

O/897/21

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3538781
AND THE REQUEST BY AIRCRAFT HOME LTD
TO REGISTER THE TRADE MARK**

PowerScrub

IN CLASS 7

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO. 423202
BY TECHTRONIC CORDLESS GP**

Background and pleadings

1. Aircraft Home Ltd (“**the Applicant**”) applied to register the plain text word “PowerScrub” as a UK trade mark in respect of the following goods:

Class 7: *Mechanical spraying, rinsing and cleaning apparatus, and installations consisting thereof, in particular high-pressure cleaning apparatus, steam cleaning and steam jet apparatus, particle jet apparatus, spray extraction apparatus, brushing machines, vacuum cleaners, floor cleaning machines; Floor polishing apparatus; Carpet brushing vacuum cleaners; Cleaning machines for hard surfaces; Cleaning machines for hard floors; Cleaning machines for textile covers; Cleaning machines for glass surfaces; Mechanical window cleaning apparatus; Automatic window cleaning apparatus (electric); Mechanical high-pressure water jet apparatus for cleaning, removing and treating surfaces and for cutting, drilling and deburring; High-pressure water tools, in particular high-pressure lances and high-pressure spray guns; Polishing machines, scrubbing machines, shampooing machines, sanding machines; Sweeping machines; Cleaning machines, carpet cleaning machines; Floor mopping machines, vacuum cleaners; Shampooers and scrubbers; Electrical apparatus and machines for kitchen and laundry use; Floor cleaning apparatus and machines; Carpet shampooers; Floor polishers; Hard floor cleaners; Dry cleaning apparatus for floors and carpets; Steam cleaners; Accessories for vacuum cleaners and other floor cleaning machines; Attachments for vacuum cleaners; Electric motors for use in domestic appliances; parts and fittings for all the aforesaid goods.*

2. The application was filed on 29 September 2020, and that is “**the relevant date**” for the purposes of these opposition proceedings. The application was published for opposition purposes on 20 November 2020, and on 12 February 2021, Techtronic Cordless GP (“**the Opponent**”) filed a Form TM7 to oppose the registration under sections 3(1)(b) and 3(1)(c) of the Trade Marks Act 1994 (“**the Act**”). Under sections 3(1)(b) and (c) the Opponent seeks rejection of the whole application claiming as follows:

(i) Under section 3(1)(b), the contested mark is devoid of any distinctive character. The mark is simply comprised of the words “power” and “scrub” which, when assessed in relation to the goods in Class 7 are not capable of acting as an indicator of commercial source.

(ii) Under section 3(1)(c), the mark is a combination of descriptive words, with “Power” designating that the goods are power operated or powerful and “Scrub” designating their intended purpose, which is for cleaning, polishing and brushing. The combination of descriptive words, with no fanciful or imaginative elements does not give rise to a registrable mark and the mark should be free for all to use.

3. On 28 July 2021 the Opponent filed a Form TM7G – request to add grounds to a notice of opposition – through which it sought to include section 3(1)(d) in the opposition. The Opponent explained that it had not been possible to include this ground in the original notice of opposition as it was only when gathering evidence in support of the 3(1)(b) and (c) grounds that the Opponent became aware of the pertinence of section 3(1)(d). The ground was duly added, its basis is that:

(iii) The mark “PowerScrub” has become customary in the current language and/or in the bona fide and established practices of the trade. The mark is used widely in the UK to refer to cleaning equipment and tools, in particular power operated scrubbing tools.

4. On 5 May 2021, the Applicant filed a Form TM8 – notice of defence and counterstatement. In its counterstatement, the Applicant provides a brief background of its business and sets out the following reasons in support of its denial that the contested mark is descriptive or devoid of any distinctive character:

(i) The mark “PowerScrub” considered as a whole does act as an indicator of commercial source, being comprised of one distinctive innovative term that the Applicant has developed as a continuation of its product line where it has already obtained a registration for the mark “PowerGlide”.

(ii) The mark has been examined by the Registry and found to be distinctive, as evidenced by its acceptance for publication.

(iii) If undertaking a search of a well-known search engine for the term “PowerScrub”, the first page of results is dominated by the Applicant’s product and there is no other “PowerScrub” product.

(iv) The Applicant views the opposition as a hinderance and attack on its activity either because the Opponent failed to secure rights in a similar mark, or it is “a tactic used by a large conglomerate to coerce a smaller entity to ‘fall in line’”.

(v) The Applicant refers to the “BABY-DRY”¹ judgment and highlights that even two descriptive words are capable of being registered where they are combined to create a distinctively innovative word. The Applicant also refers to the findings of Justice Mann in *Easynet Group plc v Easygroup IP Licensing Ltd.*²

5. The proviso to section 3(1) holds that:

“...a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

6. The Applicant has not explicitly claimed that its mark has acquired distinctive character through use, however, I note the Applicant’s contention that an internet search for “PowerScrub” produces a first page of results that are dominated by its product. The Applicant did not provide evidence in these proceedings, so it is not possible to verify this claim. Also, as noted by the Opponent, the application of the proviso to section 3(1) would not appear relevant to the Applicant who describes its business practice of applying for a trade mark registration prior to launching its new product. It seems clear therefore that the Applicant has not made use of its mark prior to the relevant date of application for the contested mark.

Representation and papers filed

7. Forrester IP LLP acts for the Opponent in these proceedings; Trademark Brothers Ltd for the Applicant. During the evidence rounds only the Opponent filed evidence.

¹ *Procter & Gamble v Office for Harmonisation in the Internal Market (OHIM)* [2002] RPC 17.

² [2006] EWHC 1872.

Neither party requested a hearing and only the Opponent filed submissions in lieu of a hearing.

The Opponent's evidence

8. The Opponent's evidence in chief comprises the witness statement of Janette Hamer, Chartered Trade Mark Attorney and Partner at Forresters IP LLP, dated 9 July 2021. Ms Hamer introduces 22 exhibits, JCH1 to JCH22, through which she aims to show that the contested mark falls foul of the requirements for registration set out under sections 3(1)(b), (c) and (d) of the Act.

The legislation

9. Section 3 of the Act deals with the so-called "absolute grounds" for refusal of registration based on the inherent characteristics of the trade mark concerned, and provides as follows:

"3.- (1) The following shall not be registered-

(a) [...]

(b) trade marks which are devoid of any distinctive character,

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

(d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade"

The Case Law

10. Although the UK has left the EU, section 6(3)(a) of the European (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 Trade Marks Act 1994

relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case law of EU courts and the related EU legislation.

11. The case law under section article 7(1)(c) of the EU Trade Mark Regulation (which corresponds to section 3(1)(c) of the Act) was set out by Arnold J. in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc*³ (with most case notes omitted) as follows:

“91. The principles to be applied under article 7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in Agencja Wydawnicza Technopol sp. z o.o. (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services...

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94 . Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it.

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services.

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for

³ [2012] EWHC 3074 (Ch).

registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes.

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question. It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration.

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive.

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation, Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or

services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94, the terms ‘the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service’, the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word ‘characteristic’ highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics.”

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned.⁴”

DECISION

12. Having set out the relevant law and legal principles, I now take stock in light of the claims and evidence in this case. My task here is to decide, whether, on 29 September 2020, when the Applicant applied for its trade mark, the mark “PowerScrub” was descriptive of any characteristic of the goods applied for, devoid of any distinctive character in respect of those goods, or had become customary within the trade for the

⁴ See *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Kononklijke Nederland NV v Benelux-Merkenbureau* (C-363/99) [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97].

respective goods. The position must be assessed from the perspective of the average consumer, who is deemed to be reasonably observant and circumspect.⁵

The average consumer

13. The goods covered by the Applicant's mark are (i) various types of powered cleaning apparatus, including accessories for floor cleaning machines; (ii) mechanical tools and machines for removing and treating surfaces, cutting, drilling, deburring and sanding; (iii) electric motors for use in domestic appliances; (iv) parts and fittings for all of the listed goods.

14. I consider the average consumer of the Applicant's goods to be broader than the general public that is put forward by the Opponent. For cleaning apparatus used in a domestic setting, by individuals, the general public will be relevant. However, I consider that the goods may also be targeted to professionals offering cleaning services, or those providing industrial cleaning services. In addition to this, where electric motors for domestic appliances and parts and fittings are concerned, manufacturers and providers of servicing and repair services will also be relevant. A number of factors will be taken into account when purchasing the goods, including the intended context and purpose of use, the cost, technical specifications, size, weight, power and effectiveness.

15. The goods will not be purchased with any frequency and, being powered goods, featuring some form of motor, I consider that they will cost a fairly significant sum, ranging up to very expensive for industrial appliances. I consider that professionals will pay a higher degree of attention than members of the general public. Overall, I consider that at least a medium degree of attention will be paid in the purchase of the goods.

⁵ *Matratzen Concord AG v Hukla Germany SA*, Case C-421/04.

Decision on section 3(1)(c)

16. In reaching my decision, I note that section 3(1)(b) and 3(1)(c) are independent and have different general interests behind them but that, if a mark is found to be descriptive, it follows that it is also devoid of any distinctive character. I also keep in mind that it is possible for a mark not to fall foul of section 3(1)(c), but to still be objectionable under section 3(1)(b).⁶

17. The Applicant contends that its mark “*is not comprised of two simple words, but rather one distinctive term*”. I disagree with the Applicant’s argument here as the presentation of the word “Scrub” with a capital letter “S” – “PowerScrub” – clearly separates the mark into the two individual words “Power” and “Scrub”.

18. The Opponent’s Exhibits JCH1 and JCH2 feature definitions from Collins Dictionary of the words in the mark. From these, I note in particular:

- *Power*

7. Uncountable noun

The power of something is the ability that it has to move or affect things.

The Roadrunner had better power, better tyres and better brakes.

...massive computing power.

11. Adjective

Power tools are operated by electricity.

...large power tools, such as chainsaws.

...a power drill.

- *Scrub*

1. Verb

If you scrub something, you rub it hard in order to clean it, using a stiff brush and water.

⁶ SAT.1 SatellitenFernsehen GmbH v OHIM, Case C-329/02 P at paragraph 25.

2. Verb

If you scrub dirt or stains off something, you remove them by rubbing hard.

19. Taking account of the above definitions, I consider that the Applicant's mark will be understood by the average consumer as referring to electrically operated appliances or tools that are used for the removal of dirt or stains. In my view the words in the mark do not represent an "*unusual juxtaposition*" in the way found by the Court of Justice of the European Union (CJEU) in the BABY-DRY case referred to by the Applicant.

20. Turning to the Opponent's evidence in Exhibits JCH3 to JCH18, these feature pages from various websites showing power operated cleaning appliances referred to principally as "power scrubbers", but also, as terms including "powered scrubber"; "power cleaner"; "power scrubbing brush"; "sonic scrubber"; and "powerful cordless scrubber". From this evidence, it is clear to me that there is a specific market in the UK for electrically operated (power) appliances or tools for the purpose of scrubbing surfaces to remove dirt and stains. Given that there is a market for such power operated scrubbing devices, I disagree with the Applicant's statement that "*the normal bystander and reasonable person*" would understand the mark to refer to someone manually scrubbing objects. The evidence shows that there are goods on the UK market that are commonly referred to as "scrubbers" and while I accept that the word in the trade mark is "scrub" and not "scrubbers", I keep in mind from the case law set out at paragraph 11 above that it is "*irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration.*"⁷

21. The Applicant submits that "*no member of the public would go above and beyond to analyse the mark to such an extent to come to the conclusion that the mark is descriptive for the applied goods*". I disagree and find that under section 3(1)(c), the average consumer, paying at least a medium degree of attention will understand "PowerScrub" as descriptive of the kind and intended purpose of the goods applied for

⁷ Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 57.

and listed below, this being that they are electrically operated appliances or tools for the removal of dirt and stains; and accessories, parts and fittings therefore:

Class 7: *Mechanical spraying, rinsing and cleaning apparatus, and installations consisting thereof, in particular high-pressure cleaning apparatus, steam cleaning and steam jet apparatus, particle jet apparatus, spray extraction apparatus, brushing machines, vacuum cleaners, floor cleaning machines; Floor polishing apparatus; Carpet brushing vacuum cleaners; Cleaning machines for hard surfaces; Cleaning machines for hard floors; Cleaning machines for textile covers; Cleaning machines for glass surfaces; Mechanical window cleaning apparatus; Automatic window cleaning apparatus (electric); Mechanical high-pressure water jet apparatus for cleaning, removing and treating surfaces and for cutting, drilling and deburring; High-pressure water tools, in particular high-pressure lances and high-pressure spray guns; Polishing machines, scrubbing machines, shampooing machines, sanding machines; Sweeping machines; Cleaning machines, carpet cleaning machines; Floor mopping machines, vacuum cleaners; Shampooers and scrubbers; Electrical apparatus and machines for kitchen and laundry use; Floor cleaning apparatus and machines; Carpet shampooers; Floor polishers; Hard floor cleaners; Dry cleaning apparatus for floors and carpets; Steam cleaners; Accessories for vacuum cleaners and other floor cleaning machines; Attachments for vacuum cleaners; Electric motors for use in domestic appliances; parts and fittings for all the aforesaid goods.*

22. The goods that I have underlined in the above list: “*Mechanical high-pressure water jet apparatus for cutting, drilling and deburring*” and “*sanding machines*” may not at first glance appear to be for cleaning purposes. Neither of the parties has specifically addressed these goods in their evidence or submissions, however, I consider that in an industrial setting, these goods could be used for the removal of dirt and stains, for example in cutting, drilling or sanding dirt from pipes or other surfaces. Therefore, I find that the section 3(1)(c) ground for refusal set out in paragraph 21 applies equally to these goods.

23. For vacuum cleaners and accessories therefore, where suction is primarily used for the removal of dirt, I consider that scrubbing attachments may be used with such

devices, meaning that the same reasoning under section 3(1)(c) applies in respect of these goods.

24. Finally, under section 3(1)(c) of the Act, I note the Applicant's comments that the word "scrub" can "*be used in many ways other than the way the Opponent has described it*". In this respect, I refer to the case law cited above and specifically the judgment of the CJEU in Wrigley where it was confirmed that it is sufficient under section 3(1)(c) that "*at least one of its possible meanings designates a characteristic of the goods or services concerned*". Therefore, it is not relevant that the word "scrub" can have meanings other than in respect of an action to remove dirt or stains. Indeed, when taking into account the goods at issue, which are concerned with cleaning, I consider that consumers are most likely to understand the word "scrub" as referring to an action to remove dirt or stains, as opposed to any other meaning that the word has.

25. The opposition under section 3(1)(c) of the Act succeeds in respect of all the goods in the application.

Decision on section 3(1)(b)

26. I have found the Applicant's mark to be objectionable under section 3(1)(c) for all of the goods applied for. If my decision is correct, it follows that the mark is also devoid of any distinctive character and therefore excluded from registration by section 3(1)(b) of the Act too. However, it is possible that the mark may be objectionable under section 3(1)(b) regardless of whether the mark is also considered descriptive.

27. In its submissions in lieu of a hearing, the Opponent sets out various case law relating to section 3(1)(b) and concludes that:

"the mere combination of two ordinary and common words does not provide the Contested Mark with any distinctive character. The average consumer will not identify the Contested Mark as an indication of origin, but instead as a term that is used to describe the goods and/or their intended purpose".

28. The Applicant submits that its mark is distinctive. It highlights that no objection was made to the mark at examination stage, but it must be understood that this is not a factor which would preclude a finding in opposition or cancellation proceedings that the mark is non-distinctive (or contrary to any other ground under section 3).

29. In *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG*,⁸ the CJEU summarised the principles to be applied when considering section 3(1)(b). The summary included that:

“31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (Henkel v OHIM, paragraph 34; Case C-304/06 P Eurohypo v OHIM [2008] ECR I-3297, paragraph 66; and Case C-398/08 P Audi v OHIM [2010] ECR I-0000, paragraph 33).

32. It is settled case-law that that distinctive character must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public (Storck v OHIM, paragraph 25; Henkel v OHIM, paragraph 35; and Eurohypo v OHIM, paragraph 67).”

30. Taking account of the mark, the goods applied for and having considered the arguments of the parties, and the legal authorities cited, I find the Applicant’s mark to be devoid of any distinctive character. The word “power” refers to the ability of something to affect things,⁹ it is also synonymous with “strength”.¹⁰ In respect of cleaning appliances or tools, their parts, fittings and accessories, I consider that the average consumer will perceive a non-distinctive, laudatory meaning from the mark when seen in relation to the Applicant’s goods, this being that the goods are effective devices for the removal of dirt and stains. I therefore find that the mark “PowerScrub”

⁸ C-265/09P.

⁹ See definition at paragraph 18.

¹⁰ Collins English Thesaurus.

will not serve to distinguish the Applicant's goods from those of other undertakings that produce devices for removing dirt and stains and the Applicant's mark is contrary to section 3(1)(b) of the Act.

31. The opposition under section 3(1)(b) of the Act succeeds in respect of all the goods in the application.

Section 3(1)(d)

32. Section 3(1)(d) prevents the registration of marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade. In *Telefon & Buch Verlagsgesellschaft GmbH v OHIM*¹¹, the General Court summarised the case law of the Court of Justice under the equivalent of s.3(1)(d) of the Act, as follows:

“49. Article 7(1)(d) of Regulation No 40/94 must be interpreted as precluding registration of a trade mark only where the signs or indications of which the mark is exclusively composed have become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services in respect of which registration of that mark is sought (see, by analogy, Case C-517/99 Merz & Krell [2001] ECR I-6959, paragraph 31, and Case T-237/01 Alcon v OHIM – Dr. Robert Winzer Pharma (BSS) [2003] ECR II-411, paragraph 37). Accordingly, whether a mark is customary can only be assessed, firstly, by reference to the goods or services in respect of which registration is sought, even though the provision in question does not explicitly refer to those goods or services, and, secondly, on the basis of the target public's perception of the mark (BSS, paragraph 37).

50. With regard to the target public, the question whether a sign is customary must be assessed by taking account of the expectations which the average consumer, who is deemed to be reasonably well informed and reasonably

¹¹ Case T-322/03.

observant and circumspect, is presumed to have in respect of the type of goods in question (BSS, paragraph 38).

51. Furthermore, although there is a clear overlap between the scope of Article 7(1)(c) and Article 7(1)(d) of Regulation No 40/94, marks covered by Article 7(1)(d) are excluded from registration not on the basis that they are descriptive, but on the basis of current usage in trade sectors covering trade in the goods or services for which the marks are sought to be registered (see, by analogy, Merz & Krell, paragraph 35, and BSS, paragraph 39).

52. Finally, signs or indications constituting a trade mark which have become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services covered by that mark are not capable of distinguishing the goods or services of one undertaking from those of other undertakings and do not therefore fulfil the essential function of a trade mark (see, by analogy, Merz & Krell, paragraph 37, and BSS, paragraph 40)."

33. The question I must consider is whether the Opponent has, through the evidence it has filed, established that "PowerScrub" has become customary for the Applicant's cleaning appliances, tools and parts, fittings and accessories in Class 7. I have already noted in this decision that the Opponent has provided examples of terms including "power scrubbers", "powered scrubber"; "power cleaner"; "power scrubbing brush"; "sonic scrubber"; and "powerful cordless scrubber" used in respect of cleaning devices. None of the evidence shows use of the term "PowerScrub", or even "Power Scrub". As there is no evidence before me of the use of these terms, I find that the Opponent has failed to show that the Applicant's mark has become customary in the current language of the trade for cleaning appliances and tools, or their parts, fittings and accessories.

34. The opposition under section 3(1)(d) of the Act fails.

Outcome

35. Although the opposition under section 3(1)(d) has failed, the opposition under sections 3(1)(b) and (c) succeed in respect of all of the Applicant's goods and subject to any successful appeal, the Applicant's mark will be refused in its entirety.

COSTS

36. The Opponent has been successful and is entitled to a contribution towards its costs based on Annex A of the Tribunal Practice Notice (TPN) 2/2016. As the opposition was not successful under section 3(1)(d), which was added after the proceedings had commenced, I make no award in respect of the filing of Form TM7G.

37. Applying the guidance of the TPN, I award costs to the Opponent on the following basis:

<i>Form TM7 fee</i>	£200
<i>Preparing a statement and considering the other side's statement</i>	£400
<i>Preparing evidence</i>	£600
<i>Preparing submissions in lieu of a hearing</i>	£400
	TOTAL £1,600

38. I order Aircraft Home Ltd to pay Techtronic Cordless GP the sum of £1,600. The above sum should be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 13th day of December 2021

**Charlotte Champion
For the Registrar**