

O/0420/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003656281

BY SAFRAN AIRCRAFT ENGINES

TO REGISTER THE FOLLOWING MARK:

EUMET

IN CLASSES 7, 9, 35 AND 37

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP000430739

BY EUROPEAN ORGANISATION FOR THE EXPLOITATION OF

METEOROLOGICAL SATELLITES

Background and pleadings

1. On 16 June 2021, Safran Aircraft Engines (“the applicant”) applied to register the trade mark shown below and the application was published for opposition purposes on 5 November 2021. The applied for mark has a priority date of 12 January 2021.

EUMET

2. The registration is sought for the following goods and services:

Class 7 Aircraft propulsion systems, as well as components and spare parts thereof, Including the following goods: Engines and motors, Turbines, Pumps [machines], Propellers, Reactors, nacelles, thrust reverser, Engine air intakes, fan cowls, exhaust cones; Compressors; Heat exchangers [parts of machines]; Couplings and transmission and propulsion components; Machines for industrialisation in the aeronautical sector, Machines for producing composite and non-composite parts in the aeronautical field, machines for producing and repairing parts for use in aeronautical propulsion systems; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

Class 9 Electric and electronic apparatus and instruments, namely potential computers, digital speed regulation and fuel delivery (FADEC) computers, braking, temperature, pressure, vibration analysis and flight control computers; Electric, electronic and magnetic pressure, speed, displacement, temperature, position and vibration sensors, sensors and transducers for optics and testing; Electronic parameter processing boards; Computing and operating software for the simulation, running and storage of test programs; Monitoring systems consisting of computer hardware

and software for evaluating safety and performance, and requirements for maintenance and upkeep of aircraft engines and/or modules and parts thereof; Electric and electronic maintenance and control equipment (on board aircraft or engines, fixed on test benches or portable benches for use on the ground) for reading and interpreting data from controllers and sensors; Computer software for managing the operation and the repairs, servicing, upkeep, maintenance and reconditioning of aircraft engines and/or parts and fittings therefor; Test benches [measuring, testing and checking apparatus] for engines, turbines and other propulsion machines for aircraft; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

Class 35 Retail and wholesale services connected with the sale of aircraft engines and reversers and nacelles and/or modules thereof; Administrative and commercial management of parts and spare parts for users of engines, systems, equipment and parts for aircraft; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

Class 37 Installation, repair and maintenance of aeronautical and astronautical craft, space launchers, aircraft and parts therefor, including propulsion systems for aeronautical vehicles, motors and engines, thrusters, nacelles, reverse thrusters; Repair, servicing, upkeep and maintenance under the wing for all types of system, propulsion unit, equipment and parts for aircraft; Upgrading, reconditioning and standard changing of engines, propulsion units, systems, equipment and parts for aircraft; Consultancy relating to the identification and selection of tools for the repair, servicing, upkeep, standardisation and maintenance of systems, equipment and parts for aeronautical

vehicles; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

3. EUROPEAN ORGANISATION FOR THE EXPLOITATION OF METEOROLOGICAL SATELLITES (“the opponent”) opposes the trade mark on the basis of sections 5(1) and 5(2)(a) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all the goods and services in the application and is reliant on the mark and the goods and services detailed below.
4. UK00801378160, filed 28 April 2017, registered 14 May 2018, priority date 3 November 2016.

EUMET

Class 9 Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; phonograph records; cash registers; calculating machines, data processing equipment and computers; weather balloons; scientific apparatus and instruments for use in meteorology and climatology, included in this class; satellites; satellite computers; satellite receivers; satellite equipment; satellite transmitters and satellite receivers; satellite antennas; satellite communications equipment; satellite navigation equipment; ground stations for satellite communications; target surveillance apparatus [satellite]; satellites for scientific purposes; satellite for signal transmission; software for the analysis of satellite imagery; software for satellite navigation systems; recorded computer programs; computer programs [downloadable]; computer software [stored programs]; computer

operating programs [saved]; computer peripherals; magnetic data carriers; data processing equipment; distance measuring apparatus; apparatus for recording distances; electronic publications [downloadable]; transmitters of electronic signals; transmitting sets [telecommunications]; electronic components, computers; data processing equipment; software; electronic devices for storing data and user terminals for meteorological, environmental and climatology information and data processing; detectors; remote control devices; electrical and electronic equipment and installations composed thereof for the remote control of industrial operations; electrodynamic apparatus for the remote control of equipment; interfaces [interface devices for computers]; echo sounders; monitoring apparatus [electric]; nautical apparatus and instruments; optical apparatus and instruments; speed indicators; surveying apparatus and instruments; high-frequency apparatus; mathematical instruments; cosmographic instruments; precision measuring instruments; measuring apparatus; measuring instruments; counters; computer software for encryption; image recognition software.

Class 35 Business management; business administration; office functions; business organization services; business management and organization consultancy; assistance with regard to business organization; computerized file management; systemization of data in a central file; maintenance of meteorological, environmental and climatology information and data; data processing [office work]; automated compilation and systemization of information into computer databases; compilation of statistical data; compilation and systematization of data in computer databases; office work in the field of electronic data processing; data search in computer files [for others]; updating and maintenance of data in computer

databases; collection, systemization, compilation of meteorological, environmental and climatological data stored in computer databases; compilation of mathematical data.

Class 42 Scientific and technological services and research and design related thereto; industrial analysis and research services; design and development of computer hardware and software; research on meteorology, environment and climate; provision of meteorological information, namely prognosis regarding meteorology, environment and climate; information relating to meteorology, environment and climate; information services relating to meteorology, environment and climate; provision of information relating to meteorology, environment and climate; provision of meteorological information in the nautical field; computer programming; analyses regarding the installation of computer systems; advisory services relating to environmental and climate protection; consulting services relating to research in the field of environment protection; geological prospecting; research relating to geology, environment and climatology; conducting scientific studies relating to geology, environment and climatology; land surveying; urban planning; providing meteorological information; development and research services regarding new products for others; technical research; technical project studies; quality control; services relating to the data encryption and decryption; conversion of document data between computer formats; encryption of digital images; IT consulting.

5. The opponent filed a Form TM7 and an accompanying statement of grounds. Its section 5(1) claim means that it considers that the applicant's mark is identical to its earlier mark and registration is sought for identical goods and services as the earlier mark. Its section 5(2)(a) claim means that it considers

that the applicant's mark is identical to its earlier mark and registration is sought for similar goods and services as the earlier mark.

6. The applicant filed a Form TM8 and a counterstatement denying the claims made.
7. Neither party requested to be heard, but the applicant filed written submissions in lieu of a hearing.
8. The applicant is represented by Potter Clarkson LLP and the opponent is represented by Office Freylinger S.A.

DECISION

9. Sections 5(1) to 5(2)(a) of the Act read as follows:

“5(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

(2) A trade mark shall not be registered if because—

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

...

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

10. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(1) In this Act an “earlier trade mark” means—

(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.

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

11. Given its priority date, the trade mark upon which the opponent relies qualifies as an earlier trade mark as defined above. Given the date on which it was registered, the earlier mark is not subject to the proof of use provisions in section 6A of the Act.

Case law

12. 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 Trade Marks Act relied on in these proceedings are derived from an EU Directive. That is why this decision continues to make reference to the trade mark case-law of EU courts.

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

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

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

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

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

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

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

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

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

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

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

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

Comparison of the trade marks

14. The opponent's and the applicant's marks are shown below:

Opponent's trade mark	Applicant's trade mark
EUMET	EUMET

15. The respective marks are manifestly identical.

Distinctive character of the earlier mark

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

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

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

17. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

18. The word “EUMET” would be seen by a significant proportion of average consumers as a set of initials, not having any particular meaning. Another significant proportion would see it as an invented word, the combination of vowels and consonants making it pronounceable. In either scenario, “EUMET” is not suggestive of the goods and services for which the mark is registered. As a set of initials the mark is not particularly noteworthy (the average consumer in the UK being used to seeing initialisms as the basis for trade marks) and the mark would be inherently distinctive to a medium

degree. Seen as an invented word, the mark is inherently distinctive to a high degree.

Comparison of the goods and services

19. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

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

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

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

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

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

22. In *Sky v Skykick* [2020] EWHC 990 (Ch), Lord Justice Arnold considered the validity of trade marks registered for, amongst many other things, the general term ‘computer software’. In the course of his judgment he set out the following summary of the correct approach to interpreting broad and/or vague terms:

“...the applicable principles of interpretation are as follows:

- (1) General terms are to be interpreted as covering the goods or services clearly covered by the literal meaning of the terms, and not other goods or services.

(2) In the case of services, the terms used should not be interpreted widely, but confined to the core of the possible meanings attributable to the terms.

(3) An unclear or imprecise term should be narrowly interpreted as extending only to such goods or services as it clearly covers.

(4) A term which cannot be interpreted is to be disregarded.”

23. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut for Lernsysteme v OHIM – Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

24. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market* (Trade Marks and Designs) (OHIM), Case T-325/06, the GC stated that “complementary” means:

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

25. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services*

for chickens. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted, as the Appointed Person, in *Sandra Amelia Mary Elliot v LRC Holdings Limited*, BL-0-255-13:

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

While on the other hand:

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

26. The goods and services in question are as below:

Opponent’s goods and services	Applicant’s goods and services
	<p><u>Class 7</u> Aircraft propulsion systems, as well as components and spare parts thereof, Including the following goods: Engines and motors, Turbines, Pumps [machines], Propellers, Reactors, nacelles, thrust reverser, Engine air intakes, fan cowls, exhaust cones; Compressors; Heat exchangers [parts of machines]; Couplings and transmission and propulsion components; Machines for industrialisation in the aeronautical</p>

	<p>sector, Machines for producing composite and non-composite parts in the aeronautical field, machines for producing and repairing parts for use in aeronautical propulsion systems; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.</p>
<p><u>Class 9</u> Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; phonograph records; cash registers; calculating machines, data processing equipment and computers; weather balloons; scientific apparatus and instruments for use in meteorology and climatology, included in this class; satellites; satellite computers; satellite receivers; satellite equipment; satellite transmitters and satellite receivers; satellite antennas; satellite communications equipment; satellite navigation equipment; ground stations for satellite communications; target surveillance apparatus [satellite]; satellites for scientific purposes; satellite for signal transmission; software for the</p>	<p><u>Class 9</u> Electric and electronic apparatus and instruments, namely potential computers, digital speed regulation and fuel delivery (FADEC) computers, braking, temperature, pressure, vibration analysis and flight control computers; Electric, electronic and magnetic pressure, speed, displacement, temperature, position and vibration sensors, sensors and transducers for optics and testing; Electronic parameter processing boards; Computing and operating software for the simulation, running and storage of test programs; Monitoring systems consisting of computer hardware and software for evaluating safety and performance, and requirements for maintenance and upkeep of aircraft engines and/or modules and parts thereof; Electric and electronic maintenance and control equipment (on board aircraft or engines,</p>

analysis of satellite imagery; software for satellite navigation systems; recorded computer programs; computer programs [downloadable]; computer software [stored programs]; computer operating programs [saved]; computer peripherals; magnetic data carriers; data processing equipment; distance measuring apparatus; apparatus for recording distances; electronic publications [downloadable]; transmitters of electronic signals; transmitting sets [telecommunications]; electronic components, computers; data processing equipment; software; electronic devices for storing data and user terminals for meteorological, environmental and climatology information and data processing; detectors; remote control devices; electrical and electronic equipment and installations composed thereof for the remote control of industrial operations; electrodynamic apparatus for the remote control of equipment; interfaces [interface devices for computers]; echo sounders; monitoring apparatus [electric]; nautical apparatus and instruments; optical apparatus and instruments; speed indicators; surveying apparatus and instruments; high-frequency apparatus; mathematical

fixed on test benches or portable benches for use on the ground) for reading and interpreting data from controllers and sensors; Computer software for managing the operation and the repairs, servicing, upkeep, maintenance and reconditioning of aircraft engines and/or parts and fittings therefor; Test benches [measuring, testing and checking apparatus] for engines, turbines and other propulsion machines for aircraft; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

<p>instruments; cosmographic instruments; precision measuring instruments; measuring apparatus; measuring instruments; counters; computer software for encryption; image recognition software.</p>	
<p><u>Class 35</u> Business management; business administration; office functions; business organization services; business management and organization consultancy; assistance with regard to business organization; computerized file management; systemization of data in a central file; maintenance of meteorological, environmental and climatology information and data; data processing [office work]; automated compilation and systemization of information into computer databases; compilation of statistical data; compilation and systematization of data in computer databases; office work in the field of electronic data processing; data search in computer files [for others]; updating and maintenance of data in computer databases; collection, systemization, compilation of meteorological, environmental and climatological data stored in computer databases; compilation of mathematical data.</p>	<p><u>Class 35</u> Retail and wholesale services connected with the sale of aircraft engines and reversers and nacelles and/or modules thereof; Administrative and commercial management of parts and spare parts for users of engines, systems, equipment and parts for aircraft; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.</p>

	<p><u>Class 37</u></p> <p>Installation, repair and maintenance of aeronautical and astronautical craft, space launchers, aircraft and parts therefor, including propulsion systems for aeronautical vehicles, motors and engines, thrusters, nacelles, reverse thrusters; Repair, servicing, upkeep and maintenance under the wing for all types of system, propulsion unit, equipment and parts for aircraft; Upgrading, reconditioning and standard changing of engines, propulsion units, systems, equipment and parts for aircraft; Consultancy relating to the identification and selection of tools for the repair, servicing, upkeep, standardisation and maintenance of systems, equipment and parts for aeronautical vehicles; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.</p>
<p><u>Class 42</u></p> <p>Scientific and technological services and research and design related thereto; industrial analysis and research services; design and development of computer hardware and software; research on meteorology, environment and climate; provision of meteorological information, namely prognosis regarding</p>	

meteorology, environment and climate; information relating to meteorology, environment and climate; information services relating to meteorology, environment and climate; provision of information relating to meteorology, environment and climate; provision of meteorological information in the nautical field; computer programming; analyses regarding the installation of computer systems; advisory services relating to environmental and climate protection; consulting services relating to research in the field of environment protection; geological prospecting; research relating to geology, environment and climatology; conducting scientific studies relating to geology, environment and climatology; land surveying; urban planning; providing meteorological information; development and research services regarding new products for others; technical research; technical project studies; quality control; services relating to the data encryption and decryption; conversion of document data between computer formats; encryption of digital images; IT consulting.

27. I note that the applicant has appended the phrase “none of the aforesaid relating to satellites or to meteorological, environmental and climatological

data” to the list of terms in each of the classes that it has applied for. I will conclude what relevance this has (if any) in the goods and services assessment that follows.

Class 7

28. I compare the applicant’s “Machines for industrialisation in the aeronautical sector, Machines for producing composite and non-composite parts in the aeronautical field, machines for producing and repairing parts for use in aeronautical propulsion systems” with the opponent’s Class 9 “electrical and electronic equipment and installations composed thereof for the remote control of industrial operations”. The applicant’s goods are machines, in this instance relating to aeronautical manufacturing, “aeronautical” being defined by the Collins online dictionary as “involving or relating to the design and construction of aeroplanes”.¹ The opponent’s goods are not machines themselves, but they do enable the remote control of machines. Both sets of goods could be used by those engaged in manufacturing and there would be a reasonably high degree of overlap between the trade channels. Some competition would arise where a company was choosing between manually operated and remotely controlled manufacturing, but only in the aeronautical sector. The respective goods are not complementary because the applicant’s manufacturing goods need not be remotely controlled. I find the respective goods to be of low similarity.

29. I can see no common ground between the applicant’s “Aircraft propulsion systems, as well as components and spare parts thereof, Including the following goods: Engines and motors, Turbines, Pumps [machines], Propellers, Reactors, nacelles, thrust reverser, Engine air intakes, fan cowls, exhaust cones”, “Compressors”, “Heat exchangers [parts of machines] and “Couplings and transmission and propulsion components” and the opponent’s goods. Any connection between the opponent’s various apparatus and

¹ www.collinsdictionary.com/dictionary/english/aeronautical

instruments, its data processing and computing goods, and the applicant's aircraft engines and associated machinery is too tenuous for there to be a finding of similarity, and I also note that satellites are expressly excluded from the applicant's goods. I find the applicant's goods to be dissimilar to the opponent's goods.

Class 9

30. In respect of the applicant's "Electric and electronic apparatus and instruments, namely potential computers, digital speed regulation and fuel delivery (FADEC) computers, braking, temperature, pressure, vibration analysis and flight control computers", and noting that various types of computers are listed after the word "namely", these goods are *Merix* identical to the opponent's "... computers". The applicant's goods are included in a more general category designated by the earlier mark.
31. The applicant's "Electric, electronic and magnetic pressure, speed, displacement, temperature, position and vibration sensors, sensors and transducers for optics and testing" and its "Electronic parameter processing boards" are *Merix* identical to the opponent's "electronic components ...". The applicant's goods are included in a more general category designated by the earlier mark.
32. The applicant's "Computing and operating software for the simulation, running and storage of test programs", "Computer software for managing the operation and the repairs, servicing, upkeep, maintenance and reconditioning of aircraft engines and/or parts and fittings therefor", and "Monitoring systems consisting of computer ... software for evaluating safety and performance, and requirements for maintenance and upkeep of aircraft engines and/or modules and parts thereof" are *Merix* identical to the opponent's "software". The applicant's goods are included in a more general category designated by the earlier mark.

33. The applicant's "Monitoring systems consisting of computer hardware ... for evaluating safety and performance, and requirements for maintenance and upkeep of aircraft engines and/or modules and parts thereof" is *Meric* identical to the opponent's "monitoring apparatus [electric]". The applicant's goods are included in a more general category designated by the earlier mark.
34. I compare the applicant's "Electric and electronic maintenance and control equipment (on board aircraft or engines, fixed on test benches or portable benches for use on the ground) for reading and interpreting data from controllers and sensors" with the opponent's "data processing equipment". Equipment which reads and interprets data has the same broad nature, purpose and method of use as data processing equipment. Both would be used by those proficient in the use and interpretation of data. Both sets of goods could be purchased through the same trade channels, albeit the applicant's goods analyse data from controllers and sensors, while the opponent's goods have general utility. The goods could be in competition in that respect, but they are not complementary. I find the respective goods to be highly similar.
35. I compare the applicant's "Test benches [measuring, testing and checking apparatus] for engines, turbines and other propulsion machines for aircraft" with the opponent's "measuring apparatus". Both sets of goods have the same nature and method of use in that they are both types of apparatus used for evaluation purposes. Both sets of goods have the purpose of measuring things, but the applicant's goods can also serve slightly wider testing and checking purposes. The applicant's goods are used for testing aircraft engines while the opponent's goods have general application. The applicant's goods would be used by specialist mechanics, whereas the opponent's goods would be used by a wider variety of members of the public and specialists in various fields. The trade channels therefore diverge to that extent. There would be some competition in the aircraft industry as between specific measuring apparatus and test benches which have slightly wider purposes.

The goods are not complementary. I find the respective goods to be of medium similarity.

Class 35

36. The applicant's "Administrative and commercial management of parts and spare parts for users of engines, systems, equipment and parts for aircraft" is *Meric* identical to the opponent's "business management" services. The applicant's services are included in a more general category designated by the earlier mark.

37. I consider the applicant's "Retail and wholesale services connected with the sale of aircraft engines and reversers and nacelles and/or modules thereof" to be different from the opponent's general business and office services. Retail and wholesale services have characteristics which mean they differ in nature and purpose from the opponent's services. The applicant's services collate and present products to customers and require a focus on bringing in revenue. By contrast, the opponent's services assist third parties in the running of businesses and are about the efficient day-to-day running of an organisation. The opponent's services are further differentiated in that they are specifically for aircraft engines and other parts. The trade channels for the respective services would differ and the respective services are neither in competition, nor are they complementary. I find the applicant's services to be dissimilar to the opponent's services.

Class 37

38. In respect of the applicant's "Installation, repair and maintenance of aeronautical and astronautical craft, space launchers, aircraft and parts therefor, including propulsion systems for aeronautical vehicles, motors and engines, thrusters, nacelles, reverse thrusters", its astronautical craft and space launchers could have something in common with the opponent's "satellites", but satellites are expressly excluded from the applicant's services. There are no other of the opponent's goods which have a close connection

with the applicant's services. The opponent's goods do not, for example, include other types of aeronautical craft, such as rockets. Its measuring, electronic and computing equipment are not the goods that the applicant's installation, repair and maintenance services are designed for. Nor can I find anything in common between the applicant's services and those of the opponent. I find the applicant's services to be dissimilar to the opponent's goods and services.

39. I make the same finding – that of dissimilarity – for the applicant's "Repair, servicing, upkeep and maintenance under the wing for all types of system, propulsion unit, equipment and parts for aircraft", its "Upgrading, reconditioning and standard changing of engines, propulsion units, systems, equipment and parts for aircraft", and its "Consultancy relating to the identification and selection of tools for the repair, servicing, upkeep, standardisation and maintenance of systems, equipment and parts for aeronautical vehicles".

40. As some degree of similarity between the goods and services is required for there to be a likelihood of confusion², the opposition fails in respect of the following goods and services:

Class 7 Aircraft propulsion systems, as well as components and spare parts thereof, Including the following goods: Engines and motors, Turbines, Pumps [machines], Propellers, Reactors, nacelles, thrust reverser, Engine air intakes, fan cowls, exhaust cones; Compressors; Heat exchangers [parts of machines]; Couplings and transmission and propulsion components; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

² *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

Class 35 Retail and wholesale services connected with the sale of aircraft engines and reversers and nacelles and/or modules thereof; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

Class 37 Installation, repair and maintenance of aeronautical and astronautical craft, space launchers, aircraft and parts therefor, including propulsion systems for aeronautical vehicles, motors and engines, thrusters, nacelles, reverse thrusters; Repair, servicing, upkeep and maintenance under the wing for all types of system, propulsion unit, equipment and parts for aircraft; Upgrading, reconditioning and standard changing of engines, propulsion units, systems, equipment and parts for aircraft; Consultancy relating to the identification and selection of tools for the repair, servicing, upkeep, standardisation and maintenance of systems, equipment and parts for aeronautical vehicles; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

41. The respective marks are identical. All that is necessary for the opponent's section 5(1) claim to succeed is for the goods and services to be identical, it not being a requirement of this ground of opposition that the test for likelihood of confusion be engaged. As such, the opponent's section 5(1) claim succeeds for the following goods and services that I have found to be identical:

Class 9 Electric and electronic apparatus and instruments, namely potential computers, digital speed regulation and fuel delivery (FADEC) computers, braking, temperature, pressure, vibration analysis and flight control computers; Electric, electronic and magnetic pressure, speed, displacement, temperature, position and vibration sensors, sensors and transducers for optics and testing; Electronic parameter processing boards; Computing

and operating software for the simulation, running and storage of test programs; Computer software for managing the operation and the repairs, servicing, upkeep, maintenance and reconditioning of aircraft engines and/or parts and fittings therefor; Monitoring systems consisting of computer hardware and software for evaluating safety and performance, and requirements for maintenance and upkeep of aircraft engines and/or modules and parts thereof; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

Class 35 Administrative and commercial management of parts and spare parts for users of engines, systems, equipment and parts for aircraft; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

The average consumer and the nature of the purchasing act

42. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

43. The goods include technical machinery, software and electronic components, and services such as the retail and wholesale provision of aircraft and parts, as well as maintenance and repair. Some of these will clearly be expensive infrequent purchases made by technical professionals and businesses and may include a tendering process prior to purchase. For these, the level of attention paid will be higher than average. Some goods, such as software and electrical components, could be bought by the same average consumer, but also by members of the general public. These purchases will likely have a lower degree of attention paid as they will likely be more frequent and will have a broader price range. However, the level of attention paid will be at least medium because the average consumer will need to ensure that the goods are fit for purpose.
44. Visual considerations will predominate during the purchasing process for the above-mentioned goods, although I do not rule out verbal factors.

Likelihood of confusion

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

direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

46. The marks are identical. Where I found the respective goods and services to be identical, the opponent's section 5(1) claim succeeded, it not being a requirement to engage the test for likelihood of confusion.

47. I now consider the opponent's section 5(2)(a) claim.

48. Where I found similarity between the respective goods and services, it was of a high, medium, or low level.

49. A significant proportion of average consumers would see the opponent's mark as a set of initials, giving it a medium level of inherent distinctive character, but another significant proportion would consider it to be an invented word, whereby it would have a high degree of inherent distinctive character.

50. The average consumer of the parties' goods and services would pay a higher-than-average level of attention in respect of technical machinery, while the purchase of software and electrical components would necessitate at least a medium level of attention. In all cases, visual considerations will predominate.

51. Having conducted a multi-factorial assessment, and noting the interdependency principle, I find that there would be a likelihood of direct confusion for all those goods and services that I have found to be similar. My assessment takes into account the fact that these identical marks may be seen as invented words and therefore highly distinctive. This finding extends to those goods and services that I have found to be of low similarity. There is no minimum threshold level of similarity between the goods and services that must be shown as it is sufficient that some similarity exists in order to consider the likelihood of confusion.³

³ See *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, paragraph 49

CONCLUSION

52. Subject to appeal, the opposition succeeds in relation to the following goods and services:

- Class 7 Machines for industrialisation in the aeronautical sector, Machines for producing composite and non-composite parts in the aeronautical field, machines for producing and repairing parts for use in aeronautical propulsion systems; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.
- Class 9 Electric and electronic apparatus and instruments, namely potential computers, digital speed regulation and fuel delivery (FADEC) computers, braking, temperature, pressure, vibration analysis and flight control computers; Electric, electronic and magnetic pressure, speed, displacement, temperature, position and vibration sensors, sensors and transducers for optics and testing; Electronic parameter processing boards; Computing and operating software for the simulation, running and storage of test programs; Monitoring systems consisting of computer hardware and software for evaluating safety and performance, and requirements for maintenance and upkeep of aircraft engines and/or modules and parts thereof; Electric and electronic maintenance and control equipment (on board aircraft or engines, fixed on test benches or portable benches for use on the ground) for reading and interpreting data from controllers and sensors; Computer software for managing the operation and the repairs, servicing, upkeep, maintenance and reconditioning of aircraft engines and/or parts and fittings therefor; Test benches [measuring, testing and checking apparatus] for engines, turbines and other propulsion machines

for aircraft; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

Class 35 Administrative and commercial management of parts and spare parts for users of engines, systems, equipment and parts for aircraft; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

53. The application will proceed to registration for the following goods and services:

Class 7 Aircraft propulsion systems, as well as components and spare parts thereof, Including the following goods: Engines and motors, Turbines, Pumps [machines], Propellers, Reactors, nacelles, thrust reverser, Engine air intakes, fan cowls, exhaust cones; Compressors; Heat exchangers [parts of machines]; Couplings and transmission and propulsion components; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

Class 35 Retail and wholesale services connected with the sale of aircraft engines and reversers and nacelles and/or modules thereof; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

Class 37 Installation, repair and maintenance of aeronautical and astronautical craft, space launchers, aircraft and parts therefor, including propulsion systems for aeronautical vehicles, motors and engines, thrusters, nacelles, reverse thrusters; Repair, servicing, upkeep and maintenance under the wing for all types of system, propulsion unit, equipment and parts for aircraft; Upgrading, reconditioning and standard changing of engines, propulsion units, systems, equipment and parts for aircraft;

Consultancy relating to the identification and selection of tools for the repair, servicing, upkeep, standardisation and maintenance of systems, equipment and parts for aeronautical vehicles; none of the aforesaid relating to satellites or to meteorological, environmental and climatological data.

COSTS

54. The parties having achieved a roughly equal level of success, each party will bear its own costs.

Dated this 5th day of May 2023

JOHN WILLIAMS

For the Registrar