

**O-0264-23**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF**

**TRADE MARK APPLICATION NO 3610836**

**IN THE NAME OF HELAXY INC.**

**TO REGISTER**

**HELAXY**

**AS A TRADE MARK IN CLASSES 01, 05, 09, 10 & 42**

**AND**

**OPPOSITION THERETO (UNDER NO. 426686)**

**BY**

**A.C.N. 633 220 612 PTY LTD**

## BACKGROUND

1) On 16 March 2021<sup>1</sup>, Helaxy Inc. ('the applicant') applied to register the trade mark HELAXY. The specification of goods and services, which has since been amended in classes 09 and 42<sup>2</sup>, currently reads as follows:

**01:** Chemical and biological substances, in particular diagnostics, for use in industry and for scientific and research purposes, in particular for in vitro use.

**05:** Preparations, in particular diagnostic preparations, for medical and veterinary purposes, in particular for in vitro use in the field of medical and veterinary diagnosis; chemical and biological substances, in particular diagnostics, for medical and veterinary purposes, in particular for in vitro use in the field of medical and veterinary diagnosis.

**09:** Scientific apparatuses and instruments for laboratory use; software programs for operation and maintenance of scientific apparatuses and instruments for laboratory use in the field of medical and veterinary diagnostics, in particular electrophoretic apparatuses, homogenizers, spectrophotometers and laboratory robots; software programs for creating experimental profiles, providing experimental reports and reports of apparatus performance verification in the field of medical and veterinary diagnostics; software programs for analyzing, displaying and visualizing experimental data and biological data in the field of medical and veterinary diagnostics; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases.

**10:** Medical and veterinary apparatuses and instruments, in particular apparatuses for diagnostics; apparatuses and instruments for the conducting, monitoring and evaluating of diagnostic examinations for medical and veterinary purposes.

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<sup>1</sup> Priority date of 01 December 2020

<sup>2</sup> As per Form TM21B filed on 24 June 2022

**42:** Scientific and technology services and research services in the field of medical and veterinary diagnosis; consultancy services for scientific, technological, and research purposes, including consultancy services for laboratory testing, in the field of medical and veterinary diagnostics; development of software programs for the operation and maintenance of electrophoretic apparatuses, homogenizers, spectrophotometers and laboratory robots in the field of medical and veterinary diagnostics; development of software programs for creating experimental profiles, providing experimental reports and reports of apparatus performance verification in the field of medical and veterinary diagnostics, in particular for in vitro diagnostics; development of software programs for analyzing, displaying and visualizing experimental data and biological data in the field of medical and veterinary diagnostics, in particular for in vitro diagnostics; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases.

2) The application was published in the Trade Marks Journal on 04 June 2021 and notice of opposition was later filed by A.C.N. 633 220 612 PTY LTD ('the opponent'). The opponent claims that the trade mark application offends under sections 5(2)(b), and 5(3) of the Trade Marks Act 1994 ('the Act').

3) In support of its grounds under sections 5(2)(b) and 5(3) of the Act, the opponent relies upon the following trade mark registration:

- **UKTM 801532013**

**HALAXY**

**Filing date:** 10 May 2019

**Priority date:** 08 May 2019

**Date of entry in register:** 08 October 2020

**Class 09:** Downloadable computer software; downloadable software and computer software products and platforms for use in the ongoing operation and administration of hospital services; downloadable software application products; downloadable software and computer software for the purposes of providing health and medical related advice; downloadable software and computer software for providing practice management services in the veterinary, health and medical industries, including records management, report generation and related administrative services; downloadable software and computer software for the purposes of business scheduling and appointment scheduling; downloadable software and computer software to enable the transmission, sharing, organisation and management of medical, clinical and patient information; downloadable software and computer software for the purposes of compiling databases relevant to the veterinary, health and medical industries, including medical practitioner databases and contact information; downloadable software and computer software for the purposes of searching and accessing databases relevant to the veterinary, health and medical industries, including medical practitioner databases and contact information; downloadable software and computer software for the purposes of compiling and accessing information relevant to patient medical records.

**Class 35:** Business management, consultancy and advisory services; business advisory services relevant to the establishment and management of professional referral networks and databases in the veterinary, health and medical industries; organisation and management of customer loyalty programmes and customer loyalty schemes; sales promotion through customer loyalty programmes and customer loyalty schemes; systemisation of information into computer databases, network databases and referral databases; providing database management services for the veterinary, health and medical industries; business management, consultancy and advisory services relevant to the ongoing operation and administration of hospital services; business advisory services relevant to employee assistance programmes; business advisory services relevant to employee assistance programmes in the veterinary, health and medical industries; business

administration and management of employee assistance programmes for corporate entities; business management, consultancy and advisory services relevant to the veterinary, health and medical industries; providing business appointment scheduling services for healthcare providers, medical practitioners and patients; providing business appointment scheduling services for veterinary practitioners and service providers; business advisory services relevant to the establishment and management of professional referral networks and databases.

**Class 36:** Insurance services; providing financial services relevant to hospital services and the ongoing operation and administration of hospital services; insurance services relevant to the veterinary, health and medical industries; insurance services relevant to the hospital industry; financial payment processing services relevant to the hospital industry; provision of financial services relevant to the veterinary, health and medical industries; provision of financial services relevant to the veterinary, health and medical industries, including collection of fees, payments and rebates; provision of electronic payment services; provision of electronic payment services relevant to the veterinary, health and medical industries; monetary transaction services relevant to the veterinary, medical and health industries; payment processing services; financial payment processing services in relevant to the veterinary, medical and health industries; payment processing services relevant to the veterinary, medical and health industries.

**Class 41:** Online publication of information in the veterinary, medical and health industries; development of educational courses and materials relevant to the ongoing operation and administration of hospital services; publication of multimedia material online relevant to the veterinary, health and medical industries; professional development training services relevant to the veterinary, health and medical industries; professional development training services relevant to the hospital industry; online publication of information relevant to hospital services; online publication of information relevant to veterinary, health and medical industry products and services; online publication of information relevant to veterinary, health and medical issues,

updates and news; publication of blogs on the Internet; conducting and arranging of education sessions and courses, training sessions and workshops relevant to the veterinary, health and medical industries; conducting and arranging of education sessions and courses, training sessions and workshops relevant to hospital services; development of educational courses and materials for the veterinary, health and medical industries; providing online educational training materials relevant to the veterinary, health and medical industries.

**Class 42:** Software as a service (saas) for providing practice management, records management and administration services in the veterinary, health and medical industries, including for enabling the transmission, sharing, organisation and management of medical and clinical information and data, processing of electronic payments, accessing and searching online medical practitioner databases, and for the provision of clinical tools to track and manage patient treatment; software as a service (saas) for providing practice management, records management and administration services to hospitals including for enabling the transmission, sharing, organisation and management of medical and clinical information and data, processing of electronic payments, accessing and searching online medical practitioner databases, and for the provision of clinical tools to track and manage patient treatment; health and medical research services, including medical research services relevant to all medical practice areas, including veterinary services; providing online non-downloadable business scheduling tools and project management tools relevant to the ongoing operation and administration of hospital services; providing online non-downloadable business scheduling tools and project management tools; providing online non-downloadable business scheduling tools and project management tools relevant to the health and medical industry, including records compilation and management; providing online non-downloadable business scheduling tools and project management tools directed at business scheduling tools and project management tools directed at healthcare providers, medical practitioners and patients; providing online non-downloadable business scheduling tools and project management tools directed at veterinary practitioners and service

providers; internet portal design services; internet portal design services relevant to the health and medical industry; internet portal design services relevant to the tracking of patient treatment and management in the veterinary, health and medical industries; internet portal design services relevant to hospitals and the ongoing operation and administration of hospitals.

**Class 44:** Health care and medical services; veterinary services; hospital services; pharmacy services, including services relevant to the dispensing of pharmaceutical products; clinical aged care being medical and nursing care services; disability care being medical and nursing care services; providing health and medical related information, namely providing information relevant to the accessibility of health and medical related services, veterinary services and providing information to practitioners in the health and medical industry, and providing information to veterinary practitioners in the veterinary industry; online provision of information in the veterinary, medical and health industries; online provision of information relevant to veterinary, health and medical industry products and services; online provision of information relevant to veterinary, health and medical issues, updates and news; advisory services relevant to the veterinary, health and medical industries.

4) It is claimed that the respective goods and services are identical or similar and that the respective marks are similar such that there exists a likelihood of confusion under Section 5(2)(b).

5) It is also claimed that the earlier mark enjoys a reputation in the UK in respect of all the goods and services covered by it and that use of the contested mark will take unfair advantage of, or be detrimental to, the reputation and/or distinctive character of the earlier mark.

6) The trade mark relied upon by the opponent is an earlier mark, in accordance with section 6 of the Act. As it completed its registration procedure less than five years prior to the application date of the contested mark, it is not subject to the proof of use conditions, as per section 6A of the Act.

7) The applicant filed a counterstatement, denying the grounds of opposition.

8) The opponent is represented by Stobbs; the applicant is represented by Sonder & Clay. The opponent's evidence in chief consists of witness statements from two individuals: Ms Alison Hardacre with exhibits AH1 – AH11 and Ms Hannah Cramp with exhibit HC1. The applicant filed no evidence or submissions during the evidence rounds. A hearing took place before me at which the opponent was represented by Mr Julius Stobbs. The applicant was not represented at the hearing but filed written submissions in lieu<sup>3</sup>.

## **DECISION**

### **Section 5(2)(b)**

9) This section of the Act states:

“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.

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.”

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<sup>3</sup> Dated 29<sup>th</sup> July 2022



10) The leading authorities which guide me are from the CJEU: *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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

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 of the Act relied on in these proceedings are derived from an EU Directive. Accordingly, this decision continues to make reference to the trade mark case law of EU courts.

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

12) All relevant factors relating to the goods and services should be taken into account when making the comparison. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the CJEU, Case C-39/97, 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.”

13) Guidance on this issue has also come from Jacob J where, in *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281, the following factors were highlighted as being relevant:

- (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.

14) In terms of being complementary (one of the factors referred to in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer*), this relates to close connections or relationships that are important or indispensable for the use of the other. In *Boston Scientific Ltd v OHIM* Case T- 325/06, it was stated:

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

15) In *Sanco SA v OHIM* Case T-249/11, the General Court found that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services was very different, i.e. chicken against transport services for chickens. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* (BL-0-255-13):

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

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

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert

sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

17) I also bear in mind that in *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, ('*Avnet*') Jacob J. (as he then was) stated that:

"In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

18) Further, in *Gérard Meric v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM Case T-133/05) ('*Meric*'), the General Court held 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 the trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 Oberhauser v OHIM – Petit Liberto (Fifties) [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 Vedial v OHIM – France Distribution (HUBERT) [2002] ECR II-5275, paragraphs 43 and 44; and Case T-10/03 Koubi v OHIM – Flabesa (CONFORFLEX) [2004] ECR II-719, paragraphs 41 and 42)."

19) Finally, I bear in mind that, where it is not obvious to me that there is similarity between any of the respective goods and services, the onus is on the opponent to present evidence in support of its contentions that there is similarity (see, for

example, Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc Case C-39/97, paragraph 22).

20) The goods and services to be compared are:

Opponent's specification	Applicant's specification
<p><b>Class 09:</b> Downloadable computer software; downloadable software and computer software products and platforms for use in the ongoing operation and administration of hospital services; downloadable software application products; downloadable software and computer software for the purposes of providing health and medical related advice; downloadable software and computer software for providing practice management services in the veterinary, health and medical industries, including records management, report generation and related administrative services; downloadable software and computer software for the purposes of business scheduling and appointment scheduling; downloadable software and computer software to enable the transmission, sharing, organisation and management of medical, clinical and patient information; downloadable software and computer software for the purposes of compiling databases</p>	<p><b>01:</b> Chemical and biological substances, in particular diagnostics, for use in industry and for scientific and research purposes, in particular for in vitro use.</p> <p><b>05:</b> Preparations, in particular diagnostic preparations, for medical and veterinary purposes, in particular for in vitro use in the field of medical and veterinary diagnosis; chemical and biological substances, in particular diagnostics, for medical and veterinary purposes, in particular for in vitro use in the field of medical and veterinary diagnosis.</p> <p><b>09:</b> Scientific apparatuses and instruments for laboratory use; software programs for operation and maintenance of scientific apparatuses and instruments for laboratory use in the field of medical and veterinary diagnostics, in particular electrophoretic apparatuses, homogenizers, spectrophotometers and laboratory robots; software programs for creating experimental profiles, providing</p>

relevant to the veterinary, health and medical industries, including medical practitioner databases and contact information; downloadable software and computer software for the purposes of searching and accessing databases relevant to the veterinary, health and medical industries, including medical practitioner databases and contact information; downloadable software and computer software for the purposes of compiling and accessing information relevant to patient medical records.

**Class 35...**

**Class 36...**

**Class 41:** Online publication of information in the veterinary, medical and health industries; development of educational courses and materials relevant to the ongoing operation and administration of hospital services; publication of multimedia material online relevant to the veterinary, health and medical industries; professional development training services relevant to the veterinary, health and medical industries; professional development training services relevant to the hospital industry; online publication of information relevant to hospital

experimental reports and reports of apparatus performance verification in the field of medical and veterinary diagnostics; software programs for analyzing, displaying and visualizing experimental data and biological data in the field of medical and veterinary diagnostics; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases.

**10:** Medical and veterinary apparatuses and instruments, in particular apparatuses for diagnostics; apparatuses and instruments for the conducting, monitoring and evaluating of diagnostic examinations for medical and veterinary purposes.

**42:** Scientific and technology services and research services in the field of medical and veterinary diagnosis; consultancy services for scientific, technological, and research purposes, including consultancy services for laboratory testing, in the field of medical and veterinary diagnostics; development of software programs for the operation and maintenance of electrophoretic apparatuses, homogenizers, spectrophotometers and laboratory robots in the field of medical and

<p>services; online publication of information relevant to veterinary, health and medical industry products and services; online publication of information relevant to veterinary, health and medical issues, updates and news; publication of blogs on the Internet; conducting and arranging of education sessions and courses, training sessions and workshops relevant to the veterinary, health and medical industries; conducting and arranging of education sessions and courses, training sessions and workshops relevant to hospital services; development of educational courses and materials for the veterinary, health and medical industries; providing online educational training materials relevant to the veterinary, health and medical industries.</p> <p><b>Class 42:</b> Software as a service (saas) for providing practice management, records management and administration services in the veterinary, health and medical industries, including for enabling the transmission, sharing, organisation and management of medical and clinical information and data, processing of electronic payments, accessing and searching online medical practitioner</p>	<p>veterinary diagnostics; development of software programs for creating experimental profiles, providing experimental reports and reports of apparatus performance verification in the field of medical and veterinary diagnostics, in particular for in vitro diagnostics; development of software programs for analyzing, displaying and visualizing experimental data and biological data in the field of medical and veterinary diagnostics, in particular for in vitro diagnostics; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases.</p>
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databases, and for the provision of clinical tools to track and manage patient treatment; software as a service (saas) for providing practice management, records management and administration services to hospitals including for enabling the transmission, sharing, organisation and management of medical and clinical information and data, processing of electronic payments, accessing and searching online medical practitioner databases, and for the provision of clinical tools to track and manage patient treatment; health and medical research services, including medical research services relevant to all medical practice areas, including veterinary services; providing online non-downloadable business scheduling tools and project management tools relevant to the ongoing operation and administration of hospital services; providing online non-downloadable business scheduling tools and project management tools; providing online non-downloadable business scheduling tools and project management tools relevant to the health and medical industry, including records compilation and management; providing online non-downloadable business scheduling tools and project management tools directed at business

scheduling tools and project management tools directed at healthcare providers, medical practitioners and patients; providing online non-downloadable business scheduling tools and project management tools directed at veterinary practitioners and service providers; internet portal design services; internet portal design services relevant to the health and medical industry; internet portal design services relevant to the tracking of patient treatment and management in the veterinary, health and medical industries; internet portal design services relevant to hospitals and the ongoing operation and administration of hospitals.

**Class 44:** Health care and medical services; veterinary services; hospital services; pharmacy services, including services relevant to the dispensing of pharmaceutical products; clinical aged care being medical and nursing care services; disability care being medical and nursing care services; providing health and medical related information, namely providing information relevant to the accessibility of health and medical related services, veterinary services and providing information to

<p>practitioners in the health and medical industry, and providing information to veterinary practitioners in the veterinary industry; online provision of information in the veterinary, medical and health industries; online provision of information relevant to veterinary, health and medical industry products and services; online provision of information relevant to veterinary, health and medical issues, updates and news; advisory services relevant to the veterinary, health and medical industries.</p>	
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21) I will take each of the classes within the application in turn, grouping certain goods and services together where it is appropriate to do so<sup>4</sup>. Before doing so, I must also point out, given the nature of the applicant's submissions before me, that the comparison must be made on the basis of a notional and objective assessment of the respective goods and services listed in the parties' specifications and not upon the actual use that either party has made or intends to make in the marketplace.

Class 01

*Chemical and biological substances, in particular diagnostics, for use in industry and for scientific and research purposes, in particular for in vitro use.*

22) Mr Stobbs submitted that the applicant's goods listed above are similar to certain of the opponent's services because they could either be i) provided as part of the provision of the opponent's 'Healthcare and medical services' and are therefore complementary to the same or ii) could be used as part of, or be the 'outcome'/end-

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<sup>4</sup> As per *Separode Trade Mark*, BL O-399-10

product of, the opponent's 'Health and medical research services...'. I am not persuaded by these submissions for the reasons set out below.

23) As regards point i), it is important to note that the applicant's goods listed above in class 01 are, by virtue of being in that particular class, for purposes other than for medical or veterinary use (goods that are for medical or veterinary use are proper to class 5)<sup>5</sup>. Whilst, bearing in mind the guidance in *Avnet* and *Treat*, the ordinary and natural, or core, meaning of 'Healthcare and medical services' (which includes pharmacy services) would obviously include the provision of diagnostic preparations for medical/veterinary use which fall within class 05, I do not consider that the opponent's services would obviously include the provision of the applicant's substances in class 01 which are not for medical/veterinary use but rather are for other diagnostic and industrial/scientific purposes. I therefore dismiss the argument at point i). I also can see no other reason to find similarity between those goods and services bearing in mind the factors identified in *Canon*.

24) As regards point ii), again bearing in mind the principle in *Avnet*, in particular, and the core meaning of 'Health and medical research services', I accept that undertakings carrying out such services may use the applicant's class 01 goods to carry out their research (such as biological/chemical reagents and the like in a research setting such as a laboratory) but it is not obvious to me that those undertakings would also provide such goods to their customers. As already noted, the applicant's class 01 goods are not for medical or veterinary purposes but rather are for other diagnostic and industrial/scientific purposes. As such, it is not obvious to me that the applicant's goods are likely to be the 'outcome'/end-product of the opponent's 'Health and medical research services...'. I therefore dismiss the argument at point ii). I also can see no other reason to find similarity between those goods and services bearing in mind the factors identified in *Canon*.

25) There is also no obvious similarity between the applicant's class 01 goods and any of the other goods or services covered by the opponent's specification, including

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<sup>5</sup> As per TMClass, accessed on 02 March 2023: [Search for Goods and Services - TMclass \(europa.eu\)](https://europa.eu/euipo/tmclass/)

those in class 44 set out in the table in Mr Stobbs' skeleton argument at paragraph 27, having regard for their respective nature, purpose, methods of use, trade channels and that there is no obvious complementary or competitive relationship in play.

26) I find that the applicant's goods in class 01 are not similar to any of the opponent's goods or services.

#### Class 05

*Preparations, in particular diagnostic preparations, for medical and veterinary purposes, in particular for in vitro use in the field of medical and veterinary diagnosis; chemical and biological substances, in particular diagnostics, for medical and veterinary purposes, in particular for in vitro use in the field of medical and veterinary diagnosis.*

27) Unlike the goods in class 01, the applicant's goods in class 05 are for the purposes of medical or veterinary use. Bearing this in mind, I consider there to be some similarity between those kinds of goods and the opponent's 'Healthcare and medical services' (which would cover pharmacy services, for example). This is because, although the respective goods and services are obviously different in nature and method of use and the exact purpose is not the same, it seems obvious to me that all of the applicant's goods will be important for the provision of the opponent's services to the extent that the average consumer may believe that respective goods and services come from the same undertaking. There is therefore a complementary relationship in play. The users and trade channels are likely to be the same. I find a medium degree of similarity between the opponent's 'Healthcare and medical services' and the applicant's goods in class 05.

#### Class 09

*Scientific apparatuses and instruments for laboratory use; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases.*

28) I note that scientific apparatus and instruments which fall within class 09 are, for the most part, not for medical use, with the exception of goods such as ‘microscopes for medical use’ and ‘weighing scales for medical use’. All other scientific apparatus and instruments for medical and veterinary purposes are proper to class 10<sup>6</sup>. I will bear this in mind when conducting the comparison. I also bear in mind that I do not consider that the ordinary and natural, or core, meaning of ‘Scientific apparatuses and instruments for laboratory use’ is apt to cover ‘computer software’. Although software programs may be used as part of scientific apparatus/instruments or incorporated within the same, I do not consider that computer software, in and of itself, would naturally be described as a piece of scientific apparatus or a scientific instrument per se.

29) Mr Stobbs argued that the above goods of the applicant are similar to the opponent’s ‘Health and medical research services’ because the applicant’s goods will be used by scientists when carrying out their research. In his submission there is therefore a complementary relationship between those goods and services. I disagree. It may be true that a scientist carrying out health and medical research services may use scientific apparatus and instruments, of the kind falling within class 09, to carry out that research in a laboratory and the goods are therefore important, in that sense, to the earlier services but that does not, in my view, satisfy the particular test for complementarity in trade mark law. The relevant test is that the goods must be important for, or indispensable to, the services in such a way that the average consumer is likely to believe that they come from the same undertaking. The mere fact that scientists carrying out the opponent’s services may use the applicant’s goods during their research does not, in my view, satisfy that test. There is also no obvious coincidence in terms of respective nature, method of use, purpose or trade channels and there is no evidence before me to suggest otherwise.

30) Mr Stobbs also argued that the applicant’s goods may be the ‘product’ of the opponent’s ‘Health and medical research services’ and are complementary in that

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<sup>6</sup> As per TMClass, accessed on 02 March 2023: [Search for Goods and Services - TMclass \(europa.eu\)](https://europa.eu/euipo/tmclass/)

sense. Bearing in mind, again, the ordinary and core meaning of the opponent's services, and the *Avnet* principle, it is not obvious to me that they would be likely to involve the production of scientific apparatus and instruments of the kind falling within class 09 and there is no evidence before me to suggest otherwise.

31) I also cannot see that there is any obvious similarity between the applicant's goods listed above in class 09 with any of the opponent's other goods or services including the opponent's 'health and medical services'. I find that the applicant's goods, listed above, in class 09 are not similar to any of the opponent's goods or services.

*software programs for operation and maintenance of scientific apparatuses and instruments for laboratory use in the field of medical and veterinary diagnostics, in particular electrophoretic apparatuses, homogenizers, spectrophotometers and laboratory robots; software programs for creating experimental profiles, providing experimental reports and reports of apparatus performance verification in the field of medical and veterinary diagnostics; software programs for analyzing, displaying and visualizing experimental data and biological data in the field of medical and veterinary diagnostics; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases.*

32) All of the above goods fall within the opponent's 'Downloadable computer software' in class 09. They are identical as per *Meric*.

#### Class 10

*Medical and veterinary apparatuses and instruments, in particular apparatuses for diagnostics; apparatuses and instruments for the conducting, monitoring and evaluating of diagnostic examinations for medical and veterinary purposes.*

33) Mr Stobbs submitted that the above goods are similar to the opponent's 'Health and medical research services' for similar reasons as those he advanced in respect of the contested scientific apparatus and instruments in class 09 i.e. that the goods may be used for carrying out those services or be the product of such services and

are therefore complementary. I can see some force in Mr Stobbs' arguments as regards the goods in class 10. The goods in class 10 are all specifically for medical, veterinary and/or diagnostic purposes. It seems to me that an undertaking carrying out the opponent's 'health and medical research services' (which covers such services relating to medical and veterinary diagnosis/diagnostics) may also use that research to develop medical and veterinary apparatus and instruments of the kind falling within class 10. Although the respective nature and purpose is not the same, the respective users and trade channels may be the same or overlap. The applicant's goods in class 10 may also be important for the provision of the opponent's 'healthcare and medical services' in such a way that the average consumer may believe that the respective goods and services come from the same source. I find a low-medium degree of similarity between the opponent's 'health and medical research services'/'Healthcare and medical services' and the applicant's goods in class 10.

#### Class 42

*Scientific and technology services and research services in the field of medical and veterinary diagnosis; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases. (my emphasis)*

34) Mr Stobbs identified the opponent's 'health and medical research services...' in class 42 as representing the opponent's strongest case against the above services of the applicant. I agree. The opponent's services are broad, covering a wide range of research services relating to health and medicine, including those which are in the field of medical and veterinary diagnosis. I find that the applicant's underlined services 'in the field of medical and veterinary diagnosis; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases' are identical to the opponent's 'health and medical research services' as per Meric (bearing in mind that the term 'Scientific' is a broad one which, in my view, obviously encompasses scientific research).

35) Turning to the applicant's 'technology services... in the field of medical and veterinary diagnosis', to my mind 'technology services' is rather a broad term and



would cover services such as the 'design and development of technology for the purposes of medical/veterinary diagnosis'. It seems obvious to me that an undertaking carrying out the opponent's medical research services (which covers those relating to medical and veterinary diagnosis) may also use that research to develop certain kinds of new/improved technology for use in the same field. Although the respective nature and purpose is not the same, the respective users and trade channels may be the same and there may be a degree of complementarity since the opponent's research services may be important for the applicant's services in such a way that the average consumer believes that they come from the same source. I find that there is a medium degree of similarity between the opponent's 'health and medical research services...' and the applicant's 'technology services in the field of medical and veterinary diagnosis; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases'.

*consultancy services for scientific, technological, and research purposes, including consultancy services for laboratory testing, in the field of medical and veterinary diagnostics; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases.*

36) For similar reasons to those set out in paragraphs 34-35, I find that the above services of the applicant are either identical or, if not, are nevertheless similar to the opponent's 'health and medical research services...' to at least a medium degree.

*development of software programs for the operation and maintenance of electrophoretic apparatuses, homogenizers, spectrophotometers and laboratory robots in the field of medical and veterinary diagnostics; development of software programs for creating experimental profiles, providing experimental reports and reports of apparatus performance verification in the field of medical and veterinary diagnostics, in particular for in vitro diagnostics; development of software programs for analyzing, displaying and visualizing experimental data and biological data in the field of medical and veterinary diagnostics, in particular for in vitro diagnostics; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases.*

37) The opponent's strongest case against these services lies with its 'Downloadable computer software' in class 09. At the hearing, Mr Stobbs argued that the respective goods and services are highly similar because, although the nature is not the same, the goods and services are complementary. I agree that there is an obvious complementary relationship in play, of the kind described in the case law. Further, although the respective nature, methods of use and exact purpose are not the same, the respective users will be the same and the trade channels are likely to be the same or at least overlap significantly. There is at least a medium degree of similarity between the opponent's 'Downloadable computer software' and the applicant's services.

**There cannot be a likelihood of confusion where there is no similarity between the respective goods and services<sup>7</sup>. The ground under section 5(2)(b) must therefore fail against the goods and services of the applicant which I have found share no similarity with the opponent's goods or services.**

#### **Average consumer and the purchasing process**

38) It is necessary to determine who the average consumer is for the respective goods and services and the manner in which they are likely to be selected. 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.”

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<sup>7</sup> *Waterford Wedgewood v OHIM* Case C-398/07

39) The average consumer for the relevant goods and services is likely to consist primarily of professionals in the medical/veterinary/scientific sector. I would expect the average consumer to take some care in the selection, taking into consideration numerous factors before committing to the purchase. I find that a high degree of attention is likely to be paid during the purchase for all of the goods and services. They are all likely to be sought out primarily by eye on websites, for example, and so I would expect the purchase to be mainly visual. However, I bear in mind that the goods and services may sometimes be the subject of word-of-mouth recommendations and/or discussions with medical/veterinary/scientific professionals and therefore aural considerations are also borne in mind.

### **Comparison of marks**

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

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

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

41) The marks to be compared are:

# HALAXY v HELAXY

42) The overall impression of both marks lies in the single word of which they consist.

43) The applicant contends that the marks are not visually or aurally similar. I disagree. There is patently a high degree of both visual and aural similarity between the marks, given that both consist of a six-letter word with only the second letter in the words being different ('A' and 'E') respectively.

44) Turning to the conceptual comparison, the applicant submits that the marks are conceptually different. It explains that, while neither mark, as a whole, has any meaning, the opponent's evidence shows that the opponent's mark is derived from the two words 'health' and 'galaxy' and therefore, it submits, this is how the average consumer would perceive that mark. Contrastingly, it submits that its own mark will be recognised by the average consumer as consisting of the prefix 'he'/'hel', being, in its submission, a direct reference to the DNA helix, combined with an abbreviation for 'Galaxy'. I am not persuaded by these submissions. I note the opponent's evidence in which it explains that its mark means 'health galaxy'<sup>8</sup> but there is nothing else before me to suggest that the notional average consumer is likely to perceive the earlier mark in that way. Neither is there any evidence before me to suggest that the average consumer is likely to recognise 'he'/'hel' as an abbreviation for helix/DNA helix or that 'HELAXY' is likely to be perceived in the manner contended by the applicant. In my view, both marks will immediately be perceived as meaningless invented words and nothing more. The conceptual position is therefore neutral.

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

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<sup>8</sup> Exhibit AH2

45) The distinctive character of the earlier mark must be considered. The more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion (*Sabel BV v Puma AG*). In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

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

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

46) I have already concluded that HALAXY is likely to be perceived as an invented word. As such, it is neither describes nor alludes to the goods or services of the earlier mark in any way. I find that it has a high degree of inherent distinctiveness.

47) The opponent has also filed evidence of use which, it claims, shows that its earlier mark enjoys an enhanced degree of distinctiveness consequent upon the use made of it in relation to certain software goods and services in class 09 and 42<sup>9</sup>. I

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<sup>9</sup> As per paragraph 49 of Mr Stobbs' skeleton argument

have read all of the evidence from Ms Hardacre and Ms Cramp. However, it does not satisfy me that the distinctiveness of the earlier mark has been enhanced in the UK. In particular, I note that:

- i) it is not clear which of the figures in the evidence relate to the UK (or EU) as opposed to other countries in the World in which the opponent carries out business, such as Australia, the US, Canada and New Zealand (for example).<sup>10</sup>
- ii) All of the figures provided relating to sign-ups, appointments, add-on services and on-line advertising that do relate specifically to the UK appear to be modest.<sup>11</sup>
- iii) the evidence of awards won by the opponent do not clearly relate to the UK; rather, they appear to be awards from Australia<sup>12</sup>
- iv) the customer testimonials from the UK are very small in number<sup>13</sup>
- v) there is nothing else in the evidence before me, beyond the evidence described in points i)-iv) above, to indicate that the mark has nevertheless been used to such an extent in the UK that its inherent distinctiveness has been enhanced.

Bearing in mind all of the above, and taking a collective view of the evidence before me, I find no enhanced distinctiveness of the earlier mark.

### **Likelihood of confusion**

48) I must now feed all of my earlier findings into the global assessment of the likelihood of confusion, keeping in mind the following factors: i) the interdependency principle, whereby a lesser degree of similarity between the goods and services may be offset by a greater similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*); ii) the principle that the more distinctive the earlier mark is, the greater the likelihood of confusion (*Sabel BV v Puma AG*), and;

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<sup>10</sup> See, for example, the figures given at the bullet points at paragraph 5 of Ms Hardacre's statement

<sup>11</sup> See, for example, the figures in paragraph 6, the figures in the table at paragraph 7 and the advertising figures in the table at paragraph 12 of Ms Hardacre's statement

<sup>12</sup> See exhibit AH4 which states that the ceremony was held in Sydney, Australia.

<sup>13</sup> Exhibit AH5

iii) the factor of imperfect recollection i.e. that consumers rarely have the opportunity to compare marks side by side but must rather rely on the imperfect picture that they have kept in their mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.*).

49) I have found that some of the respective goods and services are identical and others are similar to a low-medium/medium degree. The marks are also visually and aurally highly similar. Furthermore, the marks are conceptually neutral. The lack of any conceptual hook for the consumer, for either mark, means that they are likely to be more prone to the effects of imperfect recollection than they would have been had the marks created a clear concept in their mind. This is so, notwithstanding the high degree of attention that is likely to be paid (whilst such a degree of attention militates to some extent against the marks being imperfectly recalled, it does not mean that imperfect recollection has no role to play). A further important factor weighing in the opponent's favour is that the earlier mark is highly distinctive. Weighing all of these factors, and having regard for the interdependency principle, I find that the average consumer is likely to mistake one mark for the other and therefore believe that the respective goods and services come from the same undertaking.

**50) The opposition under section 5(2)(b) of the Act partially succeeds.**

### **Section 5(3)**

51) Section 5(3) of the Act provides:

“(3) A trade mark which-

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

52) The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L'Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the



goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

## **Reputation**

53) I have already considered the opponent's evidence of use when I dealt with the matter of the opponent's claim of enhanced distinctiveness. Bearing in mind my earlier comments in that regard, I find that the opponent has not established the requisite reputation in the UK. Without reputation, there can be no link or damage.

**The ground under Section 5(3) of the Act fails.**

## OUTCOME

### 54) The opposition has succeeded against the following goods and services:

**05:** Preparations, in particular diagnostic preparations, for medical and veterinary purposes, in particular for in vitro use in the field of medical and veterinary diagnosis; chemical and biological substances, in particular diagnostics, for medical and veterinary purposes, in particular for in vitro use in the field of medical and veterinary diagnosis.

**09:** software programs for operation and maintenance of scientific apparatuses and instruments for laboratory use in the field of medical and veterinary diagnostics, in particular electrophoretic apparatuses, homogenizers, spectrophotometers and laboratory robots; software programs for creating experimental profiles, providing experimental reports and reports of apparatus performance verification in the field of medical and veterinary diagnostics; software programs for analyzing, displaying and visualizing experimental data and biological data in the field of medical and veterinary diagnostics; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases.

**10:** Medical and veterinary apparatuses and instruments, in particular apparatuses for diagnostics; apparatuses and instruments for the conducting, monitoring and evaluating of diagnostic examinations for medical and veterinary purposes.

**42:** Scientific and technology services and research services in the field of medical and veterinary diagnosis; consultancy services for scientific, technological, and research purposes, including consultancy services for laboratory testing, in the field of medical and veterinary diagnostics; development of software programs for the operation and maintenance of electrophoretic apparatuses, homogenizers, spectrophotometers and laboratory robots in the field of medical and veterinary diagnostics;

development of software programs for creating experimental profiles, providing experimental reports and reports of apparatus performance verification in the field of medical and veterinary diagnostics, in particular for in vitro diagnostics; development of software programs for analyzing, displaying and visualizing experimental data and biological data in the field of medical and veterinary diagnostics, in particular for in vitro diagnostics; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases.

**55) The opposition has failed against the following goods and services:**

**01:** Chemical and biological substances, in particular diagnostics, for use in industry and for scientific and research purposes, in particular for in vitro use.

**09:** Scientific apparatuses and instruments for laboratory use; none of the aforementioned is intended for use in the fields of medical practice management and medical practitioner databases.

**COSTS**

56) The opponent has had a greater degree of success than the applicant. I estimate the ratio of success to be roughly 75%:25% in the opponent's favour. Using the guidance in Annex A of Tribunal Practice Notice 2/2016, and allowing for the degree of success of the applicant, I award the opponent costs on the following basis:

Preparing a statement and considering the applicant's statement	£300
Official fee:	£200
Preparing and filing evidence	£500
Preparing for, and attending, the hearing	£400

Less £350 for applicant's degree of success

**Total:** **£1, 050**

57) I order Helaxy Inc. to pay A.C.N. 633 220 612 PTY LTD the sum of **£1, 050**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 10<sup>th</sup> day of March 2023**

**Beverley Hedley  
For the Registrar,  
the Comptroller-General**