O/0942/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003979890
IN THE NAME OF VIRIDI PARENTE, INC.
TO REGISTER THE FOLLOWING TRADE MARK:

IN CLASS 7, 9, 12, 37 AND 42

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000445375
BY PROMOVEC GROUP A/S.

BACKGROUND AND PLEADINGS

1. On 15 November 2023, Viridi Parente, Inc. ("the Applicant") applied to register the trade mark shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on 12 January 2024 in respect of the following goods and services:

> **Class 7:** Earth moving machines; Earth moving machines, namely, backhoes; Earth moving machines, namely, excavators.
>
> **Class 9:** Battery packs; Battery packs for energy requirements of 50kWh to 1 Megawatt; Battery packs for stationary, point of use storage technology; Battery packs for instantaneous backup, demand response, peak shaving, and energy load balancing; energy and power management systems; batteries and back up power systems for electric traffic devices.
>
> **Class 12**: Electric vehicles, namely, Off highway vehicles and on highway vehicles, namely, utility vehicles and delivery trucks.
>
> **Class 37:** Installation, maintenance and repair of energy and power management systems; installation, maintenance and repair of batteries and back up power systems for electric traffic devices.
>
> **Class 42:** Research and development of energy and power management systems; Research and development of batteries and back up power systems for electric traffic devices.

2. On 19 January 2024, Promovec Group A/S ("the Opponent") opposed the application under Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed against all goods and services in the application. The Opponent relies upon the following mark:

> **VIRIDUS**
>
> UK Registration no. UK00918042893
> Filing date: 29 March 2019

Date of registration: 15 August 2019

Relying upon the following goods and services:

Class 9: Batteries; batteries for electric vehicles; electrochemical cells; lithium ion batteries; power supply devices; battery chargers; battery testers; power monitoring and control devices; battery jars; battery mounts; computers for use with bicycles and vehicles; global positioning systems for use with vehicles; parts and fittings for the aforementioned goods, not included in other classes.

Class 12: Vehicles; apparatus for locomotion by land, air or water; electric bicycles; pedal-assisted bicycles; bicycles; saddlebags adapted for bicycles; parts and fittings for the aforementioned goods, not included in other classes.

Class 35: Retail and wholesale services, also via the Internet, in connection with batteries, batteries for electric vehicles, electrochemical cells, lithium ion batteries, power supply devices, battery chargers, battery testers, power monitoring and control devices, battery jars, battery mounts, computers for use with bicycles and vehicles, global positioning systems for use with vehicles, parts and fittings for the aforementioned goods; Retail and wholesale services, also via the Internet, in connection with vehicles, apparatus for locomotion by land, air or water, electric bicycles, pedal-assisted bicycles, bicycles, saddlebags adapted for bicycles, parts and fittings for the aforementioned goods.

3. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the Opponent's earlier mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the

same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.[1]

4. The Opponent submits that the marks are similar and that the goods and services are identical or similar.

5. The Applicant filed a counterstatement within which it denied the claims made.

6. Only the Opponent filed evidence during proceedings. Neither party requested a hearing, however, both parties filed submissions in lieu. This decision is taken following a careful consideration of the papers.

7. The Applicant is represented by Forresters IP LLP; the Opponent is represented by Stevens Hewlett & Perkins.

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.

Evidence

9. The Opponent filed evidence in the form of the witness statement of Robin Philip Webster, of Stevens Hewlett & Perkins, signed and dated 05 August 2024. The witness statement is accompanied by exhibit RPW1.

10. The evidence seeks to show various findings in the marks comparisons in oppositions and cancellations proceedings which were made by other Hearing Officers at the UKIPO. Whilst these decisions are noted, firstly, I recognise that I am not bound

[1] See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

by the decisions of other Hearing Officers. Secondly, contrary to the opponent's submissions, I do not consider that these are comparisons on all fours – this is on the basis that some of the marks presented are merely word marks and there are various levels of stylisation in the examples provided. Subsequently, I will make my comparison based on the marks, submissions and facts that have been presented before me in these proceedings.

DECISION

Section 5(2)

11. The opposition is based upon Sections 5(2)(b) of the Act, which read as follows:

> "5(2) A trade mark shall not be registered if because -
>
> (a) …
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark".

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

> (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

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

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa; Page 8 of 20

(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

13. The goods and services for comparison are as follows:

Opponent's goods and services	Applicant's goods and services
Class 9: Batteries; batteries for electric vehicles; electrochemical cells; lithium ion batteries; power supply devices; battery chargers; battery testers; power monitoring and control devices; battery jars; battery mounts; computers for use with bicycles and vehicles; global positioning systems for use with vehicles; parts and fittings for the aforementioned goods, not included in other classes. Class 12: Vehicles; apparatus for locomotion by land, air or water; electric bicycles; pedal-assisted bicycles; bicycles; saddlebags adapted for bicycles; parts and fittings for the aforementioned goods, not included in other classes. Class 35: Retail and wholesale services, also via the Internet, in connection with batteries, batteries for electric vehicles,	Class 7: Earth moving machines; Earth moving machines, namely, backhoes; Earth moving machines, namely, excavators. Class 9: Battery packs; Battery packs for energy requirements of 50kWh to 1 Megawatt; Battery packs for stationary, point of use storage technology; Battery packs for instantaneous backup, demand response, peak shaving, and energy load balancing; energy and power management systems; batteries and back up power systems for electric traffic devices. Class 12: Electric vehicles, namely, Off highway vehicles and on highway vehicles, namely, utility vehicles and delivery trucks. Class 37:

electrochemical cells, lithium ion batteries, power supply devices, battery chargers, battery testers, power monitoring and control devices, battery jars, battery mounts, computers for use with bicycles and vehicles, global positioning systems for use with vehicles, parts and fittings for the aforementioned goods; Retail and wholesale services, also via the Internet, in connection with vehicles, apparatus for locomotion by land, air or water, electric bicycles, pedal-assisted bicycles, bicycles, saddlebags adapted for bicycles, parts and fittings for the aforementioned goods.	Installation, maintenance and repair of energy and power management systems; installation, maintenance and repair of batteries and back up power systems for electric traffic devices. Class 42: Research and development of energy and power management systems; Research and development of batteries and back up power systems for electric traffic devices.

14. In *Gérard Meric v OHIM,* Case T-133/05, the General Court ("GC") stated that:

> "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".

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

> "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.

16. 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.

17. In *Kurt Hesse v OHIM,* Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court ("GC") stated that "complementary" means:

"82. ...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".

18. For the purposes of considering the issue of similarity of the goods and services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10.

19. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

> "365. […] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case."

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

> "… Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each

involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

Class 7

Earth moving machines; Earth moving machines, namely, backhoes; Earth moving machines, namely, excavators.

21. In its submissions in lieu of a hearing, the opponent submits that the goods are for *"earth moving machines"* which are roadworthy and can be driven and move earth from place to place. It continues that with that reasoning being applied, that they can be considered as vehicles and are therefore similar to the term *"vehicles"* and *"apparatus for locomotion by land"* in the opponent's mark. I interpret the word *"locomotion"* in the term *"apparatus for locomotion by land"* as referring to the movement of the apparatus itself across land and not the movement of the earth which is the principal function of the applicant's goods. I agree with the opponent that the applicant's goods can be classified as vehicles, applying the broadest interpretation. However, the main purpose of vehicles at large is transportation. To the contrary, the applicant's goods involve the transportation and excavation of earth, whilst I accept that they will need to be driven to a specific location to use used, I do not consider this to be the main purpose of the goods.

22. Whilst I recognise that the Nice Classification is purely administrative,[2] I also note that in the case of *Altecnic Ltd's Trade Mark Application*, the Court of Appeal ("COA") decided that *"the registrar is entitled to treat the class number in the application as relevant to the interpretation of the scope of the application, for example, in the case of an ambiguity in the list of the specification of goods".*[3] In these circumstances, I consider that the consumers of the goods will differ, with the

[2] See *Mould Pro decision Case* T-794/21 at [22-28].
[3] [2002] RPC 34 (COA) at [42].

applicant's goods being targeted at consumers such as farmers or building developers for the specific purpose of moving earth, although I do recognise that they may need to be driven along the public highway (or transported) before it is able to reach its target destination. I consider that the trade channels will differ, with the applicant's goods being sourced from specialist providers, and the opponent's goods being sourced by the general public from motor traders. The goods will also have different users, nature and purpose. However, I do recognise that superficially there may be an overlap in the method of use. I do not consider that the goods are complementary, as I do not consider that they are indispensable/important to one another, and I am not of the view that the consumers of the goods would believe that the goods are provided by the same or economically linked undertakings. In addition, I do not consider that there is any competition between the goods at issue. I remind myself of the case of *Unicorn Studio Inc v Veronese Case* CH-2023-000214, Iain Purvis, KC, sitting as deputy High Court judge, stated that any finding of similarity requires the exercise of common sense.[4] Accordingly, taking a realistic approach to the comparison of these particular goods, I find them to be dissimilar. If I am wrong in this, then I find them to be, at best, similar to only a very low degree.

Class 9

Battery packs; Battery packs for energy requirements of 50kWh to 1 Megawatt; Battery packs for stationary, point of use storage technology; Battery packs for instantaneous backup, demand response, peak shaving, and energy load balancing; energy and power management systems; batteries and back-up power systems for electric traffic devices.

23. I note that the applicant agrees that its goods in this class are identical or similar to the term *"batteries*" that appears in the opponent's specification. I agree with this submission and concern that the opponent's term encompasses the various terms in the applicant's specification. Therefore, I consider the goods to be identical on the principle outlined in *Meric* or similar to at least a medium degree.

[4] At [24]

Class 12

Electric vehicles, namely, Off highway vehicles and on highway vehicles, namely, utility vehicles and delivery trucks.

24. The opponent's broad term *"vehicles"* encompasses the applicant's various types of electric vehicles and, as such, the goods are identical on the principle outlined in *Meric.*

Class 37

Installation, maintenance and repair of energy and power management systems; installation, maintenance and repair of batteries and back up power systems for electric traffic devices.

25. I note that the opponent has submitted that these services are complementary to class 9 and class 12 goods. As an example, the opponent submits that the above services are ancillary to batteries and power supply devices, as is research and development of the same. I note that the opponent submits in its submissions in lieu that the applicant has failed to challenge the assertions made by the opponent in relation to the services comparison and accordingly it should be treated as a '*tactic admission that the respective services are similar'.* To the contrary, I note that in its Form TM8 the applicant states that the goods and services are dissimilar and reiterates this in its submissions in lieu, submitting these services and the goods in classes 12 and 9 in the opponent's specification are dissimilar. This is submitted to be on the basis that the uses, users, trade channels and nature of the goods and services all differ.

26. I consider that the relevant public of the opponent's *"batteries"* and *"power supply devices"* may coincide with "*[…] maintenance and repair of batteries and back up power systems for electric traffic devices"* and "[…] *maintenance and repair of energy and power management systems*. In addition, I agree with the opponent that these goods and services may be complementary, in the sense that consumers may think that responsibility for the production of those goods and provision of those

services lies with the same undertaking. I also consider that the goods and services may overlap in trade channels. I consider that the method of use and purpose of the goods and services will differ. Consequently, despite the goods and services' different natures, I consider that the goods and services are similar to a medium degree.

27. However, I do not consider that there is complementarity between the opponent's goods and "*Installation […] of energy and power management systems"* and *"installation, […] of batteries and back up power systems for electric traffic devices."* This is on the basis that it is not my view that the average consumer will presume that the installer of batteries etc will also be responsible for the production of such goods. I do not consider that the overlap in users is sufficient to substantiate similarity. Therefore, I consider that the goods and services are dissimilar. Even if I am mistaken, I do not consider the goods and services to be similar to any more than a very low degree.

Class 42:

Research and development of energy and power management systems; Research and development of batteries and back up power systems for electric traffic devices.

28. I note that the opponent has submitted that these services are complementary to its goods in classes 9 and 12. The opponent does not comment on the other factors. I agree with the applicant's submissions in its submissions in lieu that the goods and services will differ in uses, users, trade channels and the nature of the goods and services. In addition, I do not consider that the goods and services are in competition. In relation to the complementarity of the goods and services at issue, I do not consider that 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",*[5] especially taking into consideration that the services are so specialist. I remind myself of the case of *Unicorn Studio Inc v Veronese Case*, where it was stated that any finding of similarity requires the exercise of common sense. Taking a realistic approach, I consider these goods

[5] Boston Scientific

and services to be dissimilar. If I am mistaken, they would not be similar beyond a very low degree.

29. As a level of similarity is required between the competing goods and services in order for there to be a likelihood of confusion under the Act,[6] and no similarity has been found with the following services that I have found to be dissimilar:

> **Class 37:** *Installation […] of energy and power management systems; installation, […] of batteries and back up power systems for electric traffic devices.*

COMPARISON OF THE MARKS

30. The respective trade marks pleaded under 5(2)(b) are shown below:

Earlier trade mark	Contested trade mark
VIRIDUS	 **(first in series)**  **(2nd in series)**

31. The opponent's mark is a word only mark of the text 'VIRIDUS'. The mark is presented in capital letters in a standard black typeface, with no other elements to contribute to the overall impression. The overall impression of this mark rests in the word itself.

32. The applicant's mark is a series of two marks that consist of a device element and the word 'Viridi'. The applicant does not describe the device, however, the opponent submits that the device is a stylised letter 'V' logo which is the distinctive

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

element. I agree with the opponent that the device element is a 'V' shape with vertical lines at the end of the device. However, I do not agree with the applicant that the device is the distinctive element. The device is presented in green in the first mark in the series and grey in the second mark of the series. The word element, as above, is the word 'Viridi' in blue (first mark in the series) and black (second mark in the series). While the typeface used is very slightly stylised, it is fairly standard. As consumers tend to be drawn towards the word elements of the marks,[7] I am of the view that despite the placement of the device at the beginning of the mark, and its size, I consider that the word 'Viridi' will play the greater role in the overall impression of the mark with the device element playing a lesser role. The slight stylisation and colour will also play a lesser role in the overall impression of the mark.

33. Visually, the marks share the letters 'VIRID'. However, they differ with the ending of 'I' in the applicant's series of marks, the device, the slight stylisation of the text and the colours (as described above). In addition, they differ with the end of 'US' in the opponent's mark. Taking the above into account, I consider the marks to be similar to a medium degree.

34. It is my view that the device in the applicant's series of marks will not be pronounced. Aurally, both marks would be articulated as three syllables, the applicant's mark would be pronounced as either "VEE-REED-EE" or "VI-RI-DEE". Whilst the opponent's mark will be pronounced as either "VEE-REED-US" or "VI-RI-DUS", meaning an aural commonality between the first two syllables of the competing marks. Overall, I consider the marks to be aurally similar to a high degree.

35. For a conceptual message to be relevant, it must be capable of immediate grasp by the average consumer - Case C-361/04 *P Ruiz-Picasso and others v OHIM* [2006].[8]

[7] *MigrosGenossenschafts-Bund v EUIPO*, T-68/17
[8] Paragraph 56

36. The opponent submits that both marks have Latin origin with no direct English meaning and would not be understood by the average consumer. The applicant has offered no submissions with regard to any possible concept of either mark.

37. To my knowledge, neither of the competing marks has a defined meaning in British English, and they are each likely to be perceived by a significant proportion of the average UK consumer as invented words with no conceptual meaning, although I accept that some consumers may assume that either one or both marks are derived from Latin. It is my view that the device in the applicant's mark will not be perceived as adding anything further conceptually, rather it will be viewed as a device of a 'V', as in 'Viridi'. Even where consumers recognise that the marks originate from Latin, as neither mark has any clear and identifiable semantic content, a conceptual comparison cannot be made.

AVERAGE CONSUMER AND THE PURCHASING ACT

38. It is necessary for me to determine who the average consumer is for the goods and services in question; I must then determine the manner in which the goods and services are likely to be selected by the average consumer in the course of trade.

39. 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 and services in question: *Lloyd Schuhfabrik Meyer, Case C-342/97.* 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:

> "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."

40. In relation to the class 9 goods, I would expect the average consumer to include both the general public and businesses. Depending on the exact nature of the goods, being various types of batteries/battery packs, these may be sold through general stores or their online equivalents or may be sourced from a specialist provider. Overall, I would expect a medium degree of attention to be paid to what I consider would be a predominantly visual purchase, although oral considerations may also apply.

41. The applicant's class 7 goods will most likely be sold through specialist providers of plant machinery to business consumers such as farmers or building developers. The average consumer of the overlapping class 12 goods will include the general public, with the goods sold through dedicated motor dealerships. For both sets of goods, their selection will be by predominantly visual means, through visiting physical showrooms and from the perusal of printed brochures, as well as through online research prior to purchase. I acknowledge that oral considerations will play a part during the selection of the goods, for example by way of verbal recommendations and discussions with sales representatives. The purchase of these goods is likely to be infrequent and highly considered. Such considerations will include, inter alia, the initial cost and ongoing running and maintenance costs, and the performance and reliability of the goods, as well as their aesthetic appearance. For the class 7 goods, capacity, power and availability of accessories will also play a part. Overall, I consider a high degree of attention will be paid during the purchasing process for both the class 7 and class 12 goods.

42. In relation to the services at issue, the consumers are likely to include members of the general public as well as more specialised commercial customers or businesses. I consider that the average consumer will take into account various considerations such as costs, experience, customer support, qualifications and contract terms when selecting the services. Due to the nature of the services, I consider that the price and frequency of the purchase is likely to vary. These services will typically be advertised in brochures, specialist magazines, on the internet and on the front of retail premises. Therefore, the initial selection is primarily visual. However,

I accept that such services may be researched or discussed with a member of staff, so word-of-mouth recommendations also come into play. Therefore, I do not discount that an aural component plays a part. Taking this into account I consider that the average consumer is likely to pay a medium to high degree of attention when selecting the services.

Distinctive character of the earlier trade mark

43. The distinctive character of a trade mark can be appraised only, first, by reference to the goods and services in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In *Lloyd Schuhfabrik*, 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)."

44. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and services, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. As the opponent has filed no evidence regarding the distinctiveness of the earlier trade mark, I have only the inherent characteristics of its trade mark to consider.

45. Earlier in my decision, I found that the opponent's mark would be perceived as an invented word by a significant proportion of the relevant consumer. I do not consider it to be allusive of the goods or services at issue. Consequently, I find the earlier mark to be inherently distinctive to a high degree.

LIKELIHOOD OF CONFUSION

46. I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods or services may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and; iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V*).

47. There are two types of confusion that may occur. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but for some reason assumes that the later mark also identifies the goods or services of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

48. I note that I have found the goods and services to vary in similarity from identical to similar to a very low degree (at best). I have found the marks to be visually similar

to a medium degree, aurally similar to a high degree and conceptually neutral. I have found the average consumers degree of attention to vary from between a medium to a high degree of attention. I have found the opponent's mark to be inherently distinctive to a high degree.

49. I have weighed up each of the competing factors in my decision, including the differences as well as the similarities between the competing marks. The average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind. In *El Corte Ingles, SA v OHIM,* Cases T- 183/02 and T-184/02, the GC noted that the beginning of words tend to have more visual and aural impact than the ends, however, I accept that this is not always the case. Given the high degree of inherent distinctive character of the earlier mark, as well as the degree of visual and aural similarity between the marks, in my view, the similarities between the marks are such that they are likely to be mistakenly recalled as each other. Consequently, I consider there to be a likelihood of direct confusion in relation to all the goods which I have found to be Meric identical. Realistically, I do not consider there to be any likelihood of confusion for those goods or services for which only a low to very low degree of similarity, at best, was found.

CONCLUSION

50. The opposition based upon 5(2)(b) has succeeded in part, and the application subject to any appeal, will be refused for some of the goods and services.

51. The application will continue for the following goods and services, which were unsuccessful, they will proceed to registration:

> **Class 7:** Earth moving machines; Earth moving machines, namely, backhoes; Earth moving machines, namely, excavators.
>
> **Class 37:** Installation […] of energy and power management systems; installation […] of batteries and back up power systems for electric traffic devices.

Class 42: Research and development of energy and power management systems; Research and development of batteries and back up power systems for electric traffic devices.

52. The opposition has succeeded for the following goods and services, which will be refused:

Class 9: Battery packs; Battery packs for energy requirements of 50kWh to 1 Megawatt; Battery packs for stationary, point of use storage technology; Battery packs for instantaneous backup, demand response, peak shaving, and energy load balancing; energy and power management systems; batteries and back up power systems for electric traffic devices.

Class 12: Electric vehicles, namely, Off highway vehicles and on highway vehicles, namely, utility vehicles and delivery trucks.

Class 37: Maintenance and repair of energy and power management systems; maintenance and repair of batteries and back up power systems for electric traffic devices.

COSTS

53. Both parties have enjoyed a share of success, with the greater degree of success on the part of the applicant who is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023. I have made a reduction to the costs to reflect the partial extent of the success. Applying the guidance in the TPN, I consider the following to be fair:

Preparing a counterstatement and considering the statement of grounds	£250
Preparing and writing submissions in lieu of a hearing	£350
Considering evidence and commenting on the other side's evidence	£400
Total:	**£1000**

54. I therefore order Promovec Group A/S**.** to pay Viridi Parente, Inc**.** the sum of £1000. 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 6th day of October 2025

A Klass
For the Registrar