

O/903/21

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003501409  
BY HILLEL-LEMUEL INVENTION (HONG KONG) COMPANY LIMITED  
TO REGISTER THE TRADE MARKS:



AND



(SERIES OF 2)

IN CLASSES 9 AND 12

AND

IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 421647 BY  
ASTON MARTIN LAGONDA LIMITED

## BACKGROUND AND PLEADINGS

1. On 17 June 2020, Hillel-Lemuel Invention (Hong Kong) Company Limited (“the applicant”) applied to register the series of 2 trade marks shown on the cover page of this decision in the UK. The application was published for opposition purposes on 3 July 2020 and registration is sought for the following goods:

Class 9      Mobile phone battery chargers; Battery charging devices for motor vehicles; USB chargers; Battery chargers for tablet computers; Battery chargers; Smartphone battery chargers; Battery chargers for laptop computers; Battery chargers for mobile phones; Wireless battery chargers.

Class 12     Photography drones; Camera drones; Drones; Drones with aerial photography feature; Civilian drones; Camera drones, other than toys.

2. On 2 October 2020, Aston Martin Lagonda Limited (“the opponent”) opposed the application based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). However, in its written submissions in lieu, the opponent elected to withdraw its section 5(3) ground. Consequently, the opposition proceeds on the basis of section 5(2)(b) only. The opponent relies upon the following trade mark:<sup>1</sup>

ASTON

EUTM no. 14543979<sup>2</sup>

Filing date 10 September 2015; registration date 20 January 2016

Relying upon some goods for which the mark is registered, namely:<sup>3</sup>

Class 12     Land, water and air vehicles; apparatus for locomotion by land, air or water; air vehicles; seaplanes; boats; locomotives; rolling

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<sup>1</sup> The opponent also originally relied upon EUTM no. 8367815 for the trade mark ASTON MARTIN. However, it elected to no longer rely upon that trade mark following its filing of written submissions in lieu.

<sup>2</sup> Although the UK has left the 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 2/2020 for further information.

<sup>3</sup> Although the opponent originally relied upon A broader specification, the scope of the earlier mark has since been reduced.

stock for railways; cars; motor cars; engines; boats, yachts; parts and fittings for the aforesaid goods; motor land vehicles, namely, automobiles; and structural parts therefore [...]; directional signals; horns; rear view and side view mirrors; mud flaps; roof-racks; ski-racks, shock absorbers for automobiles; convertors for land vehicles; steering wheels; steering linkages; suspension systems; windshield sunshades; windshield wipers; arm rests; luggage racks for motor cars; ski carriers for motor cars; storage compartments specifically fitted for use in automobiles; anti-theft alarms; alarm systems for cars; alarms for vehicles; air bags for vehicles; seat cushions; seat covers, vehicle windows; luggage carriers; airbags for vehicles; safety seats for children.

3. The opponent claims that there is a likelihood of confusion because the marks are similar and the goods are identical or similar.

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

5. The applicant is represented by Accolade IP Limited and the opponent is represented by J A Kemp LLP. Only the opponent filed evidence. Neither party requested a hearing and only the opponent filed written submissions in lieu. This decision is taken following the careful perusal of the papers.

## **EVIDENCE AND SUBMISSIONS**

6. The opponent filed evidence in the form of the witness statement of Aaron Brown Newell dated 1 August 2021, accompanied by 44 exhibits. Mr Newell is a solicitor acting on behalf of the opponent in these proceedings.

7. As noted above, the opponent filed written submissions in lieu dated 9 November 2021.

8. Whilst I do not propose to summarise the evidence and submissions here, I have taken them into account in reaching my decision and will refer to them below where necessary.

## **DECISION**

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

“5(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.”

10. Section 5A of the Act reads as follows:

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

11. By virtue of its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. The earlier mark had not completed its registration process more than 5 years before the filing date of the application in issue and is not, therefore, subject to proof of use pursuant to section 6A of the Act. Consequently, the opponent can rely upon those goods for which the mark is registered, as listed above.

12. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

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

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

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

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

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

## Comparison of goods

14. The competing goods are as follows:

<b>Opponent's goods</b>	<b>Applicant's goods</b>
<u>Class 12</u> Land, water and air vehicles; apparatus for locomotion by land, air or water; air	<u>Class 9</u> Mobile phone battery chargers; Battery charging devices for motor vehicles;

<p>vehicles; seaplanes; boats; locomotives; rolling stock for railways; cars; motor cars; engines; boats, yachts; parts and fittings for the aforesaid goods; motor land vehicles, namely, automobiles; and structural parts therefore [...]; directional signals; horns; rear view and side view mirrors; mud flaps; roof-racks; ski-racks, shock absorbers for automobiles; convertors for land vehicles; steering wheels; steering linkages; suspension systems; windshield sunshades; windshield wipers; arm rests; luggage racks for motor cars; ski carriers for motor cars; storage compartments specifically fitted for use in automobiles; anti-theft alarms; alarm systems for cars; alarms for vehicles; air bags for vehicles; seat cushions; seat covers, vehicle windows; luggage carriers; airbags for vehicles; safety seats for children.</p>	<p>USB chargers; Battery chargers for tablet computers; Battery chargers; Smartphone battery chargers; Battery chargers for laptop computers; Battery chargers for mobile phones; Wireless battery chargers.</p> <p><u>Class 12</u></p> <p>Photography drones; Camera drones; Drones; Drones with aerial photography feature; Civilian drones; Camera drones, other than toys.</p>
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15. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

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

16. In the *Treat* case, [1996] R.P.C. 281, Jacob J. (as he then was) identified the following factors for assessing similarity:

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

### Class 9

*Mobile phone battery chargers; Battery chargers for tablet computers; Smartphone battery chargers; Battery chargers for laptop computers; Battery chargers for mobile phones.*

17. In relation to these goods, the opponent submits:

“It should be noted that *Mobile phone battery chargers; battery chargers for tablet computers; smartphone battery chargers; battery chargers for laptop computers; battery chargers for mobile phones* all have a place in modern vehicles, which often require computer connectivity in order for all features to function. Often, the driver must connect his or her mobile phone or tablet to the



vehicle wirelessly. The vehicle then transmits data to the computer, and the computer often provides internet connectivity for the vehicle, enhancing certain features including entertainment systems (by accessing programs such as Spotify that transmit music through internet connection) or navigation and weather and road condition reports.

As part of this, the computing products (phone, tablet, etc.) must often be charged whilst being in use within the vehicle. Most modern vehicles contain a number of different charging ports for this purpose [...]

Consequently, vehicle manufacturers have begun manufacturing phone, tablet and other computer charging devices, including for use in vehicles, in order to ensure that the driver has every opportunity to avail of the vehicle's computer-enabled features.

These devices can take the form of simply USB-charging cables, but can also be more sophisticated, such as battery packs and wireless charging devices, both as stand-alone products and (as indicated above) installed into the console or dashboard of the vehicle.”

18. The purpose of the applicant's goods clearly differs from the opponent's, with the applicant's being to charge electronic devices and the opponent's being transport/travel or, in the case of parts and fittings, the continued function of transport/travel goods. The nature will also clearly differ, as will the method of use. I accept that there will be overlap in users at a very general level, as both could be used by members of the general public. I accept that modern cars may have a USB (or similar) connectivity port into which a user could choose to plug a mobile phone for charging purposes. However, I do not consider that that is the same as offering for sale charging devices. Even businesses that sell those parts of vehicles for replacement purposes could not be said to be supplying an actual charging device, they are merely supplying a USB port which can then be used as a charger when subsequently connected with a vehicle battery. I am not convinced that there is any meaningful overlap in trade channels, nor any competition. I accept that one could be used in conjunction with the other i.e. a mobile phone charger could be plugged into a

car. However, they cannot be said to be important or indispensable to each other, such that the average consumer would conclude that they originate from the same or economically linked undertakings.<sup>4</sup> Taking the example given by the opponent of a mobile phone which enables the driver to use car features such as entertainment or handsfree telephone, I do not consider that such goods could be said to be complementary within the meaning of the case law; the mere fact that a user may choose to use them together is not the same thing. Taking all of this into account, I consider the goods to be dissimilar. If I am wrong in this finding, then any similarity will be at a low level.

19. In reaching this conclusion, I have borne in mind that the opponent has provided evidence that it sells mobile phone battery chargers.<sup>5</sup> However, the opponent's evidence also indicates that it sells goods such as clothing and toys. The fact that one business may sell multiple types of goods is not sufficient, in my view, to justify a finding that the average consumer would expect such goods to share common trade channels or that those goods should be considered similar. Consequently, I do not consider that this evidence assists the opponent.

*Battery charging devices for motor vehicles; Battery chargers; Wireless battery chargers.*

20. In its written submissions, the opponent states that these goods:

“[...] all do or can be car parts, fittings and/or accessories and are either similar to or complementary with the Opponent's various vehicle products and/or the Opponent's registered *parts and fittings* for vehicles. They are both for use with car batteries, but also for use in cars, and increasingly feature in modern cars. [...] “Wireless battery chargers” can charge without wires, or are “portable”, ie they do not need to connect to a power source. Clearly “batter chargers” [sic] is broad and encompasses all types of battery charging products for all

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<sup>4</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06

<sup>5</sup> Exhibits 28 and 29

applications. All clearly include both car battery chargers and devices used in cars to charge the batteries of other products.”

21. I accept that these terms are broad enough to cover charges for car batteries. Consequently, I consider that there is likely to be overlap in purpose, nature, method of use, user and trade channels with “land [...] vehicles [...] parts and fittings for the aforesaid goods” in the opponent’s specification. Clearly, there will be an overlap in trade channels. Taking all of this into account, I consider there to be a high degree of similarity between the goods.

*USB chargers.*

22. The opponent makes similar arguments in respect of these goods as set out above. However, there is no evidence before me that car battery chargers would take the form of USB connection chargers. Consequently, I consider it more likely that these goods would fall within the category described in paragraph 18 above. As a result, I consider the goods to be dissimilar or, if I am wrong in that finding, similar to only a low degree.

Class 12

*Photography drones; Camera drones; Drones; Drones with aerial photography feature; Civilian drones; Camera drones, other than toys.*

23. In my view, these goods all fall within the broader category of “apparatus for locomotion by [...] air [...]” in the opponent’s specification. Consequently, these goods are identical on the principle outlined in *Meric*.

### **The average consumer and the nature of the purchasing act**

24. As the case law above indicates, it is necessary for me to determine who the average consumer is for the parties’ respective goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The*

*Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

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

25. The average consumer for the goods is a member of the general public. The frequency and cost of the goods is likely to vary. For example, the opponent’s vehicles are likely to be infrequent and costly purchases, whereas the applicant’s charging devices are likely to be of lower cost and purchased more frequently (albeit they will not be every day items). However, even where the cost is relatively low and the purchase is frequent, various factors will still be taken into consideration, such as compatibility with devices and safety compliance. Consequently, I consider that at least a medium degree of attention will be paid during the purchasing process, albeit a higher degree of attention could be paid for some of the goods.

26. The goods are likely to be purchased following self-selection from retail outlets, websites or following perusal of advertisements. Consequently, visual considerations are likely to dominate the purchasing process. However, I do not discount that there will also be an aural component to the purchase as advice may be sought from sales assistants.

### **Comparison of trade marks**


27. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant

components. The Court of Justice of the European Union (“CJEU”) stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“... it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

28. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account their distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

29. The respective trade marks are shown below:

Opponent’s trade mark	Applicant’s trade marks
ASTON	 <p>The image shows two versions of the AstonPower trade mark. The top version is in cyan, featuring a stylized 'AP' logo with vertical lines and the word 'AstonPower' in a sans-serif font below it. Below this is the word 'AND' in a smaller font, followed by a black version of the same 'AP' logo and 'AstonPower' text.</p>

30. The opponent’s mark consists of the word ASTON. There are no other elements to contribute to the overall impression, which lies in the word itself. The applicant’s

trade marks consist of the words ASTON POWER in a slightly stylised font. These words appear beneath the letters AP, with the P presented in a striped font. Given their size, I consider the letters AP play a slightly greater role in the overall impression, with the words ASTON POWER playing a slightly lesser role. For the avoidance of doubt, I do not consider that the use of colour in one of the applicant's marks has any impact on my decision and so the same comparison will apply to both.

31. Visually, the marks coincide in the presence of the word ASTON which appears identically in both parties' marks. The addition of the word POWER and the letters AP in the applicant's marks are absent from the opponent's mark and act as a point of visual difference. Taking all of this into account, I consider there to be between a low and medium degree of visual similarity between the marks.

32. Aurally, the opponent's mark is likely to be pronounced AST-ON. The word ASTON will be pronounced identically in the applicant's mark, but the letters AP and the word POWER will act as points of aural difference. Taking all of this into account, I consider there to be between a low and medium degree of aural similarity between the marks.

33. Conceptually, the word ASTON is likely to be viewed as a name. The word POWER in the applicant's marks will be given its ordinary English meaning, but is unlikely to be a point of distinctive conceptual difference given the nature of the goods. The letters AP, whilst on their own not conveying any meaning, are likely to be viewed as simply representing the first letter of the words that appear beneath them. Taking all of this into account, I consider there to be at least a medium degree of conceptual similarity between the marks.

### **Distinctive character of the earlier mark**

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the

goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

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

35. Registered trade marks possess varying degrees of inherent distinctive character ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

36. I will begin by assessing the inherent distinctiveness of the earlier mark. The word ASTON is likely to be recognised as a name. I do not consider it likely to be viewed as a particularly common name in the UK. Consequently, I consider the earlier mark to be inherently distinctive to a medium degree.

37. I have considered whether the distinctiveness of the earlier mark has been enhanced through use. In my view, the evidence is not sufficient to prove that it has. Mr Newall gives evidence that the opponent’s revenue in 2018 was £1,100,000,000 and in 2019 was £997,000,000. However, no breakdown is given as to what proportion of these figures relate to the goods relied upon or what proportion relate to the UK market. The opponent has not provided any evidence as to quantity of sales of the

goods relied upon in the UK market to enable me to assess the intensity or geographical spread of the use. No advertising and promotional expenditure information has been provided. I note that the opponent has won a number of awards:<sup>6</sup>

- a) Game Changers award 2017 in *Autocar*;
- b) Best Sports Car of the Motor Awards 2018; and
- c) Best Designed Car of the Motor Awards 2018.

38. The opponent has also received public attention as a result of its presence in various James Bond films. However, the awards and the majority of publicity relate to the mark ASTON MARTIN, not ASTON alone. There are examples of third parties using the word ASTON to refer to the opponent, but the evidence of the opponent's use of that mark is very limited.<sup>7</sup> Taking all of the evidence into account, I am not satisfied that the opponent has demonstrated that the earlier mark has acquired enhanced distinctive character through use.

### **Likelihood of confusion**

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

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<sup>6</sup> Exhibit 39

<sup>7</sup> See, for example, exhibit 11



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

40. I have found the marks to be visually and aurally similar to between a low and medium degree and conceptually similar to at least a medium degree. I have found the earlier mark to be inherently distinctive to a medium degree. I have found the average consumer to be a member of the general public who will pay at least a medium degree of attention during the purchasing process, although I recognise that for some of the goods the level of attention will be higher. I consider that the purchasing process will be predominantly visual, although I do not discount an aural component. I have found the goods to vary from being dissimilar to similar to at least a medium degree.

41. In my view, the visual and aural differences between the marks will be sufficient to prevent them from being mistakenly recalled or misremembered as each other. Consequently, I do not consider there to be a likelihood of direct confusion. However, the common use of the word ASTON, which is a relatively uncommon name, is likely to lead the average consumer to conclude that they originate from the same or economically linked undertakings when used on goods that are similar to at least a medium degree. For example, the applicant's mark may be viewed as a sub-brand indicating a category of goods which are particularly powerful. For those goods, there will be a likelihood of indirect confusion. Where the goods are dissimilar there can be no likelihood of confusion and where they are similar to only a low degree, I consider that the distance between the goods will be sufficient to offset the similarity between the marks.

## **CONCLUSION**

42. The opposition succeeds in relation to the following goods in respect of which the application is refused:

Class 9      Battery charging devices for motor vehicles; Battery chargers; Wireless battery chargers.

Class 12      Photography drones; Camera drones; Drones; Drones with aerial photography feature; Civilian drones; Camera drones, other than toys.

43. The opposition is unsuccessful in relation to the following goods for which the application may proceed to registration:

Class 9      Mobile phone battery chargers; USB chargers; Battery chargers for tablet computers; Smartphone battery chargers; Battery chargers for laptop computers; Battery chargers for mobile phones.

## **COSTS**

44. I note that, in its written submissions in lieu, the opponent has asked for an award of costs in its favour and asked for an opportunity to be heard on costs. However, as both parties have been partially successful, I am minded not to make an award of costs in this case. Nonetheless, as the opponent has requested the opportunity to be heard on costs and the opponent has not requested an oral hearing of this matter, I direct that the parties may file written submission in relation to costs within 14 days of the date of this decision. I will then issue a supplementary costs decision.

## **APPEAL PERIOD**

45. The appeal period will be set from the date of the supplementary costs decision.

**Dated this 14<sup>th</sup> day of December 2021**

**S WILSON**

**For the Registrar**