

O/0196/23

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3605485
IN THE NAME OF TURTLE ENVIRO LTD
IN RESPECT OF THE TRADE MARK**

SILT SENTINEL

IN CLASS 11

AND

**OPPOSITION THERETO UNDER NO. 429459
BY SENTINEL PERFORMANCE SOLUTIONS LIMITED**

Background and pleadings

1. Turtle Enviro Ltd (“the applicant”) applied to register the UK trade mark no. 3605485 for the mark SILT SENTINEL in the UK on 5 March 2021. It was accepted and was published in the Trade Marks Journal on 24 September 2021. Since publication, the specification of goods has been limited, and the application now stands in respect of the following goods:

Class 11: Silt separators and silt traps

2. Sentinel Performance Solutions Limited (“the opponent”) oppose the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of its three earlier UK trade marks outlined in the table below:

Trade Mark	Registration number	Filing/registration date	Goods/services relied upon
SENTINEL (“the first earlier mark”)	3335023	30 August 2018/ 21 December 2018	Class 35: Wholesale, retail or on-line selling services in relation to chemicals and chemical products for use in cleaning of aqueous systems, preparations for use in the flushing of water storage systems, preparations for use in the sediment removal of water storage systems, pumps and pipes, apparatus for the treatment of water and aqueous solutions, water supply apparatus, water

			regulating apparatus, water filters. ¹
SENTINEL ELIMINATOR VORTEX (“the second earlier mark”)	3233437	25 May 2017/ 18 August 2017	Class 11: Apparatus for the inhibition or removal of debris from water; water filters; water treatment apparatus in domestic or industrial water supply or storage systems; water flushing apparatus. ²
SENTINEL RAPID DOSE (“the third earlier mark”)	3248095	03 August 2017/ 03 November 2017	Class 11: Water supply and sanitary installations and apparatus; water filters; water supply apparatus; water regulating apparatus; water treatment apparatus in domestic or industrial water supply or storage systems. ³

3. By virtue of their earlier filing dates, the above marks constitute earlier marks in accordance with section 6 of the Act.

¹ The opponent has since added the limitation *none of the aforesaid for use in agriculture or relating to agrochemicals* to its specification in class 35 under this mark. This request was received on 6 October 2022 and was recorded on 10 October 2022. This partial surrender will not retrospectively limit the opponent’s protection and as such has no relevance within these proceedings.

² As above, the opponent added the limitation *none of the aforesaid for use in agriculture or relating to agrochemicals* to its class 11 specification under this mark. This request was received on 6 October 2022 and was recorded on the 7 October 2022, and for the reasons above will have no relevance within these proceedings.

³ Again, the opponent added the limitation *none of the aforesaid for use in agriculture or relating to agrochemicals* to its class 11 specification under this mark. This request was received on 6 October 2022 and was recorded on 10 October 2022, and for the reasons above will have no relevance within these proceedings.

4. The opponent argues that the respective goods and services are identical or similar and that the marks are similar, and that as such there will be a likelihood of confusion, including a likelihood of association between the marks.

5. The applicant filed a counterstatement denying the claims made.

6. Only the applicant filed evidence in these proceedings, and the opponent filed written submissions during the evidence rounds. Neither will be summarised at the outset of this decision but both have been considered and will be referred to where appropriate.

7. Both sides filed written submissions in lieu of a hearing. Again, these will not be summarised but will be referred to as and where appropriate during this decision. No hearing was requested and so this decision is taken following careful consideration of the papers.

8. The opponent is represented in these proceedings by ROOME ASSOCIATES LIMITED. The applicant is represented by Hargreaves Elsworth.

9. 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 upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to the case law of the EU courts.

Proof of use

10. The opponent's earlier marks relied upon had not been registered for a period of five years at the date on which the application was filed and are therefore not yet subject to proof of use in these proceedings in accordance with section 6A of the Act. The opponent may therefore rely upon its goods and services as pleaded.

Preliminary issues

Absence of confusion in the marketplace

11. In *Roger Maier and Another v ASOS*, [2015] EWCA Civ 220, Kitchen L.J. stated that:

“80.the likelihood of confusion must be assessed globally taking into account all relevant factors and having regard to the matters set out in *Specsavers* at paragraph [52] and repeated above. If the mark and the sign have both been used and there has been actual confusion between them, this may be powerful evidence that their similarity is such that there exists a likelihood of confusion. But conversely, the absence of actual confusion despite side by side use may be powerful evidence that they are not sufficiently similar to give rise to a likelihood of confusion. This may not always be so, however. The reason for the absence of confusion may be that the mark has only been used to a limited extent or in relation to only some of the goods or services for which it is registered, or in such a way that there has been no possibility of the one being taken for the other. So there may, in truth, have been limited opportunity for real confusion to occur.”

12. In *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283 Millett L.J. stated that:

"Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff's registered trade mark."

13. The applicant has provided evidence in the form of a witness statement in the name of Damone Armstrong, managing director of the applicant. The statement is dated 15 July 2022, and introduces 8 exhibits labelled Annex IA, Annex IB, Annex II, Annex III, Annex IV, Annex V, Annex VI and Annex VII.

14. The statement filed goes into detail about the applicant's business and product offered under its mark, outlining that it has been using the mark for the product since 2017 in respect of silt traps,⁴ and explaining that since 2018 to date there has been over £570,000 worth of sales.⁵ In his statement, Mr Armstrong provides examples of distributors of the applicant's products⁶ and webpages from a selection of these distributors showing search results for SENTINEL are also provided at Annex IV. In addition, webpage print outs showing a list of the opponent's partners and stockists named on the opponent's website are provided at Annex VI. Mr Armstrong goes on to state that he is not aware that there has been any confusion in the market place between SILT SENITAL silt traps and "any product sold under the SENTINEL mark".⁷

15. Whilst I note the comments made by Mr Armstrong in his witness statement and the evidence filed, it is my view that the absence of evidence relating to actual confusion in this instance is not particularly compelling. Whilst I understand Mr Armstrong is trying to show that the marks are coexisting on the market without such confusion, I have not been provided with significant evidence relating to the extent of the opponent's use of its mark in the UK. I do note the webpage which details what the opponent is offering ("...water treatment products and services that provide the best lifetime protection for heating and hot water systems")⁸ and confirm that it originally launched in the UK in 1988 and now provides international operations. However, there is no additional detail provided confirming how long the particular goods and services as registered have been offered in the UK under the marks as registered (or if many of these have been offered at all) or providing any detail regarding the extent of any use in the UK. In addition, the use made by the applicant of its marks has been somewhat limited to date, and Mr Armstrong himself has confirmed that currently there is no cross over in industry partners or stockists.⁹

16. Whilst the evidence provided shows that the applicant has been operating in the UK under the mark and that the opponent also has operations under a SENTINEL

⁴ See paragraph 5 of the witness statement of Mr Armstrong

⁵ See paragraph 6 of the witness statement of Mr Armstrong

⁶ See paragraph 7 of the witness statement of Mr Armstrong

⁷ See paragraph 15 of the witness statement of Mr Armstrong

⁸ See Annex V

⁹ See paragraph 13 of the witness statement of Mr Armstrong

mark to some extent, it falls considerably short of being compelling evidence of a lack of confusion despite side-by-side use on the market place in respect of the marks and the goods and services relied upon within this opposition, and I do not therefore consider the evidence relating to the absence of confusion in the marketplace to hold any weight in this instance.

Third party marks on the register

17. I also briefly note the applicant's reference to other third-party SENTINEL marks present on the UK register (and "worldwide") within its final written submissions. It is well established that state of the register evidence alone (insofar as the applicant's submissions can be considered as such) will not assist a party in demonstrating that the likelihood of confusion between two marks is reduced. In *Zero Industry Srl v OHIM*, Case T-400/06, the General Court ("GC") stated that:

"73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '... there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 GfK v OHIM – BUS(Online Bus) [2005] ECR II-4865, paragraph 68, and Case T-29/04 Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH) [2005] ECR II-5309, paragraph 71). "

18. I will not therefore give the applicant's submissions regarding the other third-party SENTINEL marks any further consideration within this decision.

Decision

Section 5(2)(b)

19. 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”.

Section 5A

20. 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.”

21. 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.

The principles

(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 might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

22. 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”.

23. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(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.

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

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

25. 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 GC stated there is "complementary" where:

"...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”.

26. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the GC stated that:

“29. 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”.

27. With this in mind, the goods and services for comparison are as follows:

Earlier goods and services	Contested goods and services
<p>(3335023)</p> <p>Class 35: Wholesale, retail or on-line selling services in relation to chemicals and chemical products for use in cleaning of aqueous systems, preparations for use in the flushing of water storage systems, preparations for use in the sediment removal of water storage systems, pumps and pipes, apparatus for the treatment of water and aqueous solutions, water supply apparatus, water regulating apparatus, water filters.</p>	<p>Class 11: Silt separators and silt traps</p>
<p>(3233437)</p> <p>Class 11: Apparatus for the inhibition or removal of debris from water; water filters; water treatment apparatus in</p>	

domestic or industrial water supply or storage systems; water flushing apparatus.	
(3248095) Class 11: Water supply and sanitary installations and apparatus; water filters; water supply apparatus; water regulating apparatus; water treatment apparatus in domestic or industrial water supply or storage systems.	

28. Within its submissions, the applicant states that the opponent’s specification of goods is very broad, whereas the goods sold by the opponent all relate to plumbing and aspects of water treatment. It states that the applicant’s specific goods are very different to any products used in plumbing or drainage as sold under the opponent’s marks. I note here that the assessment I must make in this instance is a notional one, based on the goods as registered by the opponent and those applied for by the applicant. The actual goods currently offered by the opponent are not relevant in this instance.

29. Before I move on to conduct a notional comparison of the goods and services, I note the correct interpretation of the opponent’s specification relied upon is in dispute between the parties. Within its counterstatement, the applicant states:

“8. It is unclear from the class 35 specification of the Opponent’s mark what services are actually covered. The specification is ambiguous. The extracted items set out in the Statement of Grounds do not read on to the Class 35 specification of services on the Register. The Opponent claims the specification is for:

“Wholesale, retail or on-line selling services in relation to [...] apparatus for the treatment of water and aqueous solution, water supply apparatus, water regulating apparatus, water filters.”

A correct reading of the specification in relation to the services mentioned in the Statement of Grounds would be:

“Wholesale, retail or on-line selling services in relation to chemicals and chemical products for use in [...] preparations for use in [...], preparations for use in [...] pumps and pipes, apparatus for the treatment of water and aqueous solutions, water supply apparatus, water regulating apparatus, water filters.”

Clearly, silt traps and silt separators are not similar to the services recited above.”

30. The opponent disputes the applicant’s interpretation within its written submissions, submitting that whilst ‘pumps and pipes’ are limited by ‘preparations for use in [...]’, the terms following this in the statement of grounds are not.

31. I have reviewed the full specification registered by the opponent in class 35, in addition to the sections relied upon by the opponent in this opposition. I agree with the applicant that it is somewhat ambiguous. However, I note there is no doubt (or dispute) that the class 35 services are all intended to begin with the term “wholesale, retail or online selling solutions in relation to”. Further, I note that there are three areas within the opponent’s specification that begin with “preparations for use in [...]”. The first two are followed by the terms *heating systems, cooling systems, heat transfer systems, boilers, water storage systems, solar heating systems, heat pumps such as ground source heat pumps and air source heat pumps, heaters, radiators, pumps and pipes* at which point they appear to come to a natural end. It seems logical that the third area in the specification beginning with “preparations for use in [...]” followed by those same terms is also intended to end following ‘pumps and pipes’ as has come before. In addition, this is also how I interpreted the specification on my initial reading of the same. Therefore, after careful consideration, I agree with the opponent that the disputed section of the specification is intended to be, and should be read as below:

“wholesale, retail or on-line selling services in relation to apparatus for the treatment of water and aqueous solutions, water supply apparatus, water regulating apparatus [and] water filters”

32. It is on this basis that I intend to proceed. However, in case I am wrong in this interpretation, if this turns out to have a determinative effect in the outcome of this decision as a whole, I will come back to consider the impact that the other interpretations of the specification may have on the same.

Earlier Reg no. 3335023

33. As discussed above, it is my view that the earlier specification filed in class 35 includes *wholesale, retail or on-line selling services in relation to apparatus for the treatment of water and aqueous solutions, water supply apparatus, water regulating apparatus [and] water filters.*

34. In my view, water filters are essentially apparatus that filter, i.e. remove impurities, from water. I note the applicant’s explanation of the contested *silt separators and silt traps* within its evidence:¹⁰

“The terms “silt trap” and “silt separator” are used interchangeably within the drainage industry. I will use the term “silt trap” throughout this Witness Statement. A silt trap is a specialised piece of drainage equipment used underground for outdoor drainage systems. It is used to catch and remove silt and debris entrained in run off water from impermeable and hard standing surface areas, such as roofs, paths and driveways, patios, car parks, roads and highways, providing efficient cleaning of the surface water run off, improving water quality downstream and in turn helping prevent flooding. The SILT SENTINEL silt trap is a plastic gully pot with an internal basket that collects and separates silt and surface water debris. Silt and debris that is entrained in surface water enters the silt trap, falls out of suspension and is collected in the basket. The basket is periodically emptied manually.”

¹⁰ See paragraph 5 of the witness statement of Mr Armstrong

35. The opponent does not appear to dispute the applicant's explanation of the contested goods, and I accept this explanation.

36. Within its counterstatement, the applicant explains why it considers its goods to be different to water filters, providing the following explanation:

"The differences between the applicant's goods and the opponent's goods are set out below:

[...]

- water is not filtered through any type of mesh or material ("water filters")"

37. Collins dictionary describes a filter as follows:¹¹

1. VERB

*To **filter** a substance means to pass it through a device which is designed to remove certain particles contained in it.*

The best prevention for cholera is to boil or filter water, and eat only well-cooked food. [VERB noun]

Synonyms: *purify, treat, strain, refine*

2. COUNTABLE NOUN

*A **filter** is a device through which a substance is passed when it is being filtered.*

...a paper coffee filter.

38. A water filter is defined by Collins dictionary as follows:¹²

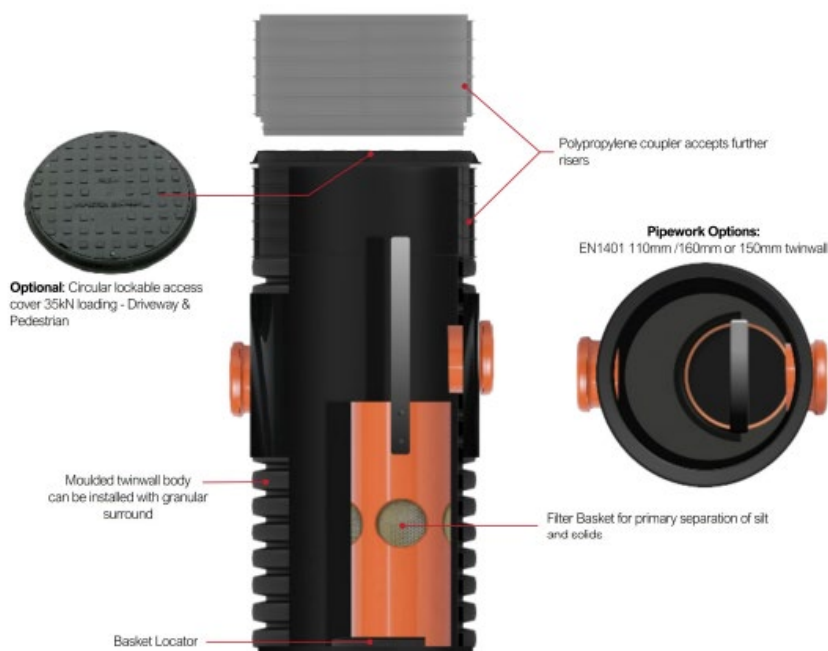
NOUN

a device for removing impurities from water

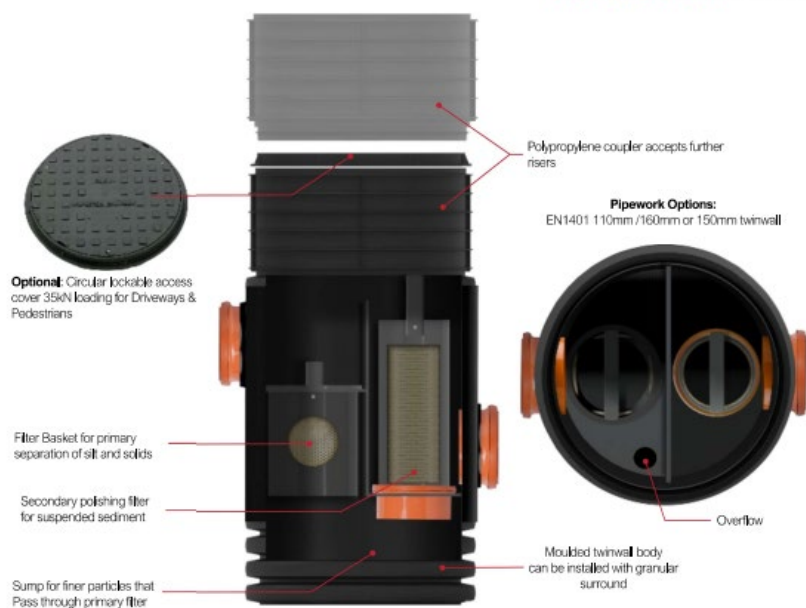
¹¹ <https://www.collinsdictionary.com/dictionary/english/filter> [accessed 9 February 2022]

¹² <https://www.collinsdictionary.com/dictionary/english/water-filter> [accessed 9 February 2022]

39. It is clear from the applicant's own explanation of silt separators and silt traps that these are devices through which water passes, designed to remove silt and debris and thus "cleaning" the same. It is my view that the ordinary and natural meaning of a water filter would include goods which separate or remove silt from water, and as such this will include the applicant's goods silt separators and silt traps. Further, I note the applicant's evidence provided at Exhibit IA shows that its own 'silt traps', sometimes include a what is referred to as a 'filter basket', and sometimes offer a 'filter insert' as an optional component as below:



PROTECTING YOUR DRAINAGE





40. This reinforces my initial view that *silt traps* and *silt separators* are devices designed to filter water, and as such fall within the meaning of *water filters*.

41. Of course, in this instance I am not simply comparing goods, rather, I am to compare the retail, wholesale or online selling services for the goods against the goods themselves. In *Oakley, Inc v OHIM*, Case T-116/06, at paragraphs 46-57, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree. I am of the view that in this instance, there will be complementarity between the retail, wholesale and online selling services for these goods in the sense that one is important for the other, and the consumer is likely to believe that the goods and services may derive from the same economic undertakings. The trade channels will be shared, as will the users. I find the earlier services to be similar to the contested goods to at least a low degree.

Earlier Reg. no. 3233437

42. The earlier mark covers the goods *apparatus for the inhibition or removal of debris from water*. Within its counterstatement, the applicant argues this is different to its goods for the following reasons:

“- the silt is not inhibited from the water (Apparatus for the inhibition or removal of debris from water.”

43. I find the above comments from the applicant do not account for the fact that by virtue of the use of ‘or’ above, the opponent’s term also covers *apparatus for the [...] removal of debris from water* per se. I find this term will clearly encompass the contested goods *silt separators and silt traps*. I therefore find the goods to be identical in accordance with the principles set out in *Meric*.

Earlier Reg no. 3248095

44. The earlier mark covers the goods *water filters*. I find these will encompass the contested goods *silt separators and silt traps* and I therefore find them identical in accordance with the principles set out in *Meric*.

Comparison of marks

45. 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.”

46. It would be wrong, therefore, to dissect the trade marks artificially, 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.

47. The respective trade marks are shown below:

Earlier trade marks	Contested trade mark
SENTINEL	SILT SENTINEL
SENTINEL ELIMINATOR VORTEX	
SENTINEL RAPID DOSE	

The overall impression of the marks

48. The first earlier mark is the single word SENTINEL. The overall impression resides in the mark as a whole.

49. The second earlier mark comprises the three words SENTINEL ELIMINATOR VORTEX. In the context of the goods, I find the word SENTINEL to be the most distinctive element of this mark. Whilst I note for some consumers it may allude to a type of a ‘guard’, and I will discuss in more detail later on in this decision, I find the words ELIMINATOR VORTEX to strongly allude to the intended purpose of the goods, i.e. to create a vortex which eliminates or removes something. Being at the beginning of the mark where the consumer tends to attach more importance¹³ and being in my view the most distinctive element of the same, I consider that the word

¹³ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

SENTINEL plays the greatest role in the overall impression of the mark. However, I do not find the other elements to be negligible.

50. The third earlier mark again comprises three words, namely SENTINEL RAPID DOSE. Again, I find SENTINEL to be the most distinctive element of the mark, with RAPID DOSE conveying to the consumer to the fact that the good may act quickly. Being at the beginning of the mark and being the more distinctive element, I find SENTINEL plays the greatest role in its overall impression, but I do not consider the other elements to be negligible.

51. The contested mark comprises the two words SILT SENTINEL. Whilst I consider that the word SILT is located at the beginning of the mark where the consumer tends to place more importance, it is also entirely descriptive in the context of the goods meaning its weight in the overall impression of the mark is somewhat diminished. I therefore consider that as the more distinctive element, that the word SENTINEL plays a greater role in the overall impression of the mark in this instance. However for some consumers I find the mark will appear to hang together to allude to a guard against silt, and neither element is negligible.

Comparison based upon the first earlier mark

Visual comparison

52. Visually, the marks coincide through the use of the word SENTINEL. This is the sole element of the first earlier mark and the second element of the contested mark. The shared element SENTINEL makes up the majority of the contested mark, and whilst I note the point of difference through the use of the word SILT is located at the beginning of the contested mark where the consumer tends to place most importance, I still consider the first earlier mark to be visually similar to the contested mark to between a medium and high degree.

Aural comparison

53. Aurally, the first earlier mark will be pronounced as the three-syllable word SENTIN-EL. The contested mark will be pronounced as four syllables and two words, namely SILT SEN-TIN-EL. Whilst the differences lie at the beginning of the marks, there are more similarities than differences, and I find the marks to be aurally similar to between a medium and high degree.

Conceptual comparison

54. The opponent submits within its TM7 that the word SENTINEL means a soldier or guard whose job it is to keep watch. Whilst the applicant disagrees that this has no immediate meaning in relation to the goods and services, it appears to agree with the definition provided by the opponent, stating that:

“The common element between the marks “SENTINEL” has a meaning in the UK and is understood by the relevant consumers to mean quite simply “guard” or “soldier”. The Cambridge Dictionary definition of the word “sentinel” is “a person employed to guard something”.

55. I accept the definition of the word SENTINEL is a person whose job it is to keep guard, and I accept that for some consumers, the first earlier mark will convey this concept. However, I also find the word SENTINEL to be unusual, and I consider it very likely that there will be a further significant portion of consumers that will not know its meaning. For those consumers, the mark will convey no concept.

56. SENTINEL in the contested mark will again for some consumers convey the same concept as it does in the earlier mark, namely a person that is whose job it is to keep guard. The first word SILT will convey to the consumer the meaning of sand or mud found in water. For those consumers with an understanding of the word SENTINEL, I find in the context of the goods the mark as a whole will allude to the idea of a guard against silt. For those that do not understand the meaning of SENTINEL, the mark will convey the concept of SILT only.

57. Overall, for those consumers that understand the meaning of the word SENTINEL, I find the marks to be conceptually similar to between a medium and high degree. Where the meaning of SENTINEL is not known to the consumer, the word SILT will create a point of conceptual difference, although I note this concept is weak in the context of the goods.

Comparison based upon the second earlier mark

Visual comparison

58. The second earlier mark coincides visually with the contested mark through the use of the word SENTINEL. However, it also includes two additional words at the end of the mark which do not feature in the contested mark, namely ELIMINATOR VORTEX. Further, the word SILT at the beginning of the contested mark does not feature in this earlier mark. I also note the word SENTINEL lies in a different position in the two marks. Overall, considering the points of similarity and the differences, I consider the marks to be visually similar to between a low and medium degree.

Aural comparison

59. The second earlier mark will be pronounced as the three words and ten syllables SEN-TIN-EL EE-LIM-IN-AT-TOR VOR-TEX. It shares one word and three syllables only with the contested mark. I consider the marks to be aurally similar to between a low and medium degree.

Conceptual comparison

60. The second earlier mark also includes the word SENTINEL, which will be understood by some consumers as defined previously. In addition, I consider that the wording ELIMINATOR VORTEX contained in this mark will convey to the consumer in the context of the goods the idea of a mass of swirling water that will act to eliminate (or get rid of) something. Where the meaning of SENTINEL is known to consumers in both marks, I find they will be conceptually similar to at least a medium degree by virtue of the same. Where the meaning of this element is not known to the consumer,

the use of SILT in the contested mark and ELIMINATOR VORTEX in the earlier mark will all create points of conceptual difference, albeit weak points of conceptual difference in the context of the goods.

Comparison with the third earlier mark

Visual comparison

61. The third earlier mark again coincides visually with the contested mark through the use of the word SENTINEL. However, it also includes two additional words at the end of the marks which do not feature in the contested mark, namely RAPID DOSE. Further, the word SILT at the beginning of the contested mark does not feature in this earlier mark. I also note the word SENTINEL lies in a different position in the two marks. Overall, considering the points of similarity and the differences, I consider the marks to be visually similar to between a low and medium degree.

Aural comparison

62. The third contested mark will be pronounced as the three words and six syllables SEN-TIN-EL RAP-ID DOSE. By virtue of the shared three syllable word, I find the marks to be aurally similar to a medium degree.

Conceptual comparison

63. The third earlier mark will also convey to some consumers the concept of a SENTINEL, whilst to others this element will not convey a concept. The use of RAPID DOSE in the mark conveys to the consumer the idea of a measured amount of something that is administered or works quickly.

64. Again, where the concept of a SENTINEL is known to consumers in both marks, I find they will be conceptually similar to at least a medium degree by virtue of the same. Where the meaning of this element is not known to the consumer, the use of SILT in the contested marks and RAPID DOSE in the earlier marks will all create

points of conceptual difference, although again I consider these to be weak concepts in the context of the goods.

Average consumer and the purchasing act

65. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

66. 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.”

67. Within its counter statement, the applicant has made submissions on the differences between the consumer for the opponent's and the applicant's goods. It states that the consumer of the applicant's goods would have a specialised knowledge of drainage systems, whereas the consumer of the opponent's goods would have knowledge and training in central heating systems. I reiterate at this point that this is a notional assessment based on the goods and services as registered and filed. I have found identity between the contested goods and those covered by the second and third earlier mark, and as such it follows that the consumers of those goods will be identical. Further, I have found that the opponent offers retail, wholesale and online selling services in respect of goods which are identical to the applicant's goods under the first earlier mark. The consumer for the wholesale and

retail services for goods and the goods themselves will again inevitably be shared. I therefore consider that the average consumer of the applicant's goods will in this instance overlap with the consumers of the earlier goods and services.

68. I consider that the applicant's goods will primarily be purchased by professional consumers, such as contractors and tradesmen. These individuals are likely to pay an above medium degree of attention to the goods, due to the responsibility involved in ensuring that suitable, compatible goods are fitted and installed in any job undertaken. This will also apply in respect of the opponent's earlier conflicting goods. Further I find that this level of attention will apply to professional consumers using the retail, wholesale and online sales services covered by the opponent, with these consumers considering factors such as the reliability and efficiency of the services offered in order to ensure that any job carried out is not hindered by the reliance on the same.

69. I also consider that the goods and services covered by the parties may also be purchased or used by the general public. For example, members of the general public may purchase silt traps and silt separators themselves to fit in a domestic setting, or they may purchase these items to be fitted by professionals on their behalf. However, I still find it likely that in these situations an above medium level of attention will be paid to these goods, with particular attention being paid to the compatibility, quality and longevity of the products. However, I consider that the level of attention paid by the general public to the opponent's retail services and on-line selling services may be slightly lower, and although the general public will likely also consider aspects such as the reliability of the services, they are unlikely to pay these services quite as much attention as the goods themselves in these circumstances.

70. I consider the conflicting goods are likely to be primarily purchased visually from physical or online retail or wholesale stores or trade catalogues or brochures. However, I consider that some purchases may be placed over the phone and verbal assistance from sales assistance may be sought, and as such I cannot completely disregard verbal considerations.

Distinctive character of the earlier trade mark

71. 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).”

72. The only evidence relating to the use of the opponent’s activities was filed by the applicant. This is very limited and does not show the extent of the use of the earlier marks in relation to the goods and services in the UK prior to the filing date of the application and is therefore not sufficient to show that the distinctiveness of the earlier marks has been enhanced through use. As such, I only have the inherent position to consider.

73. The first earlier mark is the single word SENTINEL. This appears to have no direct meaning in relation to retail, wholesale and on-line selling services. However,

I note that those consumers who understand the meaning of SENTINEL will likely consider it to be somewhat allusive of a characteristic of the goods to which the retail and wholesale services relate, for reasons I will outline below. However, I do not consider this detracts significantly from its inherent distinctiveness in relation to these services, and its use will not directly convey to the consumer the type of services offered under the mark. Overall, in respect of those consumers who understand the meaning of SENTINEL, I find it to hold a medium level of distinctive character in respect of the services. For those consumers who do not know the meaning of the word SENTINEL, it is my view they may consider this either to be an English word in respect of which they do not know the meaning, or to be a made-up word, in which case its inherent distinctiveness will appear to be fairly high.

74. The second earlier mark includes SENTINEL, in addition to the words ELIMINTOR VORTEX. For the portion of consumers that know the meaning of SENTINEL I find this alludes to the idea that the goods may act as a 'guard' in some way. However, I still find it to be a fairly unusual word which is usually used to describe a person in a particular position and will convey the concept of such, and whilst it will still therefore be allusive, I do not consider it to be on par with the use of the word 'guard' itself for example. I find the words ELIMINATOR VORTEX to strongly allude to the intended purpose of the goods, i.e. to create a vortex which eliminates or removes something, and I do not consider they really add to the level inherent distinctive character of the mark as a whole. Where the meaning of SENTINEL is known to the consumer, I find the distinctiveness of the mark as a whole to be between a low and medium level. Where the meaning of SENTINEL is not known, I find that overall, the mark will appear to hold a fairly high level of distinctive character by virtue of the use of SENTINEL.

75. The third earlier mark also begins with SENTINEL and includes the additional wording RAPID DOSE. The wording RAPID DOSE strongly alludes to the fact that the good may act quickly. Overall I do not consider this wording to add significantly to the inherent distinctive character of the earlier mark. For the same reasons set out in respect of the second earlier mark above, I find that where the meaning of SENTINEL is known, this earlier mark will hold between a low and medium level of inherent distinctive character in respect of the goods. Where the meaning of

SENTINEL is not known, I again find the level of distinctive character held by the earlier mark will appear fairly high.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

76. Prior to reaching a decision under Section 5(2)(b), I must first consider all relevant factors, including those as set out within the principles A-K at paragraph 21 of this decision. I must view the likelihood of confusion through the eyes of the average consumer, 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 they have kept in their mind. I must consider the level of attention paid by the average consumer, and consider the impact of the visual, aural and conceptual similarities of the marks by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. I must consider that the level of distinctive character held by the earlier mark will have an impact on the likelihood of confusion. I must remember that the distinctive character of the earlier mark may be inherent, but that it may also be increased through use, and that the distinctiveness of the common elements is key.¹⁴ I must keep in mind that a lesser degree of similarity between the goods and services may be offset by a greater degree of similarity between the marks, and vice versa. I must also consider that both the degree of attention paid by the average consumer and how the goods and services are obtained will have a bearing on how likely the consumer is to be confused.

77. There are two types of confusion that I may find. The first type of confusion is direct confusion. This occurs where the average consumer mistakenly confuses one trade mark for another. The second is indirect confusion. This occurs where the average consumer notices the differences between the marks, but due to the

¹⁴ See *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, in which Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar.

similarities between the common elements, they believe that both products derive from the same or economically linked undertakings.¹⁵

78. 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.

79. I found the first earlier mark to be visually and aurally similar to the contested mark to between a medium and high degree. Where the meaning of SENTINEL is known, I found the marks to be conceptually similar to between a medium and high degree, but where it is not known I found there to be points of conceptual difference, although I found the conceptual difference created by the use of SILT is weak in the context of the goods. I found services covered by this mark to be similar to the contested goods to at least a low degree.

80. In respect of the second and third earlier marks, I found these to be visually similar to the contested mark to between a low and medium degree. I found the second earlier mark to be aurally similar to between a low and medium degree, and the third earlier mark to be aurally similar to the contested mark to a medium degree. I found both earlier marks to be conceptually similar to at least a medium degree where the meaning of SENTINEL is known, but where it is not known I found the additional wording in all of the marks create points of conceptual difference only, although I found these all to be fairly weak. I found the goods to be identical in respect of both earlier marks and the contested mark.

81. I found all three earlier marks to hold a fairly high degree of distinctive character where the meaning of SENTINEL is not known to the consumer. Where the meaning is known to the consumer, I found the first earlier mark will still maintain a medium level of inherent distinctiveness in respect of the services, and that the second and third earlier marks will hold between a low and medium level of distinctive character

¹⁵ *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10

in these instances. I found the average consumer of the will comprise both professionals and members of the general public paying an above medium degree of attention in respect of the conflicting goods. I found professionals would likely also pay an above-medium level of attention to the services, whilst the general public would pay a medium level of attention to the same. I found the purchasing process will be primarily visual, but I cannot completely discount the aural comparison.

82. I consider firstly the likelihood of direct confusion between the contested mark and the first earlier mark. Whilst I note the differences between the marks are placed at beginning, I also note the only difference between this mark and the contested mark lies in an element that is entirely descriptive in the context of the applicant's goods. Further, the conceptual differences created by this element are for this reason, very weak. Whilst the services covered under this earlier mark are similar only to at least a low degree in this instance, I consider that the degree of similarity between the goods and services may be offset by the similarity between the marks. I also consider the consumers imperfect recollection, although I also factor in the level of attention paid by the consumers in respect of the goods and the services under these marks. Further, I consider that even where the consumer understands the meaning of SENTINEL, I found the earlier mark to hold a medium level of inherent distinctive character, and where this is not known the inherent distinctiveness is fairly high. Considering all of these factors, it is my view that overall, there is a likelihood of direct confusion between the marks both in respect of those consumers who are aware of the meaning of the word SENTINEL, and in respect of those consumers who are not aware of the meaning of the same, with the addition or omission of SILT only likely to be misremembered in both instances.

83. Next, I move on to consider the likelihood of direct confusion between the second and third earlier marks and the contested mark. I note that the goods under these marks are identical, which points in the opponent's favour. However, I consider that the similarities between these marks and the contested marks are lower than in respect of the first earlier mark, and that I found at an above-medium level of attention would be paid in respect of the conflicting goods. Whilst I keep in mind the consumers imperfect recollection, and that a greater degree of similarity between the goods may offset a lower degree of similarity between the marks, it is my view that in this instance

the differences between the marks are too great to go entirely unnoticed or to be entirely misremembered. As such I find there will be no direct confusion between the second and third earlier marks and the contested mark, even where there is identity between the goods.

84. I therefore consider if there is a likelihood of indirect confusion between the marks. In *L.A. Sugar* Mr Iain Purvis Q.C. (as he then was), as the Appointed Person set out three examples of when indirect confusion may occur as below:

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

85. I remind myself that the categories above were not intended to be exhaustive. However, I also consider *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, in which Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for

concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

86. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. (as he then was) considered the impact of the CJEU's judgment in *Bimbo*, Case C-591/12P, on the court's earlier judgment in *Medion v Thomson*. The judge said:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

87. I consider the first earlier mark against the contested mark filed. I note that the most distinctive element of both of these marks is the shared word SENTINEL, which is the only element of the first earlier mark. I note again that the point of difference, namely the word SILT, although found at the beginning of the marks, relates directly to the applicant’s goods. Whilst I note that, for those who are aware of the meaning of SENTINEL, SILT appears to ‘hang together’ with the word SENTINEL in the contested mark, alluding to a guard against silt, I do not find that it has unitary meaning which is more than a sum of its parts. Sitting as the Appointed Person in *BARKERS BREW Trade Mark*, O-476-14, Ruth Annand stated:

“24. To my mind the issue was not so much Medion but rather one of general principle: the overall impression the Applicant’s mark would have on the pet-owning public in the particular circumstances of this opposition.

25. The Hearing Officer seems, however, to have determined that because in his view BARKERS BREW “hung together”, and BREW was not purely descriptive of pet food, BARKERS had no independent significance in the Applicant’s mark, and that was sufficient to preclude likelihood of confusion (or a link) with the Opponent’s mark, even though BAKERS was highly distinctive and identical goods were involved.

26. On the contrary, the CJEU makes clear in *Bimbo* that “hanging together” is not the determinative criteria in assessing a composite mark: the decisive question being whether the composite mark forms a unit having a different meaning as compared to its components taken separately (*Bimbo*, para. 25).

27. Mr. Malynicz referred me to 2 earlier decisions of Mr. Geoffrey Hobbs Q.C. sitting as the Appointed Person in *CARDINAL PLACE Trade Mark*, BL

O/339/043 and CANTO Trade Mark, BL O/021/064 , as similarly expressing the same point that marks must be compared as wholes, considering the blend of meaning given by the composite mark against the single term.

28. In my judgment, the Opponent was justified in complaining that the Hearing Officer did not consider the overall blend of meaning and significance of BARKERS BREW to the pet-owning public in the context of pet food, and thus made an error of law.”

88. Considering the blend of meaning given by the composite mark against the single term SENTINEL, it is my view that should the consumer of the earlier wholesale, retail, and on-line selling services under the mark SENTINEL with a knowledge of the meaning of SENTINEL also come into contact with the contested goods under SILT SENTINEL (or vice versa), and notice the differences between the marks themselves, at least a significant portion of the same are likely to reach the logical conclusion that the applicant's goods are in this instance offered by the same undertaking as the opponent's services, with SILT being a descriptive word which assists in indicating the type of goods sold under the mark. Further, I find that where the consumer is unaware of the meaning of SENTINEL, they will consider this distinctive element, which is the sole element of the first earlier mark, to be an independent distinctive element in the later mark and consider that its use with the descriptive element SILT is again indicative of a sub-brand from the same economic entity. I therefore consider there is a likelihood of indirect confusion in respect of the first earlier mark, both where the meaning of SENTINEL is known by the consumer, and where it is not.

89. Next, I consider the second earlier mark, that being SENTINEL ELIMINATOR VORTEX. I find the most dominant and distinctive element of this mark to be that which is shared with the contested mark, namely the word SENTINEL. It is my view this plays an independent distinctive role within this earlier mark. As I have mentioned, whilst I note this element hangs together in a way with SILT in the contested mark where the meaning of SENTINEL is known, I consider again that SILT is a descriptive word which assists in indicating the type of goods sold under the mark (namely silt traps and silt separators). I also note the goods under the marks

are identical in this instance. Considering these factors, in addition to the factors outlined previously and the role of SENTINEL in each mark, it is my view that the consumer is likely to view this element in each mark and consider it to be the key indicator of origin in each, with the marks SILT SENTINEL and SENTINEL ELIMIATOR VORTEX appearing to indicate slightly different versions of products offered by the same entity, regardless of whether the meaning of SENTINEL is known to the consumer. I therefore find a likelihood of indirect confusion in respect of the same.

90. Finally, I consider the third earlier mark relied upon, namely SENTINEL RAPID DOSE. Again, I find SENTINEL plays an independent distinctive role in this earlier mark, and that is the most dominant and distinctive element within the same. For the same reasons set out in relation to second earlier mark above, I also find there will be a likelihood of indirect confusion between this third earlier mark and the contested mark, with the consumer reaching the logical conclusion that the marks are used to indicate slightly different versions of products deriving from the same economic undertaking. I therefore find a likelihood of indirect confusion between the marks.

91. As I find a likelihood of confusion based on all three of the opponent's earlier marks, I consider that a different interpretation of the opponent's specification under its first earlier mark will make no difference to the outcome of this opposition, and I therefore find no reason to consider this further.

Final Remarks

92. The opposition has succeeded in its entirety, and subject to any successful appeal, the application will be refused.

COSTS

93. The opponent has been successful and is entitled to a contribution towards its costs. In the circumstances I award the opponent the sum of £1050 as a contribution towards the cost of the proceedings. Whilst the opponent did not file any evidence of

its own, I have awarded a contribution below the scale amount for evidence for considering the applicant's evidence only. The sum is calculated as follows:

Official fee:	£100
Preparing and filing the TM7 and considering the counterstatement:	£300
Considering the evidence filed:	£300
Preparing and filing written submissions:	£350
Total	£1050

94. I therefore order Turtle Enviro Ltd to pay Sentinel Performance Solutions Limited the sum of £1050. 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 24th day of February 2023

Rosie Le Breton
For the Registrar