

O-230-18

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 3209239
BY JOHN COTTON GROUP LIMITED
TO REGISTER THE SERIES OF TWO TRADE MARKS
PROACTIVE / PROACTIV
IN CLASSES 11, 20 & 24
AND**

**IN THE MATTER OF OPPOSITION
THERE TO UNDER No. 409268 BY
BEKAERTDESLEE INNOVATION BVBA**

BACKGROUND

1) On 27 January 2017, John Cotton Group Limited (hereinafter the applicant) applied to register the series of two trade marks “PROACTIVE” and “PROACTIV” in respect of the following goods:

- In Class 11: Heated blankets; electric blankets; heated under blankets.
- In Class 20: Pillows; bolsters; cushions; support pillows; back support pillows.
- In Class 24: Household textile articles; quilts and duvets; sheeting including mattress protection; bedding; curtains and curtain materials; eiderdowns; mattress and pillow protectors; mattress enhancers.

2) The application was examined and accepted, and subsequently published for opposition purposes on 10 February 2017 in Trade Marks Journal No.2017/006.

3) On 10 May 2017 Bekaertdeslee Innovation bvba (hereinafter the opponent) filed a notice of opposition. The opponent is the proprietor of the following trade mark:

Mark	Number	Dates of filing and registration	Class	Specification relied upon
ACTIPRO	M 1078880	International registration date 04.02.11 Date protection granted in EU 02.05.12	20	Mattresses, bedding, except linen; pillows; spring mattresses; mirrors (furniture) and toilet mirrors; non-metallic castors and bed fittings; beds; curtain hooks; curtain tie-backs; curtain holders, not of textile material; curtain rails; curtain rings.
			23	Thread and yarn for textile use.
			24	Textiles and textile goods, not included in other classes; ticks; bed linen; comforters; bed and table covers; bath linen, except clothing; bed covers; eiderdowns; shower curtains made of textiles or plastics; elastic woven

				material; plastic or textile curtains; handkerchiefs of textile; household linen; pillow shams; pillowcases; bed linen; diapered linen; fabrics for household linen; linen cloth; mattress protectors; upholstery fabrics; linings; wall hangings of textile.
			27	Carpets; door mats; mats; linoleum and other floor coverings; non-textile wall hangings; bath mats; carpets; wall upholstery, not of textile.

a) The opponent contends that the marks of the two parties are highly similar and the respective goods are identical and/or similar. As such it contends that the application offends against Section 5(2)(b) of the Act.

b) The opponent also opposed the mark under section 5(4)(a). However, as the opponent failed to file any evidence in support of this ground it was struck out.

4) On 12 June 2017 the applicant filed a counterstatement. It denies that the marks are similar, either visually, aurally or conceptually. It did not put the opponent to proof of use.

5) Both parties seek an award of costs in their favour. Neither party filed evidence or wished to be heard. Both parties provided written submissions which I shall refer to as and when necessary in my decision.

DECISION

6) The first ground of opposition is under section 5(2)(b) which reads:

“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.”

7) An “earlier trade mark” is defined in section 6, the relevant part of which states:

“6.-(1) In this Act an "earlier trade mark" means -

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

8) The opponent is relying upon its trade mark listed in paragraph 3 above which is clearly an earlier filed trade mark. The opponent was not put to proof of use.

9) When considering the issue under section 5(2)(b) I take into account the following principles which 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

The average consumer and the nature of the purchasing process

10) 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 these goods are likely to be selected by the average consumer in the course of trade.

11) The goods at issue in these proceedings are mostly textiles and household goods. The average consumer for such goods will be the public at large, including businesses such as hotels. All of the goods at issue may be sold through a range of channels, such as retail premises, internet and catalogues. I also have to take into account the possibility of recommendations so aural considerations have to be taken into account. As neither party's specifications are limited I must keep all of these trade channels in mind. Clearly, the average consumer's level of attention will vary considerably depending on the cost and nature of the item at issue. However, to my mind even when selecting routine inexpensive textile items such as towels, the average consumer will pay attention to considerations such as size, colour, fabric and cost. **Overall the average consumer for the goods is likely to pay a reasonable degree of attention to the selection of textiles and household objects.**

Comparison of goods

12) When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*, the CJEU stated at paragraph 23 of its judgement:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

13) Guidance on this issue has also come from Jacob J. (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.

14) 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”.

15) In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) OHIM*) case T-133/05, the General Court (“GC”) stated:

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

a more general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T110/01 Vedral V OHIM France Distribution (HUBERT) [2002] ECR II-5275, paragraphs 43 and 44; and Case T- 10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42).”

16) In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criteria 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 General Court 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 that the responsibility for those goods lies with the same undertaking”.

17) In *Sanco SA v OHIM*, Case T-249/11, the General Court indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

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.

18) The goods to be compared are:

Opponent's goods	Applicant's goods
	In Class 11: Heated blankets; electric blankets; heated under blankets.
In class 20: Mattresses, bedding, except linen; pillows; spring mattresses; mirrors (furniture) and toilet mirrors; non-metallic castors and bed fittings; beds; curtain hooks; curtain tie-backs; curtain holders, not of textile material; curtain rails; curtain rings.	In Class 20: Pillows; bolsters; cushions; support pillows; back support pillows.
In Class 23: Thread and yarn for textile use.	
In Class 24: Textiles and textile goods, not included in other classes; ticks; bed linen; comforters; bed and table covers; bath linen, except clothing; bed covers; eiderdowns; shower curtains made of textiles or plastics; elastic woven material; plastic or textile curtains; handkerchiefs of textile; household linen; pillow shams; pillowcases; bed linen; diapered linen; fabrics for household linen; linen cloth; mattress protectors; upholstery fabrics; linings; wall hangings of textile.	In Class 24: Household textile articles; quilts and duvets; sheeting including mattress protection; bedding; curtains and curtain materials; eiderdowns; mattress and pillow protectors; mattress enhancers.
In Class 27: Carpets; door mats; mats; linoleum and other floor coverings; non-textile wall hangings; bath mats; carpets; wall upholstery, not of textile.	

19) I shall first consider the applicant's goods in class 11 which consists of "Heated blankets; electric blankets; heated under blankets". These are **similar to a medium degree** to the following items in the opponent's class 24 specification "bed linen; bed covers; eiderdowns" in that they are all items of bed linen designed to keep the occupant of the bed warm.

20) Turning to the applicant's goods in class 20, the opponent's term "pillows" encompasses the whole of the applicant's specification of "Pillows; bolsters; cushions; support pillows; back support pillows" and as such **the class 20 goods of the parties must be regarded as identical**.

21) Turning to the applicant's class 24 goods the following terms are, in my opinion, identical:

Applicant's specification in class 24	Opponent's specification in class 24
Household textile articles;	Textiles and textile goods
quilts and duvets; eiderdowns	Eiderdowns; bed linen
sheeting including mattress protection; mattress and pillow protectors	mattress protectors; bed linen; pillow shams; pillowcases
bedding	bed linen
curtains and curtain materials	plastic or textile curtains
mattress enhancers.	Textiles and textile goods, not included in other classes; bed covers; mattress protectors;

22) **The class 24 goods of the two parties are identical.**

Comparison of trade marks

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

24) It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by them. The trade marks to be compared are:

Opponent's trade mark	Applicant's trade mark
ACTIPRO	PROACTIVE PROACTIV

25) The opponent contends that all the letters included in its mark are contained within the applicant's marks. Regarding visual, aural and conceptual similarity the opponent states:

“In fact, the identical elements ACTI and PRO are contained within the Contested Marks albeit in the reverse order (PRO ACTI). The letters ‘VE’ and ‘V’ are the only additions in the Contested Mark beyond the identical elements present in the Earlier Mark. The differences between the marks are very limited, especially when the function of the additional letters in the contested marks is considered.

It is accepted that two marks will be found to be visually (or aurally) similar when, from the point of view of the relevant public, they are at least partly identical as regards one of more relevant aspects (Case T-6/01, *Matratzen*, paragraph 30). This is provided the coincidence is ‘relevant’ to the consumer. Whilst the marks should always be compared as a whole, it is accepted that the average consumer will break down the mark into elements which suggest a concrete meaning or resemble known words (Case T-356/02, *Vitakraft*, paragraph 51).

In the Earlier Mark ACTIPRO, the average consumer will clearly identify the two separate elements ‘ACTI’ (being short for ACTIVE) and ‘PRO’ which is commonly used as both a prefix and a suffix within the English language. The marks have a high level of visual similarity insofar as they both contain two groups of letters which form the highly similar visual and phonetic elements: ‘PRO’ and ‘ACTI[VE]’ which are present in both marks with only minimal and insignificant additions. Albeit the two elements are reversed, but they are still clearly distinguishable within each of the three marks at issue, and the average consumer when faced with the marks PROACTIV or PROACTIVE when used on identical/highly similar goods would see ACTIPRO (see also Case O-097-09, *Pro-V*, paragraph 41). This is especially the case taking into account the average consumer's imperfect recollection of the marks, and the fact that he does not have the opportunity to compare the marks side-by-side.

ii) Aural comparison: The Contested Marks and the Earlier Mark are aurally similar for the purposes of establishing a likelihood of confusion. The Contested Marks both consist of three

syllables PRO_AC_TIV(E). The Earlier Mark consists of three syllables AC_TI_PRO. Insofar as the marks consist of identical and/or similar-sounding elements, which are simply placed in a different order, the respective marks would sound similar when spoken aloud. Where the trade marks are formed of syllables or words that are identical or highly similar but in a different order, so that if just one of the syllables or words were rearranged, the signs would be identical or highly similar phonetically, the signs should be found phonetically similar.

iii) Conceptual comparison: The marks are conceptually similar insofar as the word 'PRO' is a commonly understood word meaning 'in favour of', which is often used in conjunction with other words, and this appears within both marks. PROACTIVE has a clear meaning to the consumer: to take action by causing change and not only reacting to change when it happens (ref. Cambridge English Dictionary). It is submitted that the word ACTIPRO looks and sounds so highly similar to PROACTIVE, that an English consumer would understand the word to have the same, or a very similar meaning to PROACTIVE, or would at the very least make a conceptual connection between the two words. This is especially the case in the UK, where consumers do commonly encounter European brands and are familiar with variations of words with the same meaning using a difference syntax.

iv) Conclusion re Likelihood of Confusion: We submit that the examiner should focus on the two "key considerations" present in this case. The first is the similarities in the marks and the second is the identity/similarities between the goods. First, looking at the appearance, sound, connotation and commercial impressions of the marks at issue and noting that the Contested Mark simply transposes the identical terms in the Earlier Mark, we submit that it is clear that confusion is likely between marks consisting of reverse combinations of the same terms if they convey the same meaning or create substantially similar commercial impressions. The UKIPO should therefore conclude that the similarities in the marks outweigh their very small differences, as the terms ACTIPRO and PROACTIV/E, when combined in either order, convey the same meaning. The likelihood of confusion is therefore more pronounced when considering the identity and similarity between the parties' goods and channels of trade in which those goods are offered."

26) For its part the applicant comments that the beginnings of marks are more important in determining differences. I note that in *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the General Court noted that the beginnings of word tend to have more visual and aural impact than the

ends. I do not accept the view that if the mark in suit contains all the letters of the earlier mark then this is significant, to my mind the order in which those letters appear is of far more importance. As to the contention that the two halves of the opponent's mark have simply been reversed, while this is almost accurate it does not reflect the additions to the mark and the fact that changing them round makes a fundamental difference to the mark. In the opponent's mark the "first" part "ACTI" might well be seen as short hand for the word ACTIVE. However, the term "PRO" is often seen as shorthand for "professional" as well as "being in favour of". To my mind the marks are visually and aurally different despite sharing a number of aspects such as their letters. Conceptually the marks in suit would both be seen as the well-known dictionary word used to describe someone or something who/which does not wait for something to occur before reacting but to anticipate events and react before they occur. The opponent's mark, it is accepted is invented. The average consumer has to search to seek a meaning. To my mind, it could be seen, as the opponent submits, as being in favour of being active or alternatively as being an active professional. I do not consider either "meaning" to be conceptually similar to the mark in suit. **The marks of the two parties are not similar.**

Distinctive character of the earlier trade mark

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

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and

industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

28) The opponent's mark consists of a single word ACTIPRO which is an invented word. **To my mind, the earlier mark is of medium to high inherent distinctiveness but cannot benefit from enhanced distinctiveness through use as no evidence has been provided.**

Likelihood of confusion

29) In determining whether there is a likelihood of confusion, 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 and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark as the more distinctive this trade mark is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods, the nature of the purchasing process and 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 he has retained in his mind. Earlier in this decision, I concluded that:

- the average consumer is a member of the general public (including businesses), who will select the goods by predominantly visual means, although not discounting aural considerations and that they will pay at least a reasonable degree of attention to the selection of such items.
- the opponent's marks have a medium to high degree of inherent distinctiveness but cannot benefit from an enhanced distinctiveness through use.
- the goods of the applicant in class 11 are similar to a medium degree to the opponents goods in class 24. The goods of the two parties in classes 20 & 24 are identical.
- the marks of the two parties are not similar.

30) In *Calvin Klein Trademark Trust v OHIM*, Case C-254/09 P, the Court of Justice of the European Union found that:

“53. As regards the third part of the first ground of appeal, it should be noted, first, that, where there is no similarity between the earlier mark and the mark applied for, the reputation of or the goodwill attaching to the earlier mark and the fact that the goods or services concerned are identical or similar are not sufficient for it to be found that there is a likelihood of confusion between the marks at issue (see, to that effect, Case C-106/03 P *Vedial v OHIM* [2004] ECR I-9573, paragraph 54; Case C-234/06 P *Il Ponte Finanziaria v OHIM* [2007] ECR I-7333, paragraphs 50 and 51; and the judgment of 11 December 2008 in Case C-57/08 P *Gateway v OHIM*, paragraphs 55 and 56).

54. In the judgment under appeal, the General Court found that there was no similarity between the marks at issue. It stated, at paragraph 52 of that judgment, that the visual, phonetic and conceptual examination of the marks shows that the overall impression created by the earlier marks is dominated by the element ‘ck’ whereas that created by the trade mark applied for is dominated by the element ‘creaciones kenny’, concluding that the lack of similarity between the signs at issue thus stems from their visual, phonetic and conceptual differences.

56. It must be observed in that connection that, contrary to what appears to be stated at paragraph 39 of the judgment under appeal, the existence of a similarity between two marks does not presuppose that their common component forms the dominant element within the overall impression created by the mark applied for. According to established case-law, in order to assess the similarity of two marks, it is necessary to consider each of the marks as a whole, although that does not rule out the possibility that the overall impression created in the mind of the relevant public by a complex trade mark may, in certain circumstances, be dominated by one or more of its components. However, it is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element (see *OHIM v Shaker*, paragraphs 41 and 42; the judgment of 20 September 2007 in Case C-193/06 P *Nestlé v OHIM*, paragraphs 42 and 43; and *Aceites del Sur-Coosur v Koipe*, paragraph 62). In that connection, it is sufficient for the common component not to be negligible.

57. However, it is clear that the General Court found, first, that the overall impression created by the mark applied for is dominated by the element ‘creaciones kenny’, on which the consumer concerned will to a very great extent focus his attention and, second, in particular at paragraph 44 of the judgment under appeal, that the element ‘ck’ occupies only an ancillary position in

relation to that element, which, in essence, amounts to a conclusion that the element 'ck' in the mark applied for is negligible.

58. Thus, having ruled out, on the basis of a properly conducted analysis, any similarity between the marks at issue, the General Court correctly concluded, at paragraphs 53 to 57 of the judgment under appeal, that, notwithstanding the reputation of the earlier marks and the fact that the goods covered by the marks at issue are identical, there is no likelihood of confusion between the marks.”

31) In view of the above, and allowing for the concept of imperfect recollection, there is no likelihood of consumers being confused into believing that the goods applied for under the mark in suit and provided by the applicant are those of the opponent or provided by some undertaking linked to it. **The opposition under Section 5(2) (b) fails completely.**

CONCLUSION

32) The opposition under Section 5(2) (b) has failed.

COSTS

33) As the applicant has been successful it is entitled to a contribution towards its costs.

Preparing a statement and considering the other side's statement	£200
Preparing submissions	£400
TOTAL	£600

34) I order Bekaertdeslee Innovation bvba to pay John Cotton Group Limited the sum of £600. This sum to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 11th day of April 2018

George W Salthouse
For the Registrar,
the Comptroller-General