TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION 2556905 BY BLUESTAR FIBRES COMPANY LIMITED IN RESPECT OF THE FOLLOWING TRADE MARK IN CLASSES 17, 22 & 24:

STARAMID

AND

OPPOSITION THERETO (NO 101320) BY RHODIA CHIMIE

The background and the pleadings

1) Bluestar Fibres Company Limited ("Bluestar") applied for the trade mark STARAMID on 25 August 2010. It was published in the Trade Marks Journal on 17 September 2010. The goods for which registration is sought are:

> Class 17: Carbon fibres; carbon fibre non-wovens; carbon fibre felt; yarns and threads (other than for use in textiles); carbon fibre composites
>
> Class 22: Textile fibres; raw fibrous textile materials; carbon fibres for textile use; yarns for textile use, carbon fibre yarns
>
> Class 24: Textiles; textile piece goods; fabrics; carbon fibre fabrics; fabrics of synthetic yarns and/or threads

2) Rhodia Chimie ("Rhodia") opposes the registration of Bluestar's mark in respect of all of the above goods. Its opposition was filed on 20 December 2010 and is based on grounds under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act"). Rhodia relies on the following trade mark in respect of both grounds of opposition:

- International Registration 874112 which designated the EU for protection on 15 December 2005, for the mark STABAMID, which is protected in respect of:

  Class 01: Industrial chemicals; unprocessed artificial resins, unprocessed plastics; polyamide

3) Rhodia's mark constitutes an earlier mark as defined by section 6 of the Act. When the applied for mark was published, the earlier mark's protection had been conferred for less than five years; this means that the use conditions, as set out in section 6A, do not apply to it.

4) Bluestar filed a counterstatement denying the grounds of opposition. It put Rhodia to proof of genuine use in respect of its earlier mark; however, as the mark is not subject to the use conditions then such a request is not relevant. I note from its counterstatement that Bluestar claim to have a family of STAR based marks. Bluestar consider that its STARAMID mark will be seen as another member of this family, with the consequence that the STAR element of STARAMID will be focused upon. However, as Bluestar filed no evidence in these proceedings this part of its defence need not be considered further. Bluestar denies that the marks are highly similar. It also denies that the goods are similar due to their different composition and nature and that Bluestar's products are purchased for its specific carbon qualities by knowledgeable consumers.

5) Only Rhodia filed evidence. Both sides provided written submissions. Neither party requested a hearing.

The evidence

Witness Statement of Isabelle Marcoux Simonnet dated 3 August 2011

6) Ms Simonnet is head of trade marks at Marque Group Rhodia, a division of Rhodia Services, a company which manages the intellectual property of Rhodia. She states that Rhodia is a world leader in "the development and production of specialty chemicals". Rhodia had worldwide sales of $5,226 million in 2010 and is built around 11 business units, one of which manufactures polyamide and related intermediate polymers (derived from the Polyamide 6.6 value chain). Rhodia produce a range of polyamide products sold under the STABAMID brand which are specifically adapted for use in the field of engineering plastics, industrial yarns, textile yarns and performance fibres. It is stated that the STABAMID mark has been used around the world, including the EU and UK, since April 2005.

7) Further information is provided in relation to STABAMID as follows:

- It is described as a "virgin" polymer product made from Polyamide 6.6 which is specifically customized, for example, in terms of viscosity, colour, mechanical and thermal properties.

- Subject to its customization, it provides the raw material for the manufacture of engineering plastics (such as those used in the manufacture of car dashboards), industrial yarns (such as those used in the production of car airbags), textile yarns (such as those used in the manufacture of furniture, carpets and hosiery) and performance fibres (such as those used in the manufacture of car interiors).

- Exhibit SMI2 contains website extracts and other material showing STABAMID's range of applications. I note the following: compounds for automotive and electrical use, airbags, tyre cords, carpets, hosiery, sportswear, underwear, bathing suits, soft furnishings such as curtains and carpets, vehicle floors, electrical outlets, parts of household appliances and clamps. There are pictures of various goods which I assume STABAMID can be manufactured into, including: car interiors, tyres, carpets, sportswear, underwear, textiles and plug sockets.

- STABAMID is sold to the customer in chip form, being small pellets of polymer plastic.

- The most common form of polyamide 6.6 (referred to as nylon 6.6 in the US) is nylon. Exhibit SMI3 contains an extract from Larousse Dictionary of Science and Technology which defines polyamide as:

"Polyamide (*Textiles*) Natural or synthetic fibres composed of polymers having the same amide group (-co-nh-) repeated along the chain. Examples of the natural fibres are silk, wool and hair. For synthetic polyamides see nylon".

Nylon is defined as:

"Nylon (*textiles)* Generic name for long chain synthetic polymeric amide which has a recurring amide and groups as an integral part of the main polymer chain…".

The Encyclopedia of Chemical Technology also states that polyamides are often referred to as nylons.

- The same exhibit provides various pieces of information about nylon from which the following is noted. Nylon is a synthetic fibre introduced in the 1930s. It has various applications including silk replacement and stockings. It is made by forcing molten nylon through very small holes in a spinneret, the streams of which harden into filaments and are then wound onto bobbins. Whilst this is noted, I must bear in mind that Ms Simonnet stated earlier that STABAMID is sold in chip form. Other uses of nylon include the manufacture of shorts, swimwear, active wear, windbreakers, bedspreads, parachutes, flak vests, uniforms, tyres, life vests, netting, umbrellas and luggage; this information comes from the website Fabric Online. Information from Wikipedia is provided which shows similar information. The Free Online Dictionary provides other definitions from which I note that nylon, as well as referring to the polyamide, also defines the cloth or yarn made from the polyamide. Information is also provided in the form of a brochure from the Nylon 6 Promotional Group. The information refers to various uses including use in the manufacture of tyres, textile fabrics, hosiery, sportswear, carpeting and film (of the type for packaging food). It is referred to as "the textile fibre of choice".

- In the worldwide market for polyamide 6.6 and intermediate products, Rhodia is said to be 2nd worldwide with a 20% market share. STABAMID represents around 10% of the worldwide market. It is stated that STABAMID is, worldwide, the industry's leading brand in this field.

- A table is provided in SMI4 showing worldwide sales broken down by product type (engineering plastics, industrial yarn, textile fibres, performance fibres). It is not necessary to detail worldwide sales, but it is noted that the table refers to "raw material polyamide in chip form".

- A table of EU sales (in Euro „000s) is provided as follows:

	2006	2007	2008	2009	2010
Engineering plastics	47315	47379	55007	32107	48667
Industrial yarns	6808	10338	9132	15872	34613
Textile Yarns	23847	43149	36149	45002	74379
Performance fibres	0	4903	6405	805	2258
Total	**77970**	**105769**	**106692**	**93696**	**159917**

Figures for the first six months of 2011 are provided, but as this is after the date of Bluestar's application they need not be detailed. A column is also provided for 2005 but it contains no figures.

- In 2010 the EU market share for STABAMID in respect of polyamide 6.6 was: engineering plastics (6%), industrial yarns (14%), textile yarns (25%) and performance fibres (2%). It is stated that STABAMID enjoys a 10% market share of the total EU market and is the leading polyamide 6.6 product as a raw material.

- Exhibit SMI5 contains invoices issued between 2005 and 2010. The invoices are made out to various companies in various countries including the UK, France, Italy, Span, Germany and Slovenia.

8) Rhodia has a division called Rhodia Fibras which manufactures polymer based fibres for use in lingerie, clothing and sportswear, They are sold under a different trade mark (AMNI) but, nevertheless, Ms Simonnet believes that this demonstrates that it is common for manufacturers who produce polyamides specifically adapted to be made into industrial and textile yarns and fibres to also produce them in extruded (or spun) form as well. Exhibit SMI6 contains information about Rhodia Fibras and other companies which Ms Simonnet says produce both the polyamide and the extruded form. The details are as follows:

- A print relating to Rhodia Fibras, a "GBU" operating in Brazil referring to its production of polyamide based fibres.

- A website extract from php-fibers.com a "world class manufacturer of high tenacity polyamide and polyester yarns and polymers".

- A print from www.europages.co.uk which lists a company called Fiber Compositi SRL which produces "plastics – industrial raw materials, carbon fibre spun yarns, carbon fibre fabric".

- A print from businessweek.com about a company with a website address of www.toray.co.jp. It has a fibres and textiles segment (which engages in the production and sale of nylon, polyester, acrylic fibre, textile products and synthetic suede) and a chemical segment (which produces and sells goods including nylons and BS resins and raw materials for synthetic

fibres). Another print is provided relating to Toray Industries which refers to similar information.

9) Ms Simonnet states that Bluestar are also a specialty chemicals company who specialize in the industrial raw material carbon fibre, its precursor Carbon Fibre Precursor (CFP) and in carbon fibre composites. She explains that carbon fibre is similar to polyamide 6.6 in that they are both industrial raw materials used for industrial applications. A common composite material is carbon fibre reinforced polyamide 6.6. Carbon fibre composites are used in a variety of industrial applications including industrial and textile yarns. Exhibit SMI7 contains extracts from Bluestar's website and from Wikipedia, providing information about carbon fibre. The exhibit is also said to include extracts from the websites of other specialty chemical companies, many of whom are customers of Rhodia, who produce composite carbon fibre reinforced polyamide 6.6 as well as polyamide industrial yarns and textile yarns. She adds that companies who specialize in the production or distribution of carbon fibre yarns also specialize in polyamide yarns. Rhodia is concerned that those in the relevant industrial and textile industries who are involved in the manufacture of engineering plastics, industrial and textile yarns and fibres, carbon fibre and related products, and even textiles and fabrics, many of whom may know of the STABAMID brand, will confuse or otherwise associate Rhodia's products with the closely related goods of the application. The details of this final exhibit are as follows:

- Wikipedia – carbon fibre is produced by bonding carbon atoms which produces an extremely thin fibre. Thousands of these may then be twisted together to form a yarn. They are usually combined with other material to form a composite, including combination with plastics which, when wound or molded, from carbon reinforced plastic (sometimes known as carbon fibre).

- Wikipedia – carbon reinforced polymer, a plastic material containing carbon fibres. The polymer most often used is epoxy, but other polymers can be used including nylon.

- Website of Bluestar – it produces "carbon fibre precursor for use in a wide range of industrial and leisure end applications, ranging from aircraft brakes to wind turbine blades and golf club shafts".

- A print from Rhodia's website relating to its Evolite product. This is a polyamide based matrix suited to continuous glass or carbon fibre composite material. It is available as a pre-impregnated fabric or consolidated plate.

- A print from the website of a company called ZageZander. It holds stock of numerous filament man-made fibre yarns, mainly polyester and nylon.

They supply carbon fibre yarn suitable for weaving, pultruding, filament winding etc. They supply spun yarn.

- A repeat of the page discussed at paragraph 8 bullet point 3.

- A print from the website of IZUMI International. They sell a machine which winds carbon fibre and other high performance fibres.

- Repeats of the prints relating to the company Toray in Japan. I note that as well as handling synthetic fibres, they market filament yarns and staple fibres and well as textiles and processed products. It also lists carbon fibre, advanced composite materials and fabricated products.

- A print from the website MatWeb Material Property Data, about a product called EMS Grivory Grilo, which appears to be a polyamide composite molding grade with 10% carbon fibres.

- A print from LanXess. This relates to another polyamide plastic composite material which uses carbon fibre.

- Another print from MatWeb relating to a further carbon reinforced nylon 66 composite material.

Section 5(2)(b)

10) Section 5(2)(b) of the Act reads:

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

11) In reaching my decision I have taken into account the guidance provided by the Court of Justice of the European Union ("CJEU") in a number of judgments: *Sabel BV v. Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* [1999] R.P.C. 117, *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* [2000] F.S.R. 77, *Marca Mode CV v. Adidas AG + Adidas Benelux BV* [2000] E.T.M.R. 723, Case C-3/03 *Matrazen Concord GmbH v GmbGv Office for Harmonisation in the Internal Market* [2004] ECR I-3657 *Medion AG V Thomson multimedia Sales Germany & Austria GmbH* (Case C-120/04)

and *Shaker di L. Laudato & Co. Sas* (C-334/05). In *La Chemise Lacoste SA v Baker Street Clothing Ltd* (BL O/330/10) Mr Geoffrey Hobbs QC, sitting as the Appointed Person, quoted with approval the following summary of the principles which are established by these cases:

> "(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, in certain circumstances, be dominated by one or more of its components;
>
> (f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite 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 causes the public to wrongly believe that the respective goods [or services] come from the same or economically-linked undertakings, there is a likelihood of confusion."

The average consumer

12) The case-law informs me that the average consumer is reasonably observant and circumspect (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27). The degree of care and attention the average consumer uses when selecting goods can, however, vary depending on what is involved (see, for example, the judgment of the General Court ("GC") in *Inter-Ikea Systems BV v OHIM* (Case T-112/06)).

13) The goods of the earlier mark are specialist chemicals, including those which can be used to produce polyamide yarns and other similar materials. The goods are core building blocks, raw chemical materials. These are not goods purchased by the public at large. They will be used by manufacturers who wish to turn those building blocks into yarns and plastic type materials. The goods will be selected with a good deal of care and consideration. Visual considerations will be important, but aural similarities will not be ignored completely from my analysis.

14) In terms of the applied for goods, notwithstanding that some of the goods (textiles for example) could be purchased by members of the general public, they may all also be purchased by manufacturing companies. I will discuss the exact channels of trade later, but it is fair to say that if they are being purchased by manufacturing companies then, again, a good deal of care and consideration will be used. The exact average consumers may vary product to product, so I will come back to this issue later in this decision.

Comparison of the marks

15) The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The visual, aural and conceptual similarities of the marks must be assessed by reference to their overall impressions, bearing in mind their distinctive and dominant components. The marks to be compared are:

STABAMID and STARAMID

16) In Bluestar's submissions (at counterstatement stage) it was argued that its mark was part of a family of STAR marks. As stated earlier, this argument is no longer relevant, no evidence having been filed to support it. Considering the mark

as it stands, I do not consider that STAR will stand out in any way in the STARAMID mark. It will be seen as an invented word and nothing else. Bluestar also submitted that because Rhodia's STABAMID mark was for goods including polyamides (which contain monomers of amides) then STAB and AMID may be seen as two components which have been conjoined. Whilst noted, I agree with Rhodia's submission that this constitutes an artificial deconstruction of the mark. I take the view that, like STARAMID, STABAMID will be seen as an invented word and nothing else. Neither mark breaks down into separate components, the words STABAMID/STARAMID, therefore, form the respective marks' dominant and distinctive elements.

17) In terms of concept, both marks are invented words and, so, neither mark has a meaning. In view of this there is nether conceptual similarity or dissimilarity.

18) Both marks begin with STA and end in AMID. They are of identical length. The only difference is the different fourth letters B and R respectively. Whilst the difference these letters create is borne in mind, I do not consider that such a difference is likely to have a significant impact. In my view, there is a high degree of both visual and aural similarity.

Comparison of goods

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

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

20) Guidance on this issue has also come from Jacob J In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281 where the following factors were highlighted as being relevant when making the comparison:

> "(a) The respective uses of the respective goods or services;
>
> (b) The respective users of the respective goods or services;
>
> (c) The physical nature of the goods or acts of service;
>
> (d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors."

21) In terms of being complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), this relates to close connections or relationships that are important or indispensible for the use of the other. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T- 325/06 it was stated:

"It is true that goods are complementary if 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 (see, to that effect, Case T-169/03 *Sergio Rossi* v *OHIM – Sissi Rossi* (*SISSI ROSSI*) [2005] ECR II-685, paragraph 60, upheld on appeal in Case C-214/05 P *Rossi* v *OHIM* [2006] ECR I-7057; Case T-364/05 *Saint-Gobain Pam* v *OHIM – Propamsa* (*PAM PLUVIAL*) [2007] ECR II-757, paragraph 94; and Case T-443/05 *El Corte Inglés* v *OHIM – Bolaños Sabri* (*PiraÑAM diseño original Juan Bolaños*) [2007] ECR I-0000, paragraph 48)."

22) In relation to understanding what terms used in specifications mean/cover, the case-law informs me that "in construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of the trade"[1] and that I must also bear in mind that words should be given their natural meaning within the context in which they are used; they cannot be given an unnaturally narrow meaning[2].

23) In terms of submissions, Rhodia highlights the similar end purposes of the goods and the resulting similarities in terms of the applications they are put to, together with the overlap that it says exists in the channels of trade. Bluestar highlights the differences in purpose (particularly with regard to the carbon fibre products) and nature and what it says are key differences in the markets for the respective products. This is just a brief summary of the submissions, but I have borne in mind everything that has been submitted.

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[1] See *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281

[2] See *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267

"Carbon fibres; carbon fibre non-wovens – class 17

24) Rhodia's earlier mark covers what I have described as building blocks, raw chemical ingredients. Consequently, the most similar of Bluestar's applied for goods are likely to be any equivalent raw products such as its class 17 goods "*carbon fibres; carbon fibre non-wovens*". They strike me as raw carbon fibre products. Rhodia's evidence suggests that these are extremely thin fibres which may then be further processed into carbon fibre yarns or materials, including composite yarns and materials. They are the core building blocks of carbon fibre products. In comparison to the goods of the earlier mark, focusing in particular on polyamides, both are raw materials which will be purchased for further processing. The further processing often appears to be directed into the production of goods for use in similar fields, for example, production into industrial or textile yarns and materials for use in the automotive industry etc. However, the exact nature of raw carbon fibre and raw polyamide is not the same. Nevertheless, I would not be surprised if a manufacturer would make a choice between purchasing carbon fibre or polyamide, the decision being based upon the exact properties required in the finished product. In its submissions, Bluestar focus upon the different characteristics of the products – whilst this is noted, I do not consider that this precludes a finding of goods similarity. Ms Simonnet's evidence demonstrates that some companies sell or manufacture both polyamide and carbon fibre. I also consider that the use of polyamide and carbon fibre in the production of composite materials supports a finding of similarity. **I come to the view that there is a reasonably high degree of similarity between the goods.**

"Carbon fibre felt" in class 17 and "textiles; textile piece goods; fabrics; carbon fibre fabrics; fabrics of synthetic yarns and/or threads" in class 24

25) In terms of these goods, the fabrics and textiles are for use in the production of a finished article such as an item of clothing. Staying with this example, the average consumer of such goods will be clothing manufacturers. There is no evidence to suggest that such manufacturers would choose between purchasing textiles/fabrics or, alternatively, purchasing a raw chemical polyamide to turn into yarn to turn into fabric/textile. Whilst it is not impossible for a clothing manufacturer to produce its own yarn (using the class 1 raw chemical goods of the earlier mark) in order to create its own textiles and fabrics in order to create its own clothing, there is no evidence before me that this is the case and, further, this strikes me as an extreme exception rather than the rule. The average consumer of the raw chemical polyamide will be those producing the yarn.

26) The goods are not the same in nature, they are chemical goods on the one hand and fabrics and textiles on the other; this is so even though the core ingredient of the latter is the former. The purposes are different, one to produce yarn etc the other to produce clothing etc. I bear in mind that some of the chemical goods may be customised specifically for an end use of creating certain

textiles; whilst this is so, this strikes me as relatively superficial when the exact purposes are considered. Given my comments on the average consumers, the users are not the same. In terms of channels of trade, there is little evidence to suggest that they overlap. Rhodia Fibras is a division of Rhodia, but this is in relation to fibres and not the further processed textiles/fabrics and is, in any event, a separate division. I have borne the evidence in mind, but I am not persuaded that the chemical goods and textiles/fabrics are commonly available through the same or similar channels of trade. My comments in the preceding paragraph demonstrate that the goods do not ordinarily compete. In terms of complementarity, I do not consider the relationship between the goods under consideration here fall within the defined parameters of complementarity set out in the relevant jurisprudence. **All things considered, the goods are not considered to be similar.**

27) In coming to the above finding I have borne in mind that the applied for goods are not limited to just clothing textiles and fabrics but could be used for other purposes. The focus on clothing is just for illustrative purposes. Nevertheless, the illustration holds true for other purposes. It also holds true with regard to carbon fibre felt which is no doubt used for some onward industrial purpose.

"Yarns and threads (other than for use in textiles); yarns for textile use, carbon fibre yarns

28) To constitute a yarn, regardless of how that yarn is to subsequently be used, a significant degree of processing from the raw chemical polyamide would appear to be required. The nature of a yarn is quite different from the nature of the raw chemical product. As per my assessment of the previously discussed goods, the exact nature differs. Although there is some evidence that speciality chemical producers may also supply spun yarn, there is no evidence that the consumers of yarn will, as an alternative to purchasing yarn, purchase the raw chemical product instead. As such, I cannot hold that there is a competitive relationship. In terms of complementarity, whilst synthetic yarn cannot be produced without the raw chemical ingredient, the same can be said of any ingredient compared to a final product - this does not mean that they are complementary as per the jurisprudence. The consumer must believe that the responsibility for those goods lies with the same undertaking. The purchaser of yarn will be those who wish to use it to produce textiles or fabrics (in the case of textile yarns) or in other manufacturing processes to produce a finished product, whereas the purchaser of the chemicals will be those producing yarn and/or other base materials. The same producer evidence is not overwhelming due to its limited nature but, also, that it indicates that different divisions of an undertaking may produce the other goods. This is the case with Rhodia (who use a separate division) and Toray (the information describes the business as having separate segments). The information about the other companies referred to in the evidence does not make it clear either way. What is also not clear is whether the

same trade marks are used; in the case of Rhodia different marks are used. Due to both the different consumers in play, and the nature of use by the companies referred to in the evidence, I do not consider that a complementary relationship of the type outlined in the jurisprudence is established. **All things considered, the goods are not considered to be similar.**

"Carbon fibre composites" in class 17 and "textile fibres; raw fibrous textile materials; carbon fibres for textile use" in class 22

29) Whilst such goods may not be as raw as the simple chemical polyamides of the earlier mark, they still strike me as goods which have moved on only one stage. I would describe them as semi-processed. They are not as processed as yarns for example, and nowhere near the same degree of processing as fabrics and textiles. It seems to me that there is likely to be a more competitive choice between the goods under comparison, in that a decision may be made between purchasing a chemical for the creation of fibres (for whatever purpose) and purchasing the semi-processed fibres and composites referred to. A manufacturer of yarn for example is likely to be able to handle both scenarios depending on the specific requirements of the job. There is a much closer link for this reason. The nature will, of course, still differ, but the purpose becomes somewhat closer. **All things considered, I am satisfied that there is at least a moderate degree of similarity between the goods.**

The distinctiveness of the earlier mark

30) The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark (based either on inherent qualities or because of use made), the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). From an inherent perspective, and as an invented word with no allusive qualities, I consider that the earlier mark is a highly distinctive one. The evidence filed demonstrates that in the field of polyamide 6.6 production, STABAMID is a leading brand worldwide and in the EU. However, nothing is provided from a UK perspective. Although the earlier mark is an International mark which has designated the EU, whether there is a likelihood of confusion is to be judged from the perspective of the UK consumer. It follows, therefore, that any enhanced distinctive character must be appreciated by the UK consumer. Without specific evidence I do not consider it appropriate to find that there is an enhanced distinctive character in the UK – the headline market figures could, for example, have been achieved through significant use in other EU countries with less use in the UK. The simple answer is I do not know, so enhanced reputation is not established. This, however, is unlikely to be significant to my findings under section 5(2)(b) given that I have found the earlier mark to be highly distinctive from an inherent perspective.

Likelihood of confusion

31) The factors assessed so far have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17), a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG,* paragraph 22). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused.

32) The earlier mark is highly distinctive. The marks are visually and aurally similar to a high degree with neither conceptual similarities nor differences. Imperfect recollection should not be overplayed in this case given what I have described as the good deal of care and consideration that will be used when the goods under discussion are selected. Nevertheless, in relation to the goods I have found to be similar, I consider that the marks are simply too close and that, consequently, there is a likelihood of confusion.

33) In relation to the goods I have found not to be similar then there can be no likelihood of confusion[3]. However, even if I am wrong on my assessment of goods similarity and that I should have found that there was some similarity, then such similarity would have been at the very low end of the scale with potentially different average consumers being considered. In such circumstances I do not consider, when all the other factors are borne in mind, that there is a likelihood of confusion.

Section 5(3)

34) I will deal with this ground briefly. This is because even if it is held that the earlier mark has a reputation a link must still be made. In relation to the goods on which Rhodia have so far failed, a link will not be made due to the quite different consumers/relevant public for the goods. Further, it is the UK relevant public which is paramount and my earlier observations in relation to enhanced distinctive character provide a further stumbling block. The opposition under section 5(3) of the Act is dismissed.

Summary

35) The opposition succeeds in relation to:

> Class 17: Carbon fibres; carbon fibre non-wovens; carbon fibre composites.
>
> Class 22: Textile fibres; raw fibrous textile materials; carbon fibres for textile use.

[3] See, for example, the CJEU's judgment in *Waterford Wedgwood plc v OHIM* Case C-398/07.

36) But fails in relation to:

> Class 17: Carbon fibre felt; yarns and threads (other than for use in textiles).
>
> Class 22: Yarns for textile use, carbon fibre yarns.
>
> Class 24: Textiles; textile piece goods; fabrics; carbon fibre fabrics; fabrics of synthetic yarns and/or threads.

Costs

37) Given the roughly equal measure of success, I do not propose to favour either party with an award of costs.

Dated 7th of August 2012

Oliver Morris
For the Registrar,
The Comptroller-General