

O/972/22

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. UK00003659033
BY GEN 2 CARBON LIMITED
TO REGISTER:**

G-TEX

**AS A TRADE MARK
IN CLASSES 1, 17 & 40**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 428304
BY GOTEX S.A.**

Background and pleadings

1. Gen 2 Carbon Limited (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the UK on 22 June 2021. The application was accepted and published in the Trade Marks Journal on 20 August 2021 in respect of the following goods and services:

Class 1: *Thermoplastic compounds; thermoplastic resins.*

Class 17: *Carbon fibres; recycled carbon fibres; carbon fibre felts; carbon fibre materials; carbon fibre fabrics; carbon fibres for use in industry; resin impregnated carbon fibre fabrics; crude fibres of carbon; raw fibres of carbon; yarns of carbon fibres; fabrics of carbon fibre; thermoplastic compounds for use in industry; parts and fittings for all of the aforesaid goods.*

Class 40: *Recycling services; recycling of carbon fibre products; processing, treating, recycling and transformation of waste products, materials, consumer goods, industrial goods and scrap products; information, advisory and consultancy services relating to all of the aforesaid services.*

2. On 19 November 2021, Gotex S.A. (“the opponent”) filed a notice of opposition on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed at the applicant’s mark in its entirety. The opponent relies on the following trade mark:

GOTEX

UK Registration no. UK00003199664

Filing date 30 November 2016; date of entry in register 24 February 2017

Relying on all the goods listed in the **Annex** to this decision.

(“the opponent’s mark”)

3. The opponent submits that there is a likelihood of confusion because the applicant’s mark is similar to its own mark and the respective goods and services are

identical or similar. The applicant filed a defence and counterstatement denying the claims made.

4. The opponent is represented by Murgitroyd & Company; the applicant is represented by Harper James. Neither party filed evidence or submissions. No hearing was requested. Neither party filed submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

5. 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 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.

Section 5(2)(b): legislation and case law

6. Section 5(2)(b) of the Act reads as follows:

“(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 or association with the earlier trade mark.”

7. Section 5A of the Act is as follows:

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

8. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(6)(1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

9. Given its filing date, the opponent’s mark qualifies as an earlier trade mark under the above provisions. The opponent’s mark has not completed its registration process more than five years before the application date of the applicant’s mark. The conditions of use do not, therefore, apply to the mark and the opponent can rely on all the goods for which its mark is registered.

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

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

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

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

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impression 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 greater 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 to mind the earlier mark, 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 the goods and services

11. The applicant's goods and services can be found in **paragraph 1**. The opponent's goods can be found in the **Annex** to this decision.

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

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

13. Guidance on this issue has also come from Jacob J. (as he was then) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

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

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

14. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v 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”.

Class 1

15. In the absence of any evidence or submissions from either party to the contrary, it is my view that “*thermoplastic compounds*” and “*thermoplastic resins*” in the applicant’s specification are plastics or materials that soften to a liquid in high heat that can be moulded easily that are to be used for various purposes. It is my view that thermoplastic compounds can be used to create a wide range of products which include pipes. In the absence of any other similarity between the parties’ goods, I compared the applicant’s goods with “*flexible pipes*” in the opponent’s specification which can be created using the applicant’s goods. It is my view that the goods differ in purpose, nature and method of use as the applicant’s goods are used in the manufacture of the opponent’s goods. It is also my view that the goods differ in trade channels as separate stores will sell the goods. Further, the goods will not share users, as it is unlikely someone looking to purchase goods such as flexible pipes will search for the thermoplastic compound used to create the goods. The goods are not in competition. Further, it is not my view that the goods are important/ indispensable for the creation of flexible pipes in such a way that customers may think that the responsibility for those goods lies with the same undertaking, as it is my view that alternative plastics could be used to create goods such as pipes in the absence of thermoplastic compounds and resins. Therefore, I find the goods to be dissimilar.

Class 17

16. “Carbon fibres” appears in both parties’ specifications, although worded differently in the opponent’s specification, and are, therefore, self-evidently identical.

17. “Recycled carbon fibres” in the applicant’s specification, is encompassed by the broader category of “carbon fibre” in the opponent’s specification. Therefore, I find the goods to be identical on the principle outlined in *Meric*.

18. “Carbon fibres for use in industry” in the applicant’s specification are similar to “carbon fibres, other than for textile use” in the opponent’s specification. In my view the goods coincide in nature, purpose and method of use. It is my view that the goods will overlap in users and trade channels. It is my view that the goods are in competition, but it is not my view that the goods are complementary. Taking this into account, it is my view that the goods are similar to a high degree.

19. “Yarns of carbon fibre” in the applicant’s specification encompasses “yarns [...]of carbon fibres, other than for use in textiles” in the opponent’s specification. Therefore, I find the goods to be similar on the principle outlined in *Meric*.

20. In the absence of any submissions or evidence to the contrary, it is my view that carbon fibre is a material made of carbon. Further, it is my view that fabric is often used interchangeably with the word material. On this basis, it is my view that “carbon fibre fabrics”, “carbon fibre materials” and “fabrics of carbon fibre” in the applicant’s specification are identical to “carbon fibre” in the opponent’s specification on the principle outlined in *Meric*.

21. In the absence of any evidence or submissions to the contrary, it is my view that “carbon fibre felts” in the applicant’s specification is created after processing carbon fibre material into a felt sheet. In my view, the applicant’s goods are similar to “carbon fibre” in the opponent’s specification. I am reminded that just because one good is a part or component of another it is not sufficient to warrant a finding of similarity on its own.¹ The goods differ in purpose, it is my view that the purpose of carbon fibre felt is for insulation whereas carbon fibre, whilst it has many uses, is not

¹ *Les Editions Albert Rene v OHIM*, Case T-336/03

used for insulation without being processed into carbon felt. Further, it is my view that the goods differ in their method of use and nature. The goods may coincide in trade channels as a store, even a specialist store may offer both products. There may be an overlap in users as the average consumer may wish to insulate and use carbon fibre for one of its many uses, such as in repairs to model boats. The goods are not in competition. However, it is my view that there is a close connection between the goods as carbon fibres are indispensable/important for the creation of carbon fibre felts in such a way that the customers may think that the responsibility for those goods lies with the same undertaking.² Bearing all this in mind, I find the goods to be similar to a low to medium degree.

22. “*Crude fibres of carbon*” and “*raw fibres of carbon*” in the applicant’s specification are encompassed by “*carbon fibres*” in the opponent’s specification. Despite the applicant’s specification stating that the fibres are crude or raw, they are still carbon fibres. Therefore, I find the goods to be identical on the principle outlined in *Meric*.

23. In the absence of any evidence or submissions from either party to the contrary, it is my view that “*resin impregnated with carbon fibre fabrics*” in the applicant’s specification are carbon fibre fabrics that have been reinforced with resin. It is my view that these goods are similar to “*carbon fibres*” in the opponent’s specification. I am mindful that just because one good is a component of another it does not mean that it sufficient to warrant a finding of similarity. It is my view that the goods differ in purpose, nature and method of use as the opponent’s goods are component parts used to make the applicant’s goods. The goods may coincide in trade channels as a store, even a specialist store may offer both products. The goods also coincide in users, as a user seeking carbon fibre may seek the applicant’s goods if they are looking for a good with alternative qualities for their project. There is some degree of competition between the goods, as the applicant’s goods may be offered as a cheaper alternative to the opponent’s goods. . It is my view that there is a close connection between the goods as carbon fibres are indispensable/important for the creation of carbon fibre materials/fabrics in such a way that consumers may think that the responsibility for those goods

² *Boston scientific Ltd v OHIM (Trade Marks and Designs)*, Case T-325/06

lies with the same undertaking.³ Bearing all this in mind I find the goods to be similar to a low to medium degree.

24. I am unable to find any obvious similarity between “*thermoplastic compounds for use in industry*” in the applicant’s specification and any of the goods in the opponent’s specification. Whilst I recognise that there are goods such as flexible pipes in the opponent’s specification that can be created using the applicant’s goods, I am unable to find any similarity in the purpose, nature, method of use, trade channels and users. Further, I find that there is no competition or complementarity between the opponent’s specification. Therefore, I find the goods to be dissimilar.

25. That leaves “*parts and fittings for all of the aforesaid goods*” in relation to the class 17 goods in the applicant’s specification. In my view, it is unclear what “*parts and fittings*” are in relation to the goods in the applicant’s specification. Additionally, no submissions or evidence have been provided to assist me in this matter. In any event, for the goods I have found to be identical, I am of the view that the parts and fittings associated with the goods will overlap in end purpose, users and trade channels. Consequently, I find the parts and fitting to these goods are similar to a medium degree. For the goods that I have found to be highly similar, it is also my view that the goods will overlap in users, end purpose and trade channels. Therefore, I find the parts and fittings of these goods to be similar to a low to medium degree. For the goods that I found to be similar to a low to medium degree, I am of the view that the parts and fittings associated with the goods are dissimilar. Or if I am wrong, similar to a very low degree. Where the goods are dissimilar, it follows that the parts and fittings for those goods are also dissimilar to the goods in the opponent’s specification.

Class 40

26. “*Recycling services*” and “*processing, treating, recycling and transformation of waste products, materials, consumer goods, industrial goods and scrap products*” in the applicant’s specification are services that recondition waste materials to create goods with a new use or function. I recognise that the applicant’s services may be

³ *Boston scientific Ltd v OHIM (Trade Marks and Designs)*, Case T-325/06

used to recycle some of the opponent's goods. However, the nature and purpose of the goods and services will differ. I also note the services will not be used the same way nor will they share the same trade channels. Whilst I recognise that with increasing environmental considerations some companies will offer recycling for their own products, it is not my view that this is common. There may be a very general overlap in users in that the users of the opponent's goods may also use recycling services. The goods and services are not in competition nor are they complementary. Whilst I note I find a very general overlap in users this is insufficient to substantiate a level of similarity. Therefore, I find the applicant's services and any of the opponent's goods to be dissimilar.

27. In relation to "*recycling of carbon fibre products*" in the applicant's specification, I am unable to find any similarity in relation to the opponent's goods based on the reasoning above at paragraph 26. I recognise that this service is specifically in relation to carbon fibre products and the opponent's goods include carbon fibre products and they may coincide in trade channels, as some companies will offer recycling for their own products, but this is not common in my view. Despite this, I am unable to find any complementarity between the goods and services. This is on the basis that while I am of the view that they may be important/indispensable to one another I am not of the view that the average consumer would expect a supplier of carbon fibre products to also recycle carbon fibre products. It is not my view that the potential similarity in trade channels is sufficient to substantiate similarity. Therefore, I find the applicant's services and the opponent's goods to be dissimilar.

28. As I have found all of the services in class 40 to be dissimilar, it follows that "*information, advisory and consultancy services relating to all the aforesaid services*" will also be dissimilar.

29. As some degree of similarity between goods and services is necessary to engage the test for likelihood of confusion, my findings above mean that the opposition aimed against those services I have found to be dissimilar will fail.⁴ For ease of reference, the opposition fails against the following goods and services in the applicant's specification:

⁴ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

Class 1: *Thermoplastic compounds; thermoplastic resins.*

Class 17: *Thermoplastic compounds for use in industry; parts and fittings in relation to carbon fibre felts, resin impregnated with carbon fibre fabrics, thermoplastic compounds for use in industry.*

Class 40: *Recycling services; recycling of carbon fibre products; processing, treating, recycling and transformation of waste products, materials, consumer goods, industrial goods and scrap products; information, advisory and consultancy services relating to all of the aforesaid services.*

The average consumer and the purchasing act

30. As the law above indicates, it is necessary for me to determine who the average consumer is for the parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

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

31. Neither party has commented on the average consumer. It is my view that the average consumer will be professionals, businesses or members of the general public. The goods at issue are likely to be selected visually from specialist stores (or their online equivalent), catalogues, websites or other printed publications. Although I do

not discount aural considerations in the form of, for example, advice received from sales staff, orders made via the telephone or word-of-mouth recommendations.

32. The cost of the goods can range from relatively inexpensive (such as carbon fibre felt) to moderately expensive (such as carbon fibre used in industry). The frequency of the purchase of the goods is likely to vary between the different average consumers, from limited purchases made by members of the general public, to more frequent purchases made by professionals and business users. In all cases, I consider that various factors will be taken into consideration such as the strength of the product, durability, weight and suitability. It is my view that the level of attention paid during the purchasing process will vary depending on the purpose of acquiring the goods. I recognise that average consumers will purchase the goods for a myriad of purposes ranging from the manufacture of vehicles to do-it-yourself hobbyists using the goods for model boat manufacture. For example, it is my view that the goods purchased for the manufacture of vehicles will have a high level of attention paid during the purchasing process whereas do-it-yourself hobbyists are likely to pay a medium degree of attention.

Comparison of the mark

33. The respective marks are shown below:

G-TEX	GOTEX
The applicant's mark	The opponent's mark

34. It is clear from *Sabel BV v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to all the overall impressions created by the trade 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.”

35. 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.

36. The applicant's mark consists of the text 'G-TEX'. The applicant's mark is presented in standard typeface and upper case. There are no other elements that contribute to the overall impression of the mark. The opponent's mark consists of the text 'GOTEX'. The opponent's mark is presented in standard typeface and upper case. There are no other elements that contribute to the overall impression of the mark.

37. Visually, the marks share the letters 'G' at the beginning of the mark and 'TEX' at the end of the mark. The only points of difference are the 'O' in the opponent's mark and the hyphen in the applicant's mark. Consequently, I consider the marks to be visually similar to a high degree.

38. Aurally, the applicant denies that the marks are similar aurally. It is my view that the applicant's mark will be pronounced as JEE-TEX. It is my view that the opponent's mark will be pronounced as GO-TEX. Consequently, I consider the marks to be similar to a medium degree.

39. Conceptually, both parties agree that the marks have no meaning. In particular, I note that the applicant states that the marks have no literal meaning but that the common element 'TEX' in both marks connotes the word 'textiles'. It is not my view that the average consumer will grasp immediately the concept of textiles from the marks without prompting. It is my view that the average consumer is likely to

perceive both marks as invented terms or unfamiliar words of another language; the marks are conceptually neutral as a consequence.

The distinctive character of the opponent's mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

41. Registered trade marks possess varying degrees of inherent distinctive character through use, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods and services, to those with a high inherent distinctive character, such as invented words which have no allusive qualities.

42. The opponent has not pleaded enhanced distinctive character through use and has not filed evidence to support such a claim, therefore, I have only the inherent position to consider.

43. The opponent submits that its mark has no meaning in the English language and states that its mark is highly distinctive in relation to its goods. However, I note that the opponent does not provide any further commentary as to why that is the case. The applicant agrees that the earlier mark has no 'literal meaning' but submits that the mark's suffix 'TEX' denotes textiles and will be perceived by the average consumer as descriptive of the goods.

44. The opponent's mark consists of the word 'GOTEX'. This is not, as far as I am aware, an ordinary dictionary word with an obvious meaning that would be immediately graspable by the majority of average consumers. While I find that to be the case, its construction is not particularly unusual to the point that it would be viewed as a novel or made up word. It is not my view that 'TEX' will be perceived by the average consumer as descriptive or allusive in relation to the goods upon which it will be displayed. Consequently, I find the mark to have a higher than medium degree of inherent distinctive character.

Likelihood of confusion

45. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services or vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be mindful to the fact that the average consumer rarely has

the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

46. I have found the marks to be visually similar to a high degree, aurally similar to a medium degree and conceptually neutral. I have found the opponent's mark to have a higher than medium degree of inherent distinctive character. I have found the average consumer to be a professional, business user or member of the general public. I have found that the goods are likely to be selected visually. However, I do not discount that there will also be an aural component to the purchase of the goods. I have concluded that the average degree of attention will vary from medium to high. I have found the goods at issue to vary in similarity from identical to similar to a very low degree.

47. While I note that the parties' marks differ in the presence/absence of 'O' and a hyphen in the marks respectively, I consider that the differences between the marks are insufficient to avoid confusion, even when the principle of imperfect recollection is considered. I am of the view that the average consumer will overlook or misremember the differences between the marks. This is particularly the case given that the marks share the letter 'G' at the beginning of the marks and the suffix 'TEX'. Further, I have found the marks to be visually similar to a high degree and the opponent's mark is inherently distinctive to a medium to high degree. Consequently, it is my view that it is likely that the marks will be misremembered or mistakenly recalled as each other, even when a high degree of attention is applied. Therefore, I find that there is a likelihood of direct confusion between the marks. In respect of the goods that I have found to be similar to a low to medium degree, I consider that the high degree of visual similarity of the marks will offset the low to medium similarity of the goods. As a result, my finding of direct confusion applies to the goods that I find to be similar to a low to medium degree as well. I do not consider that this finding will extend to the goods that I have found to be similar to less than a low to medium degree.

Conclusion

48. The opposition has succeeded for the following goods which will be refused:

Class 17: *Carbon fibres; recycled carbon fibre; carbon fibres for use in industry; yarns of carbon fibre; carbon fibre fabrics; carbon fibre materials; carbon fibre felts; fabrics of carbon fibre; crude fibres of carbon; raw fibres of carbon; resin impregnated with carbon fibre fabrics; parts and fitting relating to carbon fibres; recycled carbon fibre; carbon fibres for use in industry; yarns of carbon fibre; carbon fibre fabrics; carbon fibre materials; fabrics of carbon fibre; crude fibres of carbon; raw fibres of carbon.*

49. The opposition has failed in relation to the following goods and services which will proceed to registration:

Class 1: *Thermoplastic compounds; thermoplastic resins.*

Class 17: *Thermoplastic compounds for use in industry; parts and fittings for all of the aforesaid goods; parts and fittings relating to carbon fibre felts, resin impregnated with carbon fibre fabrics, thermoplastic compounds for use in industry.*

Class 40: *Recycling services; recycling of carbon fibre products; processing, treating, recycling and transformation of waste products, materials, consumer goods, industrial goods and scrap products; information, advisory and consultancy services relating to all of the aforesaid services.*

COSTS

50. Both parties have achieved a measure of success. In the circumstances, the applicant has had more success overall and is entitled to an award of costs based on the scale published in Tribunal Practice Note 2/2016. In the circumstances, I award the applicant the sum of £150 as a contribution towards its costs. I have reduced the award to reflect the overall balance of success. I will award costs to the applicant as follows:

Preparing a statement and considering the opponent's statement	£150
Total	£150

51. I, therefore, order Gotex S.A to pay Gen 2 Carbon Limited the sum of £150. 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 7th day of November 2022

A Klass

For the Registrar

Annex

Class 17: unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal; insulating tapes; glass fibre electrical insulating tapes; ballistic tapes to protect cables against bullets; polypropylene foamed paper tapes for wrapping and insulating cables; tapes reinforced with flexible resins to protect pipes and cables; tapes of epoxy impregnated fibreglass for insulating purposes; fibreglass reinforced plastic rods; fibreglass reinforced plastic rods for cable reinforcement; yarns and threads, not for textile use; elastic threads and elastic yarns, not for use in textiles; covered rubber thread and yarns, not for textile use; yarns and thread of carbon fibres, other than for use in textiles; yarns and threads of ceramic fibres, other than for use in textiles; yarns and threads of plastic materials, not for textile use; yarns and threads of rubber, not for use in textiles; carbon fibre; carbon fibres, other than for textile use; semi-worked polymer resins in the form of fibres; fibres impregnated with synthetic resins for use in manufacture; spun polyester fibre, other than for textile use; vulcanized fibre; plastics fibres, other than for textile use; glass fibre and glass wool; chemical fibres not for textile use; synthetic fibres, other than for textile use; yarns, threads and fibres for insulation, other than for textile use.

Class 21: yarns and threads, other than for insulation or textile use; glass yarns and glass threads, not for textile use; fibreglass yarns and threads, not for textile use; fibreglass other than for insulation or textile use; vitreous silica fibres, not for textile use.

Class 22: ropes and string; nets; tents, awnings and tarpaulins; sails; sacks; padding and stuffing materials (except of paper, cardboard, rubber or plastics); raw fibrous textile materials; raw textile fibres and substitutes; carbon fibres for textile use; cotton fibres; textile fibres; fibres being partly prepared synthetic materials for textile use; glass fibres for textile use; plastic fibres for textile use; metallic fibres for textile use; synthetic fibres; yarn fibres; ceramic textile fibres; cotton fibres; yarns for use in tyre cord construction.

Class 23: yarns and threads, for textile use; polyester yarns and threads for use as cable binders; polyester yarns for fibre optic cables; polyester yarns for fibre optic cable ripcord applications.