

O/1127/22

**TRADE MARKS ACT 1994**  
**CONSOLIDATED PROCEEDINGS**

**IN THE MATTER OF APPLICATION NOS. 3593116, 3593126 & 3628266**  
**BY HONGKONG SUN RISE TRADING LIMITED**  
**TO REGISTER THE FOLLOWING TRADE MARKS:**

**POWERWORKS**

**POWERWORKS**

**POWERWORKS**

**IN CLASSES 7, 9, 11 & 12**

**AND**

**IN THE MATTER OF OPPOSITIONS THERETO**  
**UNDER NOS. 425824, 425825 & 426991**  
**BY POSITEC GROUP LIMITED**

## **Background and pleadings**

1. On 9 February 2021, HongKong Sun Rise Trading Limited (“the applicant”) applied to register the trade marks “POWERWORKS **POWERWORKS** 3593126 (“the second contested mark”) respectively. Both marks were accepted and published in the Trade Marks Journal on 30 April 2021. Under both marks, registration is sought for goods in classes 7, 9, 11 and 12 which are outlined in Annex A of this decision.

2. On 18 April 2021,<sup>1</sup> the applicant applied to register the trade mark “POWERWORKS” in the UK under number 3628266 (“the third contested mark”). The third contested mark was published on 18 June 2021 with registration being sought for goods in class 7 as outlined in Annex B of this decision.

3. Positec Group Limited (“the opponent”) opposes the first two applications under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) on the basis of the following trade mark:

### **WORX**

UK Trade Mark No: UK00003579178

Filing date: 14 January 2021<sup>2</sup>

(“the first earlier mark”)

4. In the third opposition, the opponent opposes the third contested mark under section 5(2)(b) of the Act on the basis of the following trade mark:

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<sup>1</sup> This application, effectively a re-filing of pending European Union trade mark number 015521263, was filed pursuant to Article 59 of the Withdrawal Agreement between the United Kingdom and the European Union (hereafter referred to as “Article 59”). The EU filing date was 8 June 2016 and so, in accordance with Article 59, the contested application is deemed to have the same filing date as the corresponding pending EU application.

<sup>2</sup> I note that this mark is currently also subject to two oppositions filed by a separate third and fourth party.

## **WORX**

UK Trade Mark No: UK00914228209<sup>3</sup>

Filing date: 8 June 2015

Registration date: 15 October 2017

("the second earlier mark")

5. The goods and services relied upon by the opponent are outlined in Annex A and Annex B of this decision.
6. Given the respective filing dates, the opponent's marks are earlier marks in accordance with section 6 of the Act.
7. In its notices of opposition, the opponent contends that the parties' respective goods are identical or similar and that the competing trade marks are similar, giving rise to a likelihood of confusion.
8. The applicant filed counterstatements denying the claims made by the opponent.
9. On 29 March 2022, the proceedings were consolidated pursuant to rule 62(1)(g) of the Trade Marks Rules 2008 ("the Rules").
10. Both parties are professionally represented in these proceedings, the opponent by Boulton Wade Tennant LLP and the applicant by Appleyard Lees IP LLP. Only the opponent filed evidence in these proceedings. No hearing was requested but both parties did file written submissions in lieu. This decision is taken following a careful perusal of the papers.
11. 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

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<sup>3</sup> The opponent's mark was applied for on 8 June 2015 at the European Union Intellectual Property Office (EUIPO) and registered on 15 October 2017. Pursuant to the Withdrawal Agreement, the mark was automatically converted to comparable UK trade mark 914228209.

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**

12. The opponent filed evidence in the form of a witness statement in the name of Daniela Paull dated 30 May 2022 and one accompanying exhibit. Ms Paull is a Trade Mark Attorney and Senior Associate of the firm Boulton Wade Tennant LLP and is the opponent's representative in these proceedings.

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

## **Preliminary Issues**

14. In their notices of opposition, the opponent also initially relied upon its earlier mark UK00904224127 under section 5(2)(b) of the Act and made claims under section 5(3) in relation to opposition number 426991.

15. The opponent's earlier UK00904224127 mark had completed its registration process more than 5 years before the filing date of the application in issue, so the applicant requested the opponent to provide evidence of use of this earlier mark in line with Section 6A of the Act.

16. Although the opponent did file evidence, it did not provide evidence of use for its earlier UK00904224127 mark, nor did it file evidence to support its claims made under section 5(3). Consequently, the registry notified the parties of its preliminary view to strike out the opponent's earlier UK00904224127 mark under section 5(2)(b) and the opponent's claims under section 5(3).

17. Neither party requested a hearing, resulting in the preliminary view being confirmed. As such, the earlier marks outlined in paragraphs 3 and 4 of this decision forms the basis of these oppositions.

## **Proof of Use**

18. As the opponent's remaining marks had not completed their registration process more than 5 years before the filing date of the application in issue, they are not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely upon all of the goods and services it has identified.

## **Decision**

19. Section 5(2)(b) of the Act is as follows:

“5(2) A trade mark shall not be registered if because-

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

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

The principles:

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

- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components; (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;
- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

### **Comparison of goods and services**

21. When making the comparison, all relevant factors relating to the goods in the specification should be taken into account. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

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

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

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services;
- c) The respective trade channels through which the goods or services reach the market;
- d) 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;

e) 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.

23. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“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 fur 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”.

24. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. Benelux- Merkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

25. The goods and services to be compared can be found in the annexes of this decision.

### The first and second contested marks

#### *Class 7*



26. The terms *Air compressors; Chain saws, namely electric chain saws; Scarifiers Electricity generators; Snow throwers; Power-operated sprayers* in the applicant's specification all have identically worded counterparts in the opponent's specification, and are therefore all identical to the opponent's goods.

27. The terms *Power operated blowers, namely axial flow blowers; Lumbering saws [machines] Power operated cultivators and tillers, namely power-operated lawn and garden tillers; Power-operated brush cutters; Vacuum cleaners, namely robotic vacuum cleaners, electric vacuum cleaners and cordless vacuum cleaners* appear in both specifications albeit worded slightly differently. I therefore consider these to be identical to the opponent's goods.

28. I consider the term *Power-operated dethatchers* in the applicant's specification to be encompassed by the term *Dethatchers* in the opponent's specification. They are therefore identical in line with *Meric*.

29. The term *Garden shredders* in the opponent's specification would be included within the term *Shredders* in the applicant's specification. On that basis, I find them to be identical in line with *Meric*.

30. I find the applicant's terms *Power operated hedge trimmers and electric hedge shears; Power-operated grass/weed trimmers, namely electric lawn trimmers; Chippers [power lawn and garden tools]; Powered gardening machines; Power operated tools, namely, lawn and garden edgers; Power-operated lawn edgers and electric lawn edgers* to all be encompassed in the opponent's term *Power lawn and garden tools*. They are therefore identical on the principle outlined in *Meric*.

31. I consider *Yard chippers* in the applicant's specification to be machines which cut tree limbs, branches and trunks into chips. I therefore consider this term to be identical to *Machines for processing of wood* in the opponent's specification.

32. The opponent's *High pressure washers* would encompass the terms *Machines for cleaning surfaces using high pressure water, namely pressure washers and high pressure washers and Water spray guns* in the applicant's specification. Therefore, I find these goods to be identical in line with *Meric*.

33. The applicant's *Lawn mowers, namely robotic lawnmowers, walk behind lawn mowers and riding lawn mowers, both electric and gas-powered lawn mowers* are all encompassed within the opponent's term *lawnmowers*. They are therefore identical in line with *Meric*.

34. I find the opponent's *Vacuum cleaners* would encompass the applicant's term *Vacuum cleaners for outdoor use*. They are therefore identical in line with *Meric*.

35. I note that the opponent's specification includes the terms *lawnmowers and parts and fittings and accessories in this class for the aforesaid goods*. In view of this, I consider those terms to be identical to the applicant's term *Electronic controller for governing the electrical output of a battery during mowing operation, sold as an integral component of lawn mowers*.

36. I consider the opponent's term *Motors and engines not for land vehicles* would include the applicant's terms *Engines and motors for the generation of electricity and Trolling motors for boats*. On that basis, they are identical in line with *Meric*.

37. The term *Blowers* in the opponent's specification would encompass the applicant's term *Snow blowers*. They are therefore identical in line with *Meric*.

38. I find the opponent's *Power tools* would encompass the applicant's *Power-operated tools namely power tools, ice augers, drilling machines, screwdrivers impact wrenches, impact drivers, hammer drilling machines, rotary hammer, saws, multifunction saws, angle grinders, jig saws, reciprocating saws, screw drivers, circular saws, sanders* and they are therefore identical in line with *Meric*.

#### *Class 9*

39. The terms *Humanoid robots with artificial intelligence; Remote control apparatus* and *Optical lenses* appear in both parties specifications and are self-evidently identical.

40. The terms *Batteries, namely electric batteries, rechargeable batteries and lithiumion batteries; Battery charge devices, namely battery chargers; Electric battery;*

*Inverters [electricity]; Cameras [photography]; Gloves for protection against injury or accident* in the applicant's specification also appear in the opponent's specification albeit worded slightly differently. I consider these terms to be identical.

41. I consider the opponent's term *Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity* would encompass the applicant's *Controller for governing the electrical output of a battery; Electrical adapters and Materials for electricity mains [wires, cables]*. On that basis, I consider the terms to be identical in line with *Meric*.

42. I find the applicant's terms *Computer programs and software, namely application software and mobile apps for power tools, pressure washers, generators, batteries, battery chargers, watering devices, lawn sprinklers and outdoor power equipment namely lawn mowers, robotic lawn mowers, brush cutters, string trimmers, hedge trimmers, chain saws, leaf blowers, vacuum cleaners (outdoor use), cultivators and shredders and Computer software [recorded]; Computer programs, downloadable* would encompass the opponent's *downloadable mobile and computer software for power tools and gardening tools, especially as control system*. As such, I consider these terms to be identical in line with *Meric*.

43. The applicant's term *Eye protection* would include goods such as the opponent's *Protective goggles*. In view of this, I find these terms identical in line with *Meric*.

44. I consider the opponent's term *Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity* would encompass goods such as the applicant's *Accumulator jars; Electric accumulators; Electric accumulators for vehicles; Battery jar*. I therefore consider these terms to be identical in line with *Meric*.

45. I find that the applicant's *Sound transmitting apparatus* would encompass goods such as the opponent's *Speakers* and as such, I consider these terms to be identical in line with *Meric*.

46. I consider the applicant's *Wearable video display monitors* and *Video screens* to be types of cinematographic instruments as they are devices which display moving or still graphical images. Therefore, in line with *Meric*, I find these terms identical to the opponent's *Cinematographic apparatus and instruments*.

47. I consider the applicant's *Sensors* to be devices which detect or measure a physical property and records, indicates, or otherwise responds to it. As such, I consider this term to be identical to the opponent's *Room thermostats* and *Temperature control apparatus*.

48. I note that within the opponent's specification, the term *Telephones* are included along with *parts, fittings and accessories in this class for the aforesaid goods*. I therefore consider that these two terms together would encompass the applicant's *Telephone apparatus* and they are therefore identical in line with *Meric*.

49. I find that the applicant's *Headphones* and the opponent's *Speakers* have a shared intended purpose to transmit sound from an electronic device however the method of use would differ as headphones are intended to be worn by an individual directly covering or inserted into the ears whereas speakers project sound to a larger area. It therefore follows that the nature of these goods also differs. The respective goods would likely be found in close proximity to one another in a retail outlet or their online equivalents and I also find it likely that the goods would be derived from the same manufacturer. There would also be a user overlap and a degree of competition however I do not consider that the goods would share a complementary relationship. Overall, I consider these goods to have a medium degree of similarity.

50. In respect of the opponent's *Downloadable mobile and computer software for power tools and gardening tools, especially as control system* and the applicant's *Computers; computer hardware; data processing apparatus*, the nature and purpose of these goods clearly differs. The opponent's goods would require *Computers* and *Computer hardware* in order to function so to that extent, I consider there would be an overlap in users. Although the goods are important or indispensable from one another, I note that the opponent's software is specifically for controlling garden and power tools so I do not find it likely that consumers will believe that the goods are derived from the same undertaking. I also find the trade channels will differ and there is no

competitive relationship to be found. Consequently, any similarity between these goods is very low.

51. I consider *Computer memory devices* to be devices which store data and instruction such as hard drives, USB memory sticks and CD-ROMs and I consider *Computer peripheral devices* to be equipment used in conjunction with computers such as a mouse, keyboard and printer. These goods in the applicant's specification differ from the opponent's *downloadable mobile and computer software for power tools and gardening tools, especially as control system* in terms of nature and purpose. The opponent's software would indeed require a computer or smartphone in order to function however, I do not find that the respective goods are important or indispensable to one another for them to enjoy a complementary relationship. Whilst there may be an overlap in users, the trade channels would differ, and these goods would not have any competitive relationship. Overall, I do not consider there to be any similarity between these goods.

52. To my mind, *Data processing apparatus* means any equipment used in the storage, manipulation, management, display, reception or transmission of information. This apparatus would differ from the opponent's *Downloadable mobile and computer software for power tools and gardening tools, especially as control system* in terms of nature and purpose. I find the users and trade channels would also differ and I do not consider the goods to enjoy a complementary or competitive relationship. Consequently, I do not find there to be any similarity between these goods.

#### *Class 11*

53. The terms *microwave ovens [cooking apparatus]; refrigerators; freezers and hair driers* appear in both specifications and are self-evidently identical.

54. *Air purifiers, namely, electronic air cleaners and electronic household air cleaners and air cleaners* in the applicant's specification are identical to the opponent's *air purifiers* in line with *Meric*.

55. The terms *electric rice cookers; electric autoclaves for cooking; induction cookers* in the applicant's specification fall within the opponent's term *electric cooking machines*. On that basis, they are identical in line with *Meric*.

56. *LED light bulbs and lighting fixtures* in the applicant's specification would be encompassed by the opponent's term *Lighting apparatus*. These goods are therefore identical in line with *Meric*.

57. I consider *Flashlights* to be a type of *Electric pocket torch* and therefore find these goods to be identical in line with *Meric*.

58. The term *Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes and parts, agricultural irrigation units, air purifiers* encompasses a number of the applicant's goods including *Humidifiers; Flush toilet; Hand drying apparatus for washrooms and Electric water purifiers for household purposes*. On that basis, they are identical in line with *Meric*.

59. The opponent's *Electric fans* would also include the applicant's *Electric fans for personal use*, so I consider these goods to be identical in line with *Meric*.

60. The applicant's term *Water heaters for showers* would be encompassed by the opponent's broader term *Water heaters*. I therefore find these goods to be identical in line with *Meric*.

61. The opponent's specification includes *Air conditioners* followed by the term *...parts, fittings and accessories in this class for the aforesaid goods*. I therefore find this would be identical to the applicant's *Filters for air conditioning*.

## *Class 12*

62. The term *wheelbarrows* appears identically in both specifications.

63. I consider *Vehicles for locomotion by land, air, water or rail; tractors; car; motor cars; motorcycles; motor tricycle; electro-tricycle; moped; boat and yacht* in the

applicant's specification would all be included within the opponent's broader term *Vehicles*. As such, I find these goods to be identical in line with *Meric*.

64. The opponent's specification includes the term *Vehicles* followed by *parts, fittings and accessories for all the aforesaid*. I take this to include *engines for land vehicles; motor for land vehicles; transmissions motor, for land vehicles; transmissions, for land vehicles; propulsion device for land vehicles; seats for land vehicles; upholstery for vehicles; rear-view mirrors; side cars; motorcycle wheel; motorcycle wheel axis holder; tires for vehicle wheels; screws [propellers] for ships* which are all included in the applicant's specification. On that basis, I consider these goods to be identical in line with *Meric*.

65. I find the term *Carts* covered by the opponent's specification would include the applicant's *Cleaning cart; golf carts; carts; convey carts*. Consequently, I find these goods to be identical in line with *Meric*.

66. The opponent's specification includes *Wheeled carriers* I consider this term would encompass *Wheelchairs* which is included in the applicant's specification and as such, I find these terms to be identical in line with *Meric*.

67. I note that the opponent's specification in class 12 includes the limitation *none of the aforementioned being any bicycles, bicycle frames, bicycle parts, and protective gear specifically intended for use in bicycling*, so I am unable to find any of the goods included in the opponent's specification identical to the applicant's terms *bicycle* and *electric bicycle*. I will therefore make my comparison in respect of *Bicycle* and *Electric bicycle* to the opponent's term *Scooters, electrically powered scooters*. There would be a shared purpose between these goods as they would be used as a means of transport or recreational activity. There would also be a general overlap in terms of nature however I find the method of use between these goods would differ. I consider the goods would share the same users and trade channels and there would also be a degree of competition. There is no finding however, of a complementary relationship. Overall, I find there to be a high degree of similarity between these goods.

68. In relation to *computer memory devices* and *data processing apparatus* which I have found not to be similar, the opposition based on section 5(2)(b) of the Act must fail in respect of the first and second oppositions.

### The third contested mark

#### *Class 7*

69. There is a complementary relationship between the applicant's *Chain saws* and the opponent's *Workbench accessories, namely, workbench attachments in the nature of tool holders for holding chainsaw blades for sharpening* as these goods are both important or indispensable to one another to the extent that consumers would believe that they are derived from the same undertaking. There would also be an overlap in users, and it would be likely to find the goods sold close to one another in the same retail outlet or an online equivalent. I acknowledge however that the goods are different in nature, have a different purpose and there is no competitive relationship to be found. Weighing up all these factors, I consider the goods to be similar to a medium degree.

70. The opponent contests that *Workbench accessories, namely, workbench attachments in the nature of tool holders for holding chainsaw blades for sharpening* would likely also be used to sharpen the applicant's *Electric hedge shears* however, I consider electric hedge shears differ from chain saws and there is no evidence to suggest that the opponent's goods would also be used to sharpen the blades of electric hedge shears. Although it is clear that the purpose, method of use and nature of these contested goods differs, I consider there would be an overlap in users and the goods would be sold via the same trade channels and possibly derive from the same manufacturer. I do not consider that the goods would share a complementary or competitive relationship. Overall, I find there is a low degree of similarity between these goods.

71. In respect of *Lawn mowers; power operated blowers; power operated cultivators; power operated tools, namely, lawn and garden edgers; power-operated*



*grass/weed trimmers; power-operated lawn and garden tillers and vacuum cleaners for outdoor use* in the applicant's specification, the opponent claims that these goods share a medium degree of similarity to *Workbench attachments in the nature of tool holders for holding chainsaw blades for sharpening and clamps, jaws and vices for holding logs and timber for sawing, carving, and cutting* because of their shared intended purpose being all for use in relation to horticultural pursuit. The opponents continues that this would result in the goods being sold through the same trade channels to the same end users and by the same manufacturers. Whilst I agree that these goods would likely be sold via the same trade channels and have shared users, the respective goods would be sold in different parts of a retail outlet and the nature and purpose of the respective goods also differs. I accept that that the goods may be offered by the same manufacturer, but I do not consider that the goods would share a complementary or a competitive relationship. Considering these factors, I find there to be a very low degree of similarity between these goods.

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

72. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. 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.”

73. The opponent submits that the average consumer will comprise members of the general public and members of trade. They state that the frequency and cost of the goods is likely to vary with the average consumer generally paying a medium degree of attention during the purchasing process however it is accepted that a higher degree of attention would be paid for some goods and submitted that a lower degree of attention would be paid in respect of certain goods.

74. The applicant submits that goods such as power-operated gardening tools are highly technical in nature resulting in the relevant public displaying a higher degree of attention during the purchasing process. This also extends to goods such as vehicles which are not every day items and so a higher degree would be paid during the purchasing process due to the nature and the value of the goods in question.

75. I agree for the most part with the parties' submissions. The average consumer will consist of the general public and professionals. Given the wide range of goods at issue, the price and frequency of purchase will vary considerably. Some goods may be relatively inexpensive and purchased more frequently (such as batteries) however I consider most of the goods to be of a technical or specialist nature and these would be considerably more expensive and bought infrequently (such as vehicles in class 12 and the various power operated tools in class 7). It therefore follows that the level of attention paid will vary. For the majority of the goods, I consider that at least a medium degree of attention will be paid by the general public and the level of attention will be even higher for larger purchases such as vehicles. As for the professional consumer, I find that an above medium level of attention will be paid for the majority of the goods as their selections would be important to the operation of their business. Again, for larger purchases, I consider the professional consumer would pay a high degree of attention.

76. The average consumer is likely to purchase the goods from a DIY store, a specialist supplier or a showroom either in a retail premises or from a website or catalogue. Consequently, visual considerations are likely to dominate the selection process. However, I do not discount that there may be an aural element to the purchase of these goods, given that advice may be sought from sales representatives or by telephone.

## Comparison of marks

77. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“...it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relevant 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.”

78. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the trade 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.

79. The marks to be compared are as follows:

Opponent's mark <sup>4</sup>	Applicant's marks
<b>WORX</b>	(The first and third contested mark) <b>POWERWORKS</b>

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<sup>4</sup> The opponent relies upon its earlier mark UK00003579178 for the first two oppositions and UK00914228209 for the third opposition. As they are both for the word only mark “WORX”, I find it appropriate to group the opponent's marks together in my assessment.



Overall impression

80. The opponent's mark consists of the word "WORX" presented in upper case font. There are no other elements to contribute to the overall impression which lies in the word itself.

81. The applicant's first and third marks comprise of the word "POWERWORKS" in a standard upper-case font. In their submissions, the opponent asserts that consumers are likely to break down the mark into two separate words being "POWER" and "WORKS" with the word "WORKS" being the dominant component due to the word "POWER" being allusive of the characteristics of the goods for which registration is sought. I agree that the mark contains two identifiable elements, namely the words POWER and WORKS. However, I do not consider "WORKS" to be the more dominant component. I note for the majority of the goods the word WORKS is also not particularly distinctive, I also note POWER sits at the beginning of the mark where it will receive more attention from the consumer. Further, I consider the two words hang together to allude to 'works' that require or use 'power', or to convey that the use of power 'works' in the pursuit of a desirable outcome. I find the overall impression resides in the two elements combined into one word, namely the mark as a whole.

82. The applicant's second mark is the word "POWERWORKS" presented in a slightly stylised grey font. The first letter R in the mark is slightly overlapped by the letter W. There are two small white inverted triangles attached to the left of the central upward prongs on each letter W. I consider that the wording "POWERWORKS" will have a greater impact on the overall impression with the stylistic aspects making a smaller contribution to the overall impression.

## Visual comparison

### *The first and third contested marks*

83. Visually, the marks both contain the letters “WOR” however, these three letters appear at the beginning of the opponent’s mark whereas they are preceded by the letters “POWER” in the applicant’s mark. The letters “POWER” in the applicant’s mark have no counterpart in the opponent’s mark and the endings of the respective marks also differ with the letter “X” being used in the opponent’s mark compared to “KS” in the applicant’s mark. These elements result in the applicant’s mark being noticeably longer than the opponent’s. Weighing up these factors, I consider the marks to be visually similar to a low degree.

### *The second contested mark*

84. Visually, the same comparison applies as above, however, the stylisation of the applicant’s mark adds a further point of difference. I therefore consider the marks to be visually similar to a very low degree.

## Aural comparison

85. The opponent’s mark will be pronounced in one syllable as “WORKS” while all of the applicant’s marks will be pronounced in three syllables as “POW-ER-WORKS”. Aurally, the entirety of the opponent’s mark is included in the third syllable of the applicant’s marks. Consequently, I consider the marks hold a medium degree of aural similarity.

## Conceptual comparison

### *The first and third contested marks*

86. Conceptually, the opponent’s mark will be perceived by most consumers as a fanciful spelling for the word “WORKS”. This word has numerous meanings in the

English dictionary<sup>5</sup> however I agree with the opponent that in relation to the goods, the majority of consumers will take this to mean “something working, or works being carried out.”<sup>6</sup> In relation to the applicant’s marks, I find that the average consumer will perceive the term “POWER” as referring to “energy, especially electricity, that is obtained in large quantities from a fuel source and used to operate lights, heating, and machinery.”<sup>7</sup> I also consider that “WORKS” in the applicant’s marks will be perceived as “something working, or works being carried out.” Together, applicant’s marks allude to the concept of works that use power, such as works that may be carried out using power tools, or the fact that using power ‘works’ in the pursuit of a desirable outcome. Weighing up these factors, I find the marks to be conceptually similar to a medium degree.

#### *The second contested mark*

87. I do not find that the average consumer will attribute any meaning to the stylisation of the applicant’s second mark and as such, I again consider the respective marks to have a medium degree of conceptual similarity when “WORX” is regarded as a deliberate misspelling of “WORKS”.

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

88. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585. In *Lloyd Schuhfabrik*, the CJEU stated that:

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<sup>5</sup> [Works definition and meaning | Collins English Dictionary \(collinsdictionary.com\)](#)

<sup>6</sup> See paragraph 21 of the opponent’s submissions

<sup>7</sup> [Power definition and meaning | Collins English Dictionary \(collinsdictionary.com\)](#)

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

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

89. 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.

90. The opponent has not filed any evidence to support the earlier marks’ distinctive character has been enhanced through use. Consequently, I have only the inherent position to consider. As the opponent’s marks in the three oppositions are identical with the goods relied upon generally overlapping, I find it appropriate to group them together and make a single assessment.

91. As outlined previously in my conceptual comparison, the opponent's mark will most likely be perceived as a fanciful way of spelling "WORKS". I find the word WORKS to be somewhat allusive to the goods in question as it describes the good's ability to function, and in some instances alludes to the fact the goods may be used to be used to carry out 'works', and it therefore holds a fairly low degree of inherent distinctive character. As such, I consider the mark itself, namely the fanciful misspelling of this word, to possess a low to medium degree of inherent distinctiveness.

### **Likelihood of confusion**

92. There is no simple formula for determining whether there is a likelihood of confusion. I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them (*Canon* at [17]) and considering the various factors from the perspective of the average consumer. In making my assessment, I must bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

93. There are two types of possible confusion: direct (where the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same but puts the similarity that exists between the marks/goods down to the responsible undertakings being the same or related). The distinction between these was explained by Mr Iain Purvis Q.C., sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10. He said:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she



sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

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

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

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

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

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

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

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

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

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

### *The first contested mark*

95. I have found the marks to be visually similar to a low degree and aurally and conceptually similar to a medium degree. I considered the earlier mark to possess a low to medium degree of inherent distinctiveness. I found the similarity of goods to range from low to identical. I identified the average consumer to be either the general public who would pay at least a medium degree of attention during the purchasing

process or a professional consumer who would pay an above medium degree of attention during the purchasing process. In respect of both groups of consumers, I found that the goods would predominantly be selected by visual means though I do not discount an aural element to the purchase.

96. I have taken all of the relevant factors into account in reaching my decision and bear in mind that the purchasing process is predominantly visual and as a general rule the beginning of marks make more impact than the endings<sup>8</sup>. As I outlined previously, the visual element the respective marks share (“WOR”) is found at the beginning of the opponent’s mark and towards the end of the applicant’s mark. When considering the marks as a whole, the applicant’s mark is noticeably longer and includes five letters at the beginning which have no counterpart in the opponent’s mark. I consider that the average consumer paying at least a medium degree of attention will recognise these differences and not confuse the marks for one another, as such, I do not find there to be any likelihood of direct confusion.

97. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

98. Turning to indirect confusion, I note that the opponent’s arguments follow the logic set out in category B as outlined in *L.A Sugar*. It states that the applications simply add on a non-distinctive element, namely the word “POWER”, which one would expect to find in a sub-brand or brand extension.<sup>9</sup> However, it is my view that this will not apply in this instance. Firstly, I note the common element between the mark differs (WORKS/WORX). I also consider that this element of the mark also holds only a low to medium level of distinctiveness in respect of the goods. Further, I consider that the elements ‘power’ and ‘works’ in the contested mark hang together, and that WORKS

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<sup>8</sup> See *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

<sup>9</sup> See paragraph 27 of the opponent’s submissions in lieu.

does not appear to play an independent distinctive role in the applicant's mark. Considering these factors, it is my view that the applicant's mark POWERWORKS is not simply the opponent's earlier mark with the addition of a non-distinctive element, and it does not appear to be consistent with a sub-brand or brand extension of the opponent's mark WORX such as the type set out in category B, or vice versa. Further, I do not find this case to be consistent with category A or category C of *L.A Sugar* as set out above. At this point, I remind myself that the categories in *L.A Sugar* were not intended to be exhaustive, and so I consider if there is any other logical reason or 'proper basis' for a finding of indirect confusion between the marks. I have considered the factors set out in *Whyte and Mackay* above, but as I have found the later mark hangs together as a unit, I do not consider a likelihood of indirect confusion to apply based on the common similar element WORKS playing an independent distinctive role within the same. Having considered all of the factors, I find that should the consumer notice that the similar "WORX/WORKS" element is present in both of the marks, they would regard this as a coincidence. Accordingly, I see no reason why the average consumer would believe that the marks originate from the same or economically linked undertakings, even when I have found the contested goods to be identical. I therefore do not consider there to be a likelihood of indirect confusion.

#### *The second contested mark*

99. I have found the marks to be visually similar to a very low degree and aurally and conceptually similar to a medium degree. I considered the earlier mark to possess a low to medium degree of inherent distinctiveness. I found the similarity of goods to range from low to identical. I identified the average consumer to be either the general public who would pay at least a medium degree of attention during the purchasing process or a professional consumer who would pay an above medium degree of attention during the purchasing process. In respect of both groups of consumers, I found that the goods would predominantly be selected by visual means though I do not discount an aural element to the purchase.

100. In respect of the second contested mark, I reach the same conclusions as the first contested mark. Again, I find that consumers will notice that the applicant's mark is visibly longer than the opponent's mark and the added stylisation of the applicant's

mark adds a further point of difference. Further, I do not consider there to be a scenario where consumers would see a logical step in the respective marks deriving from the same or economically linked undertakings and so I do not find there to be any likelihood of direct or indirect confusion.

### *The third contested mark*

101. I have found the marks to be visually similar to a low degree and aurally and conceptually similar to a medium degree. I considered the earlier mark to possess a low to medium degree of inherent distinctiveness. I found the similarity of goods to range from low to medium. I identified the average consumer to be either the general public who would pay at least a medium degree of attention during the purchasing process or a professional consumer who would pay an above medium degree of attention during the purchasing process. In respect of both groups of consumers, I found that the goods would predominantly be selected by visual means though I do not discount an aural element to the purchase.

102. Again, I reach the same conclusions as the first and second earlier marks. I also note in this case, the similarity of the respective goods was generally lower. I find that consumers who will be paying at least a medium degree of attentiveness will note the differences between the marks resulting in them not being directly confused. Again, I do not see any logical reasoning to conclude that the average consumer will believe that the marks are from the same or related undertakings and as such, I do not consider there to be any likelihood of direct or indirect confusion.

## **CONCLUSION**

103. The oppositions under section 5(2)(b) of the Act have failed. Subject to any successful appeal against my decision, the applications will proceed to registration.

## **COSTS**

104. 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 Tribunal Practice Notice ('TPN') 2 of 2016. Using that TPN as a guide and considering that the evidence filed by the opponent was minimal, I award the applicant the sum of £1100 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Considering notice of opposition and preparing a counterstatement (x3):	£600
Considering the other side's evidence:	£200
Filing submissions:	£300

105. I therefore order Positec Group Limited to pay the sum of £1100 to HongKong Sun Rise Trading Limited. 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 20<sup>th</sup> day of December 2022**

**Catrin Williams**  
**For the Registrar**

## **Annex A**

### **The applicant's goods for 3593116 & 3593126**

**Class 7:** Air compressors; Power operated blowers, namely axial flow blowers; Chain saws, namely electric chain saws; Lumbering saws [machines]; Power operated cultivators and tillers, namely power-operated lawn and garden tillers; Power-operated dethatchers; Scarifiers; Shredders; Electricity generators; Power operated hedge trimmers and electric hedge shears; Yard chippers; Machines for cleaning surfaces using high pressure water, namely pressure washers and high pressure washers; Water spray guns; Lawn mowers, namely robotic lawnmowers, walk behind lawn mowers and riding lawn mowers, both electric and gas-powered lawn mowers; Electronic controller for governing the electrical output of a battery during mowing operation, sold as an integral component of lawn mowers; Engines and motors for the generation of electricity; Snow blowers; Snow throwers; Power-operated sprayers; Power-operated brush cutters; Power-operated grass/weed trimmers, namely electric lawn trimmers; Chippers [power lawn and garden tools]; Powered gardening machines; Trolling motors for boats; Vacuum cleaners, namely robotic vacuum cleaners, electric vacuum cleaners and cordless vacuum cleaners; Vacuum cleaners for outdoor use; Power operated tools, namely, lawn and garden edgers; Power-operated lawn edgers and electric lawn edgers; Power-operated tools namely power tools, ice augers, drilling machines, screwdrivers impact wrenches, impact drivers, hammer drilling machines, rotary hammer, saws, multifunction saws, angle grinders, jig saws, reciprocating saws, screw drivers, circular saws, sanders; none of the goods are related to earth drilling machines and rock drilling machines, drilling rigs.

**Class 9:** Batteries, namely electric batteries, rechargeable batteries and lithium ion batteries; Battery charge devices, namely battery chargers; Inverters [electricity]; Controller for governing the electrical output of a battery; Computer programs and software, namely application software and mobile apps for power tools, pressure washers, generators, batteries, battery chargers, watering devices, lawn sprinklers and outdoor power equipment namely lawn mowers, robotic lawn mowers, brush cutters, string trimmers, hedge trimmers, chain saws, leaf blowers, vacuum cleaners (outdoor use), cultivators and shredders; Eye protection; Gloves for protection against

injury or accident; Electric battery; Accumulator jars; Electric accumulators; Electric accumulators for vehicles; Battery jar; Computers; Data processing apparatus; Computer hardware; Computer software [recorded]; Computer programs, downloadable; Computer memory devices; Computer peripheral devices; Humanoid robots with artificial intelligence; Telephone apparatus; Headphones; Sound transmitting apparatus; Wearable video display monitors; Cameras [photography]; Optical lenses; Materials for electricity mains [wires, cables]; Video screens; Electrical adapters; Sensors; Remote control apparatus.

**Class 11:** Air purifiers, namely, electronic air cleaners and electronic household air cleaners; Flashlights; LED light bulbs; Lighting fixtures; Electric rice cookers; Electric autoclaves for cooking; Induction cookers; Microwave ovens [cooking apparatus]; Refrigerators; Freezers; Hair driers; Air cleaners; Electric fans for personal use; Humidifiers; Filters for air conditioning; Flush toilet; Hand drying apparatus for washrooms; Water heaters for showers; Electric water purifiers for household purposes.

**Class 12:** Vehicles for locomotion by land, air, water or rail; Tractors; Car; Motor cars; Cleaning cart; Engines for land vehicles; Motor for land vehicles; Transmissions motor, for land vehicles; Transmissions, for land vehicles; Propulsion device for land vehicles; Seats for land vehicles; Motorcycles; Upholstery for vehicles; Rearview mirrors; Side cars; Motorcycle wheel; Motorcycle wheel axis holder; Bicycle; Electric bicycle; Motor tricycle; Electro-tricycle; Moped; Wheelchairs; Convey carts; Golf carts; Carts; Wheelbarrows; Tires for vehicle wheels; Boat; Screws [propellers] for ships; Yacht; none of the goods are related to vehicles for mobile drilling rigs and crawler vehicles for locomotion over earth and rock.

### **The opponent's goods for oppositions 425824 & 425825**

**Class 6:** Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; ores, ladders of metal, ladders mainly made of metal, scaffolding of metal; steps of metal, aluminium ladders, ladder hooks of metal; Bins of metal; Chests



of metal; Tool boxes of metal, empty; Nozzles of metal; Jets of metal; Junctions of metal for pipes; Valves of metal, other than parts of machines; metal clamps; workbench accessories, namely, clamps; vice benches of metal; replacement parts for the above-mentioned goods; parts fitting and accessories for all the aforesaid.

**Class 7:** Machine tools; automatic vending machines; machine coupling and transmission components (except for land vehicles); agricultural, earthmoving, construction, oil and gas extraction and mining equipment; agricultural implements other than hand-operated; cultivators (machines), scarifiers, power tillers, power-operated sprayers, spreaders (machines), fertilizer spreading machines; incubators for eggs; pumps; moving and handling equipment; generators, current generators, electricity generators, solar-powered electricity generators; machines and machine tools for material processing and production; machines for processing of wood, machines for machining metals; dispensing machines; sweepers, machines and apparatus for cleaning, washing apparatus; electric power operated tools, especially wrenches (machines), electric hammers, drilling machines, impact drills, hammer drills, drill press, screwdrivers, drill bits, sharpeners (sharpening machines), saws (machines), grinders (machines), sanders, polishers, shoe polishers, buffers, cutting machines, routers, planers, hot air guns, hot glue guns, engraving machines, nailers, tackers, staplers, air compressors, electric welding machines, lathes; electric power operated and gasoline engine power operated garden tools, especially, tree pruners (machines); blowers, shears, grass trimmers, hedge trimmers, chain saws, lawn mowers, garden pumps, garden shredders, high pressure washers, vacuum cleaners, road sweepers, snow throwers, swimming pool cleaning machines; pneumatic tools, especially, welding apparatus, pneumatic guns, impact wrenches, screwdrivers, drillings, spray guns, scissors, shovels, grinding machines, nailing guns; motors and engines not for land vehicles, gasoline engines not for land vehicles; spray guns for paint, jacks; robots (machines), robotic jigsaw machines, robotic motor hand saws, robotic electric hand drills, robotic cleaning machines, robotic cleaners for household purposes, robotic mechanisms used in agriculture, robotic lawnmowers, robotic painting machines, robotic swimming pool cleaning machines; compressing fans, fans for motors and engines, fans being parts of machines, agriculture machines; woodworking machines; planing machines; engraving machines; electric kitchen appliances, namely, mixers, electric food blenders, electric food grinders for

commercial, industrial or domestic uses, electric food slicers, electric food choppers, electric egg beaters, electric can openers, electric fruit peelers, electric juice extractors, electric juicers, electric knife sharpeners, electric pasta makers for domestic use, electric vegetable peelers, electric food processors; elevating apparatus; apparatus for dressing; metalworking machines; electric machines and apparatus for polishing; portable power tools; hand-held power tools, other than hand-operated; electric spray guns; electric plastics welders; electric sand-blasting apparatus; sand paper grinding machines, grass shears; high pressure cleaners; electric breakers [power tools]; starters for motors and engines; electric disintegrators; hydraulic door openers and closers (parts of machines); 3D printers; power operated brushing machines; electric cleaning machines and devices; Power tools; electric power operated tools; electric power operated and gasoline engine power operated garden tools; Power lawn and garden tools; rotary mowers, ride-on mowers, walk behind mowers, push mowers, lawn edgers, cylinder mowers, dethatchers; seeder, spreaders aerators; robotic power tools; robotic garden tools; remote controlled lawn mowers, power-operated tools namely, bush cutter, vac blower, turbine blower, pole saw, leaf shredder, seed spreader; earth moving machines, namely scarifier; electric pruner; electric lawn raker; hand-held power tools, namely drills, impact drivers, rotary hammers, nibblers, jig saws, reciprocating saws, circular saws, angle grinders, cutters and jointers; multi oscillation tools, hot air guns, portable water washing and cleaning nozzles, watering tools; gardening tools, namely, snow shovels [powered]; vacuum shredders and blowers for collecting leaves; washing machines; pumps, namely jet pumps, submersible pumps, fountain pumps, centrifugal pumps; parts fittings and accessories in this class for the aforesaid goods.

**Class 8:** Hand tools and implements (hand-operated); cutlery; side arms; razors; hand-operated implements and tools for material processing and construction, repair and maintenance; hand held tools, especially, drills, screwdrivers, drill bits, screwdriver bits, saws, saw blades, grinders, grinding wheels, sanders, sanding discs, abrading disc, hammers, hand jacks, planers, routers, wrenches, nippers, punches, pruning knives, tool belt, tool holders, gardening tools, especially, rakes, shovels, lawn edger's, hoes, cultivators, clippers, spades; manual adhesive extruding guns, vices; metal vice jaws; abrading instruments (hand instruments); agricultural implements (hand-operated), fertilizer spreaders (hand-operated); garden tools (hand-operated);

edge trimmers; pruning shears; hand-operated lifting jacks; lawn clippers (hand instruments); pruning knives; tableware (knives, forks and spoons); Hand tools, namely, vices, metal vice jaws, and clamps; tool handles, not of metal; parts, fittings and accessories in this class for the aforesaid goods.

**Class 9:** Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; electronic stud finders, non-electric wall stud finders; fire-extinguishing apparatus; electrical inverters, chargers, battery jump starters, electronic surveillance apparatus, surveillance robots, humanoid robots with artificial intelligence, robotic electrical control apparatus, speakers, radios; downloadable mobile and computer software for power tools and gardening tools, especially as control system; remote controls; remote control apparatus; software for remote controls; remote control apparatus for garden tools and power tools; measuring instruments and apparatus, levels (instruments for determining the horizontal), laser measuring instruments; battery chargers, battery packs, batteries, electrical power supplies, electric power converters; protective knee pads, goggles, protective goggles, clothing for protective or safety purpose; gloves for protective or safety purpose; thermostats; thermostat controllers; room thermostats; temperature control apparatus; telephones; television; camcorders; digital cameras; digital copiers; range finders; optical lenses; relays; video cameras; projectors; smoke detecting apparatus; spirit levels; commutators; electric door bells; microphones; radios; camera; parts, fittings and accessories in this class for the aforesaid goods; none of the aforementioned being any bicycles, bicycle frames, bicycle parts, and protective gear specifically intended for use in bicycling.

**Class 11:** Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes and parts, agricultural irrigation units, air purifiers; electric cool boxes; robots for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; electric fans, ventilating fans, tanning apparatus; filter for industrial and household; heat guns; Electric lights; electric light bulbs; electric light bulbs controlled wirelessly; lighting apparatus; electric pocket torches; refrigerators; air conditioners; clothes dryers; water

heaters; hair dryers; electric coffee machines; electric egg boilers; roasters; electric cooking machines; water heater; sterilizers; electric laundry dryers; microwave ovens; electrically heated clothing for protective or safety purposes, electrically heated gloves for protective or safety purposes; freezers; parts, fittings and accessories in this class for the aforesaid goods.

**Class 12:** Vehicles; apparatus for locomotion by land, air or water; scooters, electrically powered scooters; vehicle tire deflators, tire inflators; delivery robots, drones, wheeled carriers; multipurpose wheeled carriers in this class; carts for garden use; wheelbarrows; wheelbarrows for garden use; trolleys; carts; hand cars; dollies (trolleys); accessories for Multipurpose wheeled carriers in the nature of garden carts, wheelbarrows, trolleys, carts, hand trucks, and dollies including bag holders, cylinder holders, plant mover straps, rock mover mesh, water bags, garden cart seats, wheelbarrow and garden cart tub organizers; attachments for converting a wheelbarrow to a firewood carrier; attachments for converting a wheelbarrow to a wheeled snow plow; tool trolleys; parts, fittings and accessories for all the aforesaid; none of the aforementioned being any bicycles, bicycle frames, bicycle parts, and protective gear specifically intended for use in bicycling.

**Class 20:** Furniture, mirrors, picture frames; ladders and movable steps, non-metal tool boxes; saw horses, multipurpose saw horses with non-metal clamps; workbenches; worktables, industrial worktables; workstations having multi-use work surfaces; portable work tables, especially, saw tables for clamping and holding saws; workbench accessories, especially, attachable work tables and saw horses; Combined vice and workbench; workbench accessories, namely, clamps; vice benches not of metal; replacement parts for the above-mentioned goods; Tool boxes; plastic tool boxes; workboxes; Packaging containers made principally of plastics; Containers made of synthetic material [other than for household or kitchen use]; Portable water carriers [containers] made of plastics; plastic boxes; furniture; signboards; chests; plastic inserts [trays] for tool boxes; Multipurpose saw horses and non-metal clamps, sold as a unit; plastic racks for tools; cases (Non-metallic) for tools; Combined vice and workbench of metal; parts, fittings and accessories in this class for the aforesaid goods.

**Class 21:** Household or kitchen utensils and containers (not of precious metal or coated therewith); cool boxes, combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes; parts, fittings and accessories in this class for the aforesaid goods.

**Class 22:** Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials; parts, fittings and accessories in this class for the aforesaid goods.

**Class 28:** Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees; toy robots; ball inflators; parts fittings and accessories in this class for the aforesaid goods.

**Class 35:** Advertising; business management; business administration; office functions; wholesale and retail services, wholesaling and retailing of goods, including online Retail and wholesale services relating to Common metals and their alloys, metal building materials, transportable buildings of metal, materials of metal for railway tracks, non-electric cables and wires of common metal, ironmongery, small items of metal hardware, pipes and tubes of metal, safes, ores, ladders of metal, ladders mainly made of metal, scaffolding of metal, steps of metal, aluminium ladders, ladder hooks of metal, Bins of metal; Retail and wholesale services relating to Chests of metal, Tool boxes of metal, empty, Tool boxes of metal, empty, Nozzles of metal, Jets of metal, Junctions of metal for pipes, Valves of metal, other than parts of machines, Combined vice and workbench of metal, metal clamps, workbench accessories, namely, clamps, vice benches of metal, Machine tools, machine coupling and transmission components (except for land vehicles), agricultural, earthmoving, construction; Retail and wholesale services relating to oil and gas extraction and mining equipment, agricultural implements other than hand-operated, cultivators (machines), scarifiers, power tillers, power-operated sprayers, spreaders (machines), fertilizer spreading machines, incubators for eggs, pumps, moving and handling equipment, generators, current generators, electricity generators, solar-powered electricity generators, machines and

machine tools for material processing and production; Retail and wholesale services relating to machines for processing of wood, machines for machining metals, dispensing machines, sweepers, machines and apparatus for cleaning, washing apparatus, electric power operated tools, especially wrenches (machines), electric hammers, drilling machines, impact drills, hammer drills, drill press, screwdrivers, drill bits, sharpeners (sharpening machines), saws (machines), grinders (machines), sanders, polishers, shoe polishers, buffers, cutting machines, routers; Retail and wholesale services relating to planers, hot air guns, hot glue guns, engraving machines, nailers, tackers, staplers, air compressors, electric welding machines, lathes, electric power operated and gasoline engine power operated garden tools, especially, tree pruners (machines), blowers, shears, grass trimmers, hedge trimmers, chain saws, lawn mowers, garden pumps, garden shredders, high pressure washers, vacuum cleaners, road sweepers, snow throwers, swimming pool cleaning machines; Retail and wholesale services relating to pneumatic tools, especially, welding apparatus, pneumatic guns, impact wrenches, screwdrivers, drillings, spray guns, scissors, shovels, grinding machines, nailing guns, motors and engines not for land vehicles, gasoline engines not for land vehicles, spray guns for paint, jacks, robots (machines), robotic jigsaw machines, robotic motor hand saws, robotic electric hand drills, robotic cleaning machines, robotic cleaners for household purposes; Retail and wholesale services relating to robotic mechanisms used in agriculture, robotic lawnmowers, robotic painting machines, robotic swimming pool cleaning machines, compressing fans, fans for motors and engines, fans being parts of machines, agriculture machines, woodworking machines, planning machines, engraving machines, electric kitchen appliances, namely, mixers, electric food blenders, electric food grinders for commercial, industrial or domestic uses, electric food slicers; Retail and wholesale services relating to electric food choppers, electric egg beaters, electric can openers, electric fruit peelers, electric juice extractors, electric juicers, electric knife sharpeners, electric pasta makers for domestic use, electric vegetable peelers, electric food processors, elevating apparatus, apparatus for dressing, metalworking machines, electric machines and apparatus for polishing, portable power tools, hand-held power tools, other than hand-operated, electric spray guns; Retail and wholesale services relating to electric plastics welders, electric sand-blasting apparatus, sand paper grinding machines, grass shears, high pressure cleaners, electric breakers, starters for motors and engines, electric disintegrators, hydraulic door openers and

closers (parts of machines), 3D printers, power operated brushing machines, electric cleaning machines and devices, Power tools, electric power operated tools, electric power operated and gasoline engine power operated garden tools; Retail and wholesale services relating to Power lawn and garden tools, rotary mowers, ride-on mowers, walk behind mowers, push mowers, lawn edgers, cylinder mowers, dethatchers, seeder, spreaders aerators, robotic power tools, robotic garden tools, remote controlled lawn mowers, power-operated tools namely, bush cutter, vac blower, turbine blower, pole saw, leaf shredder, seed spreader, earth moving machines, namely scarifier, electric pruner, electric lawn raker, hand-held power tools, namely drills; Retail and wholesale services relating to impact drivers, rotary hammers, nibblers, jig saws, reciprocating saws, circular saws, angle grinders, cutters and jointers, multi oscillation tools, hot air guns, portable water washing and cleaning nozzles, watering tools, gardening tools, namely, snow shovels [powered], leaf eaters, pumps, namely jet pumps, submersible pumps, fountain pumps, centrifugal pumps, hand tools and implements (hand-operated), cutlery, side arms, razors; Retail and wholesale services relating to hand-operated implements and tools for material processing and construction, repair and maintenance, hand held tools, especially, drills, screwdrivers, drill bits, screwdriver bits, saws, saw blades, grinders, grinding wheels, sanders, sanding discs, abrading disc, hammers, hand jacks, planers, routers, wrenches, nippers, punches, pruning knives, tool belt, tool holders, gardening tools, especially, rakes, shovels, lawn edger's, hoes, cultivators, clippers, spades; Retail and wholesale services relating to manual adhesive extruding guns, vices, metal vice jaws, non electric tools not included in other classes, abrading instruments (hand instruments), agricultural implements (hand-operated), fertilizer spreaders (hand-operated), garden tools (hand-operated), edge trimmers, pruning shears, hand-operated lifting jacks, lawn clippers (hand instruments), pruning knives, tableware (knives, forks and spoons), Hand tools, namely, vices, metal vice jaws, and clamps; Retail and wholesale services relating to Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, signalling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, electronic stud finders, non-electric wall stud finders, Retail and wholesale services relating to automatic vending machines and mechanisms for coin-operated apparatus, fire-extinguishing apparatus, electrical inverters, chargers, battery jump starters, electronic

surveillance apparatus, surveillance robots, speakers; Retail and wholesale services relating to radios, downloadable mobile and computer software for power tools and gardening tools, especially as control system, remote controls, remote control apparatus, software for remote controls; Retail and wholesale services relating to remote control apparatus for garden tools and power tools, measuring instruments and apparatus, levels (instruments for determining the horizontal), laser measuring instruments, battery chargers, battery packs, batteries, electrical power supplies, electric power converters, protective knee pads, goggles, protective goggles, clothing for protective or safety purpose, gloves for protective or safety purpose; Retail and wholesale services relating to electrically heated clothing for protective or safety purposes, electrically heated gloves for protective or safety purposes, thermostats, thermostat controllers, room thermostats, temperature control apparatus, telephones, television, camcorders, digital cameras, digital copiers, multi-function devices incorporating copiers, facsimile, scanner and/or printer functions, printing devices, hard copy output devices and computer output devices particularly printers; Retail and wholesale services relating to photocopiers, facsimile machines and printing hardware components, scanners, electric dictionary, range finders, optical lenses, relays, video cameras, projectors, smoke detecting apparatus, spirit levels, commutators, electric door bells, microphones, radios, camera, optical lenses, photographic printers, enlargers, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes and parts; Retail and wholesale services relating to agricultural irrigation units, air purifiers, electric cool boxes, robots for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, electric fans, ventilating fans, tanning apparatus, filter for industrial and household, heated guns, Electric lights, electric light bulbs, electric light bulbs controlled wirelessly, lighting apparatus, electric pocket torches, refrigerators, air conditioners; Retail and wholesale services relating to clothes dryers, water heaters, hair dryers, electric coffee machines, electric egg boilers, roasters, electric cooking machines, hair dryers, water heater, sterilizers, electric laundry dryers, microwave ovens, washing machines, freezers, vehicles, apparatus for locomotion by land, air or water, scooters, electrically powered scooters, vehicle tire deflators, tire inflators, delivery robots, drones, wheeled carriers; Retail and wholesale services relating to multipurpose wheeled carriers in this class, carts for garden use, wheelbarrows, wheelbarrows for garden use, trolleys, carts, hand cars, dollies



(trolleys), kits for converting wheelbarrows into hay wagons, kits for converting wheelbarrows into garden carts, accessories for Multipurpose wheeled carriers in the nature of garden carts, wheelbarrows, trolleys, carts, hand trucks, and dollies including bag holders, cylinder holders, plant mover straps; Retail and wholesale services relating to rock mover mesh, water bags, garden cart seats, wheelbarrow and garden cart tub organizers, attachments for converting a wheelbarrow to a firewood carrier, attachments for converting a wheelbarrow to a wheeled snow plow, tool trolleys, furniture, mirrors, picture frames, ladders and movable steps, non-metal tool boxes, saw horses, multipurpose saw horses with non-metal clamps, workbenches, worktables, industrial worktables; Retail and wholesale services relating to workstations having multi-use work surfaces, portable work tables, especially, saw tables for clamping and holding saws, workbench accessories, especially, attachable work tables and saw horses, Combined vice and workbench, workbench accessories, namely, clamps, vice benches not of metal, replacement parts for the above-mentioned goods, Tool boxes, plastic tool boxes, workboxes, Packaging containers made principally of plastics; Retail and wholesale services relating to Containers made of synthetic material [other than for household or kitchen use], Portable water carriers [containers] made of plastics, plastic boxes, furniture, signboards, tool handles, not of metal, chests, plastic inserts [trays] for tool boxes, Multipurpose saw horses and non-metal clamps, sold as a unit, plastic racks for tools, cases (Non-metallic) for tools, Household or kitchen utensils and containers (not of precious metal or coated therewith); Retail and wholesale services relating to cool boxes, combs and sponges, brushes (except paint brushes), brush-making materials, articles for cleaning purposes, steel wool, unworked or semi-worked glass (except glass used in building), glassware, porcelain and earthenware not included in other classes, Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes), padding and stuffing materials (except of rubber or plastics), raw fibrous textile materials; Retail and wholesale services relating to Games and playthings, gymnastic and sporting articles not included in other classes, decorations for Christmas trees, toy robots, ball inflators, replacement parts for all the forgoing goods and all parts fitting and accessories for the forgoing goods.

**Class 37:** Building construction; repair, installation and maintenance services relating to portable power tools, hand held power tools, other than hand operated, power lawn

and garden tools, robotic power tools, robotic garden tools, advisory and consultation services for all the aforesaid.

**Class 42:** Scientific and technological services and research and design; industrial analysis and research services; design and development of computer hardware and software; design of tools, power tools and garden tools.

## **Annex B**

### **The applicant's goods for 3628266**

**Class 7:** Chain saws; electric hedge shears; lawn mowers; power operated blowers; power operated cultivators; power operated tools, namely, lawn and garden edgers; power-operated grass/weed trimmers; power-operated lawn and garden tillers; vacuum cleaners for outdoor use.

### **The opponent's goods for 426991**

**Class 8:** Non-metal clamps; non-metal tool stands; workbench accessories, namely, non-metal clamps; Vices; Combined vice and workbenches; Hand tools, namely, vices, metal vice jaws, and clamps; workbench accessories, namely, workbench attachments in the nature of tool holders; clamps, jaws and vices for holding logs and timber for sawing, carving, and cutting; workbench accessories, namely, workbench attachments in the nature of tool holders for holding chainsaw blades for sharpening; workbench accessories, namely, workbench attachments in the nature of tool holders, particularly, clamps, jaws, and vices for clamping of work pieces; workbench accessories, namely, metal attachable tool holders in the nature of clamps, jaws, and vices for holding items to be welded; workbench accessories, namely, workbench attachments in the nature of clamps, jaws, and vices for clamping of work pieces; parts, fittings and accessories for the aforesaid goods.