

O/369/22

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003594723

BY PLANET SELL LTD TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASSES 3, 8 AND 9

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 424621 BY CHEMOFORM AG**

Background and Pleadings

1. On 12 February 2020, Planet Sell Ltd ('the Applicant') filed an application to register the trade mark shown on the cover page of this Decision, number UK00003594723. The application was published for opposition purposes in the *Trade Marks Journal* on 16 April 2021. Registration is sought in respect of the following:

Class 3: *Cleaning sprays; Cleaning fluids; Cleaning foam; Cleaning chalk; Chalk (Cleaning -); Cleaning preparations; Floor cleaning preparations; Oven cleaning preparations; Carpet cleaning preparations; Tooth cleaning preparations; Window cleaning compositions; Glass cleaning preparations; Wallpaper cleaning preparations; Caustic cleaning agents; Foam cleaning preparations; Hair cleaning preparations; Teeth cleaning lotions; Dry cleaning preparations; Windshield cleaning liquids; Windscreen cleaning liquids; Household cleaning substances; Hand cleaning preparations; Windscreen cleaning preparations; Dry-cleaning preparations; Windscreen cleaning fluids; Automobile cleaning preparations; Toilet cleaning gels; Masks (Beauty -); Beauty lotions; Beauty masks; Beauty milks; Beauty gels; Beauty creams; Beauty serums; Beauty milk; Beauty soap; Facial beauty masks; Beauty care cosmetics; Beauty balm creams; Beauty care preparations; Non-medicated beauty preparations; Beauty masks for hands; Distilled oils for beauty care; Beauty preparations for the hair; Beauty creams for body care; Body cleaning and beauty care preparations; Beauty serums with anti-ageing properties; Beauty tonics for application to the body; Beauty tonics for application to the face; Shampoos; Shampoo; Pet shampoos; Shampoo-conditioners; Hair shampoos; Car shampoos; Emollient shampoos; Body shampoos; Dry shampoos; Hair shampoo; Vehicle shampoos; Baby shampoo; Dandruff shampoo; Shampoo bars; Waterless shampoo; Waterless shampoos; Carpet shampoo; Shampoos for pets; Shampoo for animals; Non-medicated shampoos; Baby shampoo mousse; Pets (Shampoos for -); Shampoos for vehicles;*

Shampoos for babies; Shampoos for personal use; Non-medicated hair shampoos; Non-medicated pet shampoos; Hair rinses [shampoo-conditioners]; Shampoos for human hair; Refill packs for shampoo dispensers; Dandruff shampoos, not for medical purposes; Shampoos for pets [non-medicated grooming preparations]; Shampoos for animals [non-medicated grooming preparations]

Class 8: *Kitchen knives; Kitchen mandolines; Kitchen knives (Non-electric -); Cutlery, kitchen knives, and cutting implements for kitchen use; Scissors for kitchen use; Japanese chopping kitchen knives; Thin-bladed kitchen knives; Fish slicing kitchen knives; Gardeners' knives; Gardening trowels; Gardening scissors; Garden forks; Gardening shears; Trowels [gardening]; Garden rollers [hand-operated]; Gardening tools (Hand operated -); Garden tools, hand-operated; Hand-operated tools for gardening; Hand-powered cultivators for gardening; Agricultural, gardening and landscaping tools; Three-prong cultivators for gardening; Hand powered three-prong cultivators for gardening; Sprayers [hand-operated tool] for garden use in spraying insecticide; Sprayers [hand-operated tool] for garden use in spraying weedkillers; Cutlery; Biodegradable cutlery; Forks [cutlery]; Spreaders [cutlery]; Spreaders being cutlery; Hand-operated cutlery; Canteens of cutlery; Boxes for cutlery [fitted]; Cutlery of precious metals; Boxes adapted for cutlery; Cutlery for use by babies; Silverware [cutlery, forks and spoons]; Cutlery for use by children; Disposable tableware [cutlery] made of plastics; Table cutlery [knives, forks and spoons]*

Class 9: *Pads (Mouse -); Mouse pads; Touch pads; Digitiser pads; Tone pads; Spectacle nose pads; Sunglass nose pads; Touch pads [electric]; Computer mouse pads; Touch pads [electronic]; Mouse pads [computer peripheral]; Brake pad wear sensors; Ear pads for headphones; Nose pads for eyewear; Notebook computer cooling pads; Knee-pads for workers; Silicone nose pads for eyeglasses; Computers; Computers and computer hardware; Computer chips; Computer controllers;*

Process computers; Computer networks; Computer joysticks; Tablet computer; Computer peripherals; Mainframes [computers]; Computer mousepads; Computer stylus; Computer styluses; Computer buses; Computer buffers; Hardware (Computer -); Computer monitors; Computer disks; Portable computers; Personal computers; Computer software; Computer programs; Laptop computers; Computer daughterboards; Computer chipsets; Computer keypads; Quantum computers; Computer cables; Micro-computers; Computer modems; Trip computers; Computer interfaces; Computer hardware; Computer printer; Computer screens; Notebook computers; Computer motherboards; Stick computers; Computer cabling; Computer keyboards; Micro-computer; Computer servers; Wearable computers; Tablet computers; Computer tapes; Computer games; Computer modules; Computer printers; Computer whiteboards; Computer discs; Mobile computers; Desktop computers; Computer diskettes; Computer touchscreens; Palmtop computers; Computer memories; Computer mainframes; Computer plotters; Computer firmware; Computer terminals; Computer cases; Computer databases; Computer systems; Computer mouses; Computer mice; Computer mouse; Computer housings; Handheld computers; Computer apparatus; Communications computers; Computer programmes; Netbook computers; Laptops [computers]; Computer shareware; Computer groupware; Netbooks [computers]; Computer software for accessing computer networks; Computer utility programs for computer maintenance; Computer software for testing vulnerability in computers and computer networks; Computer programs for connecting remotely to computers or computer networks; Computer software for computer aided software engineering; Computer programs for video and computer games; Personal computers incorporating dietary aid computer software; Computer software downloadable from global computer networks; Operating computer software for main frame computers; Computer memory devices; Monitors [computer hardware]; Computer database servers; Computer software packages; Computer disk drives; Downloadable

computer programs; Downloadable computer software; Computer graphics software; On-board computers; Computer screen filters; Computer programming software; Components for computers; Trackballs [computer peripherals]; Computer interface cards; Microchips [computer hardware]; Computer operating programs; Computer operating programmes; Recorded computer programs; Computer programs, recorded; Recorded computer software; Software (Computer -), recorded; Computer application software; Thin client computers; Computer firewall software; Computer monitor frames; Computer gaming software.

2. On 24 May 2021, the application was opposed by Chemoform AG ('the Opponent') based on section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed against all of the Applicant's goods. The Opponent relies on the following two earlier marks for its section 5(2)(b) ground:

i) UK00801448317

Planet Pool

Filing date: 27 July 2018

Date registration completed: 9 July 2019

Priority date: 20 February 2018

Priority Country: Germany

Registered in respect of the following goods and services:

- Class 1: *Chemical products for softening, treating, purifying water; chemicals for the maintenance of swimming pools; filtering materials made of mineral or vegetable substances; chlorine for swimming pools; biological water treatment preparations; chemicals for use in swimming pools; chemicals for use in cleaning water; chemical analysis kit for testing swimming pool water; chemical bonding agents [other than for household or stationery use]; chemical products for the treatment of drinking water; chemicals used in*

industry, science and photography, as well as in agriculture, horticulture and forestry; biological preparations for use in industry and science; chemical preparations for water purification in swimming pools; chemical preparations for testing swimming pool water; chemicals for water treatment in swimming pools and spas; chemical preparations for producing perfumes; detergents for cleaning use as part of manufacturing operations; glass granules for use in swimming pool filters; test strips impregnated with reagents for testing swimming pool water; water treatment preparations.

Class 3: *Cosmetics and cosmetic preparations; non-medicated cosmetics and toiletry preparations; perfumery, essential oils; washing and cleaning preparations; cleaning, polishing, scouring and abrasive preparations; natural perfumery; oils for cosmetic purposes; perfumery, essential oils; perfumery and fragrances; perfumery oils for producing cosmetic preparations cleaning agents; synthetic perfumery.*

Class 5: *Biocides; disinfectants for swimming pools; disinfectants; preparations for destroying vermin; fungicides; herbicides.*

Class 6: *Building materials of metal exclusively for use in or with swimming pools, whirlpools, saunas, steam baths and ponds; hand railings of metal; stair rails of metal; swimming pools of metal; ladders made wholly of metal; building materials of metal exclusively for use in or with swimming pools, whirlpools, saunas, steam baths and ponds; swimming pool roofings of metal; ironmongery exclusively for use in or with swimming pools, whirlpools, saunas, steam baths and ponds; small items of metal hardware exclusively for use in or with swimming pools, whirlpools, saunas, steam baths and ponds; tubes of metal; ladders of metal; valves of metal for swimming pool tubes; shutters of metal; swimming pools [structures] of metal.*

- Class 7: *Automatic swimming pool sweepers; sweeping machines for use in swimming pools; swimming pool cleaning machines; pumps for counter-current swimming; robotic swimming pool cleaning machines; water pumps for showers; water pumps for swimming pools.*
- Class 9: *Automatic dosage apparatus; metering apparatus for dispensing perfumes in measured quantities; dosage dispensers; liquid dosage devices that measure the amounts to be dispensed; programmable controllers; solar modules; solar cells.*
- Class 11: *Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, water supply and sanitary purposes; apparatus for ventilating exclusively for use in or with swimming pools, whirlpools, saunas, steam baths and ponds; sauna stones; sauna equipment; lighting elements; steam baths, saunas and bathing facilities [wellness]; disinfectant dispenser for toilets; disinfectant dispenser for washrooms; showers for outdoor use; filter for swimming pools chlorination equipment for water treatment; cartridge filtering devices [water treatment devices]; solar hot plates; solar water heater; portable showers; water treatment filter; water treatment equipment for water softening; water treatment equipment for water softening for household purposes; water purifiers; apparatus for the distribution, treatment and filtering of water in households and in industry; lighting, heating and cooling equipment; lights for swimming pools; globes for swimming pools; heat pumps, electric heaters, heat exchangers; sterilising equipment; chlorinating equipment for swimming pools; sanitary; swimming pool; heated swimming pool; apparatus for baths, for whirlpool baths, for baths with a jet of water; steam baths, saunas; water disinfectors; water treatment plants, apparatus and units; apparatus and units for the treatment and disinfection of swimming pools, baths and whirlpools; filters for swimming pools, baths and whirlpools; parts and fittings*

for all the aforesaid goods; pool filter.

Class 19: *Non-metallic pipes for building; transportable buildings, not of metal; polystyrene concrete blocks for the construction of walls, in particular swimming pools; building materials (non-metallic), in particular for landscaping, swimming pools and pond construction; hollow blocks, especially for garden design, swimming pool and pond construction; artificial stones, in particular for landscaping, swimming pool and pond construction; concrete components, in particular for garden design, swimming pool and pond construction; kits made of non-metallic building materials, in particular for garden design, swimming pool and pond construction; formwork systems, in particular for garden design, swimming pool and pond construction; handrails, not of metal; swimming pool (not metal); building materials, not of metal; pipes for building, not of metal; inlet nozzles, not of metal, for underwater use in swimming pools; swimming pool covers, not of metal as parts of swimming pools; swimming pool (not metal); stairs, not of metal, for swimming pools; surface skimmers [swimming pool gutters]; wintering and safety covers for swimming pools as parts of swimming pools; non-metallic rollers for wintering and swimming pool safety covers as parts of swimming pools.*

Class 20: *Ladders made of glass fibre; ladders made of wood; ladders made of plastics; steps [ladders], not of metal.*

Class 21: *Brushes; brushes with detergent containers; brush holders.*

Class 22: *Covers for swimming pools; nets; tents and tarpaulins; awnings of textile or plastic.*

Class 28: *Inflatable swimming pools [play articles]; scoop nets; swimming pools [play articles]; games; toys; gymnastic and sporting articles;*

toys for use in swimming pools; balls, balloons as toys; swimming pool (playthings); inflatable paddling pools; inflatable toys.

Class 35: *Retailing or wholesaling relating to products for softening, treating, purifying water, chemicals for the maintenance of swimming pools, filtering materials made of mineral or vegetable substances, chlorine for swimming pools, biological water treatment preparations; chemicals for use in swimming pools, chemicals for use in cleaning water, chemical analysis kit for testing swimming pool water, chemical bonding agents [other than for household or stationery use], chemical products for the treatment of drinking water, chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry, biological preparations for use in industry and science, chemical preparations for water purification in swimming pools, chemical preparations for testing swimming pool water, chemicals for water treatment in swimming pools and spas, chemical preparations for producing perfumes, detergents for cleaning use as part of manufacturing operations, glass granules for use in swimming pool filters, test strips impregnated with reagents for testing swimming pool water, water treatment preparations, chlorine for swimming pools; retailing and wholesaling relating to preparations for softening, preparing, cleaning of water, chemical products for swimming pool maintenance, filter materials made of mineral or vegetable substances; retailing or wholesaling relating to cosmetics and cosmetic preparations, non-medicated cosmetics and toiletry preparations, perfumery, essential oils, washing and cleaning preparations, cleaning, polishing, scouring and abrasive preparations, natural perfumery, oils for cosmetic purposes, perfumery, essential oils, perfumery and fragrances, perfumery oils for producing cosmetic preparations, cleaning agents, synthetic perfumery, biocides, disinfectants for swimming pools, disinfectants, preparations for destroying vermin, fungicides, herbicides; retailing or wholesaling relating to building materials of metal, hand railings*

of metal, stair rails of metal, swimming pools of metal, ladders made wholly of metal, building materials of metal, swimming pool roofings of metal, ironmongery, small items of metal hardware, tubes of metal, ladders of metal, metal valves for swimming pool tubes, shutters of metal, swimming pools [structures] of metal; retailing or wholesaling relating to automatic swimming pool sweepers, sweeping machines for use in swimming pools, swimming pool cleaning machines, pumps for counter-current swimming, robotic swimming pool cleaning machines, water pumps for showers, water pumps for swimming pools, machine tools, pool vacuum cleaners, swimming pool pumps, dosing pumps, filtration pumps, sealing membranes for pumps, suction hoses for swimming pool sucker, robot basin cleaners, filters (parts of machines or engines), turbochargers, presses and compressors, manual winter and safety roller blinds for swimming pools, pool cleaning machines; retailing or wholesaling relating to automatic dosing apparatus, metering apparatus for dispensing perfumes in measured quantities, dosage dispensers, liquid dosage devices that measure the amounts to be dispensed, programmable controllers, solar modules, solar cells [electric], scientific apparatus, not for medical purposes, electrolyzers, software packages for water treatment and pool regulation, ozonizers, electric distribution cabinets for swimming pools, alarms, pool alarms, swimming pool apparatus and instruments, swimming pool dosing devices and instruments, electric reels for wintering and storage swimming pool covers, pool thermometer, solar panels, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, sauna stones, sauna equipment, lighting elements, steam baths, saunas and bathing facilities [wellness], disinfectant dispenser for toilets, disinfectant dispenser for washrooms, showers for outdoor use, filter for swimming pools, chlorination equipment for water treatment, cartridge filtering devices [water treatment devices], sauna equipment, solar hot

plates, solar water heater, portable showers, water treatment filter, water treatment equipment for water softening, water treatment equipment for water softening for household purposes, water purifiers, apparatus for the distribution, treatment and filtering of water in households and in industry, lighting, heating and cooling equipment, lights for swimming pools, globes for swimming pools, heat pumps, electric heaters, heat exchangers, sterilizing equipment, chlorinating equipment for swimming pools, sanitary, swimming pool, heated swimming pool, apparatus for baths, for whirlpool baths, for baths with a jet of water, steam baths, saunas, water disinfectors, water treatment plants, apparatus and units, apparatus and units for the treatment and disinfection of swimming pools, baths and whirlpools, filters for swimming pools, baths and whirlpools, parts and fittings for all the aforesaid goods; retailing or wholesaling relating to pipes [non-metallic] for building, trans-portable buildings [non-metallic], polystyrene concrete blocks for the construction of walls, in particular swimming pools, building materials (non-metallic), especially for garden design, swimming pool and pond construction, hollow stone, especially for garden design, swimming pool and pond construction, artificial stones, especially for garden design, swimming pool and pond construction, concrete components, especially for garden design, swimming pool and pond construction, kits, in particular for garden design, swimming pools and ponds, formwork systems, in particular for landscaping, swimming pool and pond construction, handrails (not of metal), swimming pools (not of metal), building materials (not of metal), pipes for building (not of metal), pool roofings (not of metal), swimming pools (not of metal), stairs (not of metal) for swimming pools, surface skimmers, wintering and safety covers for swimming pools, rollers (not of metal) for wintering and swimming pool safety covers, pool filters, fiberglass ladders, wooden ladders, ladders of plastic, stepladders (not of metal); retailing or wholesaling relating to brushes, detergent container brushes, brush holders, swimming

pool covers, nets, tents and tarpaulins, fabric or plastic awnings, inflatable swimming pools [toys], landing nets, toys and playthings, gymnastic and sporting articles, toys for use in swimming pools, games, toys, balls or large balls, swimming pools (toys), inflatable paddling pools, inflatable toys, pool filters, ladders of wood or plastic, air mattresses, not for medical purposes, nets, brushes, hand brushes, handles and tubes, ropes, cords, balls, swimming pools (toys), inflatable swimming pools.

Class 37: *Repair of swimming pools, bubble baths, whirlpools and pool filters; installation work for swimming pools, bubble baths, whirlpools and pool filters; maintenance and cleaning of swimming pools; hygienic cleaning [swimming pool for swimming pools, bubble baths, whirlpools and pool filters; application of surface layers in swimming pools; construction of swimming pool complexes; installation, maintenance, repair and maintenance of disinfection apparatus and equipment, water disinfection apparatus, systems, apparatus and assemblies for water treatment, apparatus and assemblies for the treatment and disinfection of swimming pools, bubble baths and jacuzzi baths, pool filters, bubble baths and jacuzzi baths, parts and accessories for all the aforesaid goods; information and advice relating to the aforesaid.*

ii) IR WO0000000806657



International registration date: 28 February 2003

Priority date: 31 August 2002

Priority Country: Germany

Designation date: 28 February 2003

Office of origin: Germany

Publication date: 26 September 2003

Date of protection of the International Registration in the UK: 27 December 2003

Registered in respect of the following goods:

Class 1:	<i>Flocculation and precipitation agents, organic and inorganic additives for filtering materials for water, chemical agents for regulating ph values, chemical agents for withstanding damage caused by water in winter, in particular for swimming pools, water hardness stabilisers, which also destroy algae; scale removing preparations, other than for household purposes; products for preventing electrostatic charges, other than for household purposes; chemical auxiliary agents for form stripping; chemical separator agents for tar and bitumen; solvents for tar and bitumen; adhesive substances for industrial use; artificial resins for manufacturing coverings based on one or more components, artificial resins designed for protection against humidity, chemical or mechanical reactions; chemical additives for use with concrete and mortar; testing and measuring chemical products for swimming pool water testing apparatus; chemical solvents for concrete and for cement, chemical separator agents for concrete; rust solvents for concrete and metal; solvents for oils and greases, organic and inorganic solid chlorine preparations for disinfecting water; solvents for colorants; solvents for dyes; chemical diffusion agents for saunas, chemical diffusion agents for medicated bath preparations.</i>
Class 3:	<i>Cleaning products included in this class, in particular for swimming pools, tiles, floors, toilets and sanitary installations and also taps and plumbing fixtures and refined steel, including</i>

	<i>universal cleaning products, products for cleaning carpets, plastics, glass; hand cleaning products; machine cleaning products and specialised cleaning products, in particular for roadmarkers, road signs, signposts and façades; disinfectant cleaning products, cleaning products for the maintenance of saunas, having disinfectant properties; perfume oils for saunas, essential oils for saunas, massage oils; rubbing preparations for cosmetic purposes, cosmetic bath substances; wax removal products; furniture cleaning products; floor cleaning products; scale removing preparations for household purposes, scouring solutions; cleaning chemicals for covered markets and industrial installations and for machines, scouring solutions.</i>
Class 5:	<i>Disinfectants; interior and exterior air conditioning preparations; weedkillers and insecticides; chemical preparations for treating mildew and fungi; rub-in products for medicinal purposes (external use); therapeutic bath substances; algacides; disinfectants for water; medical preparations for the bath.</i>
Class 16:	<i>Printed matter, brochures, leaflets, catalogues, information material, handbooks, advertising material (included in this class); instructional and teaching material (except apparatus); primers (elementary text books).</i>
Class 21:	<i>Hand-operated cleaning instruments, brooms, articles for cleaning purposes, sponges, brushes, in particular for swimming pools (included in this class).</i>

3. The Opponent claims that:

- The Applicant's goods are either identical or highly similar to the goods and services in respect of which the earlier marks are registered;
- The dominant and distinctive element of the Applicant's mark is 'PLANET' and that the Opponent's earlier marks 'are highly distinctive per se for the goods

and services on which the opposition is based' and 'based on use made of the goods and services on which the opposition is based';

- That there is therefore a likelihood of confusion between the parties' marks under section 5(2)(b) of the Act.

4. The Opponent has claimed use of its mark WO0000000806657.

5. The Applicant filed a Defence and Counterstatement in which it denies the claim against it in its entirety. I note the following:

-Although we agree with the opposition that our application contains the same trademark classes (3,8 and 9) as their registered Trademark, each class contains a range of products. The opposition has provided no proof on the similarity between the products. Chemoform AG's products are niche i.e. Swimming Pools and Ponds cleaning products. The only household product which they have given on their website is "Steel cleaner" which Planet Sell Ltd does not sell. Therefore, we disagree with the opposition that our products are similar.

It appears that opponent's opposition is based on the description of the mark rather than the appearance of the mark. As we have applied for a figurative mark, opposer's comments are not valid.

-We do not agree that the most distinctive part of the mark is "Planet " (Form TM7, attachment 1 point 7) but the whole mark should be considered as one which do not resemble to the mark protected by the opposer (Planet Pool).

-We do not agree with opposer's comment that our mark has a "slight stylisation" (Form TM7, attachment 1 point 13). Instead, our mark is very unique, and, in our opinion, it is impossible to confuse our mark with the opposer's mark.

-We do not agree that "Planet Pool/Planet C" are phonetically similar to "Planet Care everyday (Form TM7, attachment 1 point 13).

-It appears that opposer is claiming protection on the word "PLANET" which is absurd (Form TM7, attachment 1 point 7). The Word "Planet" is not a distinctive word, commonly used around the word in everyday life and can be used in variety of setting.

-There are at least 49 trademarks with the word "Planet" in it (please see Appendix 2). Most of these trademarks were registered before the opposer's mark, many of them contain/share the classes with the opposer's mark. This shows that a precedent exists to grant trademarks containing the word "Planet" which should be the case in our application.

We do not agree that there is any likelihood of confusion between our mark and opposer's mark and request for the opposition to be overruled.

6. Neither party has filed evidence or requested a hearing. Written submissions in lieu of a hearing have been filed by the Opponent only.
7. The Opponent is represented by Swindell & Pearson Ltd; the Applicant represents itself.
8. The following decision has been made after careful consideration of the papers before me.

Relevant dates

9. The Opponent's registration UK00801448317 is an earlier mark because the date upon which it was filed fell before the filing date of the applied-for mark on 12 February 2020. The Opponent's registration WO0000000806657 is an earlier mark because it designated the UK for protection on 27 December 2003, also before the filing date of the applied-for mark.
10. Section 6A of the Act provides that where the registration procedure of the earlier mark was completed more than 5 years prior to the application date of the applied-for mark, the Opponent may be required to prove use of the earlier mark. In the instant case Section 6A is engaged because the Opponent's earlier mark WO0000000806657 had been registered for more than five years on the date on which the Applicant filed its application. However, the Applicant has chosen not to request evidence of the Opponent's use of the mark¹. The Opponent is therefore entitled to rely upon all of the goods that it seeks to rely upon.

Preliminary issue

11. The Applicant has argued in its counterstatement that the presence on the Register of 'at least 49 trademarks with the word "planet" in it [sic]' demonstrates that 'a precedent exists to grant trademarks containing the word "Planet". This argument does not weaken the Opposition against its mark. The presence, or otherwise, of other marks on the Register containing 'planet' has no bearing on the instant proceedings. My assessment is concerned only with the particular

¹ See box at [7] of the Applicant's counterstatement.

marks referred to in this opposition, although I keep in mind the Applicant's general point about the distinctiveness of the word PLANET.

Decision

Section 5(2)(b) of the Act and related case law

12. Section 5(2)(b) of the Act states:

“A trade mark shall not be registered if because—

(a) ...

(b) It is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

There exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

13. The following principles are derived from the decisions of the CJEU² 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 C120/04; *Shake 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;

² Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Trade Marks Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

(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;

(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

14. Similarity of goods/services – Nice classification

Section 60A of the Act provides:

“(1) For the purpose of this Act goods and services-

(a) are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification.

(b) are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification.

(2) In subsection (1), the ‘Nice Classification’ means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, which was last amended on 28 September 1975.”

15. I must therefore be mindful of the fact that the appearance of respective goods/services in the same class is not a sufficient condition for similarity between those goods/services, and neither are they to be found dissimilar simply because some goods/services may fall in a different class.

16. I must also bear in mind the decision of the General Court ('GC') in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05:

"29. ... 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".

17. The CJEU in *Canon*, Case C-39/97, stipulated that all relevant factors relating to a parties' goods and services must be taken into account:

"[23] "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".

18. Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281³, identified the following factors for assessing similarity of the respective goods and services:

- (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;

³ *British Sugar Plc v James Robertson & Sons Ltd* [1996] R. P. C. 281, pp 296-297.

(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.

19. Goods or services will be found to be in a competitive relationship only where one is substitutable for the other.⁴

20. 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 [or services]. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court stated that “complementary” means:

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

21. The parties’ respective goods and services are set out above at [1] and [2]; due to their length, I will not set them out again here.

⁴ *Lidl Stiftung & Co KG v EUIPO*, Case T-549/14.

i) Earlier registration UK00801448317, 'Planet Pool':

Class 3

22. The Opponent has submitted⁵ that the Applicant's class 3 goods are identical or highly similar to the Opponent's class 3 goods for its registration UK00801448317, 'Planet Pool'.

23. The Applicant has stated in its counterstatement that:

'Chemoform AG's products are niche i.e. Swimming Pools and Ponds cleaning products. The only household product which they have given on their website is 'Steel cleaner' which Planet Sell Ltd does not sell. Therefore we disagree with the opposition that our products are similar'.

Whilst this point is noted, how the parties currently use their marks are not relevant factors in the assessment of whether there is a likelihood of confusion. I must only consider the 'notional' use of the marks in relation to the goods/services in their respective specifications. As noted above at [10] the Opponent is entitled to rely on the full width of its specifications. Any differences between the parties' goods or services as marketed are irrelevant unless they are apparent from the specifications of the respective marks.

24. The following of the Applicant's class 3 terms will fall within both of the Opponent's broad terms *washing and cleaning preparations* and *cleaning, polishing, scouring and abrasive preparations*, in respect of its registration UK00801448317, 'Planet Pool':

Cleaning sprays; Cleaning fluids; Cleaning foam; Cleaning chalk; Chalk (Cleaning -); Cleaning preparations; Floor cleaning preparations; Oven cleaning preparations Carpet cleaning preparations; Window cleaning compositions; Glass cleaning preparations; Wallpaper cleaning preparations; Caustic cleaning agents; Foam cleaning preparations; Dry cleaning preparations; Windshield cleaning

⁵ Opponent's written submissions in lieu of a hearing, paragraph [16].

liquids; Windscreen cleaning liquids; Household cleaning substances; Windscreen cleaning preparations; Dry-cleaning preparations; Windscreen cleaning fluids; Automobile cleaning preparations; Toilet cleaning gels; Carpet shampoo; Car shampoos; Vehicle shampoos; Shampoos for vehicles.

The respective goods are therefore 'Merici' identical.

25. I group together the following of the Applicant's goods, all being cleaning and/or cosmetic preparations for personal use:

Tooth cleaning preparations; Hair cleaning preparations; Teeth cleaning lotions; Hand cleaning preparations; Masks (Beauty -); Beauty lotions; Beauty masks; Beauty milks; Beauty gels; Beauty creams; Beauty serums; Beauty milk; Beauty soap; Facial beauty masks; Beauty care cosmetics; Beauty balm creams; Beauty care preparations; Non-medicated beauty preparations; Beauty masks for hands; Distilled oils for beauty care; Beauty preparations for the hair; Beauty creams for body care; Body cleaning and beauty care preparations; Beauty serums with anti-ageing properties; Beauty tonics for application to the body; Beauty tonics for application to the face; Shampoos; Shampoo; Shampoo-conditioners; Hair shampoos; Emollient shampoos; Body shampoos; Dry shampoos; Hair shampoo; Baby shampoo; Dandruff shampoo; Shampoo bars; Waterless shampoo; Waterless shampoos; Non-medicated shampoos; Baby shampoo mousse; Shampoos for babies; Shampoos for personal use; Non-medicated hair shampoos; Hair rinses [shampoo-conditioners]; Shampoos for human hair; Refill packs for shampoo dispensers; Dandruff shampoos, not for medical purposes.

All of these terms will fall within the Opponent's broad term *non-medicated cosmetics and toiletry preparations*, in respect of its registration UK00801448317, 'Planet Pool'. These goods are therefore 'Merici' identical. If they are not identical, they are highly similar.

26. I group together the following of the Applicant's goods, all being shampoos for animals:

Pet shampoos; Shampoos for pets; Shampoo for animals; Pets (Shampoos for -);

Non-medicated pet shampoos; Shampoos for pets [non-medicated grooming preparations]; Shampoos for animals [non-medicated grooming preparations].

I compare these goods to the Opponent's *non-medicated cosmetics and toiletry preparations*, on the basis that this broad term will encompass shampoos. The goods will differ in purpose to the extent that the Applicant's goods are for use on animals, although purpose will coincide in the broad sense that both sets of goods are cosmetic i.e. aimed at improving or maintaining the appearance or condition of an aspect of the person (in the case of shampoos, the hair and scalp), or animal's coat, as the case may be. Users will be distinct; consumers of the Applicant's goods will be pet or animal owners, whereas consumers of the Opponent's goods will be individuals seeking to maintain or improve the appearance of their hair. Methods of use will coincide in that both sets of goods are applied topically, albeit the Applicant's goods will be applied to an animal's coat rather than a human being. Trade channels will often differ; I consider it unusual for animal shampoos to be sold in the same outlets as toiletries for human beings, although if they are, they will be sold in different sections/aisles. The physical nature of the goods will overlap to the extent that both animal shampoos and goods within the Opponent's term will be sold in the form of a liquid, gel or lotion. I find the goods to be neither competitive nor complementary. I therefore find the respective goods to have a low level of similarity with the Opponent's *Cosmetics and cosmetic preparations*, in respect of its registration UK00801448317, 'Planet Pool'.

Class 8

27. I note the following from the Opponent's written submissions⁶:

In particular it is maintained that the opposed goods in Class 8 are similar to the goods of the earlier rights in particular they are similar to the Class 11 goods of the PLANET POOL registration or if these goods are not identical, they are highly similar. This was not addressed by the Applicant and it is maintained that this accepted by the Applicant.

⁶ Opponent's written submissions, paragraph [18].

28. I do not find the respective goods to be identical, they are clearly different products. I do not accept the Opponent's submission that the Applicant has conceded that these goods are similar. The Applicant has stated in its counterstatement that 'we disagree with the opposition that our products are similar'. I will therefore consider whether there is similarity between these goods.

29. I group the following of the Applicant's goods together, all being items of cutlery, or goods for use with cutlery:

Kitchen knives; Kitchen mandolines; Kitchen knives (Non-electric -); Cutlery, kitchen knives, and cutting implements for kitchen use; Scissors for kitchen use; Japanese chopping kitchen knives; Thin-bladed kitchen knives; Fish slicing kitchen knives; Cutlery; Biodegradable cutlery; Forks [cutlery]; Spreaders [cutlery]; Spreaders being cutlery; Hand-operated cutlery; Canteens of cutlery; Boxes for cutlery [fitted]; Cutlery of precious metals; Boxes adapted for cutlery; Cutlery for use by babies; Silverware [cutlery, forks and spoons]; Cutlery for use by children; Disposable tableware [cutlery] made of plastics; Table cutlery [knives, forks and spoons].

30. I compare these goods against the Opponent's class 11 term *Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, water supply and sanitary purposes*. The Opponent's *apparatus for ...cooking*, includes goods such as cooking appliances e.g. ovens, air fryers, and parts for such appliances e.g. fans for ovens. The Applicant's goods, on the other hand, comprise utensils used in the eating or preparation of food rather than the process of cooking (i.e. the heating of the food). Therefore, although both sets of goods will be used in the kitchen, their specific purposes will diverge. Users will overlap; purchasers of kitchen appliances will also purchase kitchen utensils. Methods of use will differ to the extent that the Applicant's goods are 'tools' used by hand whereas the Opponent's goods are used in a more passive way i.e. one does not physically engage with the Opponent's apparatus in the same sense as one cuts food with a knife. Trade channels will often be shared, although they are unlikely to be sold next to each other. There is no competition between the goods. The goods are

not complementary; neither is essential or important for the use of the other. I therefore find the respective goods to have a very low level of similarity.

31. I group the following of the Applicant's goods together, all being gardening tools used to cut or loosen soil:

Gardeners' knives; Gardening trowels; Gardening scissors; Garden forks; Gardening shears; Trowels [gardening]; Garden rollers [hand-operated]; Gardening tools (Hand operated -); Garden tools, hand-operated; Hand-operated tools for gardening; Hand-powered cultivators for gardening; Agricultural, gardening and landscaping tools; Three-prong cultivators for gardening; Hand powered three-prong cultivators for gardening.

32. In my view, there are no goods or services within the Opponent's specification which can be said to be similar to these goods. The Opponent has not brought any specific clash to the Tribunal's attention. The closest that one might get is *chemicals used in agriculture* in class 1 and, perhaps, *fungicides* and *herbicides* in class 5. However, compared to garden tools, such things are very different indeed, both in nature, purpose and method of use. They are neither competitive nor complementary; and, even if they could be sold in a garden centre, these goods are likely to be found in different places. I therefore find the Applicant's goods, enumerated at [31], to be dissimilar to the Opponent's goods and services.

33. I group the following of the Applicant's goods together, all being sprayers for administering weedkiller:

Sprayers [hand-operated tool] for garden use in spraying insecticide; Sprayers [hand-operated tool] for garden use in spraying weedkillers

34. I compare these goods against the Opponent's *fungicides* and *herbicides* in class 5. The respective goods will overlap in purpose to the extent that the Applicant's goods are used to dispense the Opponent's goods. Users will therefore coincide. Trade channels will often be shared. Although the goods are not in a competitive

relationship, they are complementary; sprayers are important for dispensing the Applicant's goods and the average consumer will presume that the both sets of goods originate from the same or economically-related undertakings. I therefore find the Applicant's goods, enumerated at [33], to be similar to the Opponent's goods to a medium degree.

Class 9

35. I note the following from the Opponent's written submissions⁷:

In particular it is maintained that the opposed goods in Class 9 are identical similar to the goods of the earlier rights in particular they are identical to the Class 9 goods of the PLANET POOL registration or if these goods are not identical, they are highly similar. This was not addressed by the Applicant and it is maintained that this accepted by the Applicant.

36. I group the following of the Applicant's goods together, all being pads of one sort or another (none of which are electronic or touch-sensitive):

Pads (Mouse -); Mouse pads; Spectacle nose pads; Sunglass nose pads; Computer mouse pads; Mouse pads [computer peripheral]; Ear pads for headphones; Nose pads for eyewear; Notebook computer cooling pads; Knee-pads for workers; Silicone nose pads for eyeglasses; Computer mousepads.

37. In my view, there are no goods or services within the Opponent's specification which can be said to be similar to these goods. I could see nothing obvious myself, and nothing specific has been brought to my attention by the Opponent. I therefore find the Applicant's goods, enumerated at [36], to be dissimilar to the Opponent's goods.

I also find the Applicant's term *Brake pad wear sensors* to be dissimilar to the Opponent's goods, for the same reason.

⁷ Opponent's written submissions, paragraph [19].

38. I group the following of the Applicant's goods together, all being computers of one sort or another:

Digitiser pads⁸; Computers; Computers and computer hardware; Process computers; Tablet computer; Portable computers; Personal computers; Laptop computers; Micro-computers; Trip computers⁹; Stick computers¹⁰; Micro-computer; Mobile computers; Desktop computers; Handheld computers; Communications computers; Netbook computers; Laptops [computers]; Netbooks [computers]; Personal computers incorporating dietary aid computer software; On-board computers¹¹; Thin client computers.

39. I compare these goods against the Opponent's *programmable controllers*.

Computers are electronic devices used to store and process data according to instructions given to it by a program. A *programmable controller* is an industrial computer that has been adapted for the control of manufacturing processes. *Programmable controllers* will be covered by the following of the Applicant's broad terms:

Computers; Computers and computer hardware; Process computers; Tablet computer; Portable computers; Personal computers; Laptop computers; Micro-computers; Micro-computer; Mobile computers; Notebook computers; Desktop computers; Handheld computers; Communications computers; Netbook computers; Laptops [computers]; Netbooks [computers]; Thin client computers; Wearable computers; Tablet computers; Palmtop computers.

These goods are therefore 'Merit' identical with the Opponent's *programmable controllers*. If I am wrong about that, then the level of similarity between the respective goods will be high, on the basis that the Applicant's goods, enumerated at [38], are computer-type devices which *could* be used for industrial processes.

⁸ A computer input device that enables a user to hand-draw images, animations and graphics with a pen-like stylus, in the manner of drawing images with a pencil and paper.

⁹ A computer fitted to a car to record, inter alia, distance travelled and fuel consumption.

¹⁰ A single-board computer resembling a USB stick, typically used for streaming music or video content.

¹¹ A computer used in cars to continuously inform the driver about the current or average fuel consumption.

40. I now compare the remaining goods, enumerated at [38], against the Opponent's *programmable controllers*:

Digitiser pads; Trip computers¹²; Stick computers¹³; Personal computers incorporating dietary aid computer software; On-board computers¹⁴

In my view, the specific purposes of the respective parties' goods are disparate. These sorts of computers are used for specialised tasks and are unlikely to have any industrial process applications. The goods are similar only in the very broad sense that all are computers of some sort. Because the respective purposes are so specialised, I do not consider there to be any user overlap. Physical nature may overlap somewhat because all computers contain common components such as chipsets. I consider trade channel overlap unlikely, though not impossible. The respective goods are not in competition, nor do I find them to be complementary. I find the respective goods to be similar only to a low degree.

41. I group together the following of the Applicant's goods, all being types of computer software, albeit with a specified purpose:

Computer software for computer aided software engineering; Computer programs for video and computer games; Computer gaming software.

I compare these goods against the Opponent's *programmable controllers*. In my view, the Applicant's goods bear no similarity to *programmable controllers*. I consider it unlikely that these specific types of software would be used for industrial purposes.

42. I group the following of the Applicant's terms together, all being types of general software (as opposed to the more specialised types of software enumerated at [41] which could potentially be used for industrial processes:

¹² A computer fitted to a car to record, inter alia, distance travelled and fuel consumption.

¹³ A single-board computer resembling a USB stick, typically used for streaming music or video content.

¹⁴ A computer used in cars to continuously inform the driver about the current or average fuel consumption.

Computer software; Computer programs; Computer programmes; Computer shareware¹⁵; Computer groupware¹⁶; Computer software for accessing computer networks; Computer utility programs for computer maintenance; Computer software for testing vulnerability in computers and computer networks; Computer programs for connecting remotely to computers or computer networks; Computer software downloadable from global computer networks; Operating computer software for main frame computers; Computer software packages; Downloadable computer programs; Downloadable computer software; Computer graphics software; Computer programming software; Computer operating programs; Computer operating programmes; Recorded computer programs; Computer programs, recorded; Recorded computer software; Software (Computer -), recorded; Computer application software; Computer firewall software;

43. I compare these goods against the Opponent's *programmable controllers*. The primary purpose of the respective goods will differ: *programmable controllers*, as computers, are electronic devices used to store and manipulate data, whereas computer software and programs are the sets of instructions according to which computers operate. That said, I note that at a general level both the *programmable controller* and the software could be aimed at facilitating an industrial process. There will be user overlap; users of the Opponent's goods will also purchase software for use with those goods. As already noted, the goods will differ in physical nature; one set of goods being hardware, the other being software. Trade channels will overlap. There is no competition between the goods. I consider the respective goods to be complementary; computer software is indispensable to the Opponent's goods because *programmable controllers*, rely on programmes/software to operate, and the average consumer would presume both sets of goods to originate from the same undertaking. I therefore find the respective goods to be similar to a low degree.

44. I group together the following of the Applicant's goods, all being types of computer hardware, peripherals or accessories relating to computers:

¹⁵ A type of software which is initially shared by the owner for trial use at little or no cost with usually limited functionality but which can be upgraded upon payment.

¹⁶ Software which enables people to collaborate while located remotely from each other.

Touch pads; Tone pads; Touch pads [electric]; Touch pads [electronic]; Computer chips; Computer controllers; Computer networks; Computer joysticks; Computer peripherals; Mainframes [computers]; Computer stylus; Computer styluses; Computer buses; Computer buffers; Hardware (Computer -); Computer monitors; Computer disks; Computer daughterboards; Computer chipsets; Computer keypads; Quantum computers; Computer cables; Computer modems; Computer interfaces; Computer hardware; Computer printer; Computer screens; Computer motherboards; Computer cabling; Computer keyboards; Computer servers; Computer tapes; Computer games; Computer modules; Computer printers; Computer whiteboards; Computer discs; Computer diskettes; Computer touchscreens; Computer memories; Computer mainframes; Computer plotters; Computer firmware; Computer terminals; Computer cases; Computer databases; Computer systems; Computer mouses; Computer mice; Computer mouse; Computer housings; Computer apparatus; Computer memory devices; Monitors [computer hardware]; Computer database servers; Computer disk drives; Components for computers; Trackballs [computer peripherals]; Computer interface cards; Microchips [computer hardware]; Computer monitor frames.

45. I compare these goods against the Opponent's *programmable controllers*.

The purposes of the respective goods will differ to the extent that the Opponent's *programmable controllers* are complete standalone items ready for use, whereas the Applicant's goods are auxiliary devices, components of, or accessories to the Opponent's goods. Users will therefore overlap. The goods will differ in physical nature; although both sets of goods are items of hardware, they will differ in shape and size. Trade channels will overlap. There is no competition between the goods. I consider the respective goods to be complementary; the Applicant's goods are useful, in some cases necessary, for the Opponent's goods, and the average consumer would presume both sets of goods to originate from the same undertaking. I therefore find the respective goods to be similar to a medium degree.

ii Earlier registration WO0000000806657, Planet 'C'

Class 3

46. I group together the following of the Applicant's goods, all being cleaning products of one sort or another:

Cleaning sprays; Cleaning fluids; Cleaning foam; Cleaning chalk; Chalk (Cleaning -); Cleaning preparations; Floor cleaning preparations; Oven cleaning preparations; Carpet cleaning preparations; Window cleaning compositions; Glass cleaning preparations; Wallpaper cleaning preparations; Caustic cleaning agents; Foam cleaning preparations; Dry cleaning preparations; Windshield cleaning liquids; Windscreen cleaning liquids; Household cleaning substances; Windscreen cleaning preparations; Dry-cleaning preparations; Windscreen cleaning fluids; Automobile cleaning preparations; Toilet cleaning gels; Car shampoos; Vehicle shampoos; Carpet shampoo; Shampoos for vehicles.

47. I compare these goods against the Opponent's broad term *Cleaning products included in this class, in particular for swimming pools, tiles, floors, toilets and sanitary installations and also taps and plumbing fixtures and refined steel, including universal cleaning products, products for cleaning carpets, plastics, glass.*

The use of the wording 'in particular' is synonymous with the wording 'for example' and, therefore, does not limit the term in any way¹⁷.

All of the Applicant's goods, enumerated at [46], are cleaning products and will, therefore, fall within the Opponent's term. I therefore find these goods to be 'Merit' identical with the Opponent's goods.

48. I now compare the following of the Applicant's goods, all being toiletries and/or cosmetics, against the Opponent's *massage oils*:

¹⁷ Authority for this is provided by case T-336/09 *Häfele GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, paragraph [33] in which the words " 'in particular' used in a description of goods

Masks (Beauty -); Beauty lotions; Beauty masks; Beauty milks; Beauty gels; Beauty creams; Beauty serums; Beauty milk; Beauty soap; Facial beauty masks; Beauty care cosmetics; Beauty balm creams; Beauty care preparations; Non-medicated beauty preparations; Beauty masks for hands; Distilled oils for beauty care; Beauty preparations for the hair; Beauty creams for body care; Body cleaning and beauty care preparations; Beauty serums with anti-ageing properties; Beauty tonics for application to the body; Beauty tonics for application to the face.

49. As already described, the Applicant's goods are intended to maintain or improve the condition and/or appearance of the person. The Opponent's *massage oils*, in my view, are intended for, inter alia, relaxation/stress relief, to soothe muscles, to improve circulation. The specific purposes of the respective goods therefore differ. Methods of use will overlap to the extent that both sets of goods are applied topically. Users will overlap in that both sets of goods will be purchased by the general public as well as the professional public (e.g. health spas, beauty salons and the like). Trade channels will overlap; in some cases, the respective goods will be found in the same section or aisle. To my mind, there will be competition between the goods e.g. one might choose to use one of the Applicant's *Distilled oils for beauty care* for a massage. I do not find the goods to be complementary. Even though the average consumer might presume both sets of goods to originate from the same undertaking, neither set of goods is indispensable to the other. I therefore find the respective goods to have a medium level of similarity.

50. I group together the following of the Applicant's goods, all being products used to clean the person:

Tooth cleaning preparations; Hair cleaning preparations; Teeth cleaning lotions; Hand cleaning preparations; Shampoos; Shampoo;-Shampoo-conditioners; Hair shampoos; Emollient shampoos; Body shampoos; Dry shampoos; Hair shampoo; Baby shampoo; Dandruff shampoo; Shampoo bars; Waterless shampoo; Waterless shampoos; Non-medicated shampoos; Baby shampoo mousse; Shampoos for babies; Shampoos for personal use; Non-medicated hair shampoos; ; Hair rinses [shampoo-conditioners]; Shampoos for human hair; Refill

packs for shampoo dispensers; Dandruff shampoos, not for medical purposes.

51. I compare these goods against the Opponent's *massage oils*. These goods are intended to clean the person i.e. the teeth or hair, as the case may be. The purpose of these goods therefore differs from the that of the Opponent's *massage oils*. Although both sets of goods are applied topically, the specific methods of use diverge; the Opponent's goods are massaged into the skin for a fairly prolonged period of time, whereas the Applicant's goods are rinsed off promptly after use. Users will overlap to the extent that most members of the public purchase products to clean the teeth and hair/scalp; therefore user overlap is inevitable. Trade channels will overlap; in some cases, the respective goods will be found in the same section. I find the goods to be neither competitive nor complementary. In the light of the foregoing, I find the respective goods to be similar only to a low degree.

52. I now compare the Applicant's animal shampoos (*Pet shampoos; Shampoos for pets; Shampoo for animals; Pets (Shampoos for -); Non-medicated pet shampoos; Shampoos for pets [non-medicated grooming preparations]; Shampoos for animals [non-medicated grooming preparations]*) against the Opponent's *massage oils*. The purposes and methods of use of the respective goods diverge. Users of the Opponent's goods will be either pet owners or pet grooming professionals, whereas users of the Applicant's goods will be either individuals seeking a product to use for a massage at home or salons/spas and the like providing massage services. I consider trade channel overlap to be unlikely. I find the goods to be neither competitive nor complementary. I do not find any level of similarity between the respective goods.

Class 8

53. In my view, there are no goods or services within the Opponent's specification which can be said to be similar to the following goods, and the Opponent has not brought any specific clash to the Tribunal's attention:

Kitchen knives; Kitchen mandolines; Kitchen knives (Non-electric -); Cutlery, kitchen knives, and cutting implements for kitchen use; Scissors for kitchen use;

Japanese chopping kitchen knives; Thin-bladed kitchen knives; Fish slicing kitchen knives; Gardeners' knives; Gardening trowels; Gardening scissors; Garden forks; Gardening shears; Trowels [gardening]; Garden rollers [hand-operated]; Gardening tools (Hand operated -); Garden tools, hand-operated; Hand-operated tools for gardening; Hand-powered cultivators for gardening; Agricultural, gardening and landscaping tools; Three-prong cultivators for gardening; Hand powered three-prong cultivators for gardening; ; Cutlery; Biodegradable cutlery; Forks [cutlery]; Spreaders [cutlery]; Spreaders being cutlery; Hand-operated cutlery; Canteens of cutlery; Boxes for cutlery [fitted]; Cutlery of precious metals; Boxes adapted for cutlery; Cutlery for use by babies; Silverware [cutlery, forks and spoons]; Cutlery for use by children; Disposable tableware [cutlery] made of plastics; Table cutlery [knives, forks and spoons].

54. Following my reasoning at [34], I find the following of the Applicant's goods to have a medium level of similarity to the Opponent's *chemical preparations for treating mildew and fungi*;

Sprayers [hand-operated tool] for garden use in spraying insecticide; Sprayers [hand-operated tool] for garden use in spraying weedkillers.

Class 9

55. In my view, there are no goods or services within the Opponent's specification which can be said to be similar to the Applicant's class 9 goods, and the Opponent has not brought any specific clash to the Tribunal's attention. For clarity, whilst my decision has focused on certain of the Opponent's goods/services, I have considered all of the goods/services.

Average consumer and the purchasing act

56. 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.

57. In *Hearst Holdings Inc*¹⁸ Birss J. (as he then was) described the average consumer thus:

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

58. Class 3

The average consumer of the respective parties’ class 3 goods, which, broadly speaking, include cleaning products and cosmetics/toiletries (for humans and animals), will, in most cases, be the general public. It is recognised that a number of purchases will be made by professional consumers e.g. businesses in the hospitality industry will purchase cleaning products; health spas, beauty salons and the like will purchase cosmetics/toiletries. The goods will be purchased from physical shops or online. The purchasing act will be primarily visual in nature with the goods being self-selected from shelves or ‘clicked on’ online, but I appreciate that there will be an aural aspect where a purchaser consults a member of retail staff for advice before completing their purchase. I consider the goods to be purchased with an average level of attention, factors considered will include, *inter alia*, the suitability of the goods for the task (e.g. in the case of cleaning products); the ingredients of which the goods are composed; whether the goods are hypoallergenic.

59. Class 8

The average consumer of the Applicant’s class 8 goods will, in my view, comprise both the general and professional public. The purchasing act will be primarily visual, with items being self-selected from physical shops, catalogues or

¹⁸ *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).

websites. There will be an aural aspect in cases where a purchaser seeks advice from a member of retail staff. I find that the purchaser will pay an average degree of attention when purchasing the goods. Factors taken into account will include, *inter alia*, durability and ergonomic design.

60. Class 9

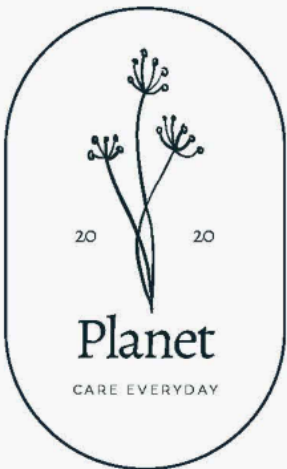
The average consumer of the class 9 goods will depend on the particular product purchased. The Opponent's *programmable controllers* will be purchased by professional consumers in the business of manufacturing. In my view, these goods will likely be purchased with a measure of prudence because the purchaser will need to consider its business needs. A transaction will, in many cases, not conclude until the purchaser has discussed its needs with the seller of the goods. I find that these goods will be purchased with a high level of attention. The terms relating to auxiliary devices, computer accessories and software will include goods purchased by both the general and professional public. The purchasing act will be primarily visual, with goods being selected from physical shops, catalogues or online stores. I appreciate that some purchases will involve an aural aspect where advice is sought from retail staff. I consider that these goods will be purchased with a medium level of attention.

61. I now consider the class 9 terms relating to computer components (as opposed to peripherals and complete machines) and the more specialised goods such as *computer servers*. In my view, these goods are most likely, but not exclusively, to be purchased by professionals, e.g. businesses or IT experts. In my view, the professional purchaser will display a high level of attention when making these purchases. Factors taken into account will include, *inter alia*: the IT needs of the business; the compatibility of the goods with existing devices and systems. In the case of *computer servers*, the size of the equipment will be a principal consideration (some servers need to be housed in a room of their own owing to their size). In many instances, purchases of these goods will only conclude after discussion with the seller of the goods.

62. Class 11

I now consider the Opponent's class 11 term *apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, water supply and sanitary purposes*. This term will cover a broad range of goods such as ovens (both domestic and commercial) and air conditional systems, to name a few. The average consumer will comprise both the general and professional public. The purchasing act will be primarily visual, the goods being purchased from physical shops/showrooms, catalogues or online. To my mind, these goods will be considered purchases made with a level of attention in the medium-high range. Factors influencing the purchasing decision will include, *inter alia*, the suitability of the goods for the consumer's needs, the compatibility of the goods with existing goods.

Comparison of the marks

Opponent's (earlier) marks	Applicant's (contested) mark
i) Planet Pool ii) 	

63. 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 CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

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

i) Earlier registration UK00801448317, ‘Planet Pool’:

65. The Opponent submits that the word ‘Planet’ ‘dominates the mark phonetically and visually and conceptually’. I also note the following¹⁹:

9. It is maintained that the dominant and distinctive element of the opposed mark is “PLANET”. This was not accepted by the Applicant.
10. It is maintained that the element of the opposed mark “CARE” is descriptive and devoid of distinctive character for the opposed goods. This was accepted by the Applicant.
11. It is maintained that the element of the opposed mark “EVERYDAY” is descriptive and devoid of distinctive character for the opposed goods. This was accepted by the Applicant.
12. It is maintained that the element “2020” of the opposed mark is descriptive and devoid of distinctive character for the opposed goods. This was accepted by the Applicant.
13. It is maintained that the flower/plant element of the opposed mark is descriptive and devoid of distinctive character for the opposed goods. This was not accepted by the Applicant.

¹⁹ Opponent’s written submissions in lieu of a hearing.

14. It is maintained that the earlier marks Planet Pool and  and the opposed mark are similar as to their dominant and distinctive elements which are PLANET in all cases. This was not accepted by the Applicant.
15. Whilst the opposed mark does have slight stylisation it is maintained that the marks are phonetically very similar, conceptually either identical or very similar and visually similar. This was not accepted by the Applicant.
66. The Opponent's mark, UK00801448317, is a word-only mark composed of the words 'Planet Pool', in a plain black font, with the first letter of each word capitalised and the remaining characters in lower case. The overall impression resides in the mark in its entirety, in the words 'Planet Pool'; the word 'Planet' being the dominant element owing to the fact that 'Pool' alludes to some of the Opponent's goods. For the goods in respect of which the word 'pool' is not allusive, I find that neither word element dominates the other.
67. The Applicant's mark is a complex mark comprising word and device elements. The word 'Planet' is positioned centrally in the mark, in a plain font with a capital 'P' and the remaining letters in lower case. The characters appear emboldened relative to the other word elements. The words 'CARE EVERYDAY' are arranged beneath the word 'Planet' in smaller font, all characters in upper case. The device element comprises a simple line drawing of a plant of the umbellifer variety, e.g. cow's parsley. A number '20' is positioned either side of the device. The elements are drawn together by way of being enclosed within a border composed of straight vertical lines and semi-circular horizontal lines. The overall impression resides in the mark in its entirety, with the word 'Planet' standing out by virtue of its size.
68. Visual comparison
- The respective marks share the word 'Planet'. Points of difference are:
- The presence of the word 'Pool' in the Opponent's mark, absent from the Applicant's mark;
 - The fact that the Applicant's mark is a complex mark, whereas the Opponent's mark is comprised of words only;

- The presence of the device and word elements '20 20' and 'CARE EVERYDAY' in the Applicant's mark, absent from the Opponent's mark.
- The presence of the border in the Applicant's mark, absent from the Opponent's mark.

Bearing in mind the overall impressions that I have described, I find the marks to be visually similar to a low degree.

69. Aural comparison

The Opponent's mark will be articulated as 'PLA-NET *POOL*', with the emphasis on the third and final syllable. The Applicant's mark will be articulated as 'PLA-NET CARE EV-RY *DAY*' with the emphasis on the sixth and final syllable. In my view the '20 20' element will be seen by the average consumer as something akin to the date when a business was established (e.g. 'X and Sons est. 1933') rather than as part of a trade mark. For that reason, I consider it unlikely that the '20 20' element will be articulated. The first two syllables of the respective marks are identical. I therefore find that the marks are aurally similar to a medium degree. If the '20 20' element *is* articulated, then the marks will be aurally similar to a low degree.

70. Conceptual comparison

The words 'Planet' and 'Pool' are words in the English dictionary with which the average consumer will be very familiar. 'Planet' will be understood as a celestial body, of which our planet Earth is an example. 'Pool' will be understood in a number of ways:

- As a still body of water, or other liquid;
- As a reference to swimming pool;
- As a verb e.g. to pool one's resources i.e. to combine one's assets to reach a common goal;
- As an adversarial game involving cues and balls.

In my view, the Opponent's mark 'Planet Pool', for certain of the goods and services in respect of which it is registered, will be perceived as a purveyor of goods specifically related to swimming pools. The use of the word 'Planet', in my view, suggests a brand dedicated to "all things 'swimming pool'" in a similar way

to the way in which a brand like 'PC World' suggests a purveyor of all things PC-related.

However, I recognise that, for other goods that are not related to swimming pools, (e.g. cosmetics) the mark might not be perceived in the way described above. In the case of these goods, it is my view that it is *possible* that 'pool' could be seen as a reference to swimming pool, or, potentially, one of the other meanings outlined above. However, to my mind, the mark 'Planet Pool' will be perceived as a unitary whole.

71. I now consider the Applicant's mark. The mark includes words in the English language with which the average consumer will be very familiar. 'Planet' will be understood as outlined above. 'Care' will be understood as meaning dedication or concern. 'Everyday' will be understood as a synonym for 'daily' or 'each day'. The '20 20' element will, to my mind, be presumed to denote a date e.g. date when the business was established. In my view, the Applicant's mark will convey the idea of goods that are environmentally friendly or sustainable. This is especially so given that the mark is '20 20 *Planet Care Everyday*'. The plant-themed device contributes to the suggestion of 'natural' products that are non-harmful to the planet.

72. In the light of the foregoing analysis, and in the case of both alternative analyses provided in respect of the Opponent's mark, I find the respective marks to be conceptually similar to a low degree.

ii) Earlier registration WO0000000806657, 'Planet C':

73. I now compare the Applicant's mark against the Opponent's registration WO0000000806657.

74. The Opponent's mark comprises word elements and a device. The word elements 'planet c' appear in a heavily emboldened font, each character edged in black with a white infill, all in lower case. A globe device is positioned on the right-hand side of the mark, with half of the letter 't' and the whole of the letter 'c' overlaying the device. The overall impression resides in the mark in its entirety,

with the word elements having dominance owing to the fact that the device simply reinforces the word 'planet'.

75. Visual comparison

The respective marks share the word 'Planet'. They also share 'c', albeit this element appears as a single letter in the Opponent's mark, whereas it forms part of the word 'Care' in the Applicant's mark. Points of difference are:

- The presence of the globe device in the Opponent's mark, absent from the Applicant's mark;
- The presence of the elements '20 20', 'Care' and 'Everyday' in the Applicant's mark, absent from the Opponent's mark;
- The presence of the border in the Applicant's mark, absent from the Opponent's mark;
- The presence of the plant device in the Applicant's mark, absent from the Opponent's mark;

Bearing in mind the overall impressions that I have described, I find the marks to be visually similar to a low degree.

76. Aural comparison

The Opponent's mark will be articulated as 'PLA-NET C'. The first two syllables of the respective marks are identical. If the '20 20' element of the Applicant's mark is not articulated, I find that the marks are aurally similar to a medium degree. If the '20 20' element *is* articulated, then the marks will be aurally similar to a low degree.

77. Conceptual comparison

The concept conveyed by the word 'planet' has been addressed. The 'c' element of the Opponent's mark will simply be perceived as the letter 'c' from the alphabet. The globe device, in my view, reinforces the concept of planet and therefore adds no further concept to the mark. To my mind, the mark 'planet c' will convey the idea of a 'designation' of planet in a series, e.g. 'planet a', 'planet b', 'planet c' etc. In the light of my analysis of the Applicant's mark, I find the respective parties' marks to be conceptually similar to a low degree.

Distinctive character of the earlier mark

78. *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).

79. ‘Planet’ and ‘Pool’ are English words with which the average consumer will be very familiar. The word ‘pool’, is allusive of some of the goods in respect of which the mark is registered because they include products used for swimming pools. Either way, I find that the Opponent’s mark has an average level of inherent distinctive character.

80. The Opponent has not adduced any evidence to enhance the level of inherent distinctive character.

Although the word 'planet' neither alludes to nor describes the Opponent's goods/services, it is a commonly used word to which the average consumer will have been frequently exposed. In my view, 'planet' will have no more than an average level of distinctiveness.

Likelihood of confusion

81. Confusion can be direct or indirect. Mr Iain Purvis Q. C., as the Appointed Person, explained the difference in the decision of *L.A. Sugar Limited v By Back Beat Inc*²⁰. Direct confusion occurs when one mark is mistaken for another. In *Lloyd Schuhfabrik*²¹, the CJEU recognised that the average consumer rarely encounters the two marks side by side but must rely on the imperfect picture of them that they have kept in mind. Direct confusion can therefore occur by imperfect recollection when the average consumer sees the later mark but mistakenly matches it to the imperfect image of the earlier mark in their 'mind's eye'. Indirect confusion occurs when the average consumer recognises that the competing marks are not the same in some respect, but the similarities between them, combined with the goods/services at issue, leads them to conclude that the goods/services are the responsibility of the same or economically linked undertaking.

82. I must keep in mind that a global assessment is required taking into account all of the relevant factors, including the principles a) – k) set out above at [13]. When considering all relevant factors 'in the round', I must bear in mind that a greater degree of similarity between goods/services *may* be offset by a lesser degree of similarity between the marks, and vice versa.

²⁰ Case BL O/375/10 at [16].

²¹ *Lloyd Schuhfabrik Meyer and Co GmbH v Klijsen Handel BV* (C-34297) at [26].

83. In my view, despite the identity and similarity between some of the parties' goods, the net effect of the visual, aural and conceptual differences is sufficient to overcome the similarities that I have identified. That is the case in relation to the assessment with both earlier marks. I have found the respective marks to be visually and conceptually similar to only a low degree. Although I have found the marks to have a medium level of aural similarity, the purchasing act will, in most cases, be primarily visual, therefore the visual aspect of the marks will play a more prominent role in the average consumer's perception of the marks. Notwithstanding the principle of imperfect recollection, the average consumer will, in my view, notice the visual differences that I have identified. Even though both marks contain the element 'Planet', the accompanying words and, in the case of the Applicant, the presence of the device, bring about enough points of distinction when viewed as a whole.

84. I now consider whether there is a likelihood of indirect confusion. I will deal first with the Opponent's earlier registration UK00801448317, 'Planet Pool':

i) Earlier registration UK00801448317, 'Planet Pool'

85. I have borne in mind *Whyte and Mackay*²² in which it was held that where an average consumer perceives that a composite mark consists of two or more elements, one of which has a distinctive significance independent of the mark as a whole, confusion may occur as a result of the similarity/identity of that element to the earlier mark. For the Applicant's mark, whilst some consumers would tie the 'Planet' element to the words 'Care Everyday', some would still regard 'Planet' as an independently distinctive component. However, for the Opponent's 'Planet Pool', the consumer would not regard the 'Planet' element as independently distinctive, even though the use of the same word, in both cases, relates to a planet.

86. I can see no reason why the average consumer would presume that the same or economically linked undertaking is responsible for the relevant goods. The instant case does not fall within any of the categories identified in *L.A. Sugar Limited v*

²² *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271.

*By Back Beat Inc*²³ Mr Iain Purvis Q. C., as the Appointed Person, explained that [my words in parentheses]:

17. Instances where one may expect the average consumer to reach such a conclusion [i.e. to conclude that marks relate to the same or economically linked undertakings] 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)".

The word PLANET is certainly not strikingly distinctive, being a commonly-used word to which the average consumer will have been frequently exposed, and neither will the respective marks be seen as a logical/consistent brand extension. The Opponent has argued that the dominant and distinctive element of its mark is 'Planet'. However, for the reasons provided in my conceptual analysis, the word 'pool' also plays an important role. Even if the 'pool' element were non-distinctive, it is my view that the overall impressions of the marks, together with the word 'planet' alone, would not, in this case, lead the average consumer to attribute both marks to the same origin. I can see no other mental process by which the average consumer would arrive at a conclusion indicative of indirect confusion.

²³ Case BL O/375/10

ii) Earlier registration WO0000000806657, 'Planet C'

Notwithstanding the fact that the Opponent's mark is 'Planet C' rather than 'Planet Pool', much of the above reasoning also applies here and, therefore, leads me to find that there is no likelihood of indirect confusion.

Conclusion

87. The Opposition fails. Subject to any successful appeal against this Decision, the application may proceed to registration.

COSTS

88. I award the Applicant the sum of **£200** as a contribution towards its costs, calculated as follows²⁴:

Consideration of the Opposition and preparation of Defence and Counterstatement	£200
Total:	£200

89. I therefore order Chemoform AG to pay to Planet Sell Ltd the sum of **£200**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 4th day of May 2022

Mx N. R. Morris

**For the Registrar,
the Comptroller-General**

²⁴ Based upon the scale published in Tribunal Practice Notice 2/2016.