

O/108/13

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NOS 2571627
BY TRUMA GERATETECHNIK GMBH & CO TO REGISTER THE TRADE
MARK**

Ultrastore Rapid GE

IN CLASS 11

**AND IN THE MATTER OF OPPOSITION
THERE TO UNDER NO 102160
BY GENERAL ELECTRIC COMPANY**

BACKGROUND AND PLEADINGS

1) On 8 February 2011, Truma Geratetechnik GmbH & Co (“the applicant”) applied under the Trade Marks Act 1994 (“the Act”) for registration of the mark “Ultrastore Rapid GE” in respect of the following Class 11 goods:

Class 11: *Boilers, water heaters, heating boilers, heating installations for hot water, all for use in mobile homes and caravans.*

2) The application has a claimed International priority date of 5 October 2010.

3) The application was published in the Trade Marks Journal on 15 April 2011 and on 8 July 2011, General Electric Company (“the opponent”) filed notice of opposition in respect of all the goods listed in the application. The grounds of opposition are in summary:

- a) that the application offends under Section 5(2)(b) of the Act because it is in respect of a similar mark and in respect of identical or similar goods to two earlier marks in the name of the opponent. The relevant details of the first of these earlier marks are produced below:

Mark details and relevant dates	Goods relied upon
2271563 GE Filing date: 31 May 2001 Registration date: 8 February 2002	Class 11: <i>Apparatus for [...], heating, [...]; heating elements; electric hot plates and cooking rings; gas and electric stoves and apparatus for cooking; gas and electric ovens and cooktops; [...]; water heaters; water filtering, purification and/or softening systems, apparatus and installations; [...]; heat exchangers (not parts of machines); heating apparatus and installations; [...]; domestic and household electric and gas cooking appliances; coffee makers [...] and tea makers and their component parts [...]; including accessories and component parts of all the foregoing.</i>

The second earlier mark relied upon is Community Trade Mark (“CTM”) 5920781. The opponent relies upon all the goods and services listed (and this full list is produced as an annex to this decision). However, in the table below I only reproduce a list of the most salient goods in respect to these proceedings:

Mark details and relevant dates	Goods relied upon
CTM5920781 GE Filing date: 21 May 2007 Registration date: 19 May 2008	Class 11: [...]; solar water heaters; [...]; domestic electric and gas cooking appliances, namely, cooking rings, gas and electric stoves; gas and electric ovens and cooktops; heat exchangers; [...] electric ovens, ranges; [...]; wall cooking ovens for domestic use; [...]; convection ovens, electric and gas cook tops; [...] water conditioning units for residential purposes; [...]; water purification units and systems consisting of clarifiers, electro deionization systems, condensate polishers, vacuum degasification units, ultra filtration units, ultraviolet sterilizers, ion exchangers, acid and caustic regeneration systems, reverse osmosis systems, forced draft decarbonator units, filters, chemical feed systems and bulk storage units, sold with automatic controls and instruments to monitor operating parameters of the units and systems electrochemical liquid purification units for use in the industrial, commercial and municipal sectors; water filtering units for domestic, [...] use; [...]; water purifying units for potable water for domestic, [...] use; [...] water treatment equipment for household use, namely, water softeners and water conditioners; [...].

b) The application offends under Section 5(3) of the Act because the application is in respect of a mark similar to the above mentioned earlier CTM, for which the opponent claims a reputation in respect of all the goods and services listed (and listed in the annex to this decision).

4) The applicant subsequently filed a counterstatement admitting to “identity/similarity” between *apparatus for heating* and *water heaters* on the one hand and *heating apparatus and instruments* on the other. It denies all other of the opponent’s claims. It also put the opponent to proof of use in respect of the goods relied upon in its earlier UK registration.

5) Both sides filed evidence in these proceedings. Both sides ask for an award of costs. Neither side has requested a hearing and I make my decision following a full review of the papers.

Opponent’s Evidence

6) This takes the form of a witness statement by Sean Merrill, Counsel – Trademarks at the opponent company since 2005. Mr Merrill provides

information to support his statement that the opponent is one of the world's largest industrial concerns, being well known for its diversified technology manufacturing and services in areas such as technology, media, aircraft engines, power generation, financial services, medical imaging, television programming, and plastics. It has operations in over one hundred countries and this includes two hundred and fifty manufacturing plants and approximately 320,000 employees worldwide. This claim is supported by a financial report that appeared in the Guardian newspaper in 2010 (Exhibit GE4), a full page advertisement taken out by the opponent in the Financial Times in 2003 (Exhibit GE5) as well as various sponsorships (Exhibit GE7) and a "support for the community scheme" in Gloucestershire that involved providing bottled water to vulnerable people during a period of floods (Exhibit GE8). At Exhibit GE9 are extracts from the Financial Times newspaper showing the opponent being ranked second (in 2007) and ninth (in 2010) in the paper's global ranking of companies based upon market value and share price.

7) At Exhibit GE1, Mr Merrill provides an extract from the opponent's website www.ge.com, illustrating its four major trading divisions, namely energy, technology infrastructure, "GE Capital" (covering various financial, lending, and leasing services), and home and business solutions, such as appliances, consumer electronics and lighting.

8) At Exhibit GE2, are further pages from the opponent's website, dated 8 August 2006, illustrating its activities in Europe. Under the heading "Welcome to GE Consumer & Industrial" is listed "appliances" with general information regarding style, design and refers specifically to "speed cook ovens" and "side-by-side refrigerators". Information is also provided about lighting, power controls and under the heading of "GE Energy", oil and gas and wind energy.

9) Exhibit GE3 also provides extracts from the same website. These extracts are entitled "GE UK Fact Sheet" and provide information relating to the opponent's activities in the UK in the year 2008. Sales for the year are stated to be £5 billion and the number of employees is stated as being 18,000. The same exhibit includes a copy of an undated brochure setting out the opponent's activities. These are broadly consistent with those detailed in paragraph 7. Much of the exhibit provides only high level, general information and mentions that the opponent is "uniquely well placed to help the UK meet some of its key challenges [for example] how the country meets its 2020 carbon reduction targets" and "We believe we can contribute to the UK's environmental goals". The expression of such high level goals does little to inform the reader about the exact nature of the opponent's goods and services. It does identify the opponent's key UK business as having infrastructure, finance and media being represented. Specific mentions are made of healthcare research and development, subsea oil and gas field control and instrumentation, manufacturing of batteries (that provide uninterrupted power for over 15 years in the world's toughest climates), technology to assist businesses address environmental challenges (called its

“Ecomagination business strategy”), a global healthcare initiative, supply of power generation and energy delivery technologies, as well as provision of power, healthcare, aviation and transportation infrastructure and financial services to businesses.

10) Mortgage services are also provided to consumers. Further, under the heading “Home & Business Solutions” is a sub-heading “GE Appliances & Lighting”. “GE Appliances and Lighting” is described as “one of the leading brands in the UK across both consumer and professional lighting [...]”, but makes no specific mention of any appliances.

11) Exhibit GE10 consists of printed tables produced by Millward Brown in 2011 showing a stylised version of the opponent’s GE mark being ranked tenth in a list of most valuable global brands.

12) Exhibits GE11 to GE16 provide information to support the claim that the opponent is active in the UK in the field of water purification/mobile water solutions. Exhibit GE11 is an extract from Reuters web site and states that the opponent “sees big potential in the water purification business” and that “GE technologies focus on the quality of water released from industrial processes and municipal treatment plants”. A number of countries are mentioned, but not the UK. Exhibit GE12 is from an unknown source and provides information regarding the opponent’s “mobile water solutions” which appears to relate to services provided during emergency situations. No detailed information is provided and it is not clear that the information is intended for the UK. More information is provided at Exhibit GE13 and indicates that the opponent’s “mobile water solutions” relate to “water treatment solutions to keep [...] customer’s plants online and in production”. Numerous contact telephone numbers are provided, but not one for the UK. Exhibit GE14 is an advertisement for a workshop on these services held in Peterborough in March 2010.

13) Mr Merrill states that the opponent has sold appliances such as dishwashers, air conditioners, electric ranges and refrigerators in the UK since at least 2001 with sales (made from the US) since then totalling over \$7 million. Mr Merrill states that actual sales in the UK would have been higher as they also include goods shipped from Europe, but that these figures are not available to him. Extracts from the opponent’s UK appliances website are provided at Exhibit GE17. It describes appliances being available in “three brand levels”, namely “GE”, “GE Profile” and “GE Monogram”. Household cookers and refrigerators are shown with prices in pound sterling. Exhibit GE18 is an extract from the website www.lsy-appliances.co.uk. Mr Merrill explains that these were the UK distributor for the opponent’s goods between 2006 and 2009. The extract refers prominently to “GE Appliances”, but provides no specific information. Extracts from the website of the opponent’s current UK distributor, Glen Dimplex Home Appliances are provided at Exhibit GE19 and refers to it being the sole UK distributor of the

“GE brand of kitchen appliances” and further, that “the GE brand includes refrigeration, cooking and laundry products”.

Applicant’s Evidence

14) This takes the form of a witness statement by Julie Ann Turner, Trade Mark Attorney with Ablett & Stebbing, the applicant’s representative in these proceedings. Ms Turner conducted Internet research to determine whether combinations of two or three letters are used to denote the model types of water heaters in the UK. The results obtained on 26 April 2012 from the website www.onlineboilers.co.uk are provided at Exhibit JAT1. This illustrates use of boiler names such as “Baxi Platinum 28 HE” (plus eleven other similar “Baxi” marks), “Ideal Logic Combi 24HE” (plus five other similar “Ideal” marks), “Potterton Promax Plus Combi 24 HE” (plus two other similar “Potterton” marks), “Greenstar Highflow CDi” and “Worcester Bosch Greenstar Highflow CDi 550” (plus six other similar “Greenstar” or “Worcester Bosch Greenstar” marks) and “Glow-Worm Flexicom cx 30” (plus four other similar “Glow-Worm” marks).

15) Exhibit JAT2 consists of extracts from the website www.johnlewis.com, dated 2 October 2012, showing various dual-fuel range cookers all having the name “Lacanche Macon” or Westahl Cluny” followed by what appears to be a model number. These model numbers follow the same format and all end in the letters “GE”, such as “LG1053GE” or “WG1052GE”.

16) Ms Turner states that she has been informed by the applicant that the average retail price of its goods are in the region of £165 and £195, whereas the website www.which.co.uk (see Exhibit JAT3) indicates that the typical cost of a domestic solar water heating system is £3,000 to £5,000.

Opponent’s Evidence in reply

17) This takes the form of a witness statement by Jane More O’Ferrall, trade mark attorney and partner at Haseltine Lake LLP, the opponent’s representatives in these proceedings. At Exhibit 2, Ms More O’Ferrall presents the first five pages of results from the online search engine, Google for the terms “gas + electric + GE”. Many hits refer to the opponent’s services and goods. None illustrate that “GE” is used to denote “dual-fuel”. The results of a similar search, this time for the terms “dual + fuel + GE” are presented at Exhibit 3. The only relevant use shown in references to the opponents own “GE” branded dual-fuel cooking ranges.

18) At Exhibit 4 is an extract from the website www.lacanche.co.uk and provides information about “cooking on your Lacanche/Westahl” range cooker.

19) Exhibit 5 consists of extracts from the websites www.baxi.co.uk and www.bdrthermea.com illustrating that the Baxi, Potterton and Ideal brands are all part of BDR Thermea, the largest boiler manufacturer in Europe.

DECISION

Section 5(2)(b)

20) Section 5(2)(b) reads:

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

(a) ...

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

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

21) 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), 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.”

22) Of potential relevance to a ground of opposition under Section 5(2) are the provisions that relate to proof of use. Section 6A(1) details the circumstances where these provisions apply:

“6A Raising of relative grounds in opposition proceedings in case of non-use

(1) This section applies where –

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.”

23) The opponent relies upon two earlier marks, both of which are registered and have filing dates that predate that of the contested application. They, therefore, qualify as earlier marks as defined by Section 6 of the Act.

24) The opponent's CTM5920781 completed its registration procedure on 19 May 2008. This is less than five years before the contested application was published (on 15 April 2011) and, consequently, is not subject to the proof of use provisions set out in Section 6A, above. The consequence of this is that the opponent is entitled to rely upon the full list of goods and services listed in its CTM. The opponent's other mark, 2271563, is subject to the proof of use provisions because it completed its registration procedure on 8 February 2002 that predate, by more than five years, the publication of the contested mark. However, the goods and services relied upon in this earlier mark are broadly comparable to terms as covered in the opponent's CTM. Consequently, the choice of earlier mark would not appear to materially affect the outcome of these proceedings as based on Section 5(2) of the Act. Therefore, my considerations will be based only upon the likelihood of confusion between the opponent's CTM and the contested mark.

25) In my consideration of a likelihood of confusion, I take into account the guidance from the settled case law provided by the Court of Justice of the European Union (CJEU) in *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] FSR. 77, *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] ETMR 723, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04 and *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (OHIM) C-334/05 P. It is clear from these cases that:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v Puma AG*,

(b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v Puma AG*, 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; *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.*,

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV v Puma AG*,

(d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v Puma AG*,

(e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,

(f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either *per se* or because of the use that has been made of it; *Sabel BV v Puma AG*,

(g) in determining whether similarity between the goods or services covered by two marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,

(h) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v Puma AG*,

(i) further, 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; *Marca Mode CV v Adidas AG and Adidas Benelux BV*,

(j) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*.

(k) assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*

(l) it is only when all other components of a complex mark are negligible that it is permissible to make the comparison on the basis of the dominant element; *Shaker di L. Laudato & C. Sas v OHIM*

Comparison of goods

26) In assessing the similarity of goods, it is necessary to apply the approach advocated by case law and all relevant factors relating to the respective goods and services should be taken into account in determining this issue. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the CJEU stated at paragraph 23:

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

27) Other factors may also be taken into account such as, for example, the distribution channels of the goods concerned (see, for example, *British Sugar Plc v James Robertson & Sons Limited (TREAT)* [1996] RPC 281).

28) I also bear in mind the following guidance of the General Court ("the GC") in *Gérard Meric v OHIM*, T-133/05:

"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 the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedral v OHIM – France Distribution (HUBERT) [2002] ECR II-5275, paragraphs 43 and 44; and Case T- 10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42)."

29) Finally, in terms of understanding what a "complementary" relationship consists of, I note the judgment of the GC in *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-325/06 where it was stated:

"It is true that goods are complementary if there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking (see, th that

effect, Case T-169/03 *Segio Rossi v OHIM - Sissi Rossi (SISSI ROSSI)* [2005] ECR II-685, paragraph 60, upheld on appeal in Case C-214/05 P *Rossi v OHIM* [2006] ECR I-7057; Case T-364/05 *Saint-Gobain Pam v OHIM - Propamsa (PAM PLUVIAL)* [2007] ECR II-757, paragraph 94; and Case T-443/05 *El Corte Ingles v OHIM - Bolanos Sabri (PiraNAN diseno original Juan Bolanos)* [2007] ECR I-0000, paragraph 48)."

30) In its statement of case, the opponent relied upon the full list of goods and services listed in its CTM despite many obviously having no similarity to the applicant's goods. I intend to limit my consideration regarding the comparison of goods and services to a list of goods that appears to present the opponent with its best case. If it is not successful in demonstrating a likelihood of confusion in respect to these, it will not succeed in respect of its other goods and services. In the table below I provide a full list of the applicant's goods and those goods that appear to present the opponent with its best case:

Opponent's goods	Applicant's goods
Class 11: [...] <i>solar water heaters; [...]</i> <i>heat exchangers; [...]</i>	Class 11: <i>Boilers, water heaters, heating boilers, heating installations for hot water, all for use in mobile homes and caravans.</i>

31) The applicant's *water heaters, all for use in mobile homes and caravans* includes *solar water heaters* and applying the guidance provided in *Meric*, it is self evident that these two terms cover identical goods. Similarly, the applicant's *heating installations for hot water, all for use in mobile homes and caravans* also includes *solar water heaters* and once again the respective goods are identical. The fact that solar water heaters can be about £3000 - £5000, whereas the applicant's goods are typically £165 - £195 does not impact upon this finding as this does no more than reflect the current market strategy of the companies. Boilers and water heaters for mobile homes and caravans may also be available at higher prices and conversely, more affordable solar water heaters may be available, especially those that may be smaller than the household systems referred to in Exhibit JAT3, and for use in mobile homes.

32) The applicant's two remaining terms, namely *boilers* and *heating boilers*, are both components of water heating systems. These are components that would not normally be considered as part of a solar water heater where the water is heated by solar power rather than by a boiler. Consequently the goods are not identical. They may exhibit differences in nature, but they share intended purpose and methods of use. They are likely to share trade channels (the opponent's terms include goods intended for use in mobile homes and caravans) and will also be in direct competition with each other. Taking all of this into account, I conclude that they share a high level of similarity. Further, the opponent's *heat exchangers* includes goods that are component parts of boilers. As a component part, such goods are complementary to the applicant's goods

and likely to share the same trade channels. These goods share a good deal of similarity.

33) I acknowledge that the applicant's terms include water heating installations other than *solar water heaters* and consequently, are not identical to the opponent's *solar water heaters*. Nevertheless, these goods will still share a high level of similarity on the basis that their intended purpose, methods of use and trade channels will be the same, their nature will be similar and on the basis that the respective goods are likely to be in competition with each other.

The average consumer and nature of the purchasing act

34) Matters must be judged through the eyes of the average consumer (*Sabel BV v. Puma AG*, paragraph 23), who is reasonably observant and circumspect (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*, paragraph 27). The degree of care and attention the average consumer uses when selecting goods and services can, however, very depending on what is involved (see, for example, the judgment of the GC in *Inter-Ikea Systems B.V. v. OHIM*, Case T-112/06).

35) The average consumer for both sets of goods are members of the public and from the trade who require water heating systems, or their components, for mobile homes or caravans. There is, therefore, overlap in respect of the average consumer.

36) The goods being compared are reasonably technical in nature and more costly than everyday items. As a result, the consumer is likely to pay more than the average level of care and attention when purchasing these goods. The consumer is likely to pay attention to the specification, the performance and the overall suitability for the purpose in mind and is likely to include comparison with other similar goods.

Comparison of marks

37) For ease of reference, the respective marks are:

Opponent's mark	Applicant's mark
GE	Ultrastore Rapid GE

38) When assessing the extent of similarity between the respective marks, I must do so with reference to their visual, aural and conceptual similarities bearing in mind their distinctive and dominant components (*Sabel BV v. Puma AG*, para 23). The opponent's mark consists of the two conjoined letters "G" and "E" and the distinctiveness resides in the combination of the two letters. The applicant's mark consists of three distinctive elements, namely the word "Ultrastore", the word "Rapid" and the letters "GE". In my view it is the combination of the words

“Ultrastore” and “Rapid” that dominate the mark, but I recognise that the “GE” component retains an independent distinctive role in the mark.

39) From a visual perspective, the respective marks share some similarity because of the “GE” element common to both marks. In all other respects, the marks differ. The applicant’s mark is considerably longer consisting of its two words and the letters “GE”. Taking account of all of this, I conclude that the marks share only a low level of visual similarity. From the aural perspective, the conclusions are similar. The applicant’s mark consists of the seven syllables ULT-TRA-STOR-RAP-ID-GEE-EE, whereas the opponent’s mark consists only of the final two syllables. I conclude that they share a low level of aural similarity.

40) From a conceptual perspective, the opponent’s mark “GE” has no obvious meaning to the average consumer. The first component of the applicant’s mark is the word ULTRASTORE and the opponent contends that it will be seen as referring to an enhanced storage capacity. I concur with this contention. The second component is the word RAPID meaning “fast”. I concur with the opponent when it contends that it indicates that the goods heat water rapidly. The third component is the conjoined letters GE, and I have already found that this has no meaning. When considering the mark as a whole, and being aware of the conceptual impact of its component parts, the applicant’s mark will be weakly allusive of something related to an enhanced storage capability and where it is also fast at some unspecified action. Taking all of this into account, it is not obvious to me that the respective marks share any conceptual similarity.

41) In summary, I have found that the respective marks share a low level of visual and aural similarity and no conceptual similarity. This all combines to give the respective marks a low level of overall similarity.

Distinctive character of the earlier trade mark

42) I must consider the distinctive character of the earlier mark because the more distinctive it is, either by inherent nature or by use the greater the likelihood of confusion (*Sabel BV v Puma AG* [1998] RPC 199). The distinctive character of the earlier trade mark must be assessed by reference to the goods for which it is registered and by reference to the way it is perceived by the relevant public (*Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91).

43) The letters GE have no specific meaning in respect of the goods and consequently endowed with a normal level of distinctive character. The opponent has provided information regarding that it is widely known and referred to as GE. This is not in dispute. However, whilst there is evidence that it has sold a range of domestic appliances, namely refrigerators and cooking ranges, there is no persuasive evidence before me that the opponent’s mark has a reputation in respect of the goods that represent its best case (and referred to in paragraph 30, above).

44) I should say here that, because of the difference in nature, intended purpose, methods of use and the fact that they are not in competition, if I were to consider the opponent's case based upon cooking ranges and refrigerators and the claimed reputation in the same, in my view this represents an inferior case to the one I have considered. Further, the opponent has made much of its activities in the field of water treatment. Whilst it is not possible to ascertain the scale (if any) of activity in this area in the UK, the evidence illustrates that the opponent's activity is large scale projects targeted at businesses and municipal bodies. It is my view that its goods and activities in this area are not similar to the applicant's goods and in line with the guidance in *Waterford Wedgwood plc v OHIM – C-398/07 P*, cannot assist in making a case under Section 5(2) of the Act.

45) In summary, I find that in respect of the opponent's goods, as identified in paragraph 30, the inherent distinctive character of the opponent's mark is not enhanced through use.

Likelihood of confusion

46) I must adopt the global approach advocated by case law and take into account that marks are rarely recalled perfectly with the consumer relying instead on the imperfect picture of them he has in kept in his mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27). I must take into account all factors relevant to the circumstances of the case, in particular the interdependence between the similarity of the marks and that of the goods or services designated (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*)

47) The applicant submits that the applicant's goods are at a significantly different price to the opponent's goods. I dismiss this argument because any such perceived or actual price differences are not reflected in the respective specifications of goods. Further, as I have already said at paragraph 31, above, solar water heaters, when adapted for mobile homes, may be more affordable than those for household use. In addition, the cost of the applicant's goods may only represent one cost level within the market for such goods and other, more expensive goods, may also be covered by the applicant's specification. In reaching this conclusion, I have kept in mind the guidance of the GC in *Oakley, Inc v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-116/06, which states:

“76 Consideration of the objective circumstances in which the goods and services covered by the marks in dispute are marketed is fully justified. The examination of the likelihood of confusion which the OHIM authorities are called on to carry out is prospective. Since the particular circumstances in which the goods covered by the marks are marketed may vary in time, and depending on the wishes of the proprietors of the trade marks, the prospective analysis of the likelihood of confusion

between two marks, which pursues an aim in the general interest, that is, that the relevant public may not be exposed to the risk of being misled as to the commercial origin of the goods in question, cannot be dependent on the commercial intentions, whether carried out or not – and which are naturally subjective – of the trade mark proprietors (QUANTUM, paragraph 75 above, paragraph 104, and T.I.M.E. ART/Devinlec v OHIM, paragraph 75 above, paragraph 59).”

48) The applicant also submits that due to the specialist nature of its goods, being adapted for use in caravans and mobile homes, the opponent’s goods are not similar. As the opponent has pointed out in its written submissions, solar water heaters may be appropriate for use in caravans and mobile homes, especially where such caravans are used as permanent living spaces. Consequently, I dismiss the argument that the specialist nature of the applicant’s goods is such as to differentiate between the respective goods.

49) The opponent puts forward an argument that the consumer is familiar with two letter acronyms, such as HP, BT LG, FT and BA, being used to identify large corporations and consequently, they will identify the acronym GE as relating to the opponent. The applicant has countered by pointing to a number of marks on the register that incorporate some of these acronyms but are not related to the corporation identified by the acronym alone. These include the marks BA STUDIOS, BA-TSU, SEL BT, AUTOCOAT BT, LG INTERGRITY LIGHTING & GARDENING UK LTD and device, SPIRAX FT and SUBUTEX FT. The applicant also identifies the following marks on the Register that incorporate GE: ER & GE, AN’GE and TONG JUN GE and device.

50) I note the applicant’s arguments, but “state of the register” evidence is rarely helpful. In this respect, I am mindful of the guidance provided by the GC in *Zero Industry Srl v OHIM* – T-400/06:

“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).”

51) However, even having regard for this, whilst I accept that the consumer is familiar with two letter acronyms being used to identify large corporations, this is more of an issue of reputation of the companies cited and it is my view that it cannot be taken as a general rule that two letters appearing in the mark will be automatically be perceived as indicating a large corporation, especially in respect of goods and services for which a corporation has no reputation. An assessment of any one given use of two letters must be made as part of the global appreciation test identified by the CJEU in *Sabel BV v Puma AG* and others cases.

52) The opponent argues that the “GE” component of the applicant’s mark is an identifiable distinctive component and cannot be overlooked. On the other hand, the applicant argues that it is the beginning of a mark that is most important. Both these points are valid considerations, but it is my view that, whilst the beginning of a mark may be important, it is not a necessarily corollary that the component(s) at the end of a mark are relegated to being no more than negligible when the mark is considered as a whole.

53) The applicant also submits that the “GE” component of its mark would simply be seen as an indication of model type because it is common for boilers to be marketed using two or three letter combinations to denote model types. It supports this submission by providing evidence of BDR Thermea Group using the letters HE to denote a model in its BAXI, IDEAL and POTTERTON ranges of boilers. It also shows the letter combinations CX, CXI, SX and SXI used in respect of the brands FLEXICOM and ULTRACOM. The opponent points out that both these brands are used by companies within the Glow-Worm group. The opponent concludes that, in effect, the applicant’s evidence only demonstrates that two entities are using two or three letter combinations to denote model types and these are insufficient to demonstrate that this is a practice common in the trade.

54) The applicant submits that its use of the letters “GE” will be understood to indicate its goods are dual-fuel. It builds on this submission by claiming that the letters “GE” will be understood as a reference to “gas and electric”. However, there is no evidence that this is so and I accept the opponent’s contentions that it is not been shown that the use of two and three letter combinations is common place in the trade and that “GE” will not be understood as a reference to dual-fuel goods.

55) Further, the applicant’s view that “GE” may not be seen as origin specific because it consists of only two letters, is not well founded (it is well established that two letter marks are subject to the same global considerations as other marks and there is nothing *per se* that makes them non-distinctive). In the current case, the opponent’s mark consists of a two letter mark, and taking account of Section 72, in the absence of any attack against this registration, the assumption must be that it was validly registered and is distinctive.

56) Further, merely because the “GE” component of its mark appears at the end, this does not prevent it from retaining a distinctive role in the mark when viewed as a whole. The CJEU has commented on this issue in *Medion*, when it stated:

32 The finding that there is a likelihood of confusion should not be subject to the condition that the overall impression produced by the composite sign be dominated by the part of it which is represented by the earlier mark.

33 If such a condition were imposed, the owner of the earlier mark would be deprived of the exclusive right conferred by Article 5(1) of the directive even where the mark retained an independent distinctive role in the composite sign but that role was not dominant.

34 This would be the case where, for example, the owner of a widely-known mark makes use of a composite sign juxtaposing this mark and an earlier mark which is not itself widely known. It would also be the case if the composite sign was made up of the earlier mark and a widely-known commercial name. In fact, the overall impression would be, most often, dominated by the widely-known mark or commercial name included in the composite sign.

57) In its written submissions, the applicant relied upon the findings of the CJEU in C-254/09 P *Calvin Klein Trademark trust v. OHIM*, where it confirmed the judgment of the GC when it found that there was no likelihood of confusion between the mark CK CREACIONES KENNYA and numerous earlier stylised CK marks. I note this case, but I do not find it persuasive in the way that the applicant submits. Firstly, the opponent relied upon a stylised version of its CK mark (and this stylisation was not reproduced in the later mark) and, secondly, CJEU found no error when the GC concluded that, in the mark at issue, the CK component was considered to correspond “to the initial letters of the words ‘creaciones’ and ‘kennya’, thus establishing the origin of that element and explaining its presence” and, consequently, concluded that the ‘ck’ component was in an “ancillary position in relation to the element ‘creaciones kennya’”. Taking these two points into account, the case at issue before the CJEU was not on all-fours to the current case where the opponent’s exact mark appears, unaltered and in its entirety, in the contested mark and does not function as the initial letters for the other components in the mark.

58) Keeping the CJEU’s guidance in mind, the impact of the “GE” component in the applicant’s mark may not be the dominant distinctive element but it, nevertheless, retains a distinctive role. Consequently, despite the marks only sharing a low level of similarity, when taking account of the identity or high similarity of the goods, the distinctive character of the earlier mark and the fact that the “GE” component of the applicant’s mark plays an independent distinctive

role, I find that there is a likelihood of indirect confusion. Whilst the consumer will not confuse the two marks, it is my view that, upon being exposed to the applicant's mark in use in respect of the goods claimed, it is likely to be believed that those goods originate from the same or linked undertaking to those goods identified by the mark "GE". The fact that the purchasing act will involve more than the average level of care and attention will further increase the likelihood that the consumer will be aware of the "GE" component of the applicant's mark and therefore also increase the likelihood of confusion in respect of origin.

59) In summary, I find that there is a likelihood of confusion in respect of all the goods covered by the application.

Section 5(3)

60) I have found that the opponent has been wholly successful under its grounds based upon Section 5(2)(b) of the Act. Nevertheless, as the opponent's case under Section 5(3) relies on a reputation that lies substantially outside the goods upon which its Section 5(2) case was found to be successful, I will also comment upon the grounds based on Section 5(3) of the Act.

61) Section 5(3) reads as follows:

"5.-(3) A trade mark which –

(a) is identical with or similar to an earlier trade mark,

shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark or international trade mark (EC), in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark."

62) The scope of Section 5(3) has been considered in a number of cases notably *General Motors Corp v Yplon SA (CHEVY)* [1999] ETMR 122 and [2000] RPC 572, *Adidas Salomon AG v Fitnessworld Trading Ltd.* [2004] ETMR 10, *Premier Brands UK Limited v Typhoon Europe Limited (TYPHOON)* [2000] FSR 767, *Daimler Chrysler v Alavi (MERC)* [2001] RPC 42, *C.A. Sheimer (M) Sdn Bhd's TM Application (VISA)* [2000] RPC 484, *Valucci Designs Ltd v IPC Magazines (LOADED) O/455/00, Mastercard International Inc and Hitachi Credit (UK) Plc* [2004] EWHC 1623 (Ch), *Electrocoin Automatics Limited and Coinworld Limited and others* [2005] FSR 7, *Davidoff & Cie SA v Gofkid Ltd (DAVIDOFF)* [2003] ETMR 42, *Intel Corporation Inc. v CPM United Kingdom Ltd (INTEL)* [2009] RPC 15, *L'Oreal v Bellure* [2010] RPC 1 and *Whirlpool Corp v Kenwood Limited* [2010] RPC 2.

63) The applicable legal principles arising from these cases are as follows:

- a) 'Reputation' for the purposes of Section 5(3) means that the earlier mark is known by a significant part of the public concerned with the products or services covered by that mark (paragraph 26 of the CJEU's judgment in *CHEVY*).
- b) Under this provision the similarity between the marks does not have to be such as to give rise to a likelihood of confusion between them; the provision may be invoked where there is sufficient similarity to cause the relevant public to establish a link between the earlier mark and the later mark or sign (*Adidas Salomon v Fitnessworld*, paragraphs 29-30).
- c) Whether there is a link, within the meaning of *Adidas-Salomon and Adidas Benelux*, between the earlier mark with a reputation and the later mark must be assessed globally, taking into account all factors relevant to the circumstances of the case (*INTEL*).
- d) The fact that, for the average consumer, who is reasonably well informed and reasonably observant and circumspect, the later mark calls the earlier mark with a reputation to mind is tantamount to the existence of such a link between the conflicting marks, within the meaning of *Adidas-Salomon and Adidas Benelux*. (*INTEL*)
- e) The stronger the earlier mark's distinctive character and reputation the easier it will be to accept that detriment has been caused to it (per Neuberger J. in *Premier Brands*, and the CJEU in *CHEVY*, paragraph 30).
- f) Whether use of the later mark takes or would take unfair advantage of, or is or would be detrimental to, the distinctive character or the repute of the earlier mark, must be assessed globally, taking into account all factors relevant to the circumstances of the case (*INTEL*).
- g) Unfair advantage is taken of the distinctive character or the repute of the earlier trade mark where there is clear exploitation and free-riding on the coat-tails of a famous mark or an attempt to trade upon its reputation (*Spa Monopole v OHIM*).
- h) The use of the later mark may be detrimental to the distinctive character of the earlier mark with a reputation even if that mark is not unique; a first use of the later mark may suffice to be detrimental to the distinctive character of the earlier mark; proof that the use of the later mark is or would be detrimental to the distinctive character of the earlier mark requires evidence of a change in the economic behaviour of the average consumer of the goods or services for which the earlier mark was

registered consequent on the use of the later mark, or a serious likelihood that such a change will occur in the future (*INTEL*).

i) Taking unfair advantage of the distinctive character or repute of a mark relates not to detriment caused to the earlier mark but to the advantage taken by the third party. Such an advantage may be unfair even where the use is not detrimental to the distinctive character or to the repute of the mark (*L'Oreal v Bellure*). It is not sufficient to show that an advantage has been obtained. There must be an added factor of some kind for that advantage to be categorised as unfair (*Whirlpool Corp v Kenwood Limited*).

Reputation

64) 'Reputation' for the purposes of Section 5(3) means that the earlier mark is known by a significant part of the public concerned with the products or services covered by that mark (paragraph 26 of the CJEU's judgment in *General Motors Corp v Yplon SA (CHEVY)* [1999] ETMR 122 and [2000] RPC 572).

65) The opponent's evidence establishes that has a substantial presence in the UK with its total UK sales being £5 billion in 2008. This activity extends across a broad range of activities identified by its four broad trading divisions of energy, technology, infrastructure, "GE Capital" and home and business solutions. It appears that the majority of these goods and services relates to the opponent's large scale provision of infrastructure to the power, medical, aviation and transportation industries. In respect of these goods and services, I have no doubt that a significant part of the public concerned (ie businesses in these fields of activity) will be aware of the "GE" mark.

66) The evidence also illustrates that the opponent also provides mortgage services to consumers. Further, from the brochure provided at Exhibit GE3 to Mr Merrill's statement, under the heading "Home & Business Solutions" is a sub-heading "GE Appliances & Lighting". "GE Appliances and Lighting" is described as "one of the leading brands in the UK across both consumer and professional lighting [...]". Whilst this statement is not supported by any further information or exhibits, when taken in the context of the whole evidence, I am prepared to accept that this is a true statement and the opponent's reputation extends to consumer and professional lighting.

67) Finally, there is evidence of the opponent having a trade in the UK in its cooking ranges and refrigerators. However, there is no evidence of the scale of its business. Consequently, I am unable to conclude that its reputation also extends to these goods. There is no evidence beyond a statement by Mr Merrill that the opponent also sold dishwashers and air conditioners and a statement on the current UK distributor's website referring to refrigeration, cooking and laundry products. If this is so, there is no indication as to the scale of such trade.

Therefore, I am unable to conclude that the opponent has a reputation in respect of these goods.

The link and damage

68) Having established the existence and scope of reputation, I need to go on to consider the existence of the necessary link. I am mindful of the comments of the CJEU in *INTEL* that it is sufficient for the later trade mark to bring the earlier trade mark with a reputation to mind for the link, within the meaning of *Adidas-Salomon and Adidas Benelux*, to be established. The average consumer of the goods and services provided by the opponent is, very much in the main, business and industry. The one exception is the provision of mortgages to consumers. The average consumer for the applicant's goods is also likely to be mainly consumers drawn from the general public. It is my firm view that the relevant public for the opponent's goods and services (businesses and industry, and the general public in respect of mortgage provision), will not make the necessary link to the opponent upon seeing the applicant's mark in use in respect of water heating systems for mobile homes. In reaching this view, I have born in mind the different nature of the respective goods and services, the different relevant consumers and nature of the respective purchasing processes. Further, I have also kept in mind the similarity and differences between the respective marks.

69) As the necessary link does not exist, it follows that there can be no detriment to the opponent. Consequently, the ground based upon Section 5(3) fails in its entirety.

COSTS

70) The opposition based upon Section 5(2) of the Act having been wholly successful, the opponent is entitled to a contribution towards its costs. I take account of the fact that no hearing has taken place but that both sides filed evidence and written submissions. I award costs on the following basis:

Preparing Notice of Opposition (including official fee) and considering statement of case in reply:	£550
Preparing evidence and considering other side's evidence:	£700
Filing written submissions	£400
TOTAL	£1650

71) I order Truma Geratetechnik GmbH & Co to pay General Electric Company the sum of £1650. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 7th day of March 2013

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

ANNEX

Full list of goods and services for earlier CTM 5920781

Class 1: Synthetic resins; thermoplastic and thermosetting synthetic resins organic molding compositions, for general use in the industrial arts; chemical intermediates; organosilicone compounds-namely, polysiloxanes and silanes in the form of resins, pastes, fluids, elastomers, vulcanizing preparations and accelerators; antifoaming agents; catalysts for paints; chemicals for developing and fixing x-ray films and other chemicals associated with the development of said films; phosphors; chemical substances for use as nuclear fissionable material; fuel for nuclear reactors; fused quartz in various shapes such as discs, ingots, rods and tubes for general use in the industrial arts; adhesive substances used in industry; polycrystalline alumina ceramic, for general use in the industrial arts; soldering fluxes and preparations; thermoplastic and thermosetting adhesives; chemicals, biochemicals and reagents for use in industry, science and research; chemical preparations, kits and reagents for analysis or diagnosis used for scientific purposes, namely, chemical preparations for cell separation and culture, nucleic acid purification, nucleotides, fluorescent nucleotides, oligonucleotides, peptides, proteins, amino acids, organic molecules, and markers for DNA/RNA synthesis; reagents for luminescence; reagents for gene expression quantification; reagents for use with the polymerase chain reaction process; reagents for use with the rolling circle amplification process; reagents for cDNA cloning and vectors, modifying and restriction enzymes; reagents for labeling, sequencing and fragment analysis of nucleic acids, proteins and custom synthesis; reagents for recombinant protein expression purification; chromatography media; reagents for electrophoresis, bioinformatics, spectrophotometry and fluorometry; radiochemicals for scientific research use; reagents for scintillating proximity assays; high through put screening assays for drug development; reagents for high resolution laser fluorescence confocal microscopy; specialty chemicals for use in industry, science and research; gases and gas mixtures for industrial, research and scientific purposes; chemical preparations and substances for use in the manufacture of pharmaceutical products, diagnostic preparations and substances; chemical test reagents, saline solution and reagent-coated paper all for scientific and laboratory use; fissionable chemical elements for scientific research use; radioactive elements and isotopes for industrial, scientific and research purposes; radioactive sources and standards for use in radiographic techniques; radioactive sources for use in non-destructive testing, purification and sterilizing techniques; radionuclides for scientific research use; chemicals and chemical compositions for use in the treatment of water systems, wastewater treatment systems, cooling water systems, boiler water and steam generating systems, boiler condensate systems, fluid separation systems, water clarification and dewatering in aqueous systems, conditioning systems, gas cleaning systems, industrial process systems, fuels and fuel processing systems, hydrocarbon and gas processing systems, oil and gas processing and petrochemical systems, pulp and papermaking systems, metal and plastic coating systems, metal processing systems; chemical gasoline additives and distillate fuel additives; performance additives for fuels used in turbine engines; bags of chemically-treated water-absorbing granular materials for placement into fuel tanks; test kit consisting of reagents used for determining the presence of algae and active organic organisms in diesel fuel; bacteria cultures and nutrients for wastewater and sludge treatment; polymeric chemicals used to disperse particulate matter in steam generating equipment; chemicals and chemical compositions as antifoulants and demulsifiers in coke-making and by-product operations of iron and steel industries.

Class 2: Corrosion inhibitors in the nature of a coating for use in the metal finishing industry, namely, a final aqueous acidic rinse; corrosion inhibitors in the nature of a coating for use in cooling water systems; corrosion inhibitors in the nature of a coating, namely, resinous coatings for metal and masonry surfaces; coating materials, etching fluids.

Class 3: Cleaning preparations containing chemicals and chemical compositions for use in cleaning steel, aluminum, galvanized and mixed metal surfaces for general industrial use in the manufacture of metal products; cleaning agents containing chemicals and chemical compositions for use in industry to remove contaminants from industrial process systems; paint strippers containing chemicals and chemical compositions to remove paint from equipment surfaces in paint spray booth operations.

Class 5: Pharmaceutical preparations for use in diagnosis; veterinary pharmaceutical preparations for use in diagnosis; pharmaceutical and veterinary substances for medical purposes; diagnostic reagents and preparations for medical purposes; diagnostic substances for medical purposes; contrast media for medical imaging; diagnostic scanning agents for in vivo use; diagnostic imaging agents for magnetic resonance imaging; radiopharmaceutical products for clinical, medical, scientific and research use; radiopharmaceutical sources and standards for use in nuclear medicine; radioactive pharmaceutical preparations and non-radioactive reagents for producing radiopharmaceuticals for in vivo diagnostic or therapeutic use; gases and gas mixtures for medical imaging.

Class 6: Metal locks; metal security enclosures, namely, key cabinets, storage tubes and storage boxes for securing keys; metal lockboxes for residential, vehicular, industrial and real estate sales use; metal key cabinets for locking, tracking and storing keys; metal key safes; metals and alloys in raw, sheet, wire, pellets, rod, foil, strip, liquid, castings, sintered, pressed and fabricated form; key chains and key rings.

Class 7: Apparatus, equipment and instruments for the generation of power, namely, electric generators and wind powered electricity generators; turbines; turbines for power generation; wind turbines for power generation; wind turbines in association with wind farms, turbine generating installations, namely, power generating installations; engines for the generation of electricity; and parts and fittings for all the aforesaid; solar-powered electricity generators; machines and machine systems including component parts and fittings for the generation, transformation, conversion, transmission, distribution, control and utilization of electricity; dynamo electric machines, induction devices, electric translating devices, electric regulating and controlling devices, electric lamps, electric measuring instruments, electric protective devices, switchboards, switchboard appliances, wiring devices, and supplies; electric motors of all kinds, steam and gas turbines and parts thereof, electric generators and their parts, aircraft engines, compressors; washing machines, dryers, dishwashers, garbage disposers and compactors; pumps, namely, centrifugal pumps, diaphragm pumps, bellows pumps

and process and transfer pumps; fluid control devices, namely, valves, flow meters, pressure switches, sequence timers, regulators, levelers, ejectors, and electrical controls and switches; fluid separation cartridges and parts therefore, including semi-permeable membranes; filter cartridges for various industrial machines for filtration applications including the filtration of coating solutions for the manufacture of magnetic tape and the filtration of petrochemicals, portable water, beer in the brewing industry, and other specialty chemicals; machines for the feeding and application of chemicals for industrial use; axial and centrifugal compressors; reciprocating compressors; screw and vane compressors; rotary, vacuum, electric, submersible and centrifugal pumps; turboexpanders, namely, air and electric compressors; CNG refueling machines for land vehicles and industrial equipment and accessories and parts for all the foregoing namely, pumps, valves, fuel filters, filter casings, distributor rotors, blades, bearings and mechanical seals; steam condensers; boat engines; turbochargers for engines; fuel injectors.

Class 9: Fuel pumps for service stations for fueling airplane engines; fuel distribution equipment, namely, metered fuel pumps, electrical fuel level gauges, control valves for regulating the flow of gases and fuel lines; automated fuel station management systems comprising computer operating software, metered fuel pumps, rate control panels, fuel lines and dispensing nozzles for fueling land and marine vehicles and marine vehicles and aircraft; gas meters; on-board and wayside signaling and communication systems, train inspection systems, cross warning systems, switchmachines; GPS - based tracking and monitoring systems for the railroad and transit industries; electrical devices and electrical power distribution products, namely, capacitors, circuit breakers, circuit breaker load centers, circuit closers, circuit interrupters, commutators, contactors, current rectifiers, current limiters, electric contacts, electric collectors, electric conductors, electric connectors, electric controllers, electric inductors, electric power supplies, electricity distribution boards and boxes, electricity distribution consoles, electricity switchboards and switchboxes; computer software for persons who troubleshoot and maintain programmable controllers, computer software for analyzing blood vessels including cardiac vessels which also provides calculation functions with respect to blood vessels, computer software for use with medical patient monitoring equipment, computer software for receiving, processing, transmitting and displaying data, computer software for use in developing personalized asset allocation programs; computer software for use on-line which enables office equipment dealers to submit applications, manage portfolios and communicate with the company; computer software for use in accessing mortgage and insurance information, computer software for collecting data involving vital medical signs, computer software for use in electrical power systems analyses and instructional manual in electronic format sold as a unit therewith, computer software for use by employees for financial institutions for determining financial investments for clients and in processing the sale of the identified investments, computer software for obtaining information on the flood-hazard status of real property, computer software for the development of graphical user interfaces and data visualization, computer software for use in the calculation of mortgage payments, computer software for regulating and managing vehicle fleet maintenance services, computer software for use in connection with accessing and utilizing commercial computer services, computer software for use by customers to obtain lease portfolio information, computer software for a radiology information system for use by radiologists and radiology departments, computer software for use in the database management of employee and patient information for patient monitoring and archival purposes, computer software installed on and used in connection with PC's and medical monitoring equipment for graphical user interface, computer software for use in sending encrypted and compressed data mover paging carrier systems, computer software for providing access to websites where buyers and sellers can conduct business electronically, and computer software for underground navigation namely for navigation of down hole probe assembly for oil drilling and drilling assemblies for routing underground utilities; electronic, nuclear, industrial and laboratory testing, measuring, computing and control instruments and apparatus, telephones; electrical goods, electrical power generation and distribution products and electrical voltage and overvoltage surge products, namely, arresters, busways; capacitors; lighting contactors; controllers and input/output devices; fuses; lighting controls; switch boxes, LEDs, namely, light emitting diodes, voltage regulators for electric power, voltage surge protectors, voltage surge suppressors, voltmeters, electrical circuit boards, relays and timers, solenoids and limit switches, full-voltage manual starters, reduced voltage starters, electrical switches and disconnects, circuit board terminal blocks and pumping panels, circuit breakers and disconnects, transformers, electrical lighting and power circuit boards, electrical wires, cables, cords, and conductors, electrical wiring and fixtures, lightning arrestors, electricity meters, power meters, grounding resistors, humidity and temperature sensors; building and wood sensors; industrial calibration sensors, push buttons, motor control centers, electrical resistance heating wires and electrical controllers therefore and voltage regulators in International; software and software programs for industrial, research, and medical use; apparatus for electrophoresis; chromatography columns and pumps; apparatus for microfabrication; apparatus for bioinformatics systems; apparatus for scintillation; imaging apparatus for radioactive and luminescent emissions; synthesis and purification integrated systems; apparatus manufacturing oligonucleotides; apparatus for microarrays; laser based optical systems for digital imaging; microarray slides; laboratory glassware; vials and microvials; microtitre plates; computer software for hospital operating room management; computer software for critical care information management; industrial process control software; computer software programs and program manuals sold as a unit for use in factory management; graphical user interface based computer programs for controlling machines in industrial automation applications; software for creating graphics displays and editing dynamic data interfaces for realtime graphics applications for industrial and business applications; communications software for connecting computer network users; software for plastic injection molding; software for control, monitoring, simulation, communications, data logging and collection, and factory automation; software to integrate manufacturing machine operations, control processes, provide data for visualization, track problems and generate production reports; packaged software for use in the operation and programming of grinding machines in the manufacturing industry; industrial process control hardware, namely, computer monitors; laptop computers, ethernet cards and cables; computer networking hardware, memory cards; microchips; microprocessors; computer network hubs, switches and routers, computer accessories, display devices and terminals; computer whiteboards; system boards and processors; call control, operator interface, gage interfaces and data collectors; control and manufacturing applications, namely, statistical process control, data collection, distributed numerical control; manufacturing execution systems and document management; digital signal processing products and systems, namely industrial automation controls and

programmable logic controllers; machine tools, namely, an adaptive control product in the nature of an external controller to optimize machine tool cutting performance of rough and semi-rough cuts; distributed and remote input/output hardware devices, input/output modules, interface modules, power supplies and mounting hardware; intrusion and burglar alarm systems; security devices, namely, programming logic computers, control panels, electronic intrusion detectors, electronic glassbreak sensors, electronic vibration sensors, magnetic contacts for use in security systems, electronic switch plates, electronic motion sensors for alarm systems, electronic motion sensitive switches, hardwire sirens, audio speakers, electronic drivers, access control and alarm monitoring systems; fire, heat and smoke detecting and alarm units; computer card operated access control systems; card readers, card encoders, and encoded cards for use with card operated access control systems; video cameras; video object recognizers; video object trackers; video license plate readers; video alarm verifiers; video face recognizers; video vehicle recognizers; video traffic detectors; video access door controllers; video intrusion detectors; processing hardware and software that analyzes digital video images to automatically extract, record and report intelligence, and remote video monitoring systems for security and surveillance applications; central video monitors; video recorders; cameras; closed circuit video systems; closed circuit video system comprising one or more cameras, and a camera housing; short range, wireless, radio frequency transceivers; power line transceivers; communication control hardware for operating closed circuit camera; communication control hardware, namely keypad controllers, matrix switchers, multiplexers, digital video recorders, integrated pan-tilt-zoom domes, remote video controllers, receivers, electronic alarm, management controls and triggers, and video transmission devices sold separately or as part of a system for operating closed circuit cameras; personal digital assistant devices configured for use by real estate professionals; communications interface devices for use with personal digital assistant devices; fiber-optic transmission systems, namely, fiber optic transmitters, receivers and transceivers used in the transmission of video, audio, and data signals over optical fiber; electrical switches; electro mechanical locks; magnetic locks; electric keys; handheld electronic hardware for receiving, controlling, storing, manipulating, displaying and transmitting data and for operating electronic locks; electronic access cards and readers and encoders therefore; magnetic access cards and readers and encoders therefore; smart access cards and readers and encoders therefore; proximity cards and readers and encoders therefore; key fobs and readers and encoders therefore; bar code access cards and readers, encoders, card lamination apparatus; access keypads; radio frequency tracking tags; tracking and control system comprising one or more radio frequency tags, transceivers, and sensors used to determine and monitor the location and movement of tangible assets, inventory and individuals; infrared sensors; computer hardware and software for facilities management and controlling facility access systems and components therefore, namely, control panels, access card readers, and equipment and systems for video imaging, video monitoring; digital hard drive recording, network transmission and remote access; networked digital video storage servers, access control and surveillance applications alarm monitoring and security; computer software and hardware for controlling and operating security and access system comprising locks, doors, access, and identification; devices and security enclosures in the nature of boxes for securing keys; surveillance equipment sold individually as components or together as a system comprising one or more surveillance cameras, covert cameras, close circuit television cameras, camera housings, camera mounts, camera lenses, video monitors, video recorders, digital recorders, video storage media, video switches, control panels, keypad controllers, joystick controllers, interface apparatus for alarms and access control equipment, transceivers, receivers, transmitters, signal processors, multiplexers, matrix switches, controllers, control panel housing, switch housing, transformers switches, splitters, coaxial cables, connectors, motion detectors, microphones and speakers; computer user interface software and control software for managing security, fire and access systems; electric locks; hand-held electronic computer and communication hardware for receiving, controlling, storing, manipulating, displaying and transmitting data for operating electronic locks; electronic key fobs, readers and encoders; magnetic data carriers; data processing software and computer hardware; power supplies, namely batteries, rectifiers/voltage/current regulators and transformers; control panels - namely, electronic apparatuses adapted to electrically monitor a pre-determined activity and activate a burglar alarm; siren speakers; and electronic siren drivers - namely, tone generators and amplifiers adapted to be used for sirens; computer software to control communication hardware for operating and controlling closed circuit cameras; switch units incorporating magnetically actuated reed switches for use in burglary and fire sensing alarm systems, in industrial position sensing apparatus, in revolution counters, in equipment cabinet safety interlock systems, in industrial position controlling apparatus, in electrical cables and in pump and valve controlling apparatus and home security alarm systems; electrical and electronic checking apparatus for screening individuals, baggage, and cargo for the presence of particular substances; electrical and electronic checking apparatus for screening individuals, baggage, and cargo for the presence of explosives and/or narcotics; apparatus for detecting presence of explosives and other contraband; time or condition sensing apparatus for initiating and controlling regeneration or backwash cycles for water treatment equipment; control valves for water conditioning and water filtration equipment; bioreactors for culturing cells; portable analytical instruments; namely, a probe with a microprocessor based data conversion logger for measurement of organic and inorganic chemicals in water; filters and filter housings for laboratory use; fluid separation apparatus for laboratory use; membrane filters for laboratory use; silt density measuring device; deionization units for laboratory use, filters and filter housings for laboratory use; fluid separation apparatus for laboratory use; membrane for laboratory use; fluid flow control devices, namely, pumps, valves, flow meters and regulators for laboratory use; ozone monitors; laboratory equipment, namely, porous microtiter plates for use in cell biology and other life science applications; electronic water and process treatment controls, namely, apparatus for use in the treatment of commercial and industrial water systems, boiler water systems, cooling water systems, and closed water systems, pulp and paper processing systems, fuel processing systems, and metal processing systems to analyze the chemistry of the system, determine the proper treatment program, apply the desired treatment and monitor the effectiveness of the treatment; computer software for data management in the water treatment and pulp and paper fields; electronic controllers used for processing information in the water treatment and pulp and paper fields; apparatus for use in industrial water systems to measure and control ph and conductivity; apparatus for feeding chemical to an industrial, commercial or municipal water system in measured amounts; electronic test apparatus for use in water treatment; laboratory testing equipment-namely, deposition and corrosion rate testers; mobile laboratory equipped with equipment and instrumentation to monitor and measure ph, conductivity, and chromate concentration of industrial and domestic waters, to conduct inorganic analysis of water and to conduct microbiological testing of water;

electronic and electrochemical products, namely, fuel cells; apparatus for converting electronic radiation to electrical energy, namely photovoltaic solar modules, photovoltaic solar hybrid modules, electronical sensors for measuring solar radiation, solar cells; apparatus for converting electronic radiation to electrical energy, namely photovoltaic solar modules, systems, components, and all associated balance of system components.

Class 10: Test kits for clinical medical use including test tubes, test plates and indicator charts for evaluating test results; medical apparatus and accessories systems for the dispensing of measured unit doses of pharmaceutical preparations; vials for medical use; cannulas for medical use; syringes for medical use; injectors for medical use; cartridges for medical use; pre-filled vials containing medical diagnostic reagents; pre-filled cartridges containing chemical solutions for medical use; pre-filled cylinders containing gases and gas mixtures for medical use; infusion pumps for intravenous administration of fluids; needles for medical purposes; implantable radiation therapy devices consisting of encapsulated radioisotope brachytherapy sources; radiation therapy delivery system consisting of radioactive seeds and a bio-absorbable carrier assembly; cardiac output monitors; heat and moisture exchangers for medical use; bacteria filters for medical use; gas analyzers for medical purposes; anesthesia record keeping and data management systems and patient monitor systems, namely, gas monitors; pulse oximeters, multiparameter monitors, ECG monitors, invasive and non-invasive blood pressure monitors, neuromuscular transmission monitors, metabolic monitors and spirometers for anesthesia, intensive care and diagnostic applications; anesthesia machines and ventilators; intensive care and anesthesia accessories for single patient use, namely, gas sampling lines, airway adapters, breathing circuits, spirometry sensors and tubes, tubes, water traps, pulse oximetry sensors, non-invasive blood pressure cuffs, flushing sets, anesthesia masks, carbon dioxide absorbers, temperature probes and nebulizers; central nervous system monitors; gastrointestinal tonometers; gradient coils, namely, magnetic gradient coils used in magnetic resonance imaging; medical diagnostic devices, namely, bone densitometers; fetal monitoring apparatus, namely, fetal pulse and vital signs monitors; patient monitoring apparatus, namely, heart and vital signs monitors medical imaging systems, namely, ultrasounds, medical diagnostic imaging machines, imaging devices for screening and diagnostic applications for use in planning intervention and surgery, and parts thereof and attachments thereto; medical diagnostic apparatus for displaying diagnostic images; namely, spot film apparatus, x-ray image intensifiers, x-ray fluoroscopes, mobile x-ray units, radiographic film viewers, computerized tomography scanners, nuclear resonance scanners, ultra sound scanners, magnetic resonance scanners, positron emission tomography (pet) scanners; and parts thereof and attachments thereto including tables and pads.

Class 11: Solar collectors, solar heat collection panels; solar light fixtures, namely, indoor and outdoor solar powered lighting units and fixtures; solar thermal installations, namely solar thermal modules; solar water heaters; roofing, not of metal, incorporating solar cells; domestic electric and gas cooking appliances, namely, cooking rings, gas and electric stoves; gas and electric ovens and cooktops; heat exchangers; chemical heavy wall reactors and nuclear reactors and accessories and component parts thereof, namely, heat pumps, steam valves and valves for regulating the flow of gases and liquids; installation, maintenance and repair services for compressors, pumps, namely, machines, turboexpanders, fuel pumps and fuel distribution equipment, CNG refueling equipment, gas turbines, steam turbines, air cooled heat-exchangers, steam condensers, heavy wall reactors and tubular reactors; electric lamps of all kinds and their parts; electric lighting fixtures and their parts; electric refrigerators, freezers, air conditioning apparatus, electric ovens, ranges; microwave ovens for cooking; wall cooking ovens for domestic use; food warming drawers; convection ovens, electric and gas cook tops; electric and gas cooking ovens and ranges; ventilation hoods for stoves; and ventilating exhaust fans; water filters; water softening units; clothes dryers; electric fans, ceiling fans, flashlights; lamps and lights for vehicle; electric lights for Christmas trees; fluid separation units; fluid concentration units; fluid recycling units; polymeric membrane material for use in the separation of fluids; filter apparatus used for filtering solids from gases and liquids or filtering liquids from gases, and for filtering one immiscible liquid from another; spirally-wound elements or cartridges contained within a tubular plastic sleeve for concentrating products and removing impurities in fluid treatment systems; water conditioning units for residential purposes; reverse osmosis modules and membranes therefore; water purification units and systems consisting of clarifiers, electro deionization systems, condensate polishers, vacuum degasification units, ultra filtration units, ultraviolet sterilizers, ion exchangers, acid and caustic regeneration systems, reverse osmosis systems, forced draft decarbonator units, filters, chemical feed systems and bulk storage units, sold with automatic controls and instruments to monitor operating parameters of the units and systems electrochemical liquid purification units for use in the industrial, commercial and municipal sectors; water filtering units for domestic, commercial and industrial use; waste water purification units; water purifying units for potable water for domestic, commercial and industrial use; fluid separation units, namely industrial fluid filters; recycling units, namely, fluid purification units; water treatment equipment, namely, cartridges; water treatment equipment for household use, namely, water softeners and water conditioners; media filters and depth filters for removing sediments, iron, sulfur, tastes and odors from water; reverse osmosis water purification; depth filter units and depth filter cartridges for liquid and air filtration for domestic, industrial, and commercial use; disposable cartridge filters for industrial water filtration.

Class 12: Electric motors and diesel engines for land vehicles.

Class 17: Silicone sealants for a variety of uses such as for bath tub caulking, sealing boats and automobiles; silicone traffic and weather topping, silicone rubber roof coating; plastic panels for building construction purposes; plastic glazing compounds; plastic in the form of sheets, plates, foils, blocks, all for use in manufactures; electric insulation material, electric insulators such as insulating varnish, silicone rubber compounds; thermal insulating material, thermoplastic materials used as building materials for insulating, roofing and glazing.

Class 19: Thermoplastic building and construction materials, namely, molded or extruded thermoplastic materials used as wood metal, roofing, support or glass substitutes.

Class 35: Inventory control services; consultation in the field of inventory control services; acquisition integration services; direct marketing advertising for others featuring database marketing; consultation in the field of direct marketing advertising for others featuring database marketing; business reorganization consulting services; truck and automobile fleet management services, namely voyage reporting and invoicing via a global computer network; consultation in the field of truck and automobile fleet management services; business administration consulting services; operation and management of power plants of others; consultation in the field of operation and management of power plants, business services, namely the administration of repair and services contracts, supply chain management and consulting services in the areas of chemical product and service sourcing and procurement, product inventory and supply management and cost containment; consulting, marketing, cost and pricing analysis relating to electrochemical liquid purification units for use in the industrial sector.

Class 36: Asset based and private label financing services; financial analysis and consultation; credit card financial services; credit card services, namely, extension of credit to others; financial asset management for others; insurance and re-insurance services, namely, underwriting services for all types of insurance; equity investment services; insurance underwriting services in the field of bonds; financial guarantee assurance underwriting services; personal loan financing; mortgage banking services; acquisition financing services; commercial financing services; commercial real estate agency services; mutual fund investment; private equity and debt investment; consultancy, advisory and information services relating to all the foregoing services, Leasing and rental of mobile and modular buildings, insurance brokerage services, credit agency services in the fields of consumer and commercial credit, credit card services, real estate loan financing services and banking and financial services.

Class 37: Construction, installation, repair, replacement, overhaul and maintenance of power plants, engines, turbines, wind turbines, motors and apparatus, equipment and instrument for the generation of power and electricity and their component parts, filings and accessories; installation, maintenance and repair services for compressors and pumps, namely machines, turbo expanders, fuel pumps and fuel distribution equipment, CNG refueling equipment, gas turbines, steam turbines, air cooled heat exchangers, steam condensers, heavy wall reactors and tubular reactors; oil and gas pipeline maintenance and repair services; drilling and pumping of oil and gas; drilling for crude oil; oil well casing, tubing and drill pipe installation; rental of oil and gas well drilling tools; remote monitoring and diagnostic repair and maintenance services rendered in the repair and maintenance of aircraft engines, turbines, electrical equipment, medical equipment, locomotives including accessories and component parts of all the foregoing; construction equipment leasing; chemical cleaning services for glass-lined reactor vessels used in the chemical and pharmaceutical processing industries; maintenance services for heat transfer systems and condensers; maintenance and repair services in the field of computerized cooling system equipment, services rendered in the repair and maintenance of machinery, instruments, electrical equipment and appliances; oil and gas maintenance and repair services; drilling and pumping of oil and gas; drilling for crude oil; oil well casing, tubing and drill pipe installation; rental of oil and gas well drilling tools.

Class 38: Telecommunications equipment leasing.

Class 39: Transmission of oil or gas through pipelines; automobile, aircraft, railcar and marine vessel leasing; chemical delivery and storage services in the field of water treatment and pulp and paper making systems; leasing of shipping containers.

Class 40: Oil production services; gas production services; oil and gas well treatment services; oil and gas refining services; wastewater treatment services, water treatment services, namely, desalination, purification, conditioning, identifying and controlling microbiological organisms, cleaning of ion exchange resins; membrane regeneration services.

Class 41: Training in the use and operation of signaling and cross-warning systems for the rail and transit industries; educational services in the field of medical imaging and diagnostics; namely, holding seminars, conferences, symposiums or workshops relating to the pharmaceutical industry, for medical practitioners and employees of pharmaceutical companies; educational services, namely holding seminars, conferences, symposiums or workshops in the field of life science and biotechnology for scientists and researchers; conducting seminars related to industrial water treatment problems; providing training services for all the aforesaid; providing training services in management and the medical field through the use of instructions and demonstrations provided online, through the internet, intranet and extranets; education services, namely, conducting practical training workshops, classes and seminars featuring demonstrations in the field of management and medicine.

Class 42: Services relating to wind and wind power, namely professional consulting services and engineering services; design for others in the field of wind power; industrial design services; design of power, wind power and electric power generating equipment and installations; engineering services, technical consultation and research services in the oil and gas industries; oil and gas exploration services; geophysical exploration for the oil and gas industries; analysis of oil and gas fields; oil and gas prospecting, namely, well logging and testing; oil and gas well testing; oil and gas pipeline inspection; remote monitoring and diagnostic services for compressors, pumps, turboexpanders, fuel pumps and fuel distribution equipment, CNG refueling equipment, gas turbines, steam turbines, air cooled heat exchangers, steam condensers, heavy wall reactors and tubular reactors; information technology solution services in the field of global railroad and transit industries; and computer equipment and medical system leasing; research, consultation, and advisory services relating to engineering, design and development problems encountered by utility, industrial, and commercial companies, governments, and individuals; computer programming services for others; computer software design and analysis services for others; computer consultation services; maintenance and updating of computer software and computer systems for others; installation of computer software; computer systems analysis and design services for others; consultancy services relating to chemical research; consultancy services relating to the discovery and evaluation of drugs

and compounds having diagnostic properties; technical support services; consultancy services relating to methods for diagnosis using laser based optical systems; high through put screening assays for drug development services; customer synthesis, analytical and diagnostic services; biotechnological services; technical support services for factory automation software, namely, providing maintenance of computer software and providing periodic upgrades of software; custom design of security access systems; design and consulting services in connection with the configuration of systems used in applications supporting fiber optic technology; technical support services, namely troubleshooting of problems with computer hardware, video and electronic communication hardware, and software; technical consultation services for hardware and software used in connection with security and access systems; technical consultation services for surveillance cameras; custom design services for others in the fields of security systems, access systems, and tangible asset and inventory monitoring systems; laboratory and testing services for fluid separation and membrane testing; engineering and consulting services in the fields of water treatment, aqueous systems, cooling water systems, industrial boiler water systems, industrial water and process systems, industrial fuel processing system treatment, pulp and paper making system treatment, and metal and plastic processing system treatment; engineering services and technical support services related to the design and configuration of computer software and hardware systems to be used in the treatment of aqueous system and in the treatment of pulp and paper making systems, petroleum and petrochemical processing systems, and metal and plastic finishing operations; providing information to others, over a global computer network, relating to industrial water purification systems; advisory services related to all the aforesaid; chemical control system services relating to the feeding of treatment chemicals through industrial water systems.

Class 44: *Consultancy services relating to medical and diagnostic imaging; consultancy services relating to diagnostic, prophylactic and therapeutic properties of pharmaceuticals; medical information services; medical imaging services; medical diagnostic services; advisory services related to all the aforesaid.*