

o/295/22

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3557487
AND THE REQUEST BY CONTEMPORARY AMPEREX
TECHNOLOGY CO. LIMITED**

TO REGISTER THE SERIES OF 2 TRADE MARKS

CATL NBattery

CATL NBattery

IN CLASS 9

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 424084
BY CATERPILLAR INC.**

Background and pleadings

1. On 18 November 2020 Contemporary Amperex Technology Co. Limited (“**the Applicant**”) applied to register a series of two trade marks for the words “CATL NBattery”. I note that the second mark in the series (shown on the front page of this decision) is recorded as a figurative mark, however this mark comprises the words “CATL NBattery” in what appears to be the Times New Roman font. As there are no material differences between the two marks in the series, I will deal with the marks together and refer to them collectively as “**the contested mark**”.

2. On 22 January 2021 the contested mark was published for opposition purposes in respect of the following goods:

Class 9: *Battery jars; Battery boxes; Plates for batteries; High tension batteries; Battery chargers; Galvanic batteries; Batteries, electric; Accumulators, electric; Charging stations for electric vehicles; Solar batteries; Portable power source (rechargeable battery); Batteries, electric, for vehicles.*

3. On 22 April 2021, the contested mark was opposed, in full by Caterpillar Inc. (“**the Opponent**”). The opposition is based on sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act (“**the Act**”).

4. Under sections 5(2)(b) and 5(3), the Opponent relies upon the following UK trade mark and two EU trade marks¹ (EUTM):²

(i) The “**figurative mark**”



EUTM number 15167711

Filing date 01/03/2016

Registration date 02/02/2017

Relying on goods in Classes 7, 9 and 12

¹ EUTMs are still relevant in these proceedings given the impact of the transitional provisions of the Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 – see Tribunal Practice Notice 2/2020 for further information.

² The goods relied upon by the Opponent under section 5(2)(b) and 5(3) are listed in the annex to this decision.

(ii) The “UK mark”

CAT

UK trade mark filing number 2456446

Filing date 23/05/2007

Registration date 31/07/2009

Relying on goods in Classes 9 and 12

(iii) The “844 mark”

CAT

EUTM number 5540844

Filing date 11/12/2006

Registration date 22/02/2012

Relying on goods in Class 9

5. An “earlier trade mark” is defined in section 6(1) of the Act as:

“(a) a registered trade mark, international trade mark (UK), a European Union trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks”

6. The filing date of each of the Opponent’s three trade mark registrations is prior to the filing date of the contested mark. Therefore the Opponent’s marks constitute earlier marks under the Act.

7. Since the Opponent’s UK and 844 marks had been registered for more than five years when the contested mark was applied for, they are subject to the use provisions under section 6A of the Act. The Opponent duly provided statements of use in respect of its UK and 844 marks and the Applicant requested that the Opponent provide proof of this use.

8. Under section 5(4)(a), the Opponent relies upon two signs:

(i) The “**figurative sign**”



Used throughout the UK since 1988

Used in relation to construction, mining, agricultural, earth moving machines, vehicles, equipment and related products, forestry machines and equipment, power generation products and related products and accessories, generators, motors and engines and related products, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, batteries, battery chargers and related products, parts and fittings for all the aforesaid goods.

(ii) The “**word sign**”

CAT

Used throughout the UK since the early 1950's

Used in relation to construction, mining, agricultural, earth moving machines, vehicles, equipment and related products, forestry machines and equipment, power generation products and related products and accessories, generators, motors and engines and related products, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, batteries, battery chargers and related products, parts and fittings for all the aforesaid goods.

The Opponent's case

Section 5(2)(b)

9. Under section 5(2)(b) the Opponent relies on the goods in Class 9 under each of its earlier marks and submits that in respect of each mark:

- (i) there is a degree of conceptual, visual and aural similarity with the contested mark;
- (ii) the goods are identical, or highly similar to those under the contested mark;
- (iii) there is a likelihood of confusion with the contested mark, with the relevant public believing that the marks are used by the same undertaking, or that there is an economic link between them;
- (iv) the likelihood of confusion is enhanced by the inherent and acquired distinctiveness of the earlier marks.

Section 5(3)

10. Under Section 5(3), the Opponent relies on goods in Classes 7, 9 and 12 under its earlier marks and submits that in respect of each mark:

- (i) through extensive use and significant investment in promoting the marks, the Opponent has established a significant reputation and goodwill in the earlier marks, which are known by a significant part of the relevant public. In view of the reputation and similarity with the contested mark, the relevant public will believe the marks are used by the same undertaking, or that there is an economic connection between them.
- (ii) use of the contested mark would, without due cause, take unfair advantage of the reputation of the earlier marks, feeding on the Opponent's fame, riding on their coat-tails and/or free-riding on the substantial investment made by the Opponent and benefitting from the power of attraction, reputation and prestige of the earlier marks;
- (iii) use of the contested mark is likely to be detrimental to the distinctive character of the earlier marks by way of erosion, blurring or dilution. Such use will likely weaken the ability of the earlier marks to identify goods as originating from the

Opponent's business, resulting in a change of economic behaviour of the average consumer.

Section 5(4)(a)

11. Under section 5(4)(a), the Opponent submits that both of its signs:

- (i) have gained substantial goodwill in the UK.
- (ii) any use of the contested sign in respect of the goods under the application has the capacity to cause deception and confusion, including inducing in customers a belief that the goods under the Applicant's mark emanate from, or are associated with, the Opponent, causing damage to the Opponent's business.

The Applicant's case

12. In response the Applicant denies that the Opponent has made the case for the refusal of its mark under any of the grounds.

Section 5(2)(b)

13. Under section 5(2)(b), in respect of each of the earlier marks the Applicant:

- (i) accepts there is an overlap in the goods in Class 9;
- (ii) denies that when viewed as a whole, there is any visual, conceptual, or aural similarity with the contested mark;
- (iii) denies that there is a likelihood of confusion with the contested mark.

Section 5(3)

14. Under section 5(3), the Applicant puts the Opponent to strict proof of each of its claims. In respect of each of the earlier marks, the Applicant:

- (i) denies that there is any similarity with the contested mark;

(ii) denies that the Applicant's and Opponent's marks would be viewed as originating from the same undertaking, or that there is an economic connection between the users of the marks;

(iii) denies that use of its mark would take unfair advantage of the Opponent's marks, or would feed on the Opponent's fame, ride on its coat-tails, or free-ride on any investment made by the Opponent in its earlier marks;

(iv) denies that the use of its mark would be detrimental to, or weakened by erosion, blurring or dilution, the Opponent's earlier marks.

Section 5(4)(a)

15. In respect of the section 5(4)(a) ground, the Applicant puts the Opponent to strict proof of its claims. In respect of both of the Opponent's earlier signs, the Applicant:

(i) denies that the Opponent has gained substantial goodwill for the goods covered;

(ii) denies that there is any similarity with the contested mark;

(iii) denies that the contested mark has the capacity to cause deception and confusion including inducing consumers in a belief that the goods supplied under the Applicant's mark emanate from, or are associated with the Opponent's business, causing damage to the Opponent's business.

Representation and papers filed

16. Only the Opponent filed evidence in these proceedings, which comprises the witness statement of Lia Yasmin Young, Solicitor within the Legal Services Division of Caterpillar UK Limited, a subsidiary company of the Opponent. Ms Young introduces Exhibits LYY1 to LYY29 which aim to show how the Opponent's marks have been used. In her witness statement, Ms Young also provides financial data and information on market share.

17. A hearing took place before me by videoconference on 7 February 2022. Alaina Newnes attended as counsel for the Opponent, instructed by Hogan Lovells

International LLP; Victoria Jones attended as counsel for the Applicant, instructed by Barker Brettell LLP.

Decision

18. 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. That is why this decision continues to refer to EU trade mark law.

Proof of use

19. The relevant statutory provisions are as follows:

“Raising of relative grounds in opposition proceedings in case of non-use”

6A(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), (b) 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) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Community.

(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.”

20. Section 100 of the Act is also relevant; it reads:

“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.”

21. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J 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 Bunderversammlung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16, Case C-609/11 P *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.*

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

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

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

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

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: Ansul at [37]. Internal use by the proprietor does not suffice: Ansul at [37]; Verein at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: Silberquelle at [20]-[21]. But use by a non-profit making association can constitute genuine use: Verein at [16]-[23].

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

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in

question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

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

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

22. As already indicated, the Opponent’s UK and 844 marks are subject to the use provisions under section 6A of the Act. The Opponent must therefore show use of these marks during the five years up to the date when the contested mark was applied for, that is to 19 November 2015 to 18 November 2020 (“**the relevant period**”).

23. I will begin my assessment of the evidence of use with the UK mark, which I note includes a near identical list of goods in Class 9 to the 844 mark, and also covers Class 12, which is not included under the 844 mark. I also note that the evidence has a greater focus on the UK market with references taken from UK websites, more UK

sales figures and articles from UK publications, together with English language brochures. Under the UK mark the Opponent is required to show proof of use in respect of the following goods:

Class 9: Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; batteries and battery chargers; parts and fittings for all the aforesaid goods included in Class 9.

Class 12: Vehicles excluding catamarans; apparatus for locomotion by land; vehicles for earth moving, earth conditioning, construction, material handling, mining, paving, agriculture, and forestry excluding catamarans; fork lift trucks; agricultural tractors; engines for land vehicles; transmissions for land vehicles; structural, repair, and replacement parts for all of the foregoing.

Class 9

24. Sales of the Opponent's battery products are made via two intermediaries, Finning UK and Baccus. The evidence shows that Finning have made annual UK sales in the region of £2 million in the years 2016 and 2019, which span the relevant period. UK sales by Baccus only began in 2019, when the UK licence was set up and, in that year, there was around \$0.5 million in UK sales. While Baccus had an EU licence from 2016, the level of sales are quite low, considering the size of the EU market, ranging from \$3,000 to \$300,000. Exhibits LYY4 and LYY5 feature webpages and a catalogue showing the CAT-branded products that are sold by the intermediaries. The batteries are industrial in nature, being for machinery and vehicle engines and also batteries which ensure an uninterrupted power supply in computer and manufacturing equipment. There are also examples of battery-related products, including cables and chargers.

25. Ms Jones makes various criticisms of the Opponent's evidence, including that the webpages were obtained after the relevant period and that the sales figures are not broken down by product-type. I consider that it would have been preferable for WaybackMachine extracts to have been obtained for the webpages, and for dates to be provided as to when the brochures were in circulation. However, I note Ms Newnes'

comments that the evidence has been obtained via third parties, meaning that the Opponent did not have direct access to dated versions of the documents. I also note the copyright notice from within the relevant period which can be seen in the brochure and the advertisements showing offers available until dates during the relevant period. Overall, taking account of the sales figures, the two UK distributors for the goods and the examples of the goods being advertised and made available for sale, albeit not all dated within the relevant period, I consider that in respect of the UK mark, the evidence shows use of the word mark “CAT” in respect of industrial batteries, batteries for vehicles and parts and fittings for the aforesaid. While the Opponent has also provided evidence in showing its marks used in respect of mobile phones and torches, there is nothing to show that the batteries that these products will inevitably contain are sold separately by the Opponent. This being the case, as far as batteries are concerned, I find a fair specification to be “industrial batteries; batteries for vehicles; parts and fittings for the aforesaid”.

26. Ms Young also gives evidence in respect of CAT-branded power systems, including generators and marine power systems. There are various issues with this evidence, including that the information on generators is dated outside the relevant period, despite the goods appearing to be sold through the Opponent’s own website, and so the evidence would be more accessible to the Opponent. In addition, there are no sales figures provided for generators alone, with the sales figures being combined with engines, which are different in nature to the “*Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity*” covered by Class 9 of the Opponent’s UK mark. In respect of the marine power systems, no examples of the goods are shown, with only sales figures being provided at Exhibit LYY7. Given that the Applicant’s goods concern batteries and electric vehicle chargers, and I have already found use to have been shown by the Opponent in respect of certain types of batteries, I do not consider that use in respect of power systems or generators adds anything for the Opponent and I will not take further account of these goods.

Class 12

27. Ms Jones accepts that the Opponent has proved use of its mark in respect of all of the goods in Class 12, other than “structural, repair and replacement parts for all the foregoing”. From the evidence, I note the very high levels of UK sales for the Opponent’s machines and vehicles, in the hundreds of millions of dollars and for parts and fittings, where sales are in the tens of millions of dollars. Also noted is the 16.2% global market share that the Opponent for construction equipment. The Opponent has not provided a significant number of examples of the vehicles in respect of which it has used its mark but I note from Exhibits LYY1, LYY11, LYY13 and LYY15 the examples of CAT vehicles and machinery. In respect of Exhibit LYY15, I note that the Bauma trade fair took place in Germany, however, it is the largest trade fair of its kind and I consider it would attract UK customers and so I find this evidence to be relevant to the assessment of use of the UK mark. Taking account of the evidence, I consider the Opponent to have shown use in respect of “*vehicles for earth moving, earth conditioning, construction, material handling, mining, paving, agriculture, and forestry excluding catamarans; fork lift trucks; agricultural tractors; engines for land vehicles; transmissions for land vehicles*”, (for all of which the Applicant has accepted use to have been shown). In respect of “structural, repair, and replacement parts for all of the foregoing”, there is scant information as to the specific nature of the parts offered. However, it is clear that the Opponent offers parts for sale and Ms Young reports significant levels of sales of parts by the Opponent. I therefore find that, contrary to the Applicant’s submissions, the Opponent has shown use also in respect of parts in Class 12. I therefore find a fair specification of goods in Class 12 to be “*vehicles for earth moving, earth conditioning, construction, material handling, mining, paving, agriculture, and forestry excluding catamarans; fork lift trucks; agricultural tractors; engines for land vehicles; transmissions for land vehicles; structural, repair, and replacement parts for all of the foregoing*”.

Section 5(2)(b)

28. Section 5(2)(b) of the Act states:

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

[...]

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

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

29. The Opponent's figurative mark is not subject to the use requirements under section 6A however, I consider the stronger case for the Opponent is its word mark, which is on the face of it closer to the Applicant's mark. As I have found the Opponent to have proved that it had used its UK mark, this mark will be the focus of my analysis under section 5(2)(b).

The case law on section 5(2)(b)

30. The following principles are gleaned from the decisions of the CJEU 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 the earlier mark to mind, is not sufficient;

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

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

Comparison of the goods

31. I remind myself that for the section 5(2)(b) ground, the Opponent only relies on its goods in Class 9. Taking account of my finding on proof of use of the Opponent's UK mark, the goods to be compared are the following:

Opponent's Goods (UK mark)	Applicant's Goods
<u>Class 9:</u> Industrial batteries; batteries for vehicles; parts and fittings for the aforesaid.	<u>Class 9:</u> Battery jars; Battery boxes; Plates for batteries; High tension batteries; Battery chargers; Galvanic batteries; Batteries, electric; Accumulators, electric; Charging stations for electric vehicles; Solar batteries; Portable power source (rechargeable battery); Batteries, electric, for vehicles

32. Some of the contested goods are identical, i.e. batteries, electric, for vehicles are identical to the Opponent's batteries for vehicles. For reasons of procedural economy, I will not undertake a full comparison of the goods listed above. The examination of the opposition will proceed on the basis that the contested goods are identical to those under the Opponent's UK mark. If the opposition under section 5(2)(b) fails, even where the goods are identical, it follows that the opposition will also fail where the goods are only similar.

Average consumer and the purchasing act

33. It is necessary to determine who is the average consumer for the respective goods and how the consumer is likely to select them.

34. In *Hearst Holdings Inc*,³ Birss J. explained that:

³ *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), at paragraph 60.

“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 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 word “average” denotes that the person is typical ...”

35. It must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods in question: *Lloyd Schuhfabrik Meyer*⁴.

36. At the hearing, the parties addressed the relevant consumer of the goods in Class 9 under the respective marks. It was common ground between the parties that certain goods are directed towards business consumers or customers with specific knowledge or expertise, but that for goods such as battery chargers, batteries electric, portable power source (rechargeable battery) and batteries for vehicles, the general public would also be the average consumer.

37. Having considered the submissions, I find that the average consumer of the goods will in some cases be exclusively a professional public (e.g. battery jars, industrial batteries), and in other cases will include both a professional public and general public (e.g. Batteries, electric, portable power source (rechargeable battery)). I consider that the professional consumer will pay a high level of attention when purchasing the goods, which in certain instances will cost significant sums, for example, industrial type batteries. In respect of battery chargers, batteries electric, and portable power source (rechargeable battery), I agree with the parties that the relevant consumer of these goods will also include the general public. The level of attention that will be paid by the general public will vary from relatively low in respect of the types of batteries that are used in a multitude of items throughout the home and that are relatively inexpensive, to moderate for portable power sources and battery chargers, which will have a higher price and will necessitate more care during the purchase to ensure that the correct specification of product is obtained. In respect of batteries for vehicles, as far as these

⁴ Case C-342/97.

goods cover car batteries, I consider it more likely that garages will purchase such batteries on behalf of the vehicle owner.

38. Visual considerations will be key in respect of the purchase of the goods, with brochures and websites provided for the professional public. For goods aimed at the general public, visual considerations will apply where goods are selected from a shelf or a website. For all of the goods, I do not discount aural considerations playing a part through word of mouth recommendations, or in the case of car batteries in particular, where garages often order parts by telephone.

Comparison of the marks

39. It is clear from *Sabel BV v. Puma AG*⁵ (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 *Bimbo SA v OHIM*,⁶ 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.”

40. 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.

41. The Applicant's and Opponent's marks are shown below:

⁵ Case C-251/95.

⁶ Case C-591/12P.

The Opponent's earlier UK mark	The Applicant's mark
CAT	CATL NBattery

42. The overall impression of the Opponent's UK mark is of the common English language word "CAT", referring to a feline animal, often kept as a pet. The overall impression of the Applicant's mark is of the invented word or potential acronym "CATL", followed by the common English word "Battery" which is preceded by the single letter "N". The word "Battery" in the Applicant's mark has various meanings in English, but I consider it is primarily understood as a device that produces electrical energy to make something work. I agree with Ms Newnes that the word "Battery" in the Applicant's mark is descriptive in respect of the goods covered by the application. In respect of the letter "N", Ms Newnes submits that this is a common abbreviation for the word "and", as seen in terms such as "rock 'n' roll" and "fish 'n' chips". On this point, I agree with Ms Jones that the letter "N" would not be understood as "and" because the letter is joined to the word "Battery", rather than being sat between the two words, as it is in the phrases cited by Ms Newnes. As well as this, the phrases cited bring together two associated things, which is not apparent with the invented word/potential acronym "CATL" and the singular form of the word "Battery". Ms Newnes states that in the alternative the letter "N" will be disregarded or paid little attention. I disagree with this and consider that the letter will clearly be perceived, even if its meaning is unclear. Ms Jones also considers the possibility that the letter "N" could be understood as an abbreviation, for example referring to "New". In my view, this understanding is unlikely, and I cannot think of other examples where the letter "N" is used in this way.

43. Visually, the marks align in respect of the word "CAT", which is the entirety of the Opponent's mark and is reproduced in the Applicant's mark. The marks differ visually in respect of the letter "L" which is joined to the word "CAT" in the Applicant's mark, forming the word "CATL". The marks also differ in respect of the word "NBattery" in the Applicant's mark, which has no counterpart in the Opponent's mark. Overall I find the marks to be similar to a low degree.

44. Aurally, the Opponent's mark consists of the single syllable "CAT". The Applicant's mark comprises two words, the first consisting of two syllables pronounced "CAT – ELL" or "CAT – TLE" followed by the second word consisting of four syllables pronounced "EN – BAT – TER – RI". The point of aural similarity between the marks involves the entirety of the Opponent's mark, which appears at the beginning of the Applicant's mark, however the aural differences are significant in respect of the additional five syllables in the Applicant's mark. Overall, I consider the marks to be aurally similar to a low degree.

45. The Opponent's mark has a clear concept of a feline animal. In the Applicant's mark, the word "CATL" and the letter "N" have no apparent meaning, it is possible that these elements would be understood as some form of technical specification, but I have no information before me on what such a specification may refer to. As submitted by Ms Jones, I do not consider that the average consumer would dissect the letter "L" from the word "CATL" and therefore the Applicant's mark does not, in my view provide the concept of a feline animal. I therefore find the marks to be conceptually dissimilar.

Distinctive character of the earlier mark

46. Distinctive character is the capacity of the mark to identify the goods or services for which it is registered as coming from a particular undertaking, and to distinguish those goods or services from those of other undertakings: see *Lloyd Schuhfabrik Meyer*, paragraph 22.

47. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words. The inherent distinctive character may be enhanced through the use that has been made of the mark.

48. In *Lloyd Schuhfabrik Meyer*, the CJEU set out how an assessment of a mark's distinctive character should be made:

“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).”

49. Although the Opponent’s UK mark is an ordinary dictionary word meaning a feline animal, it has no meaning in respect of the goods for which it is registered. As such, I consider the mark to have a medium degree of distinctive character. As to whether the distinctive character of the Opponent’s UK mark has been enhanced through use, in respect of the Opponent’s industrial batteries; batteries for vehicles; parts and fittings for the aforesaid in Class 9, the evidence shows fairly longstanding use of the Opponent’s mark, at least with regards to the licensee Finning in the UK. While the evidence shows that Finning has promoted batteries in the UK, there is no indication of the amount that has been invested in promoting the CAT-branded battery products. There is also no indication of the size of the market, or indeed the cost of the products sold, however, I would consider the market to be very large, taking account of the number of vehicles in the UK, which all contain a battery and the wide variety of uses that batteries have in the home and industrial settings. I would think that the price of the goods would vary significantly, from relatively low cost to quite high for batteries

for industrial purposes. So, while it is difficult to gauge the market share that the Opponent holds for the goods, I consider that the approximate £2 million of annual sales, coupled with use over a number of years, results in a small enhancement of the distinctive character in respect of industrial batteries; batteries for vehicles; parts and fittings for the aforesaid. In respect of the Class 9 goods, given the use that has been shown, I find the Opponent's UK mark to possess slightly above a medium level of distinctive character.

Likelihood of confusion

50. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all of the factors, weighing them, and looking at their combined effect, in accordance with the authorities set out earlier, in particular at my paragraph 30.

51. In my decision, I have assumed the goods to be identical. This is an important consideration as the identical nature of goods can offset differences between the marks (and vice versa). I have found the Opponent's mark to have achieved a small enhancement in its distinctive character due to the use that the Opponent has made of the mark. Furthermore, I have identified some goods where only a relatively low degree of attention will be paid. These factors of identical goods, an above medium degree of distinctive character and low level of consumer attention are considered to be the high point of the Opponent's case under section 5(2)(b) and will be the focus of my assessment as to the likelihood of confusion. Countering these points are the low level of visual and aural similarity between the marks and their conceptual dissimilarity, all of which point strongly away from direct confusion, which occurs where marks are mistaken for one another, and flows from the principle that the average consumer rarely has the opportunity to compare marks side by side and must instead rely on an imperfect image retained in their mind.⁷ While I have found the Applicant's mark to contain the entirety of the Opponent's word mark and that the "Battery" element of the Applicant's mark is descriptive in respect of its goods, the disruption of unconventionally placed additional consonants of a letter "L" following "CAT" and "N" preceding the word "Battery" provides a different overall impression. I therefore find

⁷ *Lloyd Schuhfabrik Meyer*

that even for identical goods and even though the distinctive character of the Opponent's earlier mark is medium and this has been enhanced through use, there is no likelihood of direct confusion.

52. I must also consider indirect confusion which arises where the consumer notices the differences between the marks, but due to the similarities between the common elements, they believe that the goods or services derive from the same, or a related economic undertaking.⁸ I find that it is unlikely that the marks would be indirectly confused. As pointed out by Mr James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Limited v Ashish Sutaria*, "*a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion*"; the differences between the marks which are the reason why there is no likelihood of direct confusion might also be the reason why there is no indirect confusion.⁹ In the present case, the different visual and aural impressions of the marks created in the Applicant's mark through the addition of the letter "L" in "CATL" and the second word "NBattery", do not in my view suggest a brand evolution, a sub-brand, or an allied brand.¹⁰ At my paragraph 45, I noted the possibility of the letter "N" being understood as some form of technical specification, which could be suggestive of a sub-brand. However, I have no information before me to decide such a point without speculation, and there is anyway the further difference of the meaningless word "CATL" which forms the first part of the Applicant's mark. Taking account of all of this, I find there is no likelihood of indirect confusion.

53. While my assessment under section 5(2)(b) has focused on the Opponent's UK mark, I consider that the Opponent's figurative mark does not put the Opponent in any better position as the marks themselves are further apart due to the figurative elements in the Opponent's mark which have no counterpart in the Applicant's mark. In addition to this, the evidence does not show any further enhancement of the distinctive character of the Opponent's figurative mark, above that which I have taken into account in respect of the UK mark. In respect of the Opponent's 844 mark, the only difference with this mark is a slightly broader specification of goods in Class 9. Given

⁸ *Back Beat Inc v L.A. Sugar (UK) Limited*, BL O/375/10.

⁹ *BL O/219/16*.


¹⁰ *Back Beat Inc v L.A. Sugar (UK) Limited*.

that I have assumed the goods to be identical in my assessment, the 844 mark does not put the Opponent in any better position under section 5(2)(b).

Outcome under section 5(2)(b)

54. The section 5(2)(b) ground of opposition fails.

Section 5(4)(a)

55. Under the section 5(4)(a) ground of opposition, the Opponent relies on the word sign “CAT” which is identical to its UK and 844 marks and a black and white version of its figurative mark . The Opponent relies on a wider list of goods compared to the goods relied upon under the section 5(2)(b) claim, however, the Applicant’s field of activity – batteries and related goods – have already been considered under section 5(2)(b). This being the case, I agree with Ms Jones that this claim is no broader than the claim under section 5(2)(b). Though the tests for confusion and misrepresentation differ,¹¹ in these proceedings, with all other factors being equal, if there is no confusion, it is difficult to see how there will be misrepresentation. I find that this ground does not advance the Opponent’s case and it fails in its entirety.

Section 5(3)

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

“(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

¹¹ *Marks and Spencer PLC v Interflora* [2012] EWCA Civ 1501.

mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

(3A) 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”.

57. The relevant case law in respect of section 5(3) 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*).

58. The conditions of section 5(3) are cumulative. Firstly, the Opponent must show that the earlier mark is similar to the Applicant's mark. Secondly, 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. Fourthly, assuming that the first three conditions have been met, section 5(3) requires that one or more of the three types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods 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.

59. The Opponent relies on a reputation for its goods in Classes 9 and 12 under its UK mark; Class 9 under its 844 mark; and Classes 7, 9 and 12 under its figurative mark. Earlier in this decision, I found that the distinctive character of the Opponent's UK mark had been enhanced by a small degree in respect of industrial batteries; batteries for vehicles; parts and fittings for the aforesaid in Class 9. The same evidence demonstrates that the Opponent has the requisite reputation too, however, I consider that no more than a qualifying reputation has been shown in respect of these goods.

60. I consider the Opponent to have shown a more significant reputation in respect of machinery and vehicles. In this respect, from the evidence, I note the very significant levels of sales, in the hundreds of millions. In addition, Ms Young's evidence indicates that the Opponent holds a significant global market share for construction goods and Exhibit LYY13 features extracts from the *Yellow Table* rankings which show the Opponent's leading position in the manufacture of construction equipment. While these metrics are global, rather than specific to the UK or EU markets, Ms Young's evidence confirms that the Opponent has a significant presence in the UK and EU, appearing at major trade shows, in the press and having several UK facilities producing trucks and construction equipment and employing over 10,000 people in the UK alone. This being the case, I consider that the market share for the UK and EU is likely to be significant, as it has been shown to be for the global market.

61. I note Ms Jones' acceptance that the Opponent had a reputation at the relevant date for its UK and figurative marks in respect of engines, motors, machinery and heavy industrial and construction vehicles, and parts and accessories thereof as far as such parts and accessories fall within Class 12 (i.e. not including batteries). I consider that Ms Jones' assessment accords with my assessment of the Opponent's evidence set out at my paragraphs 27 and 60. My assessment therefore continues in respect of the Opponent having had no more than a qualifying reputation in respect of each of its three earlier marks for industrial batteries; batteries for vehicles; parts and fittings for the aforesaid. And in respect of the Opponent's UK and figurative marks, on the basis of the Opponent having had a significant reputation for engines, motors, machinery and heavy industrial and construction vehicles, and parts and accessories thereof (but not including batteries).

62. Similarity of the marks is a factor to be taken into account when assessing section 5(3). I will therefore begin my assessment on the basis of the Opponent's UK mark, which, for the reasons set out previously, is closer to the Applicant's mark, and which includes goods in Class 12, in respect of which I have identified a significant reputation.

63. 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

64. Earlier I found a low degree of visual and aural similarity to exist between the Applicant's mark and the Opponent's UK mark, with the marks being conceptually dissimilar.

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

65. The Applicant's goods and the Opponent's industrial batteries; batteries for vehicles; parts and fittings for the aforesaid overlap, and this is accepted by the

Applicant. As previously identified, the average consumer of these goods will include both a professional and general public. In respect of engines, motors, machinery and heavy industrial and construction vehicles, and parts and accessories thereof (in Class 12, and not including batteries), where a significant reputation has been established, the closest point between these goods and the Applicant's goods is in respect of the Applicant's batteries at large and batteries for vehicles, which are necessary for the functioning of the vehicles.

The strength of the earlier mark's reputation

66. As previously stated, I find the Opponent has shown no more than a qualifying reputation in respect of industrial batteries; batteries for vehicles; parts and fittings for the aforesaid; but a significant reputation in respect of engines, motors, heavy industrial and construction vehicles, and parts thereof (as covered by the Opponent's UK mark).

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

67. As identified earlier in this decision, the Opponent's UK mark possesses a medium degree of inherent distinctive character in respect industrial batteries; batteries for vehicles; parts and fittings for the aforesaid, and this had been enhanced to a small degree through use. In respect of engines, motors, machinery and heavy industrial and construction vehicles, and parts and accessories thereof (not including batteries), as previously indicated, I consider the mark to possess a medium degree of inherent distinctive character, which had been enhanced through use, resulting in a high degree of distinctive character.

Whether there is a likelihood of confusion

68. There is no likelihood of confusion, as found earlier in this decision.

69. Although a likelihood of confusion is not necessary to find there is a link, I find that there will be no link.¹² While the Opponent's word mark "CAT" is entirely subsumed within the Applicant's mark, the addition of the letter "L", joined to the letters "CAT" in the Applicant's mark has no apparent meaning independently from the initial three letters, meaning that what is perceived is the invented word, or potential acronym "CATL", which is conceptually distinct from the Opponent's mark and visually and aurally similar to only a low degree. In addition to this, the Applicant's mark includes the second word "NBattery" and while I accept that "Battery" is descriptive in nature, the conjoined letter "N" has no apparent meaning, as discussed earlier in this decision. This second word in the Applicant's mark therefore serves to further differentiate its mark from the Opponent's mark.

70. Given the differences in the marks, I consider that even for the goods where I have identified the Opponent's mark to possess a high degree of enhanced distinctive character and a significant reputation, no link would be formed in the minds of the relevant section of the public between the respective marks.

71. Given the additional differences between the Applicant's mark and the Opponent's figurative mark, I consider it even clearer that no link would be made between the Applicant's mark and the Opponent's figurative mark.

Outcome under section 5(3)

72. The section 5(3) ground of opposition fails.

Overall outcome

73. The grounds of opposition under section 5(2)(b), 5(3) and 5(4)(a) have all failed. The opposition therefore fails and the Applicant's mark may proceed to registration.

¹² Intra-Press SAS v OHIM, Joined cases C-581/13P & C-582/13P, CJEU.

Costs

74. The Applicant has successfully defended the opposition and is entitled to a contribution towards its costs. In deciding on this award, I recall that the Applicant did not submit evidence in these proceedings.

Preparing a statement and considering the other side's statement	£450
Considering and commenting on the other side's evidence	£600
Preparing for and attending a hearing	£950
TOTAL	£2,000

75. I order Caterpillar Inc. to pay Contemporary Ampere Technology Co., Limited the sum of £2,000. 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 5th day of April 2022

Charlotte Champion

Charlotte Champion

For the Registrar

Annex: Goods relied upon by the Opponent

The figurative mark – EUTM 15167711 –  (no proof of use)

Section 5(2)(b)

Class 9: Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; battery testing apparatus for sale in kit form; battery chargers; batteries; battery starters; battery cables; battery testers; battery ground strap connectors; battery tie down connectors; voltage converters; parts and fittings for all the aforesaid goods; parts and fittings included in class 9 for land vehicles namely, batteries for vehicles.

Section 5(3)

Class 7: Machines and engines and parts therefore, for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, lawn care, lifting, marine propulsion, material handling, mining, mulching, oil and gas distribution, oil and gas exploration, oil and gas production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, tunnel boring, and vegetation management; motors and engines (except for land vehicles); current generators.

Class 9: Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; battery testing apparatus for sale in kit form; battery chargers; batteries; battery starters; battery cables; battery testers; battery ground strap connectors; battery tie down connectors; voltage converters; parts and fittings for all the aforesaid goods; parts and fittings included in class 9 for land vehicles namely, batteries for vehicles.

Class 12: Vehicles for use in agriculture, compaction, construction, demolition, earth conditioning, earth contouring, earth moving, forestry, landscaping, lifting, marine propulsion, material handling, mining, mulching, oil and gas distribution, oil and gas exploration, oil and gas production, paving, pipelaying, power generation, road building and repair, site preparation and remediation, tunnel boring, and vegetation management; apparatus for ;locomotion by land; tractors; dump trucks; engines and air intake and exhaust assemblies for land vehicles; parts and fittings for all of the foregoing goods.

The 844 mark – EUTM 5540844 – CAT

Section 5(2)(b)

Class 9: Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; battery chargers; batteries; battery cables; battery testers; parts and fittings for all the aforesaid goods; parts and fittings included in class 9 for land vehicles, namely batteries for vehicles.

Section 5(3)

Class 9: Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; battery chargers; batteries; battery cables; battery testers; parts and fittings for all the aforesaid goods; parts and fittings included in class 9 for land vehicles, namely batteries for vehicles.

The UK mark – 2456446 – CAT

Section 5(2)(b)

Class 9: Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; batteries and battery chargers; parts and fittings for all the aforesaid goods included in Class 9.

Section 5(3)

Class 9: Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; batteries and battery chargers; parts and fittings for all the aforesaid goods included in Class 9.

Class 12: Vehicles excluding catamarans; apparatus for locomotion by land; vehicles for earth moving, earth conditioning, construction, material handling, mining, paving, agriculture, and forestry excluding catamarans; fork lift trucks; agricultural tractors; engines for land vehicles; transmissions for land vehicles; structural, repair, and replacement parts for all of the foregoing.