

O/0247/25

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. 3912678

IN THE NAME OF CERTAS ENERGY UK LIMITED
IN RESPECT OF THE SERIES OF TWO TRADE MARKS

evolo, evolo

IN CLASSES 4, 9, 11, 35, 36, 37, 39 & 42

AND

THE OPPOISITON THERETO UNDER NO. 442501
BY PARKINGEYE LIMITED

Background and pleadings

1. Certas Energy UK Limited (“the applicant”) applied to register trade mark application no. 3912678 for the series of two marks shown on the cover page of this decision in the UK on 17 May 2023. The application was accepted and published in the Trade Marks Journal on 2 June 2023 in respect of the goods and services in classes 4, 9, 11, 35, 36, 37, 39 & 42.

2. On 14 August 2023, Parkingeye Limited (“the opponent”) partially opposed the trade mark application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).¹ The opposed goods are set out at Annex A to this decision.² This is on the basis of its two earlier UK trade marks set out below:

EVOLGY

UK registration no. 3710026 (“the earlier ‘026 mark”)

Filing date: 14 October 2021

Registration date: 14 January 2022

Relying on all goods in class 9 and all services in class 36 as set out at Annex B to this decision.

EVOLGY PAY

UK Registration no. 3781258 (“the earlier ‘258 mark”)

Filing date: 26 April 2022

Registration date: 22 July 2022

¹ The opponent originally also relied on section 5(3) of the Act, but this ground was subsequently withdrawn.

² Since the opposition was filed, the applicant has slightly narrowed its specification by way of filing a TM21B. The opposition was maintained against the slightly narrower list of goods and services, which will be outlined later in this decision should it become necessary.

Relying on all goods and services registered, those being in classes 9, 36 and 39 as set out in Annex C to this decision.

3. By virtue of their earlier filing dates, the above marks constitute earlier marks in accordance with section 6 of the Act. As the earlier marks had been registered for a period of less than five years at the date on which the contested mark was filed, they are not yet subject to proof of use in accordance with section 6A of the Act.

4. The opponent argues that the respective goods and services are identical or similar and that the marks are highly similar, and that as such there exists a likelihood of confusion, including a likelihood of association between the marks.

5. The applicant filed a counterstatement denying the claims made.

6. Neither side filed evidence in these proceedings. Only the opponent filed written submissions during the evidence rounds which will not be summarised but will be referred to as and where appropriate during this decision.

7. A Hearing took place on 18 October 2024. The opponent is represented in these proceedings by Groom Wilkes & Wright LLP, and appointed counsel Andrew Norris KC of Hogarth Chambers to represent it at the hearing. The applicant is represented in these proceedings by Wilson Gunn and appointed counsel Amanda Michaels of Hogarth Chambers to represent it at the hearing.

8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Decision

Section 5(2)(b)

9. Section 5(2)(b) of the Act is as follows:

“5(2) A trade mark shall not be registered if because-

(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”.

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

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

11. 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.

The principles

(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

12. Where goods or services are defined in specifications identically, or where the wording differs, but the meaning is shared, they will be considered identical. Further, in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the 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”.

13. I acknowledge at this stage that there has been a significant number of submissions made by both parties concerning the similarity of the goods and services, not least at the hearing itself. Whilst I appreciate the extensive submissions made by the parties, as well as Ms Michaels reasoning provided as to why I should not find identity between the goods and services, it is my view that at least some of the contested goods, i.e. *charging stations for electronic vehicles* covered by the earlier ‘026 mark and the contested *battery charging equipment* in class 9, are identical in accordance with the principles set out in *Meric*. I therefore intend at this stage, to proceed on the basis that all of the contested goods and services are identical to those covered by the earlier trade marks. If the opposition fails even where the goods and services are identical, it follows that the opposition will also fail where the goods and services are only similar. However, if the opposition succeeds on the basis of the identical goods, I will revert to this position and complete a full assessment of the similarity of the goods and services at that stage.

Comparison of marks


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

created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union 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.”

15. It would be wrong, therefore, to dissect the trade marks artificially, 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.

16. The respective trade marks are shown below:

Earlier trade marks	Contested trade marks
EVOLOGY (“the earlier ‘026 mark”)	 (series of two)
EVOLOGY PAY (“the earlier ‘258 mark”)	

17. The earlier ‘026 mark comprises the single word EVOLOGY. It is within this element that the overall impression resides.

18. The earlier ‘258 mark comprises the two words EVOLOGY PAY. Being more distinctive and being positioned at the beginning of the mark, it is my view that the word EVOLOGY plays the greatest role in its overall impression, however, the word PAY is not negligible within the same.

19. The contested marks both comprise the single word *evolo* in a slightly stylised font. The word itself plays the greatest role in its overall impression, with the slight stylisation and the use of colour in one of the marks playing only a small role within the same.

20. It is clear to me that the opponent's earlier '026 mark is most similar to the contested marks. The earlier '258 mark simply reproduces the earlier '026 mark with the addition of a further element that has no counterpart in the contested mark. I consider at this stage that as I have proceeded on the basis that all of the goods and services are identical, the opponent's earlier '026 mark clearly puts it in the strongest position. I therefore intend to proceed on the basis of this earlier mark only at this stage.

Visual comparison

21. Visually, the marks coincide by way of the letters e-v-o-l-o. These letters make up the contested marks in their entirety, however, the earlier mark includes the two additional letters 'gy' at the end of the same, lengthening their appearance overall. Considering the contested marks are only five letters long, this difference is not insignificant. However, I note the similarities are present at the beginning of the mark where they tend to have a greater impact on the consumer.³ Whilst I have considered the colour and stylisation of the contested mark, it is my view this will fall within fair and notional use of the earlier mark and does not therefore add to the visual differences between the marks. Overall, I find the marks visually similar to between a medium and high degree.

Aural comparison

22. I note that Ms Michaels accepted on behalf of the applicant that there would be a limited extent of aural similarity between the marks. It is my view that the earlier mark will be pronounced as EH-VOL-OH-GY or EE-VOL-OH-GY, that being EEV or EHV followed by the relatively common suffix OLOGY pronounced in the normal way. It is my view that the contested marks will be pronounced as EH-VOE-LOW or EE-VOE-LOW (with -volo pronounced like polo). Whilst I note there is a similarity at the beginning of the marks due to the EH or EE sound, the sound and emphasis in the following two syllables differs somewhat, and the earlier mark also ends with a fourth syllable which makes a considerable difference to the overall aural comparison. Overall, it is my view that the marks are aurally similar to a medium degree.

³ See *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

23. I note for completeness that whilst it is my view that the contested marks will be pronounced as set out above, even if I am wrong and it was found that a significant portion of consumers would pronounce the contested marks as EH-VOH-LOW or EE-VOH-LOW (with -volo sounding like [a]pollo) I still consider there is a different emphasis on the third syllable of the marks, and importantly the additional syllable in the earlier mark continues to have a significant impact on the overall sound of the same when compared to the earlier marks. I therefore find they would still be similar aurally to a medium degree. However, it is my view that the single 'l' makes this pronunciation unlikely, and generally a double 'l' would be required for the mark to be pronounced in this way unprompted.

Conceptual comparison

24. Both parties provided submissions regarding the conceptual meaning of the marks. At the hearing, Mr Norris KC for the opponent submitted that that the opponent's position is that both marks will point to something that is evolutionary, due to the shared "Evolu-stem". He argued that this conceptual message is common to both marks.

25. On the contrary, Ms Michaels submitted I should take judicial notice of the letters EV as standing for electric vehicles, and that this, combined with the use of the suffix '-ology', which is well known as referring to the study/or science of something, will mean the average consumer will immediately understand that the word EVOLOGY is an invented word meaning the science of electric vehicles. Conversely, Ms Michaels submits that evoluo is an invented word, even if some consumers recognise its routes in the words evolve or evolution. Ms Michaels submitted that there are significant conceptual differences between the marks.

26. Having considered the submissions at length, I am not entirely in agreement with either party in respect of the arguments set out above. With reference to the earlier mark, even if I was to take judicial notice of the use of EV as a common abbreviation for electric vehicles, which based on my own limited knowledge of the sector I would not be willing to, I do not consider that this alone would be sufficient to demonstrate that average consumers would necessarily pick out the letters EV from the opponent's mark, which I note are written in the same case as the rest of the mark and on which

no particular emphasis is placed, and construe this meaning from the same. Certainly, I consider that there would at least be a significant portion of consumers to whom this would not be immediately obvious without additional prompting. That said, I do accept Ms Michaels submission that the suffix '-ology' would convey the idea of the study or science of something.⁴ On that basis, it is my view that the opponent's mark will likely convey to the consumer the concept of the study or science of something, although the study of what exactly would not be known. I do not consider that the concept of evolution will be readily construed to the consumer by this mark. I note that many words begin with the letters EV, and the suffix, being 'OLOGY', will also be one that is recognised and not be tied to the concept of evolution. I see no reason for this mark to particularly evoke the concept of evolution in this context.

27. In respect of the applicant's mark, I note that both parties appear to be in agreement that this may, for some consumers, evoke the concept of evolution, and considering this agreement between the parties, I accept this point. I do note that due to this being an entirely made up word with no easily recognisable suffix, the consumer is more likely to look for elements that suggest a meaning to them, and pull out the letters 'evol' in this mark for this purpose. However, I am not convinced this will be the case for all consumers. It is my view that there will still be a significant portion that simply consider it to be a made-up word with no meaning. However, in both cases, the concept of the study or science of something, as evoked by the earlier mark, will not be present, and this acts as a point of conceptual difference between the marks.

Average consumer and the purchasing act

28. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

⁴ See *Usinor SA v OHIM*, Case T-189/05 in which the General Court found that whilst the average consumer normally perceives a mark as a whole, they will nevertheless, perceiving a verbal sign, break it down into verbal elements which, for them, suggest a concrete meaning or which resemble words known to them.

29. 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.”

30. In this case, both parties appear to be in agreement that there will be two consumer groups. Mr Norris KC defines these groups in his skeleton arguments as the trade consumer, and the end consumer. He submits that the level of attention paid by the trade consumer may be higher than normal, but the level of attention paid by the end consumer would not be.

31. Ms Michaels defines the two consumer groups in her skeleton arguments as comprising either members of the general public, or businesses. She submits that some of the goods and services will be purchased with an average level of care and attention, whereas more specialised or expensive products, especially those aimed at business customers, will “...be bought with considerably more care”, which I take to mean will warrant a higher degree of attention.

32. The range of contested goods and services are, in this instance, very broad, and includes a variety of products from batteries in class 9, various retail services in class 35 and financial services in class 36, just by way of example. Having considered these in full, I agree with the parties submissions that consumers will comprise both members of the general public as well as professionals, and that there will be goods and services to which members of the pay an average (or medium) level of attention, and also goods and services to which the consumer, that being either a professional or a member of the general public, will pay a high degree of attention. This general finding does not appear to be in dispute between the parties, and I will conduct a more

detailed analysis in relation to each of the goods and services should it become necessary to do so.

33. Despite the range of goods and services, it is my view that these will all primarily be engaged with visually, either via visual advertisements, online via websites or through physical retail or wholesale stores or at garages or refuelling stations. However, I do not discount the possibility for word-of-mouth recommendations, for verbal assistance to be sought from retail or wholesale staff, or for orders to be placed or services to be sought over the phone. I cannot, therefore, completely discount the aural comparison.

Distinctive character of the earlier trade mark

34. 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).”

35. Notwithstanding his comments regarding the conceptual similarity of the marks, I note that in his skeleton arguments, Mr Norris KC submits that the earlier mark is an invented word with no meaning, rendering it distinctive to a high degree.

36. No evidence has been filed in this instance, and as such I only have the inherent position to consider. The earlier mark is the word *EVOLOGY*. It is my view that consumers will either consider this to be a made-up word; or to be an English word with its full meaning unknown to them, due to the use of the common suffix *LOGY*. However, despite acknowledging it is either made up or unknown to them, in both cases it is still my view that the use of the known *LOGY* suffix in the mark will convey to the consumer the idea of the study or science of something. Whilst this may to some be vaguely suggestive of cutting-edge knowledge or products, I note it is neither particularly allusive nor descriptive of the goods or services, and I have rejected the applicant's position that the use of *EV* will be descriptive or allusive of electronic vehicles in the context of the mark as a whole. Considering all of these factors, it is my view that earlier mark is inherently distinctive to an above medium degree, but not to the highest degree.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

37. Prior to reaching a decision under section 5(2)(b), I must first consider all relevant factors, including those as set out within the principles A-K at paragraph 11 of this decision. I must view the likelihood of confusion through the eyes of the average consumer, 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 they have kept in their mind. I must consider the impact of the visual, aural and conceptual similarities of the marks by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that the level of distinctive character held by the earlier mark will have an impact on the likelihood of confusion. I must remember that the distinctiveness of the common elements is key.⁵ I must keep

⁵ See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, in which Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar.

in mind that a lesser degree of similarity between the goods and services may be offset by a greater degree of similarity between the marks, and vice versa. I must also consider that both the degree of attention paid by the average consumer and how the goods and services are obtained will have a bearing on how likely the consumer is to be confused.

38. There are two types of confusion that I may find. The first type of confusion is direct confusion. This occurs where the average consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the average consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that both products derive from the same or economically linked undertakings.⁶

39. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

40. I consider firstly the likelihood of direct confusion between the marks. I note I have in this instance, proceeded on the basis of identity between the goods and services. Further, I note the above medium degree of inherent distinctiveness of the earlier mark, and I consider that these two factors both point in the opponent's favour. I also consider that I found the marks to be visually similar to between a medium and high degree, and to be aurally similar to a medium degree. I found the meaning conveyed by the suffix 'ology' in the earlier mark acts as a point of conceptual difference between the marks, and that the average consumer will comprise two different groups, those being professionals and members of the general public, but the level of attention paid will be at least medium or higher.

⁶ *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10

41. Within her skeleton arguments, Ms Michaels referred me to the decision *TVIS Ltd v Howserv Services Ltd* (“*Petsure*”) [2024] EWCA Civ 1103, in particular citing the paragraph below:

“41. ... Howserv relied upon the principle of “conceptual counteraction” established in the jurisprudence of the CJEU. This principle is that a conceptual difference between a sign and a trade mark can counteract visual and aural similarities in the assessment of likelihood of confusion. Conceptual counteraction is “exceptional”, however, and can only occur where “at least one of the signs at issue has, from the perspective of the relevant public, a clear and specific meaning which can be grasped immediately by that public”: see Case C– 328/18 P European Union Intellectual Property Office v Equivalenza Manufactory SL [EU:C:2020:156] at [74]-[75].”

42. As mentioned in the paragraph above, the principle of conceptual differences helping to counteract aural and visual similarities is not new, and it was set out in *The Picasso Estate v OHIM*, Case C-361/04 P, the Court of Justice of the European Union as follows:

“20. By stating in paragraph 56 of the judgment under appeal that, where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them, and by subsequently holding that that applies in the present case, the Court of First Instance did not in any way err in law.”

43. However, this is not always the case, and at the hearing Mr Norris KC referred me to additional paragraphs in *Petsure* including paragraph 40 which reads as follows:

“The third problem is that the judge appears to have been led into error as to the relevance of conceptual (dis)similarity in cases where the sign and the trade mark are visually and aurally similar. Contrary to what the judge seems to have thought, it is not necessary for the sign and the trade mark to be conceptually similar in order for there to be a likelihood of confusion. For example, there can

be a likelihood of confusion where the trade mark and the sign are visually and aurally similar and both are meaningless.”

44. Mr Norris KC went on to refer to paragraph 41 of *Petsure* as referenced by Ms Michaels above, highlighting both that it is said the principle of conceptual counteraction can only arise if one of the marks holds a clear and specific meaning, and that even if this is the case, it is not automatic and it will only be in exceptional circumstances that this arises.

45. I have considered all of the arguments above, and I agree with the opponent that marks do not need to be conceptually similar for a likelihood of confusion to occur, nor is it the case that in all instances where there is a conceptual distinction between the marks will confusion be avoided. However, there is no doubt that a conceptual distinction between the marks is one of the factors to consider in my overall assessment. I note in this case that the use of the “ology” suffix will act as a point of conceptual difference between the marks, and in this instance, it is one that will make the ending of the earlier mark more memorable. Whilst this alone might not be considered enough for the specific principle of “conceptual counteraction” to be solely relied upon, it will nonetheless assist the consumer in recalling and noticing the differences at the ends of the marks in this instance, which I note generally tend to have a lesser impact aurally and visually than the beginnings. Further, in this instance I note the addition of the visual and aural differences between the two marks, whilst of course keeping in mind the visual and aural similarities between the same. I also consider the consumer will be paying a medium or above level of attention to the goods and services. Whilst I keep in mind the consumers’ imperfect recollection, having carefully considered all of the relevant factors, and keeping in mind that the overall assessment of a likelihood of confusion is not a tick box exercise, it is my view that the differences between the marks will not go unnoticed or be misremembered by consumers in this instance. I therefore find no likelihood of direct confusion between the marks.

46. I therefore go on to consider the likelihood of indirect confusion. In *L.A. Sugar* (cited above) Mr Iain Purvis Q.C. (as he then was), as the Appointed Person set out three examples of when indirect confusion may occur as below:

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

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

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

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

47. I note that the examples above were intended to be illustrative and are not exhaustive. I also keep in mind *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, in which Arnold LJ referred to the comments of James Mellor Q.C. (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.

48. The opponent has argued that there is a risk that the average consumer would realise the marks are not the same but would put the similarity that exists between the marks down to a relationship between the entity responsible for the same. Mr Norris KC sets this out in his skeleton argument, in which his argument boils down to the fact both marks use “the EVOLO-core” and will share consumers and be used in respect of related goods or services. At the hearing, he set this argument out in the following terms:

“I am going to end with two examples in our skeleton which we say illustrate this point very neatly. We have an EVOLOGY customer who goes to an EVOLO charging station and we say it is highly likely or inevitable there is going to be a likelihood of confusion into thinking that the charging station is an EVOLOGY charging station connected to the EVOLOGY company. When you go to charge your car and are focusing on charging your vehicle you are suffering from a range of emotions - rage, anxiety, who knows - but you are not analysing the GY at the end because that is really the only difference. And that is a typical example as we say in relation to the core area of charging stations, our class 9 goods. We say a similar issue arises in relation to someone who has an EVOLOGY app or software and tries to pay at an EVOLO charging station or vice versa. We say in either situation whether it is direct or indirect, whatever the labels on it, we say a likelihood confusion is inevitable, otherwise they are just too close.”

49. I have already dismissed a likelihood of direct confusion above. In respect of Mr Norris KC's submissions regarding indirect confusion, it appears this is based on the fact that that both marks comprise the same initial five letters EVOLO. However, I do not consider this shared letter combination to constitute a proper basis on which indirect confusion will occur. I accept that the use of the applicant's EVOLO mark may, for some customers who are familiar with the opponent's EVOLOGY mark, bring this to mind. They do of course, share some similarities. However, the similarities are not such that to my mind the consumer would automatically assume the goods or services derive from the same economic undertaking. This situation clearly does not fit into any of the categories set out in *L.A. Sugar*, and whilst I remind myself that those are not exhaustive, I do not see any other logical reasoning that would be followed by the consumer that would lead them to arrive at the assumption the marks derive from the same entity. I do not consider that the addition or removal of 'GY' to end of the marks, would, for example, indicate a sub-brand or brand extension, or that the five letters evolo are in and of themselves so strikingly distinctive that it would be assumed that only one entity would use this element in the context of these two ultimately different words which form their marks. I therefore find no likelihood of indirect confusion in this instance.

50. I note at this stage that I do not consider that the opponent's position would be improved if I were to consider its case based on its earlier '258 mark, considering it is, in my view, less similar to the contested mark. Further, as I have found the outcome to be no likelihood of confusion, there is no need for me to revert to the comparison of the goods and services to complete a full assessment of the same at this stage.

Final Remarks

51. The opposition has failed in its entirety. Subject to any successful appeal, the application will proceed to registration.

COSTS

52. The applicant has been successful and is entitled to a contribution towards its costs. At the hearing, both parties agreed that scale costs would be appropriate in this instance. In the circumstances I award the applicant the sum of £1750 as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Considering the notice of opposition and preparing and filing the TM8:	£350
Reviewing the submissions filed in the evidence rounds:	£300
Preparing for and attending the hearing:	£1100
Total:	£1750

53. I therefore order Parkingeye Limited to pay Certas Energy UK Limited the sum of £1750. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 18th day of March 2025

R. Le Breton

For the Registrar

Annex A

Class 4: Electrical energy; electricity.

Class 9: Security apparatus and systems; energy control devices; energy generating apparatus and equipment charging appliances for rechargeable equipment; batteries; battery charging equipment; battery chargers; battery monitors; chargers for electric vehicles; charging stations for electric vehicles; electric vehicle charging points; electric vehicle charging monitoring apparatus; electrical charge controllers electric charging cables; electricity storage apparatus; ultracapacitors for energy storage supercapacitors for energy storage; electrical storage batteries; solar batteries; solar battery chargers photovoltaic apparatus for generating electricity; photovoltaic cells; solar energy collectors for generating electricity; solar panels; solar cells; remote monitoring apparatus and systems; apparatus for monitoring electrical energy consumption; energy meters for tracking and monitoring energy usage smart meters; energy regulators; energy management system apparatus; hardware and software for energy management systems; electric control devices for energy management and energy management systems; software; computer software platforms; software applications; software software platforms and software applications, all for use with heat pumps for energy processing software, software platforms and software applications, all in relation to batteries, battery chargers and battery charging; software, software platforms and software applications, all in relation to chargers for electric vehicles, charging stations for electric vehicles and electric vehicle charging points; software, software platforms and software applications, all for use with electric vehicle charging monitoring apparatus and electrical charge controllers; software, software platforms and software applications, all in relation to electricity storage apparatus; software, software platforms and software applications, all in relation to electrical storage batteries, solar batteries, solar battery chargers, photovoltaic apparatus for generating electricity, photovoltaic cells, solar energy collectors for generating electricity, solar panels and solar cells; software, software platforms and software applications, all for energy efficiency monitoring; software, software platforms and software applications, all in relation to the provision of energy; software, software platforms and software applications, all in relation to electric vehicle charging; software, software platforms and software applications, all for recording, transmitting,

displaying and analysing data relating to electric vehicle charging; software, software platforms and software applications, all in relation to payment card services and card issuing services; software, software platforms and software applications, all in relation to card services for the purchase of energy; software, software platforms and software applications, all in relation to card services for electric vehicle charging; software, software platforms and software applications, all relating to electronic payments; software, software platforms and software applications, all for use in the administration of payment services; software, software platforms and software applications, all for payment processing; software, software platforms and software applications, all in the field of electronic payment processing services in relation to the supply and purchase of energy; software, software platforms and software applications, all in the field of electronic payment processing services in relation to the supply and purchase of electric vehicle charging; software, software platforms and software applications, all for providing secure commercial transactions in relation to the supply and purchase of electric vehicle charging; software, software platforms and software applications, all for financial analysis and reporting; software, software platforms and software applications, all in relation to fleet management; parts and fittings for all of the aforesaid goods.

Class 35: Retail and wholesale services and online retail and wholesale services, all in relation to electrical energy, electricity, storage tanks and parts and fittings therefor, energy control devices, energy generating apparatus and equipment, charging appliances for rechargeable equipment, batteries, battery charging equipment, battery chargers, battery monitors, chargers for electric vehicles, charging stations for electric vehicles, electric vehicle charging points, electric vehicle charging monitoring apparatus, electrical charge controllers, electric charging cables, electricity storage apparatus, ultracapacitors for energy storage, supercapacitors for energy storage, electrical storage batteries, solar batteries, solar battery chargers, photovoltaic apparatus for generating electricity, photovoltaic cells, solar energy collectors for generating electricity, solar panels, solar cells, remote monitoring apparatus and systems, apparatus for monitoring electrical energy consumption, energy meters for tracking and monitoring energy usage, smart meters, energy regulators, energy management system apparatus, hardware and software for energy management systems, electric control devices for energy management and energy management

systems, software, computer software platforms, software applications, software and software platforms and software applications all for use with energy processing, software and software platforms and software applications all in relation to batteries and battery chargers, software and software platforms and software applications all in relation to battery charging, software and software platforms and software applications all in relation to chargers for electric vehicles, software and software platforms and software applications all in relation to charging stations for electric vehicles and electric vehicle charging points, software and software platforms and software applications all for use with electric vehicle charging monitoring apparatus and electrical charge controllers, software and software platforms and software applications all in relation to electricity storage apparatus, software and software platforms and software applications all in relation to electrical storage batteries, software and software platforms and software applications all in relation to solar batteries and solar battery chargers, software and software platforms and software applications all in relation to photovoltaic apparatus for generating electricity, software and software platforms and software applications all in relation to photovoltaic cells, software and software platforms and software applications all in relation to solar energy collectors for generating electricity, software and software platforms and software applications all in relation to solar panels and solar cells, software and software platforms and software applications all in the field of fuels and fuel management, software and software platforms and software applications all for energy efficiency monitoring, software and software platforms and software applications all in relation to the provision of energy, software and software platforms and software applications all in relation to electric vehicle charging, software, software platforms and software applications, all for recording, transmitting, displaying and analysing data relating to electric vehicle charging, software and software platforms and software applications all in relation to payment card services and card issuing services, software and software platforms and software applications all in relation to card services for the purchase of energy, software and software platforms and software applications all in relation to card services for electric vehicle charging, software and software platforms and software applications all relating to electronic payments, software and software platforms and software applications all for use in the administration of payment services, software and software platforms and software applications all for payment processing, software and software platforms and software applications all in the field of electronic payment

processing services in relation to the supply and purchase of energy, software and software platforms and software applications all in the field of electronic payment processing services in relation to the supply and purchase of electric vehicle charging, software and software platforms and software applications all for providing secure commercial transactions in relation to the supply and purchase of electric vehicle charging, software and software platforms and software applications all for financial analysis and reporting, software and software platforms and software applications all in relation to fleet management, billing and accounting services; information, advisory and consultancy services in relation to all of the aforesaid.

Class 36: Financial services relating to the provision of energy; financial services in relation to electric vehicle charging; payment card services; card issuing services; card services in relation to the purchase of energy; provision of credit for energy expenses; financial management of energy; provision of financial information relating to energy expenditure; card services in relation to electric vehicle charging; provision of credit for electric vehicle charging; financial management of electric vehicle charging; provision of financial information relating to electric vehicle charging; financial services in relation to loyalty, incentive and bonus programmes; loyalty card services; financial services relating to electronic payments; administration of payment services; payment processing; electronic payment services; online and mobile payment services; authorisation, processing, verification and management of electronic payments; making payment receipts and financial information available to others on request; electronic payment processing services in relation to the supply and purchase of energy; providing secure commercial transactions in relation to the supply and purchase of energy; electronic payment processing services in relation to the supply and purchase of electric vehicle charging; providing secure commercial transactions in relation to the supply and purchase of electric vehicle charging; financial analysis and reporting services; financial advice in relation to the purchase or leasing of electric vehicles; financial advice and consultation in the field of energy transition; information, advisory and consultancy services in relation to all of the aforesaid.

Class 37: Installation, maintenance, servicing, repair, refurbishment, restoration and cleaning of energy control devices, energy generating apparatus and equipment, charging appliances for rechargeable equipment, batteries, battery charging

equipment, battery chargers, battery monitors, chargers for electric vehicles, charging stations for electric vehicles, electric vehicle charging points, electric vehicle charging monitoring apparatus, electrical charge controllers, electric charging cables, electricity storage apparatus, ultracapacitors for energy storage, supercapacitors for energy storage, electrical storage batteries, solar batteries, solar battery chargers, photovoltaic apparatus for generating electricity, photovoltaic cells, solar energy collectors for generating electricity, solar panels, solar cells, remote monitoring apparatus and systems, apparatus for monitoring electrical energy consumption, energy meters for tracking and monitoring energy usage, smart meters, energy regulators, energy management system apparatus, hardware for energy management systems, electric control devices for energy management and energy management systems, battery charging services; electric vehicle charging services; charging station services for electric vehicles; information, advisory and consultancy services in relation to all of the aforesaid.

Class 39: Energy supply and distribution; storage of energy; transport and delivery services; arranging transport and delivery of fuel; transmission and distribution of electricity; distribution of electricity by charging stations for electric vehicles; supply of electricity by means of electric vehicle charging stations; provision of vehicle parking facilities with charging points for electric vehicles; information, advisory and consultancy services in relation to all of the aforesaid.

Class 42: Surveying and advisory services relating to energy usage and energy efficiency; consulting and advisory services in the field of energy saving and energy transition; technical advice in connection with energy usage management and energy efficiency; energy auditing services; evaluation and planning of energy requirements for others; engineering services in the field of energy technology; technical support and consulting services; providing temporary use of non-downloadable software; providing temporary use of non-downloadable computer software platforms; providing temporary use of non-downloadable software applications; providing temporary use of non-downloadable software, providing temporary use of non-downloadable software, software platforms and software applications, all for use with heat pumps for heating systems and energy processing; providing temporary use of non-downloadable software, software platforms and software applications, all in relation to batteries,

battery chargers and battery charging; providing temporary use of non-downloadable software, software platforms and software applications, all in relation to chargers for electric vehicles, charging stations for electric vehicles and electric vehicle charging points; providing temporary use of non-downloadable software, software platforms and software applications, all for use with electric vehicle charging monitoring apparatus and electrical charge controllers; providing temporary use of non-downloadable software, software platforms and software applications, all in relation to electricity storage apparatus; providing temporary use of non-downloadable software, software platforms and software applications, all in relation to electrical storage batteries, solar batteries, solar battery chargers, photovoltaic apparatus for generating electricity, photovoltaic cells, solar energy collectors for generating electricity, solar panels and solar cells; providing temporary use of non-downloadable software, software platforms and software applications, all for energy efficiency monitoring; providing temporary use of non-downloadable software, software platforms and software applications, all in relation to the provision of energy; providing temporary use of non-downloadable software, software platforms and software applications, all in relation to electric vehicle charging; providing temporary use of non-downloadable software, software platforms and software applications, all in relation to payment card services and card issuing services; providing temporary use of non-downloadable software, software platforms and software applications, all in relation to card services for the purchase of energy; providing temporary use of non-downloadable software, software platforms and software applications, all in relation to card services for electric vehicle charging; providing temporary use of non-downloadable software, software platforms and software applications, all relating to electronic payments; providing temporary use of non-downloadable software, software platforms and software applications, all for use in the administration of payment services; software, software platforms and software applications, all for payment processing; providing temporary use of non-downloadable software, software platforms and software applications, all in the field of electronic payment processing services in relation to the supply and purchase of energy; providing temporary use of non-downloadable software, software platforms and software applications, all in the field of electronic payment processing services in relation to the supply and purchase of electric vehicle charging; providing temporary use of non-downloadable software, software platforms and software applications, all for providing secure commercial transactions in relation to the supply

and purchase of electric vehicle charging; providing temporary use of non-downloadable software, software platforms and software applications, all for financial analysis and reporting; providing temporary use of non-downloadable software, software platforms and software applications, all in relation to fleet management; information, advisory and consultancy services in relation to all of the aforesaid.

Annex B

Class 9: Charging stations for electronic vehicles; coin operated mechanisms for operating gates for car parks; electronic parking lot ticket dispensers; electronic parking card systems; encoded plastic cards; encodable cards; smart cards; stored value cards; prepaid cards; parts and fittings for all the aforesaid goods.

Class 36: Information services relating to the automated payment of accounts and charges; payment administration services; automated or electronic payment, administration, processing, collection and management; payment transaction card services; all of the aforesaid relating to car park management solutions and traffic management solutions; advisory, information and consultancy services all relating to the aforesaid services.

Annex C

Class 9: CCTV systems; computers; computer software; computer hardware; parking enforcement systems; information reporting systems; information alerting systems; calculating machines; data processing equipment; computers for use in data management; computer software for processing digital images; computer software for business purposes; all of the aforesaid relating to car park management solutions and traffic management solutions; automated car parking control devices; coin operated mechanisms for operating gates for car parks; computer applications for automated car parking control; electronic parking lot ticket dispensers; parking meters; traffic management software; automatic number plate recognition software; access control apparatus and instruments; vehicle access control systems; parking management systems; electronic parking card systems; encoded plastic cards; encodable cards; smart cards; stored value cards; prepaid cards.

Class 36: Financial services; financial services provided over the internet and telephone; issuing tokens of value; issuing tokens of value as a reward for customer loyalty; information services relating to the automated payment of accounts and charges; payment administration services; automated or electronic payment, administration, processing, collection and management; payment transaction card services; all of the aforesaid relating to car park management solutions and traffic management solutions; advisory, information and consultancy services all relating to the aforesaid services.

Class 39: Transportation information; transport; transport by road; travel information services; travel information; car parking; car parking facilities (provision of -); car park services; car parking services; provision of car parks; rental of car parking spaces; management of vehicular traffic flow through advanced communications network and technology; arranging and booking of car parking; advisory, information and consultancy services all relating to the aforesaid services.