

O/0319/23

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS. UK00003701357 AND UK00003701376

BY VANGUARD AG

TO REGISTER THE TRADE MARKS:



AND

**Vanguard**

IN CLASSES 10, 16, 35, 37 AND 42

AND

IN THE MATTER OF OPPOSITIONS THERETO

UNDER NOS. 432142 AND 432143 BY

ZOETIS UK LIMITED

## BACKGROUND AND PLEADINGS

1. On 27 September 2021, Vanguard AG (“the applicant”) applied to register the following trade marks in the UK:



(“the First Application”)

Vanguard

(“the Second Application”)

2. The applications were made pursuant to Article 59 of the Withdrawal Agreement between the United Kingdom and the European Union. Under the terms of that agreement, the applicant is entitled to rely upon the earlier EU filing date for the applications i.e. 9 October 2020. The applications were published for opposition purposes on 24 December 2021 and registration is sought for the goods and services listed below:

Class 10 Surgical, medical, dental and veterinary apparatus and instruments; Artificial limbs, eyes and teeth; Orthopedic articles; Suture materials; Medicinal products.

Class 16 Paper; Millboard; Printed matter; Bookbinding material; Plastic sheets, films and bags for wrapping and packaging.

Class 35 Advertising; Business management; Business administration; Office functions; Wholesaling services and retail services related to the following goods: surgical, medical, dental and veterinary apparatus and instruments, Artificial limbs, eye and teeth, Orthopaedic articles, surgical sutures, Paper, cardboard (paperboard), Printed matter, bookbinding material, Plastic sheets, films and bags for wrapping and packaging;

solely in connection with the medical sector; Other than marketing, strategic consultancy, analysis and market research services.

Class 37 Treatment of medical instruments and apparatus through cleaning, Disinfectant services and Sterilisation; Installation and repair of medical, surgical, dental and veterinary apparatus and instruments.

Class 42 Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Research in the field of medical, surgical, dental and veterinary equipment, medical care and surgery; all aforesaid services only in the medical field.

3. The underlined services above identify the only point of difference between the specifications of the First and Second Applications; the underlined parts appear in the specification of the Second Application only.

4. On 24 March 2022, Zoetis UK Limited (“the opponent”) partially opposed the applications on the basis of sections 5(2)(a), 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The oppositions are directed at the applicant’s class 10, 35, 37 and 42 goods and services only. Under sections 5(2) and 5(3), the opponent relies upon the following trade mark:

VANGUARD

UKTM no. 1159061

Registration date 7 August 1981

Relying on all goods for which the mark is registered, namely:

Class 5 Veterinary preparations and substances.

5. The section 5(2)(a) opposition is directed against the First Application only. The opponent claims that the marks are identical and the goods and services are similar, resulting in a likelihood of confusion. The section 5(2)(b) opposition is directed against the First Application and the Second Application. The opponent claims that the marks are similar and that the goods and services are identical or similar, with the result that there is a likelihood of confusion.

6. Under section 5(3), the opponent claims that it has a reputation for the goods identified and that use of the First and Second Applications would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character and/or repute of the earlier mark.

7. Under section 5(4)(a), the opponent relies upon the sign **VANGUARD** which it claims to have used throughout the UK since at least 1997 in relation to “veterinary preparations and substances”.

8. The applicant filed counterstatements denying the claims made and putting the opponent to proof of use.

9. The applicant is represented by Bromhead Johnson LLP and the opponent is represented by Gill Jennings & Every LLP.

10. Only the opponent filed evidence. Neither party requested a hearing, but both filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

## **EVIDENCE AND SUBMISSIONS**

11. The opponent filed evidence in chief in the form of the witness statement of Edward Ferguson dated 14 September 2022. Mr Ferguson is the Director of Regulatory and Quality at the opponent, a position he has held since 2018, prior to which he was Director of Regulatory and Public Affairs. Mr Ferguson’s evidence is accompanied by 6 exhibits.

12. Both parties filed written submissions in lieu dated 11 January 2023.

## **RELEVANCE OF EU LAW**

13. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in

accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

## **DECISION**

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

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

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

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

(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.”

15. Section 5A of the Act is as follows:

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

16. The trade mark upon which the opponent relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As the earlier trade mark had completed its registration process more than 5 years before the application date of the mark in issue, it is subject to proof of use pursuant to section 6A of the Act.

## Proof of use

17. I will begin by assessing whether there has been genuine use of the earlier mark. The relevant statutory provisions are as follows:

“(1) This section applies where:

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

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

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

- (a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

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

18. Section 100 of the Act states that:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

19. Pursuant to section 6A of the Act, the relevant period for assessing whether there has been genuine use of the earlier mark is the five-year period ending with the priority date of the applications in issue i.e. 10 October 2015 to 9 October 2020.

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

“114. [...] The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v*

*Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

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

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns:

*Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

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

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

21. Proven use of a mark which fails to explain that “the commercial exploitation of the mark is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark” is, therefore, not genuine use.

22. I note the following from the opponent’s evidence:

a) The opponent sells vaccines for dogs under the earlier mark in the UK. The following marks appear on its packaging: Vanguard 7, Vanguard CPV, Vanguard CPV-L and Vanguard Lepto Ci. Mr Ferguson explains that CPV stands for Canine parvovirus, CPV-L stands for the same but also refers to a particular type of infectious disease caused by bacteria, and Leptio Ci is a reference to diseases caused by another type of bacteria.

b) The brand was originally owned by a company called SmithKline Beecham Animal Health and was subsequently transferred to Pfizer Animal Health in 1994. The brand was marketed by Pfizer until 2013 when it was transferred to the opponent.

c) The sales figures for VANGUARD products sold in the UK are as follows:

<b>Year</b>	<b>Sales in GBP</b>
2017	£7.608 million
2018	£6.598 million
2019	£4.105 million
2020	£2.059 million
2021	£2.276 million

Mr Ferguson notes that sales have dropped in recent years due to pets not being vaccinated during the Covid pandemic and raw materials for vaccines being prioritised to Covid vaccinations globally.

- d) The opponent's three primary wholesalers are located in Staffordshire, Dumfries and Somerset. The products are also sold through two wholesalers in Northern Ireland.
- e) The veterinary practices which use the VANGUARD product send out vaccination reminder materials to their clients. The yearly spend on these materials is as follows:

<b>Year</b>	<b>Amount in GBP</b>
2016	£250,000
2017	£200,000
2018	£70,000
2019	£50,000
2020	£20,000
2021	£10,000

Mr Ferguson estimates that around £250,000 was spent on supplying these materials during the period 2010 to 2016.

- f) The opponent has also invested in maintaining licences for the vaccines sold under the earlier mark.

23. I am satisfied that the trade mark has been used as registered. The use of the mark in the form Vanguard 7, Vanguard CPV, Vanguard CPV-L and Vanguard Lepto Ci are all uses upon which the opponent can rely. This is because Vanguard appears in these marks as registered and retains an independent distinctive role. The sales figures are in the millions per annum and the opponent has clearly taken steps to promote the products sold under its mark and to maintain a share in the market. Taking the evidence as a whole into account, I am satisfied that the earlier mark has been put to genuine use during the relevant period in the UK in relation to vaccines for dogs.

24. I must now consider whether, or the extent to which, the evidence shows use of the earlier mark in relation to the goods relied upon. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

25. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows:

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria’s Secret UK Ltd* [2014] EWHC 2631 (Ch) (“Thomas Pink”) at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 (“Asos”) at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46.”

26. The goods relied upon by the opponent are “veterinary preparations and substances”. I am satisfied that vaccines for dogs falls within this category. However, the term relied upon by the opponent is very broad and would cover a wide range of medicines and preventative treatments in all different forms used for a wide range of animals. I do not consider that use in relation to vaccines for dogs only, is sufficient to maintain a registration for such a broad term. In my view, “vaccines for dogs” is an appropriate sub-category. Consequently, I consider a fair specification for the earlier mark to be:

Class 5      Vaccines for dogs.

### **Section 5(2)(b) – case law**

27. 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:

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

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

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

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

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

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

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

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

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

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

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

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

28. The competing goods and services are as follows:

<b>Opponent's goods</b>	<b>Applicant's goods and services</b>
<u>Class 5</u> Vaccines for dogs.	<u>Class 10</u> Surgical, medical, dental and veterinary apparatus and instruments; Artificial limbs, eyes and teeth; Orthopedic articles; Suture materials; Medicinal products.  <u>Class 35</u> Advertising; Business management; Business administration; Office functions; Wholesaling services and retail services related to the following goods: surgical, medical, dental and veterinary apparatus and instruments, Artificial limbs, eye and teeth, Orthopaedic articles, surgical sutures, Paper, cardboard (paperboard), Printed matter, bookbinding material, Plastic

	<p>sheets, films and bags for wrapping and packaging; <u>solely in connection with the medical sector; Other than marketing, strategic consultancy, analysis and market research services.</u></p> <p><u>Class 37</u> Treatment of medical instruments and apparatus through cleaning, Disinfectant services and Sterilisation; Installation and repair of medical, surgical, dental and veterinary apparatus and instruments.</p> <p><u>Class 42</u> Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Research in the field of medical, surgical, dental and veterinary equipment, medical care and surgery; <u>all aforesaid services only in the medical field.</u></p> <p>(the underlined parts of the specification relate to the Second Application only)</p>
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29. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“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.”

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

## Class 10

### *[...] Veterinary apparatus and instruments*

31. These goods will overlap in trade channels with the opponent’s goods as veterinary supply businesses (such as wholesalers) may provide both. There will also be an overlap in user, as both could be purchased by veterinary professionals. The goods are likely to differ in nature and method of use, but there may be some overlap in

purpose. The applicant's goods could include items such as syringes, used in the administration of the opponent's vaccines, and so there could also be complementarity as they are important or indispensable for each other such that the average consumer would consider they originate from the same or economic undertaking. Consequently, I consider these goods to be similar to at least a medium degree.

*Surgical [...] apparatus and instruments; Suture materials;*

32. These goods could include both surgical items used for treatment of humans and animals. Consequently, I consider that the same overlap in trade channels and user will apply as set out above. However, I do not consider the same complementarity will apply. Consequently, I consider the goods to be similar to between a low and medium degree.

*Medical, dental [...] apparatus and instruments; Medicinal products.*

33. I consider that these terms will typically include goods used for use on humans only. I consider it unlikely that there will be a meaningful overlap in trade channels and I have no evidence that there would be. I do not consider the nature, purpose or method of use to be the same. There is no competition or complementarity. Consequently, I consider the goods to be dissimilar.

*Artificial limbs, eyes and teeth; Orthopedic articles;*

34. These are goods typically sold through specialist trade channels. I consider it unlikely that there will be any overlap in trade channels with the opponent's goods. The nature, purpose and method of use of the goods is clearly different. There is no competition or complementarity. Consequently, I consider the goods to be dissimilar.

### Class 35

*Advertising; Business management; Business administration; Office functions;*

35. The opponent makes the following submissions in relation to these services:

“In the assessment of similarity between the contested services of “Advertising; Business management; Business administration; Office functions”, we submit that these could relate to the performance of such services in relation to the goods of the VANGUARD Mark (“veterinary preparations and substances”), in line with the above principles, and therefore the respective goods and services are similar and/or complementary”.

In my view, this line of argument is flawed. The fact that advertising services may be used to promote a vaccine or that a veterinary practice may use business administration services does not make those goods and services similar. The goods and services would clearly be provided through different trade channels. The nature, method of use and purpose of the goods and services would differ. I accept that veterinary practices may purchase the opponent’s goods and may also enlist a provider of any of these services, but that is not sufficient on its own for a finding of similarity. There is no competition or complementarity. Consequently, I consider these services to be dissimilar to the opponent’s goods.

36. I have borne in mind the limitation and exclusion present in the specification of the Second Application. For the avoidance of doubt, my finding above remains the same in relation to the Second Application.

*Wholesaling services and retail services related to the following goods: [...] veterinary apparatus and instruments.*

37. I accept that these services may share trade channels and users with the opponent’s goods. However, the method of use, nature and purpose of the goods and services clearly differ. I do not consider there to be any competition or complementarity. I consider the goods and services to be similar to between a low and medium degree.

38. I have borne in mind the exclusion and limitation in the specification of the Second Application. By virtue of the fact that veterinary goods are distinct from the medical

sector, I do not consider that the limitation can apply to these services. Consequently, it does not have any bearing on my finding.

*Wholesaling services and retail services related to the following goods: Surgical [...] apparatus and instruments, surgical sutures.*

39. For the First Application, I note that the term 'surgical' could apply to goods used in the treatment of both humans and animals. Consequently, I consider there to be an overlap in trade channels and users with the opponent's goods. However, the method of use, nature and purpose of the goods and services clearly differ. I do not consider there to be any competition or complementarity. I consider the goods and services to be similar to between a low and medium degree.

40. However, the limitation in the Second Application – "solely in connection with the medical sector" – in my mind, identifies these services as relating to goods that are solely for the treatment of humans. Consequently, I do not consider the same overlap in trade channels applies. The goods and services are dissimilar.

*Wholesaling services and retail services related to the following goods: [...] medical, dental [...] apparatus and instruments, Artificial limbs, eye and teeth, Orthopaedic articles, Paper, cardboard (paperboard), Printed matter, bookbinding material, Plastic sheets, films and bags for wrapping and packaging.*

41. I do not consider that there will be an overlap in trade channels with the opponent's goods. Clearly, the goods and services will differ in nature, method of use and purpose. I recognise that there may be an overlap in user in some cases, but that is not sufficient for a finding of similarity. There is no competition or complementarity. Consequently, I consider the goods and services to be dissimilar.

42. The fact that there is a limitation and exclusion in the specification of the Second Application does not change my finding above.

## Class 37

### *Treatment of medical instruments and apparatus through cleaning*

43. The opponent submits that these services would overlap in trade channels with its own goods. However, in the absence of any evidence to demonstrate that, I consider it unlikely that the trade channels for the goods and services would be the same. The applicant's services are specialised, niche services, that would be provided by a specialist undertaking. I can see no overlap in trade channels, method of use, purpose or nature with the opponent's goods. In any event, as noted above, the word 'medical' is, in my view, most likely to refer to things used in relation to the treatment of humans (rather than animals). Consequently, I also do not consider it likely that there will be an overlap in user. There is no competition or complementarity. Taking this into account, I consider the goods and services to be dissimilar.

### *Disinfectant services and Sterilisation;*

44. The same applies to these services. However, I recognise that there may be an overlap in user as veterinary practices could use these services. Notwithstanding this, I do not consider this alone to be sufficient for a finding of similarity. Consequently, I consider the goods and services to be dissimilar.

### *Installation and repair of medical, [...] dental [...] apparatus and instruments.*

45. I do not consider it likely that these services will overlap in trade channels, method of use, purpose or nature with the opponent's goods. There is no competition or complementarity. Consequently, I consider the goods and services to be dissimilar.

### *Installation and repair of [...] surgical, [...] and veterinary apparatus and instruments.*

46. These services will overlap in trade channels and user with the opponent's goods. The nature, purpose and method of use of the goods and services are clearly different. There is no competition or complementarity. Consequently, I consider the goods and services to be similar to between a low and medium degree.

## Class 42

*Research in the field of [...] veterinary equipment.*

47. As this term covers research in the veterinary field (specifically in relation to equipment), I accept the opponent's submission that there could be an overlap in trade channels and user with the opponent's goods. However, the nature, purpose and method of use of the goods and services differ. There is no competition or complementarity. Consequently, the goods and services are similar to between a low and medium degree.

*Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Research in the field of [...] surgical, [...] equipment, [...] surgery*

48. These terms in the First Application could include research in the field of veterinary science and products. Consequently, the same finding will apply as set out above and I find them to be similar to between a low and medium degree.

49. In relation to the Second Application, the limitation – solely in connection with the medical sector – in my mind, limits any scope to research undertaken in relation to medicine used for humans (rather than animals). Consequently, I do not consider that the same overlap in trade channels and users apply. I consider the goods and services to be dissimilar.

*Research in the field of medical, [...] dental [...] equipment, medical care.*

50. I do not consider that the same overlap in trade channels applies to these services. Consequently, I consider them to be dissimilar to the opponent's goods.

51. As these services are already limited to research in the field of treatment of humans, I do not consider that the limitation/exclusion have any bearing and the same finding applies to both applications.

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

52. 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 and services 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.”

53. The average consumer for the goods will be veterinary professionals and the end users will be dog owning members of the general public. In my view, the average consumer of the services will be professionals only. The cost of the goods and services is likely to vary, as will frequency of purchase. The applicant submits that the level of attention paid would be high. Given the impact on the wellbeing of the end user's pet and the importance of these goods and services to the business of veterinary professionals, I consider that at least between a medium and high degree of attention would be paid (although I recognise it may be higher for many of the goods and services).

54. The goods and services are likely to be purchased following perusal of signage in brochures, on websites or on physical premises. However, discussions may also be had regarding the products and word-of-mouth recommendations may be made. Consequently, visual considerations will play the greater role in the purchasing process, but aural considerations will also be important.

## Comparison of trade marks

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

56. 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 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.

57. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade marks
VANGUARD	 <b>VANGUARD</b> (the First Application)  Vanguard (the Second Application)

### The First Application

58. The opponent's mark consists of the word VANGUARD. There are no other elements to contribute to the overall impression which lies in the word itself. The First Application consists of a 'V' or 'tick' device, followed by the word VANGUARD. Given its length, and the fact that the eye is naturally drawn to the element of the mark that can be read, I agree with the opponent's submission that it is the word VANGUARD which plays the greater role in the overall impression, with the device playing a lesser role.

59. Visually, the marks overlap in that they both contain the word VANGUARD. As submitted by the applicant, the device in the First Application acts as a point of visual difference. Nonetheless, I consider them to be visually similar to a high degree.

60. Aurally, I agree with the opponent that it is unlikely that the device in the First Application will be articulated. Consequently, the marks will be aurally identical. However, if the device is viewed as a stylised letter 'V' and is articulated then they will still be aurally highly similar.

61. Conceptually, the word VANGUARD may mean either something that is at the forefront of a movement or area of research or the part of an army that goes into battle first. I consider it likely that the average consumer will be familiar with one or both of these concepts. However, whichever meaning is conveyed, it will be identical for both marks. I do not consider that the device in the First Application conveys any particular meaning for the average consumer.

### The Second Application

62. The applicant admits that the Second Application and the opponent's mark are identical.

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

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

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

64. 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 and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

65. I have summarised the opponent’s evidence of use above. I am not satisfied that it justifies a finding of enhanced distinctive character. This is because I have no information about overall advertising or marketing expenditure and, as the applicant

submits, no market share information. I have, therefore, only the inherent position to consider. As noted above the word VANGUARD is an ordinary dictionary word. I accept that it may have some allusive qualities in the sense of the opponent's goods being at the forefront of their field. For that reason, I consider it to be inherently distinctive to between a slightly lower than medium degree.

### **Likelihood of confusion**

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

67. I have found as follows:

- a) The First Application and the opponent's mark are visually highly similar, aurally identical or highly similar and conceptually identical.
- b) The Second Application and the opponent's mark are identical.
- c) The goods and services vary from being similar to between a low and medium degree to similar to a medium degree (except where I have found them to be dissimilar).

- d) The earlier mark is inherently distinctive to a slightly lower than medium degree.
- e) The average consumer will be veterinary professionals and for some of the goods the end user will be pet-owning members of the public. At least between a medium and high degree of attention will be paid during the purchasing process (although for many of the goods and services it will be higher).
- f) Visual considerations will play the greater role in the purchasing process, although aural considerations are also important.

68. The Second Application and the earlier mark are identical. Clearly, there is potential for customers to directly confuse them. In my view, this will apply to all goods and services that are similar to at least between a low and medium degree. Even where the purchasing process is visual, I consider that the device element in the First Application is likely to be overlooked and that the consumer will simply recall that it was a VANGUARD product. Consequently, I consider there to be direct confusion. In my view, it will apply to all goods and services that are similar to at least between a low and medium degree. If I am wrong and the average consumer does recall the device in the First Application, I consider that they will view the common element VANGUARD as indicating that the marks originate from the same or economically linked undertakings. They are likely to view the device element as simply an alternative mark being used by the opponent. Consequently, I consider there to be indirect confusion in respect of all those goods and services that are similar to at least between a low and medium degree.

69. The opposition based upon section 5(2) succeeds in relation to the following goods and services for the First Application:

Class 10      Surgical and veterinary apparatus and instruments; Suture materials.

Class 35      Wholesaling services and retail services related to the following goods: surgical and veterinary apparatus and instruments.

Class 37 Installation and repair of surgical and veterinary apparatus and instruments.

Class 42 Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Research in the field of surgical and veterinary equipment and surgery.

70. The opposition based upon section 5(2) succeeds in relation to the following goods and services for the Second Application:

Class 10 Surgical and veterinary apparatus and instruments; Suture materials.

Class 35 Wholesaling services and retail services related to the following goods: veterinary apparatus and instruments.

Class 37 Installation and repair of surgical and veterinary apparatus and instruments.

Class 42 Research in the field of veterinary equipment.

### **Final remarks**

71. For the avoidance of doubt, even if the opponent had been successful in demonstrating enhanced distinctiveness, it would not have made a difference to the outcome of my decision. This is because the remaining goods and services are dissimilar, and there can be no likelihood of confusion where there is dissimilarity of goods and services.

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

72. Section 5(3) of the Act states:

“5(3) A trade mark which -

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

73. Section 5(3A) of the Act states:

“Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

74. 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*).

75. The conditions of section 5(3) are cumulative. Firstly, the opponent must show that the earlier mark and the applications are similar. Secondly, the opponent must show that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them in the sense of the earlier mark being brought to mind by the later mark. Finally, assuming the first three conditions have been met, section 5(3) requires that one or more of the types of damage will occur. It is unnecessary for the purposes of section 5(3) that the goods and services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

## **Reputation**

76. In *General Motors*, Case C-375/97, the CJEU held that:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

77. In determining whether the opponent has demonstrated a reputation for the goods relied upon, it is necessary for me to consider whether its marks will be known by a significant part of the public concerned with those goods. In reaching this decision, I must take all of the evidence into account including "the market share held by the trade mark, the intensity, geographical extent and duration of use, and the size of the investment made by the undertaking in promoting it."

78. In my view, the same deficiencies with the opponent's evidence apply as set out above. Consequently, I do not consider that it has established the requisite reputation and the opposition based upon section 5(3) falls at the first hurdle. However, for the sake of completeness, I will consider the opposition based upon section 5(3) in the event that I am wrong in my primary finding and that the opponent has demonstrated a moderate reputation in relation to vaccines for dogs (which, in my view, is the best case upon the evidence).

## **Link**

79. As I noted above, my assessment of whether the public will make the required mental 'link' between the marks must take account of all relevant factors. The factors identified in *Intel* are:

### The degree of similarity between the conflicting marks

The First Application and the earlier mark are visually highly similar, aurally identical or highly similar and conceptually identical.

The Second Application and the earlier mark are identical.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

The goods and services vary from being dissimilar to similar to a medium degree.

The strength of the earlier mark's reputation

I will carry out the assessment on the basis that the opponent has a moderate reputation for vaccines for dogs.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

I have found the earlier marks to be inherently distinctive to a slightly lower than medium degree.

Whether there is a likelihood of confusion

I have found there to be a likelihood of confusion for some of the goods and services.

80. I do not consider that this ground puts the opponent in any stronger position than the section 5(2) opposition. This is because the distance between the remaining goods and services (in relation to which I have found no likelihood of confusion) would be too great to result in a link, notwithstanding the similarity of the marks. Consequently, I can see no reason why the First and Second Applications would bring to mind the earlier mark, when used on dissimilar goods and services, given the only moderate reputation (at best).

81. The opposition based upon section 5(3) of the Act is dismissed.

## **Section 5(4)(a)**

82. Section 5(4)(a) of the Act states as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa)...

b) ...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark”.

83. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application.”

84. I can deal with this ground relatively swiftly. Whilst there are issues with the opponent’s evidence as noted above, I am satisfied that it is sufficient to establish a moderate (but protectable) degree of goodwill in relation to vaccines for dogs. However, whilst the test for misrepresentation is different from that for likelihood of confusion in that it entails “deception of a substantial number of members of the public” rather than “confusion of the average consumer”, it has been acknowledged that they are unlikely to produce different outcomes in practice.<sup>1</sup> For the same reasons set out

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<sup>1</sup> *Marks and Spencer PLC v Interflora* [2012] EWCA (Civ) 1501

above, I consider that the identical/highly similar marks will lead the relevant public to conclude that goods and services of the applicant originate from the opponent. This will apply where I have found the goods and services to be similar to at least between a low and medium degree. In relation to those that are dissimilar, I consider the distance between them sufficient to offset the similarity of the marks.

85. The opposition based upon section 5(4)(a) succeeds in relation to the same goods and services as the section 5(2) opposition, as set out at paragraphs **69 and 70** above.

## **CONCLUSION**

86. The opposition in relation to the First Application is successful in relation to the following goods and services for which the application is refused:

Class 10      Surgical and veterinary apparatus and instruments; Suture materials.

Class 35      Wholesaling services and retail services related to the following goods: surgical and veterinary apparatus and instruments.

Class 37      Installation and repair of surgical and veterinary apparatus and instruments.

Class 42      Scientific and technological services and research and design relating thereto; Industrial analysis and research services; Research in the field of surgical and veterinary equipment and surgery.

87. The opposition against the First Application is unsuccessful in relation to the following goods and services for which the application may proceed to registration, in addition to those which were unopposed:

Class 10      Medical and dental apparatus and instruments; Artificial limbs, eyes and teeth; Orthopedic articles; Medicinal products.

Class 16 Paper; Millboard; Printed matter; Bookbinding material; Plastic sheets, films and bags for wrapping and packaging.

Class 35 Advertising; Business management; Business administration; Office functions; Wholesaling services and retail services related to the following goods: medical and dental apparatus and instruments, Artificial limbs, eye and teeth, Orthopaedic articles, Paper, cardboard (paperboard), Printed matter, bookbinding material, Plastic sheets, films and bags for wrapping and packaging.

Class 37 Treatment of medical instruments and apparatus through cleaning, Disinfectant services and Sterilisation; Installation and repair of medical and dental apparatus and instruments.

Class 42 Research in the field of medical and dental equipment and medical care.

88. The opposition against the Second Application is successful in relation to the following goods and services for which the application is refused:

Class 10 Surgical and veterinary apparatus and instruments; Suture materials.

Class 35 Wholesaling services and retail services related to the following goods: veterinary apparatus and instruments.

Class 37 Installation and repair of surgical and veterinary apparatus and instruments.

Class 42 Research in the field of veterinary equipment.

89. The opposition against the Second Application is unsuccessful in relation to the following goods and services for which the application may proceed to registration, in addition to those that were unopposed:

- Class 10 Medical and dental apparatus and instruments; Artificial limbs, eyes and teeth; Orthopedic articles; Medicinal products.
- Class 16 Paper; Millboard; Printed matter; Bookbinding material; Plastic sheets, films and bags for wrapping and packaging.
- Class 35 Advertising; Business management; Business administration; Office functions; Wholesaling services and retail services related to the following goods: Surgical, medical and dental apparatus and instruments, Artificial limbs, eye and teeth, Orthopaedic articles, Surgical sutures, Paper, cardboard (paperboard), Printed matter, bookbinding material, Plastic sheets, films and bags for wrapping and packaging; solely in connection with the medical sector; Other than marketing, strategic consultancy, analysis and market research services.
- Class 37 Treatment of medical instruments and apparatus through cleaning, Disinfectant services and Sterilisation; Installation and repair of medical and dental apparatus and instruments.
- Class 42 Research in the field of medical and dental equipment and medical care; all aforesaid services only in the medical field.

## **COSTS**

90. The applicant has enjoyed a greater degree of success and is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. Applying an appropriate reduction for the only partial success, I award the applicant the sum of **£875**, calculated as follows:

Preparing Counterstatements and considering the Notices of opposition	£350
Considering the opponent's evidence	£350

Written submissions in lieu

£175

**Total**

**£875**

91. I therefore order Zoetis UK Limited to pay Vanguard AG the sum of £875. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 31<sup>st</sup> day of March 2023**

**S WILSON**

**For the Registrar**