

O/684/22

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION
NO. 03662675 BY
MOORLAND CONTRACT GROUP LTD
TO REGISTER AS A TRADE MARK:**

Sicura

IN CLASSES 3, 5, 11 & 37

AND

**OPPOSITION THERETO
UNDER NO. 60002186 BY
PACSOURCE PTY. LTD
AS TRUSTEE FOR THE
CANDLEWERKS PACIFIC UNIT TRUST**

Background & Pleadings

1. **Moorland Contract Group Ltd** (“the applicant”), applied to register the word trade mark shown on the front page of this decision in the United Kingdom. The application was filed 30 June 2021 and was published on 05 November 2021 in respect of the following goods and services:

Class 3: Pet shampoos; Shampoos for pets; Shampoos for pets [non-medicated grooming preparations]; Pet stain removers; Pet odor removers.

Class 5: Sanitising wipes; Hand-sanitising preparations; Disinfectants; Disinfectants for hygienic purposes; Disinfectants for veterinary use; Disinfectants for hygiene purposes.

Class 11: Sanitisers.

Class 37: Disinfecting.

2. **Pacsource Pty. Ltd as trustee for the Candlewerks Pacific Unit Trust** (“the opponent”) opposes (using the Fast Track provisions) the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent is the proprietor of the following International Registration number 01462796 for the following mark:

SIQURA

3. The mark designated the UK on 23 November 2018, and protection of the International Registration in the UK was conferred on 20 September 2019 for various goods in Class 5, as shown later in this decision. In its notice of opposition, the opponent states that all the goods covered by its earlier mark are relied upon.
4. Under Section 6(1) of the Act, the opponent’s trade mark clearly qualifies as an earlier trade mark. Further, as the registration of the opponent’s

earlier mark was completed less than five years before the application date of the contested mark, proof of use is not relevant in these proceedings as per Section 6A of the Act.

5. The opponent, in its notice of opposition, claims that the marks are visually highly similar and phonetically identical. Further, it contends the respective goods in Class 5 are identical and the rest of the contested goods and services in Classes 3, 11, and 37 are similar to the opponent's.
6. The applicant filed a defence and counterstatement, denying any visual similarity between the marks. However, the applicant accepts some aural similarity but claims that the earlier mark means "secure" whereas the contested mark is an Italian word for "safe". Further, the applicant denies any identity between the Class 5 goods and contends that there is no similarity for the rest of the goods and services in Classes 3, 11, and 37.
7. Rules 20(1)-(3) of the Trade Marks Rules (the provisions which provide for the filing of evidence) do not apply to fast-track oppositions such as the present proceedings, but Rule 20(4) does. It reads:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”
8. The net effect of these changes is to require parties to seek leave in order to file evidence in fast-track oppositions. Rule 62(5) (as amended) states that arguments in fast-track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken.
9. No request for a hearing was made. Only the opponent filed written submissions in lieu of a hearing in these proceedings, which will not be summarised but will be referred to as and where appropriate during this

decision. Thus, this decision has been taken following a careful consideration of the papers.

10. In these proceedings, the opponent is represented by Wilson Gunn and the applicant is a litigant in person.
11. 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.

Decision

Section 5(2)(b)

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

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

[...]

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

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

13. The principles, considered in this opposition, stem from the decisions of the European Courts in *SABEL BV v Puma AG* (Case C-251/95), *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (Case C-39/97), *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* (Case C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market*

(Trade Marks and Designs) (OHIM) (Case C-3/03), *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* (Case C-120/04), *Shaker di L. Laudato & C. Sas v OHIM* (Case C-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

- a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

- g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of Goods and Services

14. 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. When making the comparison, all relevant factors relating to the goods/services in the specifications should be taken into account. In *Canon Kabushiki Kaisha*, the Court of Justice of the European Union (CJEU) stated that:

“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 complementary.”

16. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] RPC 281. At [296], he identified the following relevant factors:

“(a) The respective uses of the respective goods or services;
(b) The respective users of the respective goods or services;
(c) The physical nature of the goods or acts of service;
(d) The respective trade channels through which the goods or services reach the market;
(e) In the case of self-serve consumer items, where in practice they are respectively found, or likely to be found, in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

17. The General Court (GC) confirmed in *Gérard Meric v OHIM*, Case T-133/05, paragraph 29, that, even if goods or services are not worded

identically, they can still be considered identical if one term falls within the scope of another, or vice versa:

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

18. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term ‘computer software’. In the course of his judgment, he set out the following summary of the correct approach to interpreting broad and/or vague terms:

“[...] the applicable principles of interpretation are as follows:

(1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”

19. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the

observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

20. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The GC clarified the meaning of “complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 82:

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

21. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

22. In *Altecnic Ltd’s Trade Mark Application* [2002] RPC 34 (COA) the Court of Appeal decided that “the Registrar is entitled to treat the Class number

in the application as relevant to the interpretation of the scope of the application, for example, in the case of an ambiguity in the list of the specification of goods.”

23. In *Pathway IP Sarl (formerly Regus No. 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited)*, [2018] EWHC 3608 (Ch), the late Mr Justice Carr considered whether it was appropriate to take the Class(es) in which the trade mark was registered into account in revocation or invalidation proceedings when deciding whether a description covered the goods/services shown in the evidence. After considering the judgments of the High Court in the *Omega 1* [2010] EWHC 1211 (Ch) and *Omega 2* cases [2012] EWHC 3440 (Ch), the judge stated that in his (provisional) view, the class number should be taken into account where the meaning of the disputed term is not otherwise sufficiently clear and precise. In particular the judge stated that where *“the words chosen may be vague or could refer to goods or services in numerous classes [of the Nice classification system], the class may be used as an aid to interpret what the words mean with the overall objective of legal certainty of the specification of goods and services.”*

24. The competing goods and services to be compared are shown in the following table:

Opponent’s Goods	Applicant’s Goods and Services
<p>Class 5: Agricultural disinfectants; cleaning cloths impregnated with disinfectant for hygiene purposes; detergents for medical use having disinfectant properties; disinfectant dressings; disinfectant soap products; disinfectant soap solutions; disinfectant swabs; disinfectant washes; disinfectants; disinfectants for household use; disinfectants for hygiene purposes; disinfectants for use on the person; disinfectants for</p>	<p>Class 3: Pet shampoos; Shampoos for pets; Shampoos for pets [non-medicated grooming preparations]; Pet stain removers; Pet odor removers.</p> <p>Class 5: Sanitising wipes; Hand-sanitising preparations; Disinfectants; Disinfectants for hygienic purposes; Disinfectants for veterinary use; Disinfectants for hygiene purposes.</p> <p>Class 11: Sanitisers.</p>

veterinary use; disinfectants in spray form; household disinfectants; impregnated towels containing disinfectant preparations; antibacterial skin sanitiser gels; sanitiser preparations for hospital use; sanitiser preparations for household use.	Class 37: Disinfecting.
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25. The opponent made lengthy submissions in relation to the identity and/or similarity of the respective goods and services, which I have considered in this decision.
26. In its counterstatement, the applicant claimed that:

“3) The goods in Class 5 are not identical for the following reasons:

[...]

- our products are predominantly alcohol free
- they are manufactured in the UK
- our products are aimed at the domestic market within the UK only

4) The opposed goods in Classes 3, 11 & 37 are not similar. Our products are aimed at the pet, home, salon and sport sectors.

5) [...] The SIQURA products are manufactured and distributed within Australia only. As they are not available to the UK market, there is no likelihood of confusion.

SIQURA is aimed at the following sectors:

- Aged Care Solutions
- Early Childhood
- Transport & Automotive

Sicura is aimed at the domestic market under the following sectors:

- Home

- Pets
- Salon
- Sport
- Safe

Each sector has its own colour and which does not include the SIQURA colour range.”

27. Although the applicant states that the goods and services, which the parties actually trade in, are different for various reasons, for example, that the applicant’s goods are alcohol free products, this has no bearing on my decision. This is because I must consider the matter notionally based on the terms that the parties have registered or seek to register.¹
28. For the purpose of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way for the same reasons.²

Disinfectants; Disinfectants for hygienic purposes; Disinfectants for hygiene purposes; Disinfectants for veterinary use

29. The contested terms in Class 5 are identically worded or ostensibly the same to the opponent’s, and, thus, the respective terms are identical.

Sanitising wipes; Hand-sanitising preparations

30. The contested terms are covered by the opponent’s broad terms “*antibacterial skin sanitiser gels; sanitiser preparations for hospital use;*

¹ See *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at paragraph 22 and *Roger Maier v ASOS* [2015] EWCA Civ 220 at paragraphs 78 and 84.

² *Separode Trade Mark* BL O-399-10 and *BVBA Management, Training en Consultancy v BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38.

sanitiser preparations for household use". Thus, I find the respective goods to be identical as per *Meric*.

Sanitisers

31. The contested goods in Class 11 are apparatus or installations intended for sanitary purposes, such as hand sanitiser dispensers. There is some similarity with the opponent's terms "*antibacterial skin sanitiser gels; sanitiser preparations for hospital use; sanitiser preparations for household use*" in Class 5. The competing goods do not coincide in nature, but they may overlap in the end purpose that of sanitisation. Further, the contested goods are products usually sold in specialist stores alongside the earlier goods. Therefore, the respective goods may share users and trade channels. Further, I note that there could be competition, where the users can choose one over the other. There is also a degree of complementarity between the goods, absent evidence to the contrary, that the average consumer would assume that the responsibility for these types of goods lies with the same undertaking. I find that there is a low to medium similarity.

Disinfecting

32. These are services intended to be used for disinfecting generally, and may be used in the treatment/disinfection of e.g. clothing, surfaces, machinery and other products. The nature and purpose of the earlier goods "*disinfectants*" in Class 5 and the contested services in Class 37 differ. However, I accept the opponent's submission that the earlier goods can be considered to be complementary to the contested services, as they facilitate the conduct of such services. This is particularly the case when considering the examples of disinfection services. Further, the respective goods and services could be distributed through the same trade channels. Therefore, they are similar to a low to medium degree.

Pet shampoos; Shampoos for pets; Shampoos for pets [non-medicated grooming preparations]

33. The contested terms are all products that are formulated specifically for pets protecting their skin and coat. The closest terms from the earlier specification to be compared are “*disinfectant soap products; disinfectant soap solutions; disinfectant washes*”. The opponent’s products contain chemical substances intended to destroy bacteria or other micro-organisms for human use. It is my view that the relevant public would not consider such goods suitable for pet care. Against this background, the competing goods may overlap in a general nature. However, I note that the purpose of the opponent’s goods is narrower, namely to disinfect, as opposed to the applicant’s goods to clean, protect and nurture the pet’s skin and coat. In addition, the users and method of use may be different as it is unlikely that the pet owners would use the opponent’s goods, which are intended for use on humans, on their pets. The trade channels may overlap inasmuch as the respective goods would be sold in the same retail stores and supermarkets, but they will be placed in different aisles. The goods are not complementary or in competition with each other. I find them to be dissimilar.

Pet stain removers; Pet odor removers

34. These are specialised goods intended for removing either pet stains or odours. I can see no meaningful similarity in terms of the nature, intended purpose, or method of use nor are the goods at issue in competition with or complementary to the opponent’s goods. Thus, I find them to be dissimilar.

Average Consumer and the Purchasing Act

35. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of

goods and services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97. In *Hearst Holdings & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), at paragraph 70, Birss J (as he then was) described the average consumer in these terms:

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

36. In relation to the goods in Classes 3 and 5, the average consumer will be a member of the general public without excluding businesses. The goods will generally be self-selected from supermarkets or pet shops (for goods in Class 3) or after perusal of the Internet or from catalogues/brochures. I consider the purchase to be primarily a visual one, but aural considerations may also play a part based on word-of-mouth recommendations or where the goods are ordered by telephone. The purchasing process will vary depending on the suitability and importance of the item. The average consumer will pay an average level of attention when buying such products, heightened slightly for those products, such as pet shampoos, where greater care is employed to ensure they select the correct type.
37. Regarding the Class 11 goods, the average consumer will likely be business users. Such goods can be selected from stores, including specialist ones, brochures and catalogues, and online. In retail premises, the goods will be displayed on shelves, where they will be viewed and self-selected by consumers. Although I consider this purchasing act to be primarily visual, aural considerations will not be ignored in the assessment. Further, business users may pay a slightly higher than average degree of attention to ensure the product chosen is fit for purpose.

38. The average consumer of the services at issue will be either a member of the general public or professionals and businesses. The consumers will select such services by looking through brochures and websites, so the visual element will be important. However, I do not discount the aural element, as word-of-mouth recommendations may also influence consumers' decisions. These factors suggest that the level of attention of the average consumer will fluctuate from an average to a higher than average level of attention, although heightened slightly for professionals and businesses.

Comparison of Trade Marks

39. 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.”

40. 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.

41. The marks to be compared are:

Opponent's Mark	Applicant's Mark
SIQURA	Sicura

Overall Impression

42. The contested and earlier marks consist of the words “Sicura” and “SIQURA”, respectively, presented in a standard font. Registration of a word mark protects the word itself presented in any regular font and irrespective of capitalisation.³ The overall impression of the respective marks lies in the words themselves.

Visual Comparison

43. The visual similarity is based on the fact that the competing marks share the same letters except for the third, i.e. SIQURA/Sicura. Considering all the factors, including the overall impression of the marks, I find them to be visually similar to a high degree.

Aural Comparison

44. The competing marks have the same number of syllables, namely “SI-QU-RA” and “Si-cu-ra”. In its submissions the opponent claims that “the marks are identical and will be pronounced as either 'SI-CUE-RA' or 'SEE-CUE-RA’”. In the absence of evidence, it is my view that the UK average consumer will pronounce both marks identically as either “SI-KOOR-AH” or “SI-KYOOR-AH”. Therefore, I consider that the marks are aurally identical in whichever way they are pronounced by the consumers. If I am wrong on this finding, they are similar to a high degree.

³ See *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, paragraph 16.

Conceptual Comparison

45. In its counterstatement, the applicant asserted that:

“[...] the openent states that SIQURA means "secure" but our mark Sicura is an italian word for "safe".” (sic)

46. In its submissions, the opponent claims that:

“The earlier mark appears to be an invented word, but it does evoke the sense of being secure. It is claimed by the Applicant that SICURA is an Italian word meaning 'safe', but it is also an Italian word meaning 'secure' or 'sure' or 'certain'. It is clear that both marks evoke the sense of being secure and to that extent the marks are conceptually identical.”

47. No immediate perceptible meaning can be attributed to the competing marks. However, the applicant claims that the contested mark is an Italian word and means safe, but there is no evidence to support that the UK average consumer would be aware of such a concept. As a result, I find that the average consumer will see it as an invented or a foreign language word with no identifiable concept. Although the opponent claims that the earlier mark is an invented word, it contends that the mark “evoke[s] the sense of being secure”. However, there is no evidence to support this contention. Against this background, it is my view that the average consumer will solely perceive this as an invented word or a foreign language word with no identifiable concept. As a result, I find that the marks are conceptually neutral.

Distinctive Character of the Earlier Trade Mark

48. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, paragraph 22 and 23, the CJEU stated that:

“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).

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).”

49. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.
50. The opponent has not shown use of its mark and, thus, it cannot benefit from any enhanced distinctiveness; hence, I have only the inherent

distinctiveness of the earlier mark to consider. As described above in this decision, the earlier mark is the word “SIQURA”. As the earlier mark is comprised of one plain word, its distinctiveness lies in the word itself. The earlier mark has no real suggestive or allusive significance in relation to the goods for which it is registered. The mark will be perceived by consumers as an invented or a foreign language word, and I find that the level of inherent distinctiveness will be high.

Likelihood of Confusion

51. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred above in this decision. Such a global assessment is not a mechanical exercise. I must also have regard to the interdependency principle, that a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa.⁴ It is essential to keep in mind the distinctive character of the opponent’s trade mark since the more distinctive the trade mark, the greater the likelihood of confusion. I must also keep in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon imperfect recollection.⁵
52. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. Indirect confusion is where the consumer notices the differences between the marks but concludes that the later mark is another brand of the owner of the earlier mark or a related undertaking.
53. In *L.A. Sugar Limited v Back Beat Inc*, Case BL O/375/10, Iain Purvis Q.C., sitting as the Appointed Person, explained that:

⁴ See *Canon Kabushiki Kaisha*, paragraph 17.

⁵ See *Lloyd Schuhfabrik Meyer*, paragraph 27.

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.”

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

55. Earlier in this decision I have concluded that:

- the goods at issue range from identical to dissimilar;
- the average consumer for the goods in Classes 3 and 5 will be a member of the general public or businesses, the level of attention will be average, heightened slightly for some of the goods where greater care is employed. The selection process is predominantly visual without discounting aural considerations. For the Class 11 goods, the average consumer will be business users. The level of attention paid will be slightly higher than average, and the selection process is predominantly visual without discounting aural considerations. In relation to the Class 37 services, the average

consumer will be a member of the general public or professionals/businesses. The level of attention will fluctuate from an average to a higher than average level of attention, although heightened slightly for professionals and businesses. Again, the selection process will be predominantly visual without discounting aural considerations;

- the competing marks are visually highly similar, aurally identical (or else similar to a high degree), and conceptually neutral;
- the earlier mark has a high degree of inherent distinctiveness.

56. The likelihood of confusion does not arise in relation to the application's goods which are dissimilar to the earlier mark's goods. **The opposition cannot succeed against dissimilar goods and, therefore, is dismissed insofar as it concerns the following terms:**

Class 3: Pet shampoos; Shampoos for pets; Shampoos for pets [non-medicated grooming preparations; Pet stain removers; Pet odor removers.

57. Taking into account the above factors and considering the identical goods in play, there is likelihood of direct confusion. I find that even where a higher than average degree of attention is displayed by either the general or the professional public, the similarity between the marks coupled with the high distinctiveness of the earlier mark will result in the average consumer imperfectly recollecting the earlier mark and directly confusing it with the contested mark. In addition, the conceptual neutrality of the marks in this case is a factor that points towards confusion as it will not enable the average consumer to distinguish one mark from the other leading them into mistaking/misrecalling the applicant's mark for the opponent's.

58. The above finding extends to the rest of the contested goods and services that I have found to be similar to a high and low to medium degree given the relationship that exists between them, the close visual similarity of the marks, together with the other factors as outlined above.

Outcome

59. Part of the opposition under Section 5(2)(b) **succeeds and, subject to an appeal against this decision, the application will be refused for the following goods and services:**

Class 5: Sanitising wipes; Hand-sanitising preparations; Disinfectants; Disinfectants for hygienic purposes; Disinfectants for veterinary use; Disinfectants for hygiene purposes.

Class 11: Sanitisers.

Class 37: Disinfecting.

60. Part of the opposition **fails, and the application may, subject to appeal, proceed to registration for the following goods:**

Class 3: Pet shampoos; Shampoos for pets; Shampoos for pets [non-medicated grooming preparations; Pet stain removers; Pet odor removers.

Costs

61. In terms of costs, whilst both parties have achieved a measure of success, proportionately, the opponent has been more successful than the applicant. Awards of costs in fast-track opposition proceedings are governed by Tribunal Practice Notice 2 of 2015. I award costs to the opponent on the following basis:

Filing a notice of opposition	£100
Opposition fee	£100
Filing written submissions	£200
Total	£400

62. I, therefore, order Moorland Contract Group Ltd to pay Pacsource Pty. Ltd as trustee for the Candlewerks Pacific Unit Trust the sum of £400. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 16th day of August 2022

Dr Stylianos Alexandridis
For the Registrar,
The Comptroller General