

O/383/21

TRADE MARKS ACT 1994

**IN THE MATTER OF:
TRADE MARK APPLICATION NO. 3418856
BY SALDON PRODUCTS LIMITED TO REGISTER**

IKON

IN CLASSES 9 AND 11

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 419140
BY LOUIS POULSEN A/S**

BACKGROUND AND PLEADINGS

1. Saldon Products Limited ('the applicant') applied to register trade mark No. 3418856 "IKON" in the United Kingdom ('UK') (the 'contested mark') on 5 August 2019. It was accepted and published in the Trade Marks Journal on 18 October 2019 in respect of the following goods¹:

Class 9: *Lighting control apparatus; Lighting control software for use in commercial and industrial facilities.*

Class 11: *Lighting.*

2. On 20 January 2020, Louis Poulsen A/S ('the opponent') opposed the trade mark on the basis of section 5(2)(b) of the Trade Marks Act 1994 ('the Act'). This is on the basis of its trade mark listed in the table below and the opposition is directed against all goods in the application. The trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act because it was applied for at an earlier date than the contested mark. The details of the earlier mark and the goods relied upon are as follows:

Earlier Trade Mark	European Union Trade Mark ('EUTM') no. 1810019 for ICON ²
Goods relied upon	Class 11: <i>Outdoor pole fixtures.</i>
Relevant dates	Filing date: 15 August 2000 Date of entry in register: 5 October 2001

3. Given the date on which the earlier mark was registered, it is subject to the proof of use provisions set out in section 6A of the Act. The applicant has put the opponent to strict proof of showing use of its mark in the UK in relation to the

¹ Please note, as per paragraph [6] below, the applicant has since amended this specification.

² Although the UK has left the European Union ('EU') and the transition period has now expired, EUTMs, and International Marks which have designated the EU for protection, are still relevant in these proceedings given the impact of the transitional provisions of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 – please see Tribunal Practice Notice ('TPN') 2/2000 for further information.

registered goods. The opponent made a statement of use corresponding to the goods on which it relies as set out above. The relevant period is 6 August 2014 to 5 August 2019.

4. The opponent contends that the contested mark is highly similar to their earlier mark, differing only in the letters “K” and “C”, and that the goods are identical and highly similar. The opponent submits that there exists a likelihood of confusion and, therefore, the contested mark should not proceed to registration and they are awarded costs.
5. The parties entered a period of cooling off, which expired on 23 October 2020. The applicant has since filed a counterstatement denying the grounds of opposition. The applicant submits that the nature of the opponent’s goods (“*outdoor pole fixtures*”) is unclear and, in any event, that use of the mark on these goods has not been proven. The applicant requested that the opposition is rejected and that they are awarded costs.
6. During the course of the proceedings, the applicant amended their goods to read as follows:

Class 9: *Lighting control software for use in commercial and industrial facilities.*

Class 11: *Downlights for interior use.*

Additionally, by way of a fall back specification, the applicant requested to keep only “*Downlights for interior use*” and to delete “*lighting control software for use in commercial and industrial facilities*”. As the opponent did not respond to the applicant’s amendments, it is considered that the opposition is maintained.

7. Only the opponent filed evidence and submissions in these proceedings. The evidence will be summarised to the extent that it is considered appropriate. I will refer to the evidence and written submissions as and where appropriate during this decision.

8. No hearing was requested and so this decision is taken following a careful perusal of the papers.
9. Both parties are professionally represented. Potter Clarkson LLP represents the opponent and Mathys & Squire LLP represents the applicant.
10. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case law of EU courts.

EVIDENCE

11. The opponent's evidence is in the form of a Witness Statement of Mr David Obel Rosenkvist dated 21 December 2020.
12. Mr Rosenkvist has been the "CCCO"³ of the Opponent since January 2019 and he states he has worked "*in the high-end lighting industry for the last 4 years*" and has a "*good understanding of the English language*". His statement is accompanied by Exhibits DOR1-DOR5, which I will briefly summarise.
13. Mr Rosenkvist states that "*Outdoor pole fixtures are simply fixtures (lighting) to be mounted on an outdoor pole*".
14. Exhibit DOR1 contains a series of website screenshots dated 15 December 2020. It includes the results of a Microsoft Bing search for "*pole fixtures*", of which I provide an excerpt below. The results primarily show various images of, and website links to purchase, outdoor post/pole light fixtures, though the bottom of the page does show other types of listing containing "*pole*". For example, curtain poles, fitness poles and poles used for TV aerials.

³ The opponent has not defined the meaning of 'CCCO', so I do not know its exact meaning.

Amazon.co.uk | Post Lights

<https://www.amazon.co.uk/Post-Lights/b?node=3764835031>
Nov 14, 2020 - Amazon.co.uk | Post Lights

- Auraglow IP44 Stainless Steel Outdoor Garden Path Post Light - 5w Warm White LED Light Bulb Inclu...
 - Maxtek® White Colour Solar LED Crackle Ball Garden Post Deck Cap Lights Outdoor Fence Lights (4...
 - Modern Black Outdoor Garden IP44 Rated Bollard Lamp Post Light
 - Modern LED Bollard Post Light Outdoor Garden Ground Post Cool White Stainless Steel ZLC022CW
- See a full list on amazon.co.uk

Post lights | Outdoor lights | B&Q

<https://www.diy.com/departments/lighting/outdoor-lights/post-lights/...>
Post lights illuminate your garden and driveway with our selection of outdoor post lights. Explore small LED post lights or large traditional style lamp posts to keep your home safe and secure. Depending on your space, opt for mains or solar powered and find the perfect solution to brightening up your home.

Fence post support | Fencing | B&Q

<https://www.diy.com/departments/outdoor-garden/fencing/fence-post...>
Protect and maintain your property with our wide selection of fencing materials from B&Q. We have a huge range of fence clips, bolts, brackets and connectors to make installing fences and gates simpler than ever. Sturdy steel supports help reinforce fencing to withstand everything from falling ...



See work results for pole fixtures >

Post & Bollard Lights | Online Lighting

<https://www.onlinelighting.co.uk/outdoor/post-bollard-lights.html>
Post & Bollard Lights Solar post bollards will make your driveways, paths or gardens feel sophisticated and smart whilst ensuring your outdoor spaces are better lit. With many post bollards using a simple plug and play system, installation couldn't be easier and won't require the help of an electrician.

Post Lights | Garden Spike Lights | Wickes.co.uk

<https://www.wickes.co.uk/.../Garden-Post+Spike-Lights/c/1044006>
Nov 16, 2020 - Post Lights | Garden Spike Lights | Wickes.co.uk
Wickes Pol Halo Garden Spike Light with die cast aluminium construction - 50W
You are not logged in to save your list permanently. Until you log in your list will be saved temporarily an...
Wickes Eton Brushed Chrome Post Light - 60W
Weather resistant; IP44 rated - rain proof; Can be used with a PIR motion unit; Light bulb not included. W...
Wickes Bergen Brushed Chrome Short Post Light - Stainless Steel 20W
Weather resistant; IP44 rated - rain proof; Light bulb not included. We recommend you use 1 x ES energ...
See a full list on wickes.co.uk

Amazon.com: outdoor pole light fixtures

<https://www.amazon.com/outdoor-pole-light-fixtures/s?k=outdoor+pole...>
FUJESY 2-Pack Outdoor Post Light Pole Lantern Lighting Fixture with E26 Socket 3000K LED Edison Filament Bulb Included (Corded Electric), Anti Corrosion Plastic Materials, Black, FDS2543B. 4.5 out of 5 stars 119. \$44.99\$44.99 (\$22.50/Item) Get it as soon as Fri, Sep 11. FREE Shipping by Amazon.

Images of Pole Fixtures

<bing.com/images>



New & Second-Hand Curtains, Blinds & Window Fixtures for ...

<https://www.gumtree.com/curtains-blinds-windows/gedling> -

Satin silver finish curtain pole with finials and rings. 1.7m extending to 3.4m (plus 7cm for each finial). See separate advert for a pair of claret curtains with a shimmering 'raw silk' finish, which were used on this pole.

X Sport dance pole in NG5 Gedling for £80.00 for sale | Shpock

https://www.shpock.com/en-gb/i/XkKA90_nbhnuJPzU/x-sport-dance-pole -

X pole. £150.00. Pole dancing/fitness pole. Can be put up without any fixtures/fitings to the ceiling. Comes with all parts and adjustments. Height of pole can be changed. Pole can be put on static or spin with tools included. Very easy to assemble and use.

TV Aerials Gedling Village NG4 | TV Aerial Installation ...

<https://adicomunications.co.uk/tv-aerials-gedling-village> -

The highest point obviously provides the strongest reception. A typical tv aerial installation includes supplying and installing the aerial, cabling, bracket and lashing kit if the aerial needs to be raised higher to gain optimum reception the engineers will install the Freeview aerial onto a 10 or 12-foot pole.

Gedling Colliery CC

<https://gedling.play-cricket.com/website/results/1124039> -

Play-Cricket, Gedling Colliery CC, Willoughby-on-the-Wolds CC. GAME POINTS: 12; BONUS POINTS: 7; PENALTY POINTS: 0; TOTAL POINTS

Curtain Poles, Curtain Tracks & Fixtures - dunelm.com

<https://www.dunelm.com> -

Ad Discover Our Wide Range of Eyelet Curtains at Dunelm. Free Reserve & Collect, Buy Today! Welcome to Dunelm, the UK's leading home furnishing retailers. Shop for bedding ... 230,000 5 Star Reviews - Safe & Secure Payments - Over 40 Years Experience - 170+ Stores Nationwide Types: Eyelet, Pinch Pleat, Thermal, Blackout, Net

Related Searches for pole fixtures

[outdoor lighting poles & fixtures](#)

[outdoor light fixtures pole mount](#)

[exterior light pole fixture](#)

[globe light fixture pole](#)

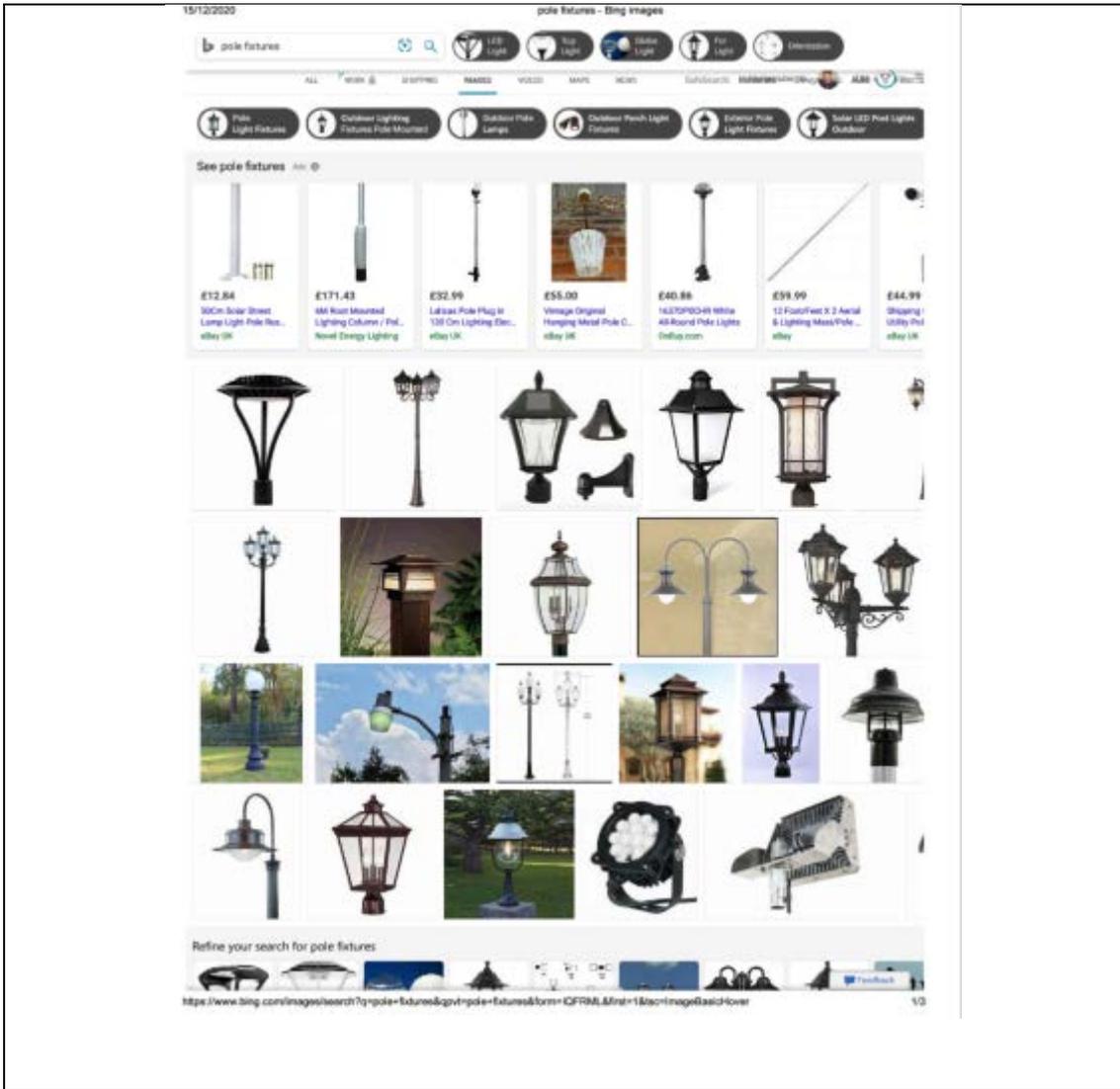
[light pole fixtures exterior led](#)

[led light pole fixture](#)

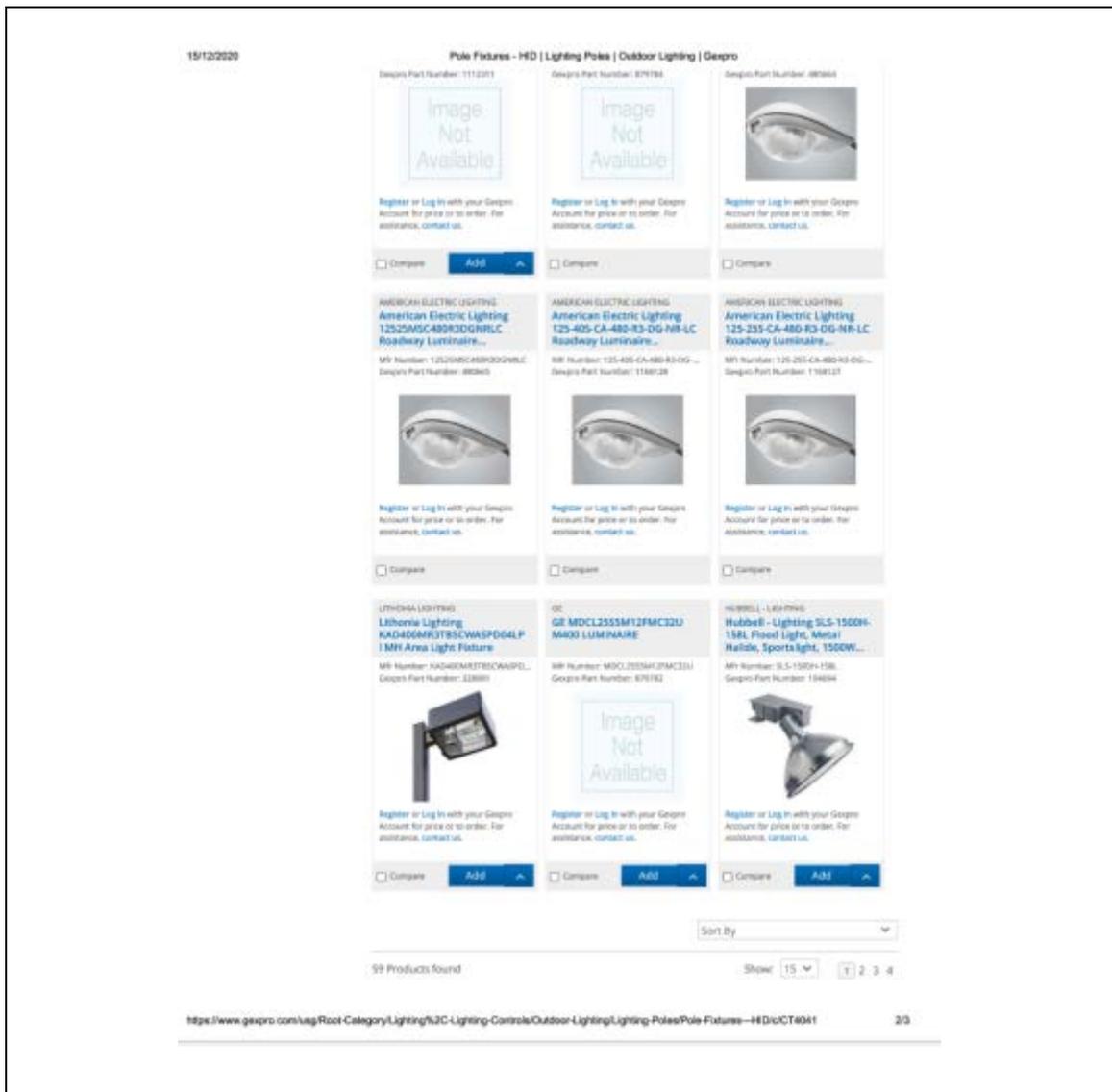
[pole mounted light fixtures](#)

[round pole fixture mounting brackets](#)

[1](#) [2](#) [3](#) [4](#) [5](#) [>](#)



15. Exhibit DOR1 also encloses a screenshot dated 15 December 2020 of a page from the website “Gexpro.com”, which Mr Rosenkvist describes as “an example of a 3rd party website, stocking a large variety of ‘pole fixtures’”. The screenshot lists several goods categorised as “Pole Fixtures – HID” available for comparison. The description of the goods varies – though several include reference to, and images of, “Roadway Lighting”. It is not clear whether Gexpro is an EU based website. I provide an example screenshot below.



16. Exhibit DOR2a includes a selection of the opponent’s brochures that contain the following;

- a. A few pages from a brochure headed “*Icon*”, with the phrase “*see your town in a new light*” beneath, that has a production date of “2013.05”. The brochure includes photographs of street lighting and various information about ‘Icon’ lighting. I provide excerpts of the information relating to its background and concept, differing versions and mounting options below. The brochure also contains information about 2 models: “*LP Icon Mini Basic Post*” and “*LP Icon Mini Opal Post*”. Mr Rosenkvist acknowledges that the brochure is outside the relevant period, but states that it is “*included to provide context on my Company's ICON products*”.

ICON – WHEN THE LIGHT IS IMPORTANT

With its simple, robust design, the Icon street lighting fixture has become a familiar sight in many cityscapes.

Icon is a highly flexible concept, thanks to a variety of optical systems and a versatile choice of light sources. Because it is so versatile, Icon helps to meet the most stringent standards in energy-efficient urban lighting.

The Icon street lighting fixture possesses a unique capacity to blend seamlessly into its surroundings. Designer Mads Odgaard drew inspiration as he roamed around the city after dark.

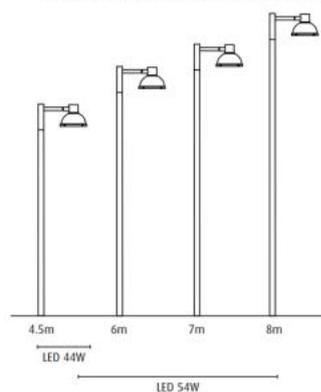
Quite simply, he found natural inspiration from observing the shape of the moon. With its subtle glow, Icon's hemispherical, illuminated surface becomes a decorative and functional feature of city streets, an integral part of the cityscape and an asset to the urban ambiance.

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poulsen**

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Icon is available in two variants, Opal and Basic, the only difference being that the Opal version uses 1% of the light emitted to illuminate its opal hemisphere. This feature makes street lighting more comfortable for residents in multi-storey buildings close to the road. As an alternative, there is also the direct downward lighting variant, Basic, which emits no light at or above an angle of 90°.

MOUNTING



The Icon series is renowned for providing a host of fitting options, such as on a post top, standard pole, arched pole, wall or suspended over a roadway. Such flexibility equips the Icon series to optimise both the lighting and identity of a local area.

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poulsen**
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- b. A few pages from a brochure entitled “*LIGHT*”/”*MBP-pricelist 2014*”. This contains various different lights, including the following containing the word ‘Icon’: “*LP Icon Mini Basic Wall*”, “*LP Icon Mini Opal Wall*”, “*LP Icon Mini Basic Post*” and “*LP Icon Mini Opal Post*”. Each of these products are

described as fixtures where the light is “*directed downwards*”. There is a “*MBP-price*” for a variety of the lights, as shown in the few extracts of the two post lights I provide below. There is also a page showing various poles and accessories, including an “*Icon Mini Polearm*” and “*LP icon Mini Basic/Opal Post*” with a “*MPB-price: 271*”. The meaning of “*MPB-price*” is not clearly defined.

LP Icon Mini Basic Post

Post

Design Mads Odgaard

Concept The light is 100% directed downwards. In the basic version the shade is opaque. Depending on the choice of reflector, the downward lighting characteristics will vary. The reflector types have been designed in different variations to provide either asymmetrical or symmetrical distributions of light.

Finish Aluminium coloured with textured surface, powder coated

Material Shade: Grey, high pressure moulded ASA. Reflector: Metallized, high pressure moulded polycarbonate. Diffuser: LED: Toughened clear glass with silk screen print. TC-FEL/HIE: Toughened clear glass. Housing: Die cast aluminium.

Mounting LED: Fitting/pole stub dimensions: Ø 48mm min. 100mm or wire suspension. Installation cable: Side-mounted and top-mounted version: 9m, 3x1,5mm² (Class I) or 9m, 4x1,5mm² (Class II). Top-mounted: For 3/4" pipe thread min. 34 mm. Wire-mounted version: No cable, but approved for looping max 3x1,5mm² via IP68 connectors. Driver position: in fixture head. Pole and suspension to be ordered separately. HIE/TC-FEL: Fitting/pole stub dimensions: Ø 48mm min. 100mm or wire suspension. Installation cable: Side-mounted version: 9m, 3x1,5mm² (Class I) or 9m, 2x1,5mm² (Class II). Top-mounted version: No cable. Terminal block: 7x3x2,5mm². Top-mounted: For 3/4" pipe thread min. 34 mm. Ballast positioning: in fixture head. Looping: Approved in top-mounted variant, max 3x1,5mm². Pole and suspension to be ordered separately.

Weight Max. 9.5kg

Class Ingress protection IP66. Electric shock protection I w. ground, II w/o ground. IK08.

Info notes LED: Round symmetric version: Dimmable 1-10V/PWM. Bi-symmetrical and asymmetrical version: Dimmable 1-10V. For the asymmetric version the light distribution can be changed by moving the reflector. HIE/TC-FEL: It is possible to rotate the reflector. The fittings can be delivered with a shading louvre on request. The fittings can also be delivered with bottom glass in clear, silk screen or matt glass. Light distribution can be changed by moving the light source: HIE/HIE. To achieve optimum asymmetrical light distributions, tubular light sources (HT) are recommended. For the HIE/HT versions it is also possible to use HSE/HST light sources. All versions are also available for a Ø 60mm stub on request.



Light source	Finish	Class	Light technique	Reflector	Mounting	Lighting control	Order no.	MBP-price
44W LED 4000K 48 lm/W	ALU COL TEXT I	I	ROT SYM	POLISH	TOP-MOUNTED	1-10V/PWM	5747835148	711
44W LED 4000K 48 lm/W	ALU COL TEXT I	I	ROT SYM	POLISH	WIRE TOP-MOUNTED	1-10V/PWM	5747835203	711
44W LED 4000K 48 lm/W	ALU COL TEXT II	II	ROT SYM	POLISH	SIDE-MOUNTED	1-10V/PWM	5747835135	711
44W LED 4000K 48 lm/W	ALU COL TEXT II	II	ROT SYM	POLISH	TOP-MOUNTED	1-10V/PWM	5747835151	711
44W LED 4000K 48 lm/W	ALU COL TEXT II	II	ROT SYM	POLISH	WIRE TOP-MOUNTED	1-10V/PWM	5747835216	711
54W LED 3000K	ALU COL TEXT I	I	ASYM	MAAT	SIDE-MOUNTED	DIM 1-10V	5747837696	812
54W LED 3000K	ALU COL TEXT I	I	ASYM	MAAT	TOP-MOUNTED	DIM 1-10V	5747837719	812
54W LED 3000K	ALU COL TEXT I	I	ASYM	MAAT	WIRE TOP-MOUNTED	DIM 1-10V	5747837735	812
54W LED 3000K	ALU COL TEXT I	I	ASYM	POLISH	SIDE-MOUNTED	DIM 1-10V	5747837630	812
54W LED 3000K	ALU COL TEXT I	I	ASYM	POLISH	TOP-MOUNTED	DIM 1-10V	5747837654	812
54W LED 3000K	ALU COL TEXT I	I	ASYM	POLISH	WIRE TOP-MOUNTED	DIM 1-10V	5747837670	812
54W LED 3000K	ALU COL TEXT I	I	DOUBLE SYMM	MAAT	TOP-MOUNTED	DIM 1-10V	5747837599	812
54W LED 3000K	ALU COL TEXT I	I	DOUBLE SYMM	MAAT	WIRE TOP-MOUNTED	DIM 1-10V	5747837612	812
54W LED 3000K	ALU COL TEXT II	II	ASYM	MAAT	SIDE-MOUNTED	DIM 1-10V	5747837706	812
54W LED 3000K	ALU COL TEXT II	II	ASYM	MAAT	TOP-MOUNTED	DIM 1-10V	5747837722	812
54W LED 3000K	ALU COL TEXT II	II	ASYM	MAAT	WIRE TOP-MOUNTED	DIM 1-10V	5747837748	812
54W LED 3000K	ALU COL TEXT II	II	ASYM	POLISH	SIDE-MOUNTED	DIM 1-10V	5747837641	812
54W LED 3000K	ALU COL TEXT II	II	ASYM	POLISH	TOP-MOUNTED	DIM 1-10V	5747837667	812
54W LED 3000K	ALU COL TEXT II	II	ASYM	POLISH	WIRE TOP-MOUNTED	DIM 1-10V	5747837683	812
54W LED 3000K	ALU COL TEXT II	II	DOUBLE SYMM	MAAT	TOP-MOUNTED	DIM 1-10V	5747837609	812
54W LED 3000K	ALU COL TEXT II	II	DOUBLE SYMM	MAAT	WIRE TOP-MOUNTED	DIM 1-10V	5747837625	812
54W LED 4000K 72 lm/W	ALU COL TEXT I	I	DOUBLE SYMM	MAAT	TOP-MOUNTED	DIM 1-10V	5747838116	812
54W LED 4000K 72 lm/W	ALU COL TEXT I	I	DOUBLE SYMM	MAAT	WIRE TOP-MOUNTED	DIM 1-10V	5747838132	812
54W LED 4000K 72 lm/W	ALU COL TEXT II	II	DOUBLE SYMM	MAAT	TOP-MOUNTED	DIM 1-10V	5747838129	812
54W LED 4000K 72 lm/W	ALU COL TEXT II	II	DOUBLE SYMM	MAAT	WIRE TOP-MOUNTED	DIM 1-10V	5747838145	812
54W LED 4000K 88 lm/W	ALU COL TEXT I	I	ASYM	MAAT	SIDE-MOUNTED	DIM 1-10V	5747838213	812
54W LED 4000K 88 lm/W	ALU COL TEXT I	I	ASYM	MAAT	TOP-MOUNTED	DIM 1-10V	5747838239	812
54W LED 4000K 88 lm/W	ALU COL TEXT I	I	ASYM	MAAT	WIRE TOP-MOUNTED	DIM 1-10V	5747838255	812
54W LED 4000K 88 lm/W	ALU COL TEXT I	I	ASYM	POLISH	SIDE-MOUNTED	DIM 1-10V	5747838158	812
54W LED 4000K 88 lm/W	ALU COL TEXT I	I	ASYM	POLISH	TOP-MOUNTED	DIM 1-10V	5747838174	812
54W LED 4000K 88 lm/W	ALU COL TEXT I	I	ASYM	POLISH	WIRE TOP-MOUNTED	DIM 1-10V	5747838190	812
54W LED 4000K 88 lm/W	ALU COL TEXT II	II	ASYM	MAAT	SIDE-MOUNTED	DIM 1-10V	5747838226	812
54W LED 4000K 88 lm/W	ALU COL TEXT II	II	ASYM	MAAT	TOP-MOUNTED	DIM 1-10V	5747838242	812
54W LED 4000K 88 lm/W	ALU COL TEXT II	II	ASYM	MAAT	WIRE TOP-MOUNTED	DIM 1-10V	5747838258	812
54W LED 4000K 88 lm/W	ALU COL TEXT II	II	ASYM	POLISH	SIDE-MOUNTED	DIM 1-10V	5747838161	812
54W LED 4000K 88 lm/W	ALU COL TEXT II	II	ASYM	POLISH	TOP-MOUNTED	DIM 1-10V	5747838187	812
54W LED 4000K 88 lm/W	ALU COL TEXT II	II	ASYM	POLISH	WIRE TOP-MOUNTED	DIM 1-10V	5747838200	812
Sparespart								
ICON MINI GLASS CLEAR							5747821974	67
ICON MINI GLASS SANDBLASTED							5747815223	94
ICON MINI GLASS W/SILK SCREEN PRINT							5747815207	77
Accessories								
ICON MINI POLE ARM F/ICON Ø76, GALV							5747815100	271
ICON MINI POLE TOP, ALU Ø115							5747815171	392
ICON MINI STEEL POLE 5,6M TOP Ø60, GALV							5747815081	479
ICON MINI POLE ARM CURVED F/ICON Ø60, GALV							5747815113	271

LP Icon Mini Opal Post

Post

Design Mads Odgård

Concept The fixture provides mainly direct downward illumination. In the opal version the shade is lit up from within and creates a soft diffuse upwards light. Depending on the choice of reflector, the downward lighting characteristics will vary. The reflector types have been designed in different variations to provide either asymmetrical or symmetrical distributions of light.

Finish Aluminium coloured with textured surface, powder coated.

Material Shade: High pressure moulded white opal acrylic. Reflector: Metallized, high pressure moulded polycarbonate. Diffuser LED: Toughened clear glass with silk screen print. Housing: Die cast aluminium.

Mounting LED: Fitting/pipe stub dimensions: Ø 48mm min. 100mm or wire suspension. Installation cable: Side-mounted and top-mounted version: 9m, 3x1,5mm² (Class I) or 9m, 4x1,5mm² (Class II). Top-mounted: For 3/4" pipe thread min. 34 mm. Wire-mounted version: No cable, but approved for looping max 3x1,5mm² via IP68 connectors. Driver position: in fixture head. Pole and suspension to be ordered separately. HI/TC-TEL: Fitting/pipe stub dimensions: Ø 48mm min. 100mm or wire suspension. Installation cable: Side-mounted version: 9m, 3x1,5mm² (Class I) or 9m, 2x1,5mm² (Class II). Top-mounted version: No cable. Terminal block: 1x3x2,5mm². Top-mounted: for 3/4" pipe thread min. 34 mm. Ballast positioning: in fixture head. Looping: Approved in top-mounted variant, max 3x1,5mm². Pole and suspension to be ordered separately.

Weight Max. 9.5kg.

Class Ingress protection IP66. Electric shock protection I w. ground, II w/o ground. IK06.



Info notes LED: Round symmetric version: Dimmable 1-10V/PMW. Bi-symmetrical and asymmetrical version: Dimmable 1-10V. For the asymmetric version the light distribution can be changed by moving the reflector. HI/TC-TEL: It is possible to rotate the reflector. The fittings can be delivered with a shading louvre on request. The fittings can also be delivered with bottom glass in clear, silk screen or matt glass. Light distribution can be changed by moving the light source. HI/HIE: To achieve optimum asymmetrical light distribution, tubular light sources (HIT) are recommended. For the HI/HIT versions it is also possible to use HSE/HST light sources. All versions are also available for a Ø60mm stub on request.

Light source	Finish	Class	Light technique	Reflector	Mounting	Lighting control	Order-no.	MBP-price
1x26W/32W/42W TC-TEL HF	ALU COL TEXT	I	SYM-ASYM	POLISH	SIDE-MOUNTED	NONE	5747821767	570
1x26W/32W/42W TC-TEL HF	ALU COL TEXT	I	SYM-ASYM	POLISH	TOP-MOUNTED	NONE	5747821725	570
1x26W/32W/42W TC-TEL HF	ALU COL TEXT	II	SYM-ASYM	POLISH	SIDE-MOUNTED	NONE	5747821770	570
1x26W/32W/42W TC-TEL HF	ALU COL TEXT	II	SYM-ASYM	POLISH	TOP-MOUNTED	NONE	5747821738	570
1x35W HIE/HIT E27 Conv.*	ALU COL TEXT	I	NOT APPLICABLE	NOT APPLICABLE	SIDE-MOUNTED	NONE	5747822520	586
1x35W HIE/HIT E27 Conv.**	ALU COL TEXT	I	NOT APPLICABLE	NOT APPLICABLE	SIDE-MOUNTED	NONE	5747822533	586
1x50/70W HIE/HIT(CRI) E27 Conv	ALU COL TEXT	I	SYM-ASYM	POLISH	TOP-MOUNTED	NONE	5747821482	570
1x50/70W HSE/HST(CRI) E27 Conv	ALU COL TEXT	II	SYM-ASYM	POLISH	TOP-MOUNTED	NONE	5747821495	570
1x50/70W HSE/HST(CRI) E27 Conv**	ALU COL TEXT	I	SYM-ASYM	POLISH	SIDE-MOUNTED	NONE	5747821521	570
54W LED 3000K	ALU COL TEXT	II	ASYM	POLISH	WIRE TOP-MOUNTED	DIM 1-10V	5747837968	812
54W LED 3000K	ALU COL TEXT	II	DOUBLE SYMM	MATT	TOP-MOUNTED	DIM 1-10V	5747837887	812
54W LED 3000K	ALU COL TEXT	II	DOUBLE SYMM	MATT	WIRE TOP-MOUNTED	DIM 1-10V	5747837900	812
54W LED 4000K	ALU COL TEXT	II	ASYM	MATT	WIRE TOP-MOUNTED	DIM 1-10V	5747838491	812
54W LED 4000K 72 lm/W	ALU COL TEXT	I	DOUBLE SYMM	MATT	TOP-MOUNTED	DIM 1-10V	5747838349	812
54W LED 4000K 72 lm/W	ALU COL TEXT	I	DOUBLE SYMM	MATT	WIRE TOP-MOUNTED	DIM 1-10V	5747838365	812
54W LED 4000K 72 lm/W	ALU COL TEXT	II	DOUBLE SYMM	MATT	TOP-MOUNTED	DIM 1-10V	5747838352	812
54W LED 4000K 72 lm/W	ALU COL TEXT	II	DOUBLE SYMM	MATT	WIRE TOP-MOUNTED	DIM 1-10V	5747838378	812
54W LED 4000K 88 lm/W	ALU COL TEXT	I	ASYM	MATT	SIDE-MOUNTED	DIM 1-10V	5747838446	812
54W LED 4000K 88 lm/W	ALU COL TEXT	I	ASYM	MATT	TOP-MOUNTED	DIM 1-10V	5747838462	812
54W LED 4000K 88 lm/W	ALU COL TEXT	I	ASYM	MATT	WIRE TOP-MOUNTED	DIM 1-10V	5747838488	812
54W LED 4000K 88 lm/W	ALU COL TEXT	I	ASYM	POLISH	SIDE-MOUNTED	DIM 1-10V	5747838381	812
54W LED 4000K 88 lm/W	ALU COL TEXT	I	ASYM	POLISH	TOP-MOUNTED	DIM 1-10V	5747838404	812
54W LED 4000K 88 lm/W	ALU COL TEXT	I	ASYM	POLISH	WIRE TOP-MOUNTED	DIM 1-10V	5747838420	812
54W LED 4000K 88 lm/W	ALU COL TEXT	II	ASYM	MATT	SIDE-MOUNTED	DIM 1-10V	5747838459	812
54W LED 4000K 88 lm/W	ALU COL TEXT	II	ASYM	MATT	TOP-MOUNTED	DIM 1-10V	5747838475	812
54W LED 4000K 88 lm/W	ALU COL TEXT	II	ASYM	POLISH	SIDE-MOUNTED	DIM 1-10V	5747838394	812
54W LED 4000K 88 lm/W	ALU COL TEXT	II	ASYM	POLISH	TOP-MOUNTED	DIM 1-10V	5747838417	812
54W LED 4000K 88 lm/W	ALU COL TEXT	II	ASYM	POLISH	WIRE TOP-MOUNTED	DIM 1-10V	5747838433	812
Sparepart								
ICON MINI, GLASS CLEAR							5747821974	67
ICON MINI, GLASS SANDBLASTED							5747815223	94
ICON MINI, GLASS W/SILK-SCREEN PRINT							5747815207	77
Accessories								
ICON MINI, POLE ARM F/ICON Ø76, GALV							5747815100	271
ICON MINI, POLE TOP, ALU Ø115							5747815171	392
ICON MINI, STEEL POLE 5,6M TOP Ø60, GALV							5747815061	479
ICON MINI, POLE ARM CURVED F/ICON Ø60, GALV							5747815113	271
ICON MINI/LP HINT CUT OFF LOUVRE							5747821961	101
ICON, WIRE SUSPENSION KIT							5747815058	154

* This variant can also use 35W HSE/HST as light source.
 ** This variant can also use 50W/70W HSE/HST as light source.

- c. A few pages from a 2016 pricelist entitled “LIGHT” listing many products, two of which contain the word “Icon”: the “LP Icon Mini Opal Wall” and “LP Icon Mini Opal Post”. These products are described as providing “mainly direct downward illumination” and the respective information is very similar to that contained in the excerpts above. The brochure states that “LP Icon Basic & Opal delivered for mounting on Ø108mm galv. steel pole in combination with galv. steel golf arm”. There is also a page showing a diagram of the LP Mini Opal Post with the lighting element and post (as shown below).

LP Icon Mini Opal Post

Description	Pole arm height	Pole arm length	Base height	Stub height	Arm diameter	Base diameter	Pipe stub	Material/Finish	Order-no	MBP-price
Fig. 7	L1, mm	L2, mm	L3, mm	L4, mm	D1, mm	P1, mm	P2, mm			
Curved pole arm	410	410	95	95	60	48	48	Galv. steel	5747815133	277
	410	410	95	95	76	60	48	Galv. steel	5747815100	277
Golfarm Ø60 Fig. 1,2	200	554	200			108	48	Galv. steel	5747826526	120
Description	Height over surface	In-ground depth						Material/Finish	Order-no	MBP-price
Pole Ø108mm Fig. 1,1	4000mm	800mm		100			60	Galv. stål	5747826513	466

* Curved pole arm, fig. 7 used with stepped or conical poles.

Ground anchor

Description	Order-no	MBP-price
GROUND ANCHOR F/Ø108-140MM POLE	5747826746	19

- d. A few pages from a brochure entitled “*light*”, with the “*credits*” referring to a date of “2017.02”. The brochure contains similar information pertaining to the LP Icon Mini Wall and LP Icon Mini Post to that mentioned in paragraph b above. There are also two undated photos of these goods – taken in Nevada and California, respectively. The credits page lists various addresses for “*Louis Poulsen*” including in Copenhagen, London, Finland, Germany, The Netherlands, Switzerland, Norway and Sweden.
- e. A few pages from a brochure entitled “*Pricelist 2019*”. Among various types of lights, there is mention of the “*LP Icon Mini Opal Wall*” and “*LP Icon Mini Opal Post*”, among others. The information pertaining to these products is similar to that aforementioned. I provide an excerpt of the Post version below, which shows that the RRP (excl. VAT) ranges from €1005 to €1146. There is also mention of the curved pole arm for the “*LP Icon Mini Opal Post*” having an RRP (excl. VAT) of €139 or €417 (as also displayed below).

LP Icon Mini Opal Post

Post

Design: Mads Odgård

Concept: The fixture provides mainly direct downward illumination. The shade is lit up from within and creates a soft diffuse upwards light. Depending on the choice of reflector, the downward lighting characteristics will vary. The reflector types have been designed in different variations to provide either asymmetrical or symmetrical distributions of light.

Finish: Aluminium coloured with textured surface, powder coated.

Material: Shade: High pressure moulded white opal acrylic. Reflector: Metallized, high pressure moulded polycarbonate. Diffuser LED: Toughened clear glass with silk screen print. Housing: Die cast aluminium.

Mounting: LED: Fitting/pipe stub dimensions: Ø 48mm min, 100mm or wire suspension. Installation cable: Side-mounted and top-mounted version: 9m, 5x1,5mm² (Class I) or 9m, 4x1,5mm² (Class II). Top-mounted: For 3/4" pipe thread min. 34 mm. Wire-mounted version: No cable, but approved for looping max 3x1,5mm² via IP68 connectors. Driver position: In fixture head. Pole and suspension to be ordered separately.

Weight: Max. 9,5kg.

Class: Ingress protection IP68. Electric shock protection I w. ground, II w/o ground. IK08.

Info notes: Delivered with integrated Surge Protection Device (SPD). Nightdim 8h 50%. For the asymmetric version the light distribution can be changed by moving the reflector. The fittings can be delivered with a shading louvre on request. The fittings can also be delivered with bottom glass in clear, silk screen or matt glass. Light distribution can be changed by moving the light source. All versions are also available for a Ø60mm stub on request. For LED replacement kit please do contact Louis Poulsen. The innovation of the LED technology is constant. The specifications mentioned are based on present technology. Please find updated info on products on our website www.louispoulsen.com.

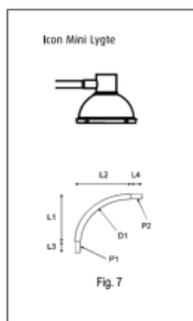


Light source	Finish	Class	Light technique	Reflector	Shield/Diffuser	Mounting	Lighting control	Order-no.	RRP € Excl. VAT 25%	RRP € Incl. VAT
47W LED 4000K 96 lm/W	ALU COL TEXT	B	ASYM	MATT	GLASS CLEAR W/PRINT	WIRE TOP-MOUNTED	NIGHTDIM + CLO DFC	5747812553	1146,-	1387,-
47W LED 4000K 94 lm/W	ALU COL TEXT	I	DOUBLE SYMM	MATT	GLASS CLEAR W/PRINT	SIDE-MOUNTED	DALI + CLO	5747812543	1146,-	1387,-
47W LED 4000K 94 lm/W	ALU COL TEXT	I	DOUBLE SYMM	MATT	GLASS CLEAR W/PRINT	TOP-MOUNTED	DALI + CLO	5747812569	1146,-	1387,-
47W LED 4000K 94 lm/W	ALU COL TEXT	I	DOUBLE SYMM	MATT	GLASS CLEAR W/PRINT	WIRE TOP-MOUNTED	DALI + CLO	5747812585	1146,-	1387,-
47W LED 4000K 94 lm/W	ALU COL TEXT	B	DOUBLE SYMM	MATT	GLASS CLEAR W/PRINT	SIDE-MOUNTED	NIGHTDIM + CLO DFC	5747812556	1146,-	1387,-
47W LED 4000K 94 lm/W	ALU COL TEXT	B	DOUBLE SYMM	MATT	GLASS CLEAR W/PRINT	TOP-MOUNTED	NIGHTDIM + CLO DFC	5747812572	1146,-	1387,-
47W LED 4000K 94 lm/W	ALU COL TEXT	B	DOUBLE SYMM	MATT	GLASS CLEAR W/PRINT	WIRE TOP-MOUNTED	NIGHTDIM + CLO DFC	5747812568	1146,-	1387,-
Spangart										
ICON MINI, GLASS CLEAR								5747821974	103,-	125,-
ICON MINI, GLASS SANDBLASTED								5747816223	144,-	174,-
ICON MINI, GLASS WIGLUK-SCREEN PRINT								5747815267	179,-	144,-
Accessories										
ICON MINI, POLE ARM F100M Ø76, GALV								5747815100	417,-	505,-
ICON MINI, STEEL POLE 5,0M TOP Ø60, GALV								5747815061	858,-	1039,-
ICON MINI, POLE ARM CURVED F100M Ø68, ØLVL								5747815113	139,-	168,-
ICON MINI/PL HINT CUT OFF LOUVER								5747821961	158,-	187,-
ICONM050, WIRE SUSPENSION KIT								5747815058	236,-	286,-

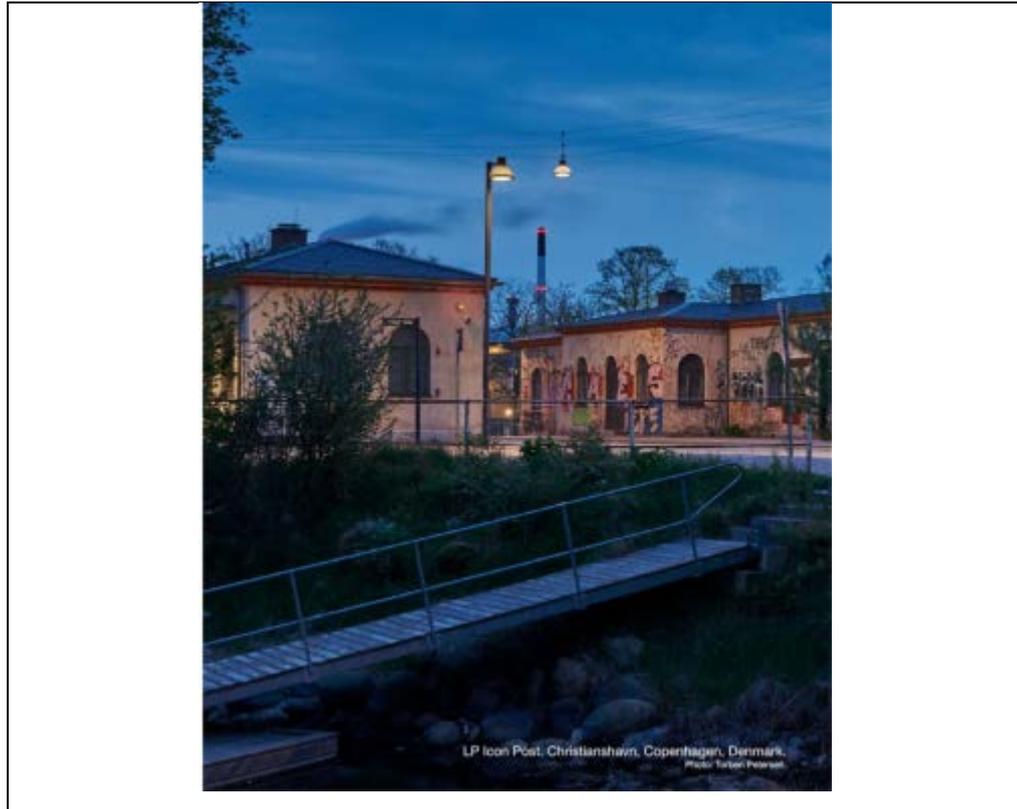
LP Icon Mini Opal Post

Description	Pole arm length L1, mm	Pole arm length L2, mm	Base height L3, mm	Stub height L4, mm	Arm diameter D1, mm	Base diameter P1, mm	Pipe stub P2, mm	Material Finish ¹	Order-no	RRP € Excl. VAT
Fig. 7 Curved pole arm	410	410	95	95	60	48	48	Galv. steel	5747815113	139
	410	410	95	95	76	60	48	Galv. steel	5747815100	417

¹ Curved pole arm, fig. 7 used with stepped or conical poles.



- f. A few pages from a brochure entitled “*Rekommanderet Retail Prisliste 2019*” with information not in English, nor translated, though seemingly containing similar information to that explored above in paragraph e.
- g. A few pages from a brochure entitled “*City- & Landscapes, Outdoor lighting*” with a “*concept/production*” date of 2019. The brochure contains two photographs of the LP Icon Post, one of which is in the EU (Denmark - as pictured below). Within the brochure, there is also information pertaining to the “*LP Icon*” and “*Icon*”, both of which are categorised under a heading “*Post tops – Reflected light*”.



17. Exhibit DOR2b contains further brochures. This includes:

- a. A few pages from a brochure entitled "*Architects of Light*" listing various types of indoor and outdoor lights. There is no obvious date of this brochure, though I note the file contains "2015" in its title. In the index there is reference to "*LP ICON BASIC WALL*" and "*LP ICON OPAL WALL*" under the "*Wall*" categorisation and reference to "*LP ICON MINI BASIC POST*" and "*LP ICON MINI OPAL POST*" under the categorisation of "*Post Tops*". The pages pertaining to these products are not in English, nor have been officially translated. However, the photographs of these products appear to be the same as previously mentioned.
- b. A few pages from an undated brochure entitled "light" that refers to the "*LP ICON MINI WALL*" and "*LP ICON MINI POST*", both of which contain descriptions similar as mentioned previously.
- c. A few pages from a brochure entitled "*LIGHT*" with the words "*MBP-pricelist 2015*" beneath. Among other non-Icon named lighting products, the

brochure mentions the “LP Icon Mini Basic Wall” and “LP Icon Mini Opal Wall” under the “Wall” categorisation and “LP Icon Mini Basic Post” and “LP Icon Mini Opal Post” under the “Post” categorisation. The descriptions of these products are similar to that aforementioned, along with the MPB-price. There is also mention of the “LP Icon Mini Basic & Opal Post” and a diagram of the product, including the post itself (as shown below). The brochure contains an extract of its “General Terms of Sale and Delivery”, with the date December 2014 listed next to the company name and registered office address.

LP Icon Mini Basic & Opal Post

Description	Pole arm height	Pole arm length	Base height	Stub height	Arm diameter	Base diameter	Pipe stub	Material/Finish	Order-no	MPB-price
Fig. 7 Curved pole arm	L1, mm 410	L2, mm 410	L3, mm 95	L4, mm 95	D1, mm 60	P1, mm 48	P2, mm 48	Galv. steel	5747815113	271
Galform 060 Fig. 1,2	200	554	200	95	76	60	48	Galv. steel	5747815100	271
						108	48	Galv. steel	5747826526	140
Description	Height over surface	In-ground depth						Material/Finish	Order-no	MPB-price
Pole Ø100mm Fig. 1,1	4000mm	800mm		100			60	Galv. stal	5747826513	407

* Curved pole arm, fig. 7 used with stepped or conical poles.

- d. A few pages from a brochure entitled “Pricelist 2018” with a table of contents that lists the “LP Icon Mini Opal Wall” and “LP Mini Opal Post”, among other products. The description of these products is similar to that aforementioned. The RRP is noted as being in the range of €1434- €1636 for the Wall light source itself and from €147- €551 for various Icon named spare parts and accessories. The RRP of the Post light ranges from €1434-€1636 and from €147-€1225 for the spare parts and accessories, of which

three of the accessories are noted as types of poles for the Icon mini (an excerpt of which is shown below). The brochure also lists the RRP of the curved pole arm for the LP Icon Mini Opal Post being €596 (also shown below).

Sparspart											
ICON MINI, GLASS CLEAR										5747821974	147
ICON MINI, GLASS SANDBLASTED										5747815223	206
ICON MINI, GLASS WSLK-SCREEN PRINT										5747815207	170
Accessories											
ICON MINI, POLE ARM F1CON Ø76, GALV										5747815100	596
ICON MINI, STEEL POLE 5.6M TOP Ø60, GALV										5747815061	1225
ICON MINI, POLE ARM CURVED F1CON Ø60, GLV										5747815113	596
ICON MINI, LP HINT CUT OFF LOUVRE										5747821961	221
ICONM0500, WIRE SUSPENSION KIT										5747815058	337

LP Icon Mini Opal Post

Description	Pole arm length L1, mm	Pole arm length L2, mm	Base height L3, mm	Stub height L4, mm	Arm diameter D1, mm	Base diameter P1, mm	Pipe stub P2, mm	Material Finish/	Order-no	RRP €
Fig. 7 Curved pole arm	410	410	95	95	60	48	48	Galv. steel	5747815113	596
	410	410	95	95	76	60	48	Galv. steel	5747815100	596

* Curved pole arm, fig. 7 used with stepped or conical poles.

Icon Mini Lygte

Fig. 7

Ground anchor

Description	Order-no	RRP €
GROUND ANCHOR F18108-140MM POLE	5747826746	35

- e. A few pages from a brochure entitled “MBP-Pricelist 2017” containing information pertaining to the “LP Icon Mini Opal Wall” and “LP Icon Mini Opal Post”. These products contain similar descriptions described earlier along with a “MBP-price”. There is also information about different types of arms/poles for the Post:

LP Icon Mini Opal Post										
Description	Pole arm height	Pole arm length	Base height	Stub height	Arm diameter	Base diameter	Pipe stub	Material/Finish	Order-no	MBP-price
Fig. 7	L1, mm	L2, mm	L3, mm	L4, mm	D1, mm	P1, mm	P2, mm			
Curved pole arm	410	410	95	95	60	48	48	Galv. steel	5747815113	295
	410	410	95	95	76	60	48	Galv. steel	5747815100	295
Golfarm Ø60	200	554	200			108	48	Galv. steel	5747826526	126
Fig. 1,2										
Description	Height over surface	In-ground depth						Material/Finish	Order-no	MBP-price
Pole Ø108mm	4000mm	800mm		100			60	Galv. stål	5747826513	495
Fig. 1,1										

* Curved pole arm, fig. 7 used with stepped or conical poles.

18. Exhibit DOR3 contains a few screenshots dated 15 December 2020 from the opponent's website (<https://www.louispoulsen.com/en-gb/>). The screenshots include information and photographs from projects across the EU. This includes a "retrofitting of over 4,000 lamps" in Rudersdal (Denmark), where the LP Icon LED Upgrade Kit and LP Icon Mini Opal Post were used and three places in Copenhagen (Denmark) where an undisclosed amount of the LP Icon Mini Opal Post were used. In one of the Copenhagen locations (Copenhagen Cityscapes), the LP Icon Mini Cable Hanger was also used. I have not been provided with the dates of these projects.

19. Exhibit DOR4 contains further screenshots dated 15 December 2020 from the opponent's website (<https://www.louispoulsen.com/en-gb/>). This time the screenshots pertain to projects outside the EU where the LP Icon Mini Opal Post was used. This includes in various states of the USA and Bergen (Norway). Mr Rosenkvist states that "all the products were manufactured and exported from inside the EU". I have not been provided with the dates of these projects.

20. Exhibit DOR5 contains 2 invoices. They contain the following information:

- a. Billing date of 22 February 2019 addressed to a Medlock Electrical Distributors of Bristol for the sum of £6,922.77 (excluding tax) for 10pc of "ICON OPAL 4K LED-DAPC ASYM MATT SIDE".
- b. Billing date of 31 August 2018 addressed to a Medlock Electrical Distributors of Bristol for the sum of £13,825.54 (excluding tax) for 20pc of "ICON OPAL 4K LED-DAPC ASYM MATT SIDE".

PROOF OF USE

21. As detailed earlier, the earlier mark is subject to the proof of use provisions in section 6A of the Act, which read:

“(1) This section applies where

- i) an application for registration of a trade mark has been published,*
- ii) 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*
- iii) the registration procedure for the earlier trade mark was completed before the start of the relevant period.*

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

- i) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.*
- ii) The use conditions are met if –*
- iii) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or*
- iv) the earlier trade mark has not been so used, but there are proper reasons for non- use.*

(4) For these purposes –

- i) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and*
- ii) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.*

(5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Community.

(5A) In relation to an international trade mark (EC) the reference in subsection (1) to the completion of the registration procedure is to be construed as a reference to the publication by the European Union Intellectual Property Office of the matters referred to in Article 190(2) of the European Union Trade Mark Regulation.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

22. As per section 100 of the Act, the onus is on the opponent, as proprietor of the earlier mark, to show use of the mark. The relevant period for assessing whether there has been genuine use of the opponent's mark is the 5-year period ending with the date of the application in issue. Mr Rosenkvist (on behalf of the opponent) and the applicant both stated that the relevant period is 5 August 2014 to 4 August

2019. However, since the date of the application in issue is 5 August 2019, taking this date back 5 years, the relevant period is 6 August 2014 to 5 August 2019.

23. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J (as he then was) summarised the law relating to genuine use as follows:

“114. ...The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 Ansul BV v Ajax Brandbeveiliging BV [2003] ECR I-2439, La Mer (cited above), Case C 416/04 P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [2006] ECR I 4237, Case C-442/07 Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft ‘Feldmarschall Radetsky’ [2008] ECR I-9223, Case C-495/07 Silberquelle GmbH v Maselli-Strickmode GmbH [2009] ECR I-2759, Case C-149/11 Leno Merken BV v Hagelkruis Beheer BV [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG [EU:C:2013:592], [2014] ETMR, Case C-141/13 P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [EU:C:2014:2089] and Case C-689/15 W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases may be summarised as follows:

- 1. Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: Ansul at [35] and [37].*
- 2. The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: Ansul at [36]; Sunrider at [70]; Verein at [13]; Leno at [29]; Centrotherm at [71]; Reber at [29].*
- 3. The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or*

services from others which have another origin: Ansul at [36]; Sunrider at [70]; Verein at [13]; Silberquelle at [17]; Leno at [29]; Centrotherm at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: Gözze at [43]-[51].

- 4. Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: Ansul at [37]. Internal use by the proprietor does not suffice: Ansul at [37]; Verein at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: Silberquelle at [20]-[21]. But use by a non-profit making association can constitute genuine use: Verein at [16]-[23].*
- 5. The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: Ansul at [37]-[38]; Verein at [14]; Silberquelle at [18]; Centrotherm at [71]; Reber at [29].*
- 6. All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the*

territorial extent of the use: Ansul at [38] and [39]; La Mer at [22]-[23]; Sunrider at [70]-[71], [76]; Leno at [29]-[30], [56]; Centrotherm at [72]-[76]; Reber at [29], [32]-[34].

7. *Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: Ansul at [39]; La Mer at [21], [24] and [25]; Sunrider at [72] and [76]-[77]; Leno at [55].*
8. *It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: Reber at [32].”*

Form of the mark

24. The mark is registered as “ICON”. As this mark is a word mark, its registration protects that word written in any normal font and irrespective of capitalisation⁴. Where the mark is used throughout the evidence either in this exact form or as “Icon”, this is use of the mark as registered, upon which the opponent can rely. I recognise that the mark is often used either before or after additional words like “LP” (at the forefront) and “MINI POST”/“MINI BASIC POST” (at the end). The mark is still used in the same format as registered, albeit it is presented alongside other words. Applying the test laid down in cases such as *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, since “ICON” retains its independent distinctive role and continues to indicate origin alone, the mark in these forms are also use of the mark as registered which the opponent can rely upon.

⁴ See *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, paragraph [16]

Sufficient Use

As the earlier mark is an EUTM, the opponent must show use of that mark in the EU⁵. In *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, the Court of Justice of the European Union ('CJEU') noted that:

“36. It should, however, be observed that..... the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase ‘in the Community’ is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.”

And

“50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as ‘genuine use’, it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark.”

And

“55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered,

⁵ See *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, paragraph [36]

it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A de minimis rule, which would not allow the national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in La Mer Technology, paragraphs 25 and 27, and the judgment in Sunrider v OHIM, paragraphs 72 and 77)."

The court held that:

"Article 15(1) of Regulation No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to 'genuine use in the Community' within the meaning of that provision.

A Community trade mark is put to 'genuine use' within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market share within the European Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the main proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the market concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity."

25. Further, in *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52, Arnold J. reviewed the case law since the *Leno* case and concluded as follows:

"228. Since the decision of the Court of Justice in Leno there have been a number of decisions of OHIM Boards of Appeal, the General Court and national courts with respect to the question of the geographical extent of the use required for genuine use in the Community. It does not seem to me that a clear picture has yet emerged as to how the broad principles laid down in Leno are

to be applied. It is sufficient for present purposes to refer by way of illustration to two cases which I am aware have attracted comment.

229. In Case T-278/13 Now Wireless Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) the General Court upheld at [47] the finding of the Board of Appeal that there had been genuine use of the contested mark in relation to the services in issues in London and the Thames Valley. On that basis, the General Court dismissed the applicant's challenge to the Board of Appeal's conclusion that there had been genuine use of the mark in the Community. At first blush, this appears to be a decision to the effect that use in rather less than the whole of one Member State is sufficient to constitute genuine use in the Community. On closer examination, however, it appears that the applicant's argument was not that use within London and the Thames Valley was not sufficient to constitute genuine use in the Community, but rather that the Board of Appeal was wrong to find that the mark had been used in those areas, and that it should have found that the mark had only been used in parts of London: see [42] and [54]-[58]. This stance may have been due to the fact that the applicant was based in Guildford, and thus a finding which still left open the possibility of conversion of the Community trade mark to a national trade mark may not have sufficed for its purposes.

230. In The Sofa Workshop Ltd v Sofaworks Ltd [2015] EWHC 1773 (IPEC), [2015] ETMR 37 at [25] His Honour Judge Hacon interpreted Leno as establishing that "genuine use in the Community will in general require use in more than one Member State" but "an exception to that general requirement arises where the market for the relevant goods or services is restricted to the territory of a single Member State". On this basis, he went on to hold at [33]-[40] that extensive use of the trade mark in the UK, and one sale in Denmark, was not sufficient to amount to genuine use in the Community. As I understand it, this decision is presently under appeal and it would therefore be inappropriate for me to comment on the merits of the decision. All I will say is that, while I find the thrust of Judge Hacon's analysis of Leno persuasive, I would not myself express the applicable principles in terms of a general rule and an exception to

that general rule. Rather, I would prefer to say that the assessment is a multi-factorial one which includes the geographical extent of the use.”

26. The General Court restated its interpretation of *Leno Merken* in Case T-398/13, *TVR Automotive Ltd v OHIM* (see paragraph [57]). This case concerned national (rather than local) use of what was then known as a Community trade mark (now an EUTM).

27. Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods/services at issue in the EU during the relevant 5 year period. In making the required assessment, I am required to consider all relevant factors, including:

- i) The scale and frequency of the use shown
- ii) The nature of the use shown
- iii) The goods and services for which use has been shown
- iv) The nature of those goods/services and the market(s) for them
- v) The geographical extent of the use shown

28. I must also bear in mind the following principles when examining the evidence before me. First, the case law does not specify particular types of documentation that must be adduced in evidence⁶. Secondly, I am required to consider the evidential picture as a whole⁷. Thirdly, I may make reasonable inferences and deductions from this evidence⁸. Fourthly, I should not resort to the burden of proof unless, having striven to do so, I find it impossible to make a decision on the weight of the evidence⁹. Fifthly, as stated by Mr Daniel Alexander Q.C. as the Appointed Person in *Awareness Limited v Plymouth City Council*, Case BL O/236/13:

⁶ See *PLYMOUTH LIFE CENTRE*, BL O/236/13, paragraph [22]

⁷ See *New Yorker SHK Jeans GmbH & Co KG v OHIM*, Case T-415/09, paragraph [53]

⁸ See *SIMPLEX Trade Mark*, BL O/329/20, paragraph [36]

⁹ See *Cooke v Watermist* [2014] EWHC 125 (Pats), paragraphs [35-37]

“[22] ... The burden lies on the registered proprietor to prove use ... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

...

“[29] ... I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as “tuition services”, is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to “tuition services” even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted.”

29. I additionally find it useful to highlight the decision of Professor Ruth Annand, sitting as the Appointed Person, in *Memory Opticians Ltd’s Application* BL O/528/15. Here she upheld the hearing officer’s decision to revoke the mark STRADA on the grounds that the level of use within the requisite 5 year period was insufficient to create or maintain market under the mark and it was not, therefore, genuine use.

In that case, there had been sales of goods bearing the mark, but these were very low in volume (circa 40 pairs of spectacles per year) and all the sales were from local branches of an optician. There was no advertising of goods under the mark and the evidence indicated that they were only displayed in store on occasions.

30. More recently, Daniel Alexander QC, sitting as the Appointed Person in *James Grant Group v Stephen Murphy* BL O/543/20, stated that “*in a case where there have been almost no sales over a 5 year period, a proprietor may have to do more than point to that tiny number alone to show that, despite the small number, real efforts have been made to develop the market*”.

31. At the outset, I note that not all of the opponent’s evidence pertains to the relevant period and some evidence is undated. Bearing in mind all of the evidence, I make the following points:

- a. It appears the opponent has a series of lighting named “*Icon*”, with various fitting options, including post tops, poles and on the wall. Where the evidence refers to wall versions of the ICON lights, as these do not appear to involve a pole fixture, I do not find the evidence supportive of use of the earlier mark on the registered goods.
- b. Only use in relation to “*outdoor pole fixtures*” is relevant. Whilst the applicant has referred to this term as being unclear, from the evidence provided and remit of Class 11, I am prepared to accept the opponent’s submission that “*the Opponent’s goods refer to lighting fixtures which are affixed to outdoor poles*”.
- c. The opponent’s 2013 and 2014 brochures list two versions of post light fixtures – the “*LP Icon Mini Basic Post*” and the “*LP Icon Mini Opal Post*”. Later brochures refer to both products¹⁰ or interchangeably refer to the either the “*LP Icon Mini Post*”¹¹ or the “*LP Icon Mini Opal Post*”¹² whilst

¹⁰ See the 2015, 2017 and 2018 pricelists

¹¹ See the brochure entitled “*light*” with a credits date of 2017.02

¹² For instance, the 2016 pricelist entitled “*LIGHT*”; the 2019 Pricelist

one 2019 brochure refers to the post versions under a slightly different name (as “*LP Icon*” or “*Icon*”). Besides the lighting fixture itself, the brochures advertise pole arm accessories for the post fixtures named, for instance “*ICON MINI, POLE ARM...*” or merely “*curved pole arm*”/“*golfarm*”. There are a few diagrams showing one of the ICON post lighting fixtures requiring assembly on a pole.

- d. Whilst the opponent’s brochures are useful to provide information on the ICON branded products, I do not know where, when or to whom the brochures were disseminated. Although a few of the brochures indicate an RRP in euros, most of the prices are in “*MRP*” (to which I have no further information).
- e. I do not have any total EU revenue figures. The only information I have confirming there have been EU sales in the 5 year relevant period comes from the 2 invoices addressed to a Bristol address that amount to a total of £20,748.31 (ex tax). They are for 30 pieces of the “*ICON OPAL 4K LED-DAPC ASYM MATT SIDE*”¹³. It is not clear what product this relates to.
- f. The photographs of, and information pertaining to, EU projects using ICON lighting fixtures in a few EU cities do not confirm whether this was within the relevant period nor how the fixtures were sold/the mark used.
- g. I have no other evidence of advertising or marketing expenditure, nor examples of attendance at trade fairs or a social media presence etc promoting ICON branded products.

32. In their submissions, the applicant contends that the opponent has not discharged the burden of showing use of the earlier mark. They argue that the goods are “*sold principally under the LP Brand*”, rather than the index of the brochures listing the goods under “*I for ICON*”. They highlight that some of the evidence is undated and that there is a lack of information confirming the projects undertaken and

¹³ See Exhibit DOR5

whether the products were manufactured and exported under the ICON mark. They also submit that the sales of ICON branded goods are not properly supported by evidence, for instance “...*there is no sales breakdown provided, no evidence of corresponding orders and only three invoices all to the same customer...*”.¹⁴

33. The opponent has not provided any figures for the size of the EU market for the relevant goods, though I would believe it to be reasonably large. Considering the evidence as a whole, I am not satisfied that the opponent has demonstrated genuine use of the earlier mark within the EU for “*outdoor pole fixtures*”. The evidence has too many shortcomings and is overly reliant on product descriptions in brochures of which I have little information about. Whilst I have some evidence that the opponent has a lighting range named ICON, I have sparse evidence showing that outdoor pole fixtures are offered under the mark ICON in the EU. I do not know where, how or when the goods have been sold nor do I have any other evidence of marketing or promotion. Whilst Mr Rosenkvist attests that “*sales of ICON branded goods between 2017 and 2019 have equated to over £20.000 in the UK and more than €4.750.000 in the whole of the EU*”, I do not know what goods these figures relate to. I only have evidence of 2 invoices to 1 Bristol-based party that 30 pieces of ICON branded goods have been sold in the UK, though it is not clear whether the goods were outdoor pole fixtures. With this in mind, I highlight particularly the case of *Plymouth City Council* mentioned earlier, in that I am entitled “*to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive*”¹⁵. Overall, I find that the opponent has not demonstrated genuine use of the ICON mark.

34. In my view the evidence provided falls far short of the sufficiency and solidity needed to meet the standards of proof required. Accordingly, the earlier mark may not be relied on to support the opponent’s claim under section 5(2)(b) of the Act. As this was the only earlier mark and ground of opposition relied upon, the opposition fails.

¹⁴ For the avoidance of doubt, I note that the opponent in fact filed two invoices consisting of three pages.

¹⁵ See paragraph [22]

CONCLUSION

35. The opposition fails in its entirety. Subject to any successful appeal against my decision, the application can proceed to registration for the full range of goods applied for.

COSTS

36. The applicant has been successful and is entitled to a contribution towards its costs. Awards of costs in proceedings commenced after 1 July 2016 are governed by Annex A of TPN 2 of 2016. Using that TPN as a guide, I award the applicant the sum of £800 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a statement and considering the other side's statement: £200

Considering and commenting on the other side's evidence: £600

37. I therefore order Louis Poulsen A/S to pay Saldon Products Limited the sum of £800. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 24th day of 2021

**B Wheeler-Fowler
For the Registrar**