

O/632/19

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION No. 3299534

BY

GRAPHITE METALLIZING HOLDINGS, INC

TO REGISTER THE FOLLOWING TRADE MARK IN CLASS 7

**GRAPHLON**

AND OPPOSITION THERETO (NO. 413144)

BY

GRAPHLON LTD

## Background and Pleadings

1. GRAPHITE METALLIZING HOLDINGS, INC (“the Applicant”) applied to register the word trade mark, GRAPHLON, on the 26 March 2018 for goods in class 7 namely “*Bearings, bushings, mechanical seals, washers.*” It was accepted and published on the 20 April 2018.

2. GRAPHLON LTD (“the Opponent”) opposes the application under sections 5(1), 5(2)(a) and 5(2)(b)<sup>1</sup> of the Trade Marks Act 1994 (“the Act”). For the purposes of its claim it relies on the following UK and EU Trade Marks:

	Marks		Classes <sup>2</sup>
1.	Graphlon graphlon	UK trade mark registration no. 3269626  Filed: 9 November 2017 Registered: 26 October 2018	1, 2, 4
2.	Graphlon graphlon	UK trade mark registration no. 3270291  Filed: 13 November 2017 Registered: 26 October 2018	1, 2, 21
3.	<b>Graphlon</b>  <b>GRAPHLON</b>	UK trade mark registration no. 3297488  Filed: 16 March 2018 Registered: 22 June 2018	1, 2, 4, 21
4.	Graphlon	EU trade mark application no. 017478439 <sup>3</sup>  Filed: 14 November 2017 Published: 12 January 2018	1, 2, 5, 9, 12, 17, 21

<sup>1</sup> For UK trade mark no. 3297488 only (mark 3)

<sup>2</sup> The full specification details are contained in the annex to this decision.

<sup>3</sup> The trade mark application is currently the subject to a partial opposition before the European Union Intellectual Property Office

3. For the purposes of this opposition the Opponent is relying on all its goods for each of its marks claiming as its primary ground under section 5(1) of the Act, that the marks are identical and that the goods are identical or in the alternative under section 5(2) of the Act, that there is a likelihood of confusion because the trade marks are identical or similar and are registered for goods identical with or similar to those for which the earlier marks are registered. The Opponent's European trade mark numbered 17478439 (Mark 4) is not yet protected however under section 6(2) of the Act it may qualify as an earlier mark if it subsequently becomes registered.

4. The Applicant filed a defence and counterstatement denying the claims made. It denies that there is any identity or similarity between the goods and in addition denies "that the Opponent is the owner of any valid earlier trade marks". The Applicant has conceded that the marks are identical<sup>4</sup> and my decision will proceed on the basis that the marks are identical. The opposition therefore stands or falls on the identity/similarity of the goods comparison. If I find it necessary to reconsider the matter later in my decision I will return to this position.

5. The Applicant is represented by D Young & Co LLP whereas the Opponent is unrepresented. Both parties filed evidence and initial submissions. Neither party requested a hearing however both parties filed further written submissions in lieu of a hearing. I have considered both parties' evidence and submissions in my deliberations and where necessary I shall refer to them.

### **Preliminary Issues**

6. The Applicant refutes that the Opponent is the owner of any valid earlier trade mark, claiming to be the US owner of its "family of marks with the prefix "GRAPH". It submits that its "Graphlon" marks registered in the USA, predate the Opponent's applications/registrations and therefore are afforded a prior entitlement. I would refer

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<sup>4</sup> Para 8.3 of Counterstatement TM8 dated 15.10.18 and submissions dated 30.05.19

the parties to Tribunal Practice Notice 4/2009 and in particular Ms Anna Carboni's decision (sitting as the appointed person) in the case of *Ion Associates Ltd v Philip Stainton and Another*, BL O-211-09. In this case Ms Carboni rejected any defence, based on prior entitlement, raised in this way, as wrong in law. Furthermore, she determined that the proper course for any Proprietor wishing to invoke an earlier right was to oppose the application or submit an application to invalidate. Whilst I note that the Applicant sought to challenge the applications/registrations, it subsequently withdrew those invalidation/opposition proceedings. Therefore, by virtue of section 6 of the Act, the Opponent's marks will be regarded as the earlier marks for the purposes of this decision. The Opponent's fourth mark numbered 17478439 has been opposed by a third party before the EUIPO and so its status is yet to be established. Nevertheless, it has an earlier application date and can be relied upon (the consequences of its reliance will be dealt with later in my decision).

7. In its defence and counterstatement, the Applicant put the Opponent to "proof of use and evidence" regarding any likelihood of confusion denying that such confusion exists. In relation to proof of use, the Opponent's marks have not as yet been registered for more than five years at the date the application was published and therefore the Opponent is not required to file evidence regarding use of its marks.<sup>5</sup> In addition my assessment of whether there is confusion must be based on an objective assessment of all the relevant factors and not whether the Opponent has demonstrated actual confusion.<sup>6</sup>

8. The Applicant submits, given that the respective goods are in a different class heading of the Nice classification system there cannot be any valid ground for the opposition under section 5(2)(a). However, similarity or dissimilarity of goods on the grounds that they appear in the same or different class is not a conclusive factor.<sup>7</sup> Specifications appearing under different class headings do not preclude a conclusion of identity/similarity on this basis alone as the classification system's purpose is to

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<sup>5</sup> Section 6A of the Act

<sup>6</sup> *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41

<sup>7</sup> Article 33(7) EUTMR

determine the boundaries of infringement rights. The assessment to be undertaken takes into account the meaning and scope of the respective terms in their entirety and is not based solely on the specific class heading in which they appear.

## **Evidence**

### Applicant's evidence

9. The Applicant's evidence consists of the statement of Mr Eben Walker with 2 exhibits dated 15 February 2019.

10. Mr Walker states that he is the president of Graphite Metallizing Holdings, Inc. a position he has held for over 35 years; his role includes managing all aspects of the company.

11. Mr Walker sets out the historical position and background regarding the company and the application for registration of the applied for mark. He states that the company is the leading manufacturer of "self-lubricating bearings, bushings, case/wear rings and thrust washers" used in a number of applications to include industrial machinery, imaging equipment, ovens/furnaces, dampers and conveyors.

12. Mr Walker explains that the company holds a family of marks beginning with the prefix "GRAPH-" namely GRAPHALLOY, GRAPHALLAST, GRAPHILM as well as the core original brand name of GRAPHLON which he states was first "first secured under US Registration No. 592959 in 1952". Mr Walker exhibits at EW1 a copy extract taken from the US Register providing details of its US registered trade mark. This trade mark is not the subject matter of these proceedings.

13. Mr Walker sets out the nature of the Applicant's Graphlon goods which are "a proprietary mixture designed precisely to optimise performance in the niche field of hydrocarbon process pumps". This he continues is an extremely difficult and technical

area relating to the use of bearings. Due to the technical nature of the Applicant's products he states they are not available via an online store or through distributors and are only sold "via face to face or video conference meetings with PHD-level engineers". Mr Walker produces at exhibit EW2 what he describes as a datasheet outlining the technical information for its GRAPHLON products. The document includes the physical properties of GRAPHLON described as "a[n] unique chemically inert long-life, low-friction material which can be used as a bushing, thrust washer, or seal" suitable for mechanical uses in corrosive liquids or atmosphere. In particular, the website outlines that its bushings are supplied in a variety of sizes for a wide range of engineering purposes, recommendations for which are provided upon request. The Applicant's seals can be used as both face seals and shaft seals again recommendations are provided upon request.

14. Mr Walker states that its GRAPHLON mark is clearly an established brand which has served as an indication of trade origin in the market place for its class 7 goods for broadly 60 years. This background he states provides it with a valid basis to expand the company globally and into the UK market.

#### Opponent's evidence

15. The Opponent's evidence consists of two witness statements and exhibits dated 17 December 2018 and 4 March 2019 respectively, completed by Mr John Pepin who is the company director of Graphlon Ltd.

16. In his first statement Mr Pepin provides an overview regarding the background to the proceedings as they stood at the time the TM7 was filed and outlines details regarding ongoing proceedings at the EUIPO. Whilst the EU mark numbered 017478439 is not as yet protected, Mr Pepin confirms that the opposition filed at the EUIPO does not relate to its class 12 goods and therefore the mark will proceed to registration in any event in relation to these goods.

17. Mr Pepin's second statement is in the form of evidence in reply to Mr Eben Walker's statement. In particular, Mr Pepin states that there is currently nothing within the Applicant's specification that restricts the material/s from which its goods are made nor is there any limitation that would prevent the Applicant from using products made from graphite or graphene in the future. The Applicant's goods are "polymer/graphite-based alloy" products whereas the Opponent's goods are made from materials which include "Graphite, Polymer, Graphene and Carbon". These factors would therefore only increase the likelihood of confusion in the future if the Applicant's mark proceeded to registration.

18. Mr Pepin produces at "PEP1" an extract taken from the Applicant's website which demonstrates that it markets its GRAPHALLOY, GRAPHLON GM 860 products to the "Automotive and Aerospace markets". Mr Pepin refutes Mr Walker's assertions that the contested goods are targeted to different market sectors.

19. Produced at exhibit PEP2 is an article taken from an unknown source on the history of graphene being graphite based and details of how [it] is made from "Graphite".

20. Mr Pepin exhibits at PEP3 a copy of a contact webpage taken from the Applicant's website. Mr Pepin states that "clearly visitors to the website read all about the Applicants products and then contact a suitable distributor/agent. THAT is not selling via direct contact it is selling via the Website /online". Mr Pepin refutes the Applicant's contention that the engineers for the parties' respective goods are different and disputes that they would be able to distinguish between GRAPHLON bearings offered by one undertaking as opposed to another. He argues that a "Bearing" remains a "Bearing" that can be used for all purposes, made from any material and for any market sector."

21. The remainder of both Mr Walker and Mr Pepin's statements consist of submissions in relation to the respective goods comparison, to which I will refer, later in my decision.

## **Decision**

22. The Opponent relies on sections 5(1), 5(2)(a) and 5(2)(b) of the Act which are 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 mark is protected.

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

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

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

23. 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.*

The principles:

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a 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.

24. For the purposes of the Opponent's claim under section 5(1) of the Act both the marks and the goods at issue are required to be identical. As noted above the Applicant has conceded that the marks at issue are identical and I will therefore proceed on this basis. The Opponent relies upon the four marks set out in paragraph 2, however its European trade mark numbered 17478439 (Mark 4) overall, presents the Opponent with its best case in terms of the mark and its specifications. I will therefore proceed solely on this mark and only return to the other marks should it become necessary to my decision.

### **Comparison of the goods**

25. When conducting a goods comparison, all relevant factors should be considered as per the judgment of the Court of Justice of the European Union ("CJEU") in *Canon Kabushiki Kaisha v Metro Goldwyn Mayer Inc.* Case C-39/97, where 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”.

26. I also bear in mind the decision in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, where the General Court 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 für 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”.

27. I am also guided by the relevant factors for assessing similarity identified by Jacob J in *Treat*, [1996] R.P.C. 281 namely:

- (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.

28. In addition, in *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J 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."

29. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

"I should add that I see no reason to give the word "cosmetics" and "toilet preparations"... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context."

30. The contested goods are set out in the table below:

Applicant's goods	Opponent's goods
<p>Class 7: Bearings, bushings, mechanical seals, washers.</p>	<p><u>Mark 4: 7478439</u></p> <p>Class 1: Graphene and graphene-based polymer dispersions products used in industry; graphene and graphene-based compositions for use in the manufacture of electronic component; graphene and graphene-based materials.</p> <p>Class 2: Coatings, especially for application on metal, walls, concrete, glasses, vehicles, steel plates, and other surfaces</p> <p>Class 5: Composite materials comprising graphene, for medical and veterinary use.</p> <p>Class 9: Semiconductors; Semiconductor elements; Semiconductor and display equipment components; Semiconductor wafers; Graphene wafers; Graphene wafer surface layers; graphene-based materials for diodes (LED); solar wafers and Wafers for solar cells; Sensors.</p> <p>Class 12: Graphene-based material and components for vehicles, brake linings for aircraft landing gear, brakes</p>

	<p>for aircraft, carriage body parts, structural parts for helicopters, structural parts for trains, structural parts for trucks, structural parts for aircraft, structural parts for automobiles.</p> <p>Class 17: Special fiber (graphene and graphene-based), not for textile use; Special fiber (graphene and graphene-based), composite-used for light-weight-components; Special fiber (graphene and graphene-based), strong-used for automobile, aircraft, space vehicle components; Special fiber (graphene and graphene-based), liquid-used and powder-used; Special fiber (graphene and graphene-based), liquid-used and powder-used; polymer resin fibres (other than for textile use); semi worked polymer resins in the forms of fibres; pre-impregnated fibre resinous material for use in moulding; resin suspensions, films, sheets and membranes; resin suspensions, films, sheets and membranes containing graphene, graphene oxide and/or derivatives of graphene; liquid resins containing graphene, graphene oxide and/or derivatives of graphene; carbon fibre; carbon fibres for use in industry; crude fibres of carbon; raw fibres of carbon, other than for textile use; carbon fibre compounds; carbon fibre felts; mineral</p>
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	<p>fibres; carbon graphite materials (semi-finished products); graphite materials (semi-finished products); carbon composite materials (semi-finished products); Oleo-adsorbent fibres containing graphene, used for treating water, air and soil contaminated with hydrocarbons and other pollutants; carbon fibres; glass fibres; plastic fibres (other than for textile use); polymer resin fibres (other than for textile use); semi worked polymer resins in the forms of fibres; pre-impregnated fibre resinous material for use in moulding; resin suspensions, films, sheets and membranes; resin suspensions, films, sheets and membranes containing graphene, graphene oxide and/or derivatives of graphene; liquid resins containing graphene, graphene oxide and/or derivatives of graphene; Special fiber (graphene and graphene-based), not for textile use; Special fiber (graphene and graphene-based), composite-used for light-weight-components; Special fiber (graphene and graphene-based), strong-used for automobile, aircraft, space vehicle components; Special fiber (graphene and graphene-based), liquid-used and powder-used; Special fiber (graphene and graphene-based), liquid-used and powder-used; polymer resin fibres</p>
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	<p>(other than for textile use); semi worked polymer resins in the forms of fibres; pre-impregnated fibre resinous material for use in moulding; resin suspensions, films, sheets and membranes; resin suspensions, films, sheets and membranes containing graphene, graphene oxide and/or derivatives of graphene; liquid resins containing graphene, graphene oxide and/or derivatives of graphene.</p> <p>Class 21: Cookware; cooking utensils; kitchen utensils; household containers; household utensils.</p>
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31. Following the Applicant's position regarding the marks, the case falls or succeeds on the identity/similarity or otherwise of the goods; unsurprisingly the parties' respective positions are polarised in this regard. The Opponent's primary position is that the Applicant's goods in class 7 are all goods capable of being classed as structural parts or components and are identical or otherwise similar to its class 12 goods. Its fall-back position is that the goods covered by the other earlier marks in classes 1, 2, 4 and 17 are complementary to the Applicant's goods, though I shall deal with these later in my decision. The Applicant's case on the other hand is that there is no overlap between the respective goods they exist within different fields of industry and even if they were manufactured from similar materials this is not in itself sufficient for a finding of similarity. In addition, *"the mere fact that a particular good is used as a part element or component of another is not in itself sufficient to establish similarity between the finished product and its parts."*



32. Both parties filed lengthy submissions in relation to the identity or similarity of the goods. The key submissions are summarised below:

The Opponent's submissions:

- The contested goods are economically linked and that all the applied for class 7 goods are identical or highly similar to its class 12 goods.
- The word “components” is defined as “parts or elements of a machine or vehicle” and therefore all of the Applicant’s goods are capable of being components or structural parts of vehicles or machines.
- The Applicant’s bearings, bushings, mechanical seals and washers can all be found in brakes and whilst not all brakes include these components it is common to find brakes with integrated wheel bearings, bushings and mechanical seals and washers.
- Bearings are “parts of a machine that allow one part to rotate or move in contact with another part” creating as little friction as possible.
- The Opponent’s class 12 goods contain “*structural parts*” which can “encompass such things as “Pistons”, “Cylinder Heads” and “other major engine parts and utilise *bearings, bushings, mechanical seals and washers*”.
- The meaning of “structural” is wide ranging and applies to not only wings and bodies but also engine casings pistons and cylinder heads.
- The contested class 7 goods have the same or similar nature and purpose of use as well as being available through the same distribution channels and target the same consumers.
- In the alternative if the goods are not identical then some of its goods in classes 1, 2, 4 and 17 namely lubricants, additives, coatings and graphene based fibres are complementary to the Applicant’s goods as they would be purchased by the same end users and from the same outlets or distributors.
- Diesel engines comprise of components and structural parts.<sup>8</sup>

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<sup>8</sup> Document headed “5 components of structural parts in diesel engine” submissions dated 17.12.18

- Integrated break discs include bearings.<sup>9</sup>

The Applicant's submissions:

- The Applicant's class 7 goods are all used in industrial engineering due to the highly specialised nature of the products.
- The Opponent's class 12 and 17 goods are made entirely from graphene or graphene related materials whereas the Applicant's are not graphene based, not marketed as containing graphene and are unrelated to the graphene industry.
- Its bushings, bearings, mechanical seals and washers are never used as 'structural parts' of any machine, assembly or in general, due to their low tensile strength. The Applicant's products would never be used as components in vehicles, brake linings, brakes, carriage body parts, trains, trucks, aircraft or automobiles or indeed any specific items listed in the Opponent's specification.
- The Applicant argues that its products are sold directly to specialised engineers following direct contact from sales representatives. The respective products are therefore not sold via the same distribution channels or target the same end consumer. The consumers for its products are highly "attentive and circumspect engineers" working almost exclusively in the API 610 Pump Engineering industry and therefore would not use the Opponent's goods or confuse the two product ranges.
- There can be no overlap in the respective products as the Applicant's goods would never form a structural part of or be a component for the Opponent's goods or vice versa.
- A part element or component of another is not in itself sufficient to establish similarity between finished products and its parts.
- Its consumers are highly specialised professionals in divergent fields; distinctly different customers operating in different markets.

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<sup>9</sup> Document headed "The kit for brake discs with integrated wheel hub" submissions dated 17.12.18

- The Applicants goods cannot be purchased directly from its website. Its website is “simply an invitation to get in touch with an engineer to begin the design and purchasing discussion”.

33. Whilst the Opponent is relying on the entire list of goods for all its marks, I will focus on its goods in class 12 and in particular those highlighted by the Opponent as its strongest case. I must, first of all, consider the purpose and the nature of the Applicant’s goods as the case rests on whether bearings, bushings, mechanical seals and washers are all capable of being considered as structural parts and components provided by the same undertaking. I bear in mind both parties submissions as outlined above in this regard. To assist me I have considered the definitions as provided in the following Oxford/Collins online dictionary references:

*Bearing/bearings:* A part of a machine that allows one part to rotate or move in contact with another part with as little friction as possible.

*Bushings:* A removable, cylindrical lining or sleeve used in a machine to reduce the effect of friction on moving parts, decrease the diameter of an opening, etc.

*Mechanical Seals:* A device or substance that is used to join two things together so as to prevent them from coming apart or to prevent anything passing between them.

*Washers:* A small flat metal, rubber or plastic ring fixed between two joining surfaces or between a nut and a bolt to spread the pressure or act as a spacer or seal.

34. The Opponent has provided dictionary definitions of “structural parts” and “components” and argues that the Applicant’s goods are all components or structural parts capable of being used in vehicles as outlined in its specification. In particular it argues that mechanical thrust washers and mechanical seals are integral

components/parts of brakes and bearings used in engines and machines. The Applicant argues that its goods are “designed precisely to optimise performance in the niche field of hydrocarbon process pumps”. The Opponent has produced an extract taken from the Applicant’s website which it says demonstrates that the Applicant markets its products as components for machinery with a multitude of industrial application to include the automotive and aerospace industry and not only hydrocarbon process pumps.

35. Taking the core meaning of these goods and without any specific evidence to the contrary, in my view the Applicant’s goods are all components integral to the workings of any machine be it automotive or mechanical. In the absence of any limitation, these goods could be manufactured in any material and for any purpose. The purpose of a “structural part” or “component” is to enable one part to work with another part to enable a machine or engine to work more efficiently. For example pumps and vehicles by their nature include moving parts and components, where each part is reliant on another to work as a whole. The Applicant’s *bearings, bushings, mechanical seals and washers* are all parts to be used in conjunction with other parts. I do not accept the Applicants submissions regarding the niche application of its goods. In my view the Applicant’s goods are found in any moving part be it a machine, engine or pump for domestic or industrial purposes. Whether for vehicles or other type of mechanical machines all the Applicant’s goods are structural parts or components used in engineering. I also do not accept that the Applicant’s goods are only directed towards “Phd engineers”. In my view a number of different consumers would have cause to use these goods be they engineers, mechanics and manufacturers or DIY enthusiast wishing to repair a fault themselves rather than engaging a professional.

36. I consider that the Applicant’s *bearing bushings mechanical seals and washers* are all encompassed in the general description and scope of the Opponent’s “*Graphene-based material and components for vehicles, brake linings for aircraft landing gear, brakes for aircraft, carriage body parts, structural parts for helicopters, structural parts for trains, structural parts for trucks, structural parts for aircraft, structural parts for automobiles*”. In my view they are identical according to the

principle set out in *Meric*. If however I am wrong in my assessment then I consider them to be highly similar for the reasons I have set out. The respective goods share nature, purpose, use and channels of trade. Consumers would consider that the goods are manufactured by the same undertakings. There is nothing that the Applicant has submitted that has persuaded me otherwise.

37. Since I have found the contested goods are identical or highly similar strictly speaking it is not necessary for me to consider the other goods however I note that only the Opponent's first three marks are currently registered. For completeness, therefore, I will consider the Opponent's other earlier remaining marks. The entire list of goods for those marks are attached as an Annex. For the opposition to succeed it is essential for there to be some similarity between the goods. This was highlighted in *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, where Lady Justice Arden stated that (my emphasis):

“49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. **If there is no similarity at all, there is no likelihood of confusion to be considered.** If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.”

38. I take into account the core meaning of the respective goods, their nature, purpose and uses. In this regard I see no obvious similarity between the Applicant's *bearings, bushings, mechanical seals, washers* and the Opponent's goods in classes 1, 2, 4, 5, 9, 17 and 21.

39. The Opponent's goods in class 1 are all chemical goods used in industry, science and agriculture. I see no obvious similarity in trade channels. The respective goods

are manufactured from different materials by different industries and through different distribution channels and outlets. They are dissimilar.

40. For the same reasons I see no obvious similarity with the Opponent's goods in Class 2 which are mainly preparations; paints, colorants and the like used for protection against corrosion.

41. The Opponent's goods in class 4 are oils, lubricants, greases, fuels and illuminants. Lubricants are preparations used to reduce friction between moving parts thus preventing wear and tear. Despite the Opponent's submissions regarding complementarity, in my view they are dissimilar. The fact that lubricants can be used in conjunction with the Applicant's goods and in this sense they are, on a very general level, complementary, it does not follow that they are similar for trade mark purposes.<sup>10</sup> The Opponent's class 4 goods are not indispensable to the applied for goods in such a way that consumers would think that the respective goods were manufactured by the same or linked undertakings.<sup>11</sup> The core purpose and nature of the respective goods are different.

42. For the same reasons the Opponent's Class 5 goods are dissimilar as they include on the whole preparations for medical, pharmaceutical and veterinary purposes. Also, I see no obvious similarity between the Opponent's goods in classes 9, 17 and 21 they are equally dissimilar. The goods in class 9 include apparatus and instruments for scientific research whereas the goods in class 21 include household and kitchen utensils and cookware. Class 17 goods include mainly electrical, thermal and acoustic insulating materials and plastics for use in manufacture. The Opponent's fibres and resins are dissimilar to the contested goods.

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<sup>10</sup> *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13

<sup>11</sup> *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06,

43. Other than the possibility that the same core materials are used to manufacture the respective goods I see no obvious similarity between the Applicant's goods and any of the Opponent's goods in these classes. The opposition therefore fails in relation to these goods and the Opponent is unable to rely on the marks to which they relate namely its first, second and third marks as listed in paragraph 2.

44. In view of my conclusions regarding the identity of the goods and since the Applicant has conceded that the competing marks are identical the opposition based on section 5(1) of the Act, in relation to mark 4, succeeds because a trade mark shall not be registered if it is identical to an earlier trade mark and the applied for goods are identical with the goods for which the earlier mark is protected. I therefore need not go on to consider whether consumers would be confused by the marks as it is implicit under section 5(1) that they would. If, however I am wrong in this regard and the goods are highly similar it is necessary for me to consider the remaining factors as to whether a likelihood of confusion exists under section 5(2)(a) of the Act.

45. A word trade mark protects the word itself irrespective of font, capitalisation or otherwise and therefore a trade mark in capitals covers use in lower case and vice versa.<sup>12</sup> In addition signs are identical if any differences are so insignificant that they go unnoticed by the average consumer.<sup>13</sup> The Applicant has conceded that the marks are identical and therefore I need not go on to compare or analyse the marks' individual components. There is nothing to distinguish between the marks either aurally, visually or conceptually.

46. In relation to the average consumer the Applicant argues that its consumers would be able to distinguish between the respective marks as they are a discreet group of PhD level engineers highly specialised, and therefore would undertake a high level of attention in the purchasing process. I do not agree. The Applicant's website clearly advertises its goods to a wider public and is accessible to all not only to those within

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<sup>12</sup> *Bentley Motors Limited v Bentley 1962 Limited* BL O/159/17

<sup>13</sup> *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00

a narrow niche field. Whilst there may be a small percentage of highly skilled consumers paying a high level of attention, on the whole I consider that the goods at issue will either be purchased from individuals wishing to purchase spare parts or from professionals - mechanics and engineers for their respective businesses. Cost will be a factor in the purchasing process as well as quality, suitability and reliability of the product. Overall whether the goods are required for a particular function by an individual or a business owner, I consider that the level of attention paid in the selection process will be average. The purchasing process would be predominantly visual however aural considerations cannot be discounted following recommendations or negotiations over the telephone.

47. The earlier mark will be considered as invented and since the Opponent has not claimed an enhanced level of distinctive character (even if it had the evidence does not support such a claim) it will be considered as possessing a high degree of inherent distinctive character.

48. Bearing in mind the identity of the marks, the highly distinctive character of the earlier marks and the highly similar goods I conclude that the average consumer will be directly confused and therefore the opposition also succeeds under section 5(2)(a). Consumers coming across one or the other mark for highly similar goods would mistake one for the other; there is nothing to differentiate between them. Consumers would consider that one and the same undertaking was responsible for the goods. The opposition succeeds in relation to its fourth mark.

49. Since I have not found identity or similarity with any of the Opponent's goods in classes 1, 2, 4, 5, 9, 17 and 21 I am not able to find in the Opponent's favour in relation to its first, second and third marks. The opposition therefore fails in relation to marks numbered 3269626, 3270291 and 3297488.



### **Status of this decision**

50. Even though the opposition has succeeded this is a provisional decision because the EU earlier mark application no. 017478439 has not achieved protection. When the status of the earlier mark changes to protected or refused, wholly or partially, I will issue a supplementary decision which will include a decision on costs. The appeal period will run from the date of the supplementary decision.

### **Direction to the Opponent**

51. I direct the Opponent to inform me when the status of the earlier mark changes to protected or refused, wholly or partially.

Dated this 21<sup>st</sup> day of October 2019

Leisa Davies

For the Registrar

Annex – Opponent’s goods (as relied upon)

Mark 1: UK 3269626

**Class 1:** Carbon for industrial purposes; Carbon rods; Metal plating compositions; Additives (Chemical -) for cooling agents; Additives (Chemical -) for fuels; Additives (Chemical -) for hydraulic fluids; Additives (Chemical -) for industrial greases; Additives (Chemical -) for polymers; Additives (Chemical -) for use in cryoprotection; Additives (Chemical -) for use in drilling; Additives (Chemical -) for use in drilling fluids; Additives (Chemical -) for use in drilling muds; Additives (Chemical -) for cooling agents; Additives (Chemical -) for fuels; Additives (Chemical -) for hydraulic fluids; Additives (Chemical -) for industrial greases; Additives (Chemical -) for oils; Additives (Chemical -) for polymers; Additives (Chemical -) for use in cryoprotection; Additives (Chemical -) for use in drilling; Additives (Chemical -) for use in drilling fluids; Additives (Chemical -) for use in drilling muds; Additives (Chemical -) for cooling agents; Additives (Chemical -) for fuels; Additives (Chemical -) for hydraulic fluids; Additives (Chemical -) for industrial greases; Additives (Chemical -) for oils; Additives (Chemical -) for polymers; Additives (Chemical -) for use in cryoprotection; Additives (Chemical -) for use in drilling; Additives (Chemical -) for use in drilling fluids; Additives (Chemical -) for use in drilling muds; Additives (Chemical -) for cooling agents; Additives (Chemical -) for fuels; Additives (Chemical -) for hydraulic fluids; Additives (Chemical -) for industrial greases; Additives (Chemical -) for oils; Additives (Chemical -) for polymers; Additives (Chemical -) for use in cryoprotection; Additives (Chemical -) for use in drilling; Additives (Chemical -) for use in drilling fluids; Additives (Chemical -) for use in drilling muds; Fuel additives (Chemical -); Additive concentrates (Chemical -) for motor fuels; Additives, chemical, to motor fuel; Anti-freezing additives (Chemical -) for fuels; Chemical additives for diesel fuels; Chemical additives for fuel; Chemical additives for fuel injection system cleaners; Chemical additives for fuel treatment; Chemical additives for motor fuel; Chemical additives for motor fuels; Chemical additives for use in fuels to inhibit corrosion; Chemical additives for use in the production of fuels; Chemical additives for use with internal combustion engine fuels; Chemical additives to motor fuel; Chemical compound additives for fuel; Chemical preparations for use as additive to fuels for combatting pollution; Chemical preparations for use as additive to fuels for improving combustion; Combusting preparations [chemical additives to motor

fuel];Detergent additives for fuels; Fuel injection cleaner chemical additive; Motor fuel (Chemical additives to -);Octane booster fuel chemical additive; Waterproofing chemical compositions; Waterproofing chemical compositions for articles of fabric; Waterproofing chemicals (Cement- -), except paints; Waterproofing chemicals (Leather- -); Waterproofing chemicals (Textile- -); Waterproofing compounds [other than paint]; Waterproofing membranes in liquid chemical form for use in construction; Waterproofing preparations [chemical]; Additives (Chemical -) for use in waterproofing concrete; Additives (Chemical -) for use in waterproofing masonry; Adhesives for waterproofing; Chemical compositions for waterproofing articles of fabric; Chemical compositions for waterproofing masonry; Chemical preparations for waterproofing masonry; Coatings for waterproofing [chemicals];Protective coatings for waterproofing surfaces of buildings [other than paints or oils]; Waterproofing chemical compositions; Waterproofing chemical compositions for articles of fabric; Waterproofing chemicals (Cement- -), except paints; Waterproofing chemicals (Leather- -); Waterproofing chemicals (Textile- -); Waterproofing compounds [other than paint]; Waterproofing membranes in liquid chemical form for use in construction; Waterproofing preparations [chemical]; Additives (Chemical -) for use in waterproofing asphalt; Additives (Chemical -) for use in waterproofing concrete; Additives (Chemical -) for use in waterproofing masonry; Adhesives for waterproofing; Chemical compositions for waterproofing articles of fabric; Chemical compositions for waterproofing masonry; Chemical preparations for waterproofing masonry; Coatings for waterproofing [chemicals]; Dressings in liquid form for waterproofing leather shoes; Protective coatings for waterproofing surfaces of buildings [other than paints or oils]; Waterproofing chemical compositions; Waterproofing chemical compositions for articles of fabric; Waterproofing chemicals (Cement- -), except paints; Waterproofing chemicals (Leather- -); Waterproofing chemicals (Textile- -); Waterproofing compounds [other than paint]; Waterproofing membranes in liquid chemical form for use in construction; Waterproofing preparations [chemical]; Additives (Chemical -) for use in waterproofing asphalt; Additives (Chemical -) for use in waterproofing concrete; Additives (Chemical -) for use in waterproofing masonry; Adhesives for waterproofing; Chemical compositions for waterproofing articles of fabric; Chemical compositions for waterproofing masonry; Chemical preparations for waterproofing masonry; Coatings for

waterproofing [chemicals]; Protective coatings for waterproofing surfaces of buildings [other than paints or oils]; Waterproofing chemical compositions; Waterproofing compounds [other than paint]; Waterproofing membranes in liquid chemical form for use in construction; Waterproofing preparations [chemical]; Coatings for waterproofing [chemicals]; Protective coatings for waterproofing surfaces of buildings [other than paints or oils]; Coolants; Coolants (Anti-boil preparations for engine -); Coolants for vehicle engines; Coolants for vehicle radiators; Metal annealing preparations; Coating agents [chemicals], other than paint; Coating compositions [chemicals], other than paint; Coating compositions [not paint] for protection against the effects of water; Coating compositions for optical fibers; Coating compositions for protection against the effects of encrustation; Coating compositions for protection against the effects of incrustation; Coatings [chemical] for glass; Coatings [chemical] for lenses; Coatings [chemicals] for preventing staining other than for household or laundry purposes; Coatings containing quartz for optical glass; Coatings containing quartz for use in lenses; Coatings for the renovation of floor coverings [other than paints or oils]; Coatings for waterproofing [chemicals]; Coatings for weatherproofing [chemicals]; Coatings in the nature of solder mask for the manufacture of electronic parts.

**Class 2:** Coating materials for protection of surfaces exposed to galvanic corrosion; Coating preparations for protection against friction; Coating preparations for protection against rust; Coating preparations for protection against wear; Coating preparations having water repellent properties [paints or oils]; Coatings; Coatings containing reflective beads; Coatings for preserving against rust; Coatings for preventing staining [other than chemicals]; Coatings for protection against the corrosive effect of acids; Metal in foil and powder form; Metal surface treating agents [paints]; Waterproofing compositions in the nature of paint; Waterproofing compounds [paint]; Waterproofing preparations [paint]; Coating compositions having waterproofing properties [paints or oils]; Coatings for waterproofing [except chemicals]; Non-metallic waterproofing materials in the nature of paint; Preparations for use as waterproofing coatings on the surfaces of buildings [paints]; Preparations for use as waterproofing coatings on the surfaces of structures [paints]; Preparations

for waterproofing [paints]; Protective coatings for waterproofing surfaces of buildings [paints]; Waterproofing compositions in the nature of paint; Waterproofing compounds [paint]; Waterproofing preparations [paint]; Coating compositions having waterproofing properties [paints or oils]; Coatings for waterproofing [except chemicals]; Non-metallic waterproofing materials in the nature of paint; Preparations for use as waterproofing coatings on the surfaces of buildings [paints]; Preparations for use as waterproofing coatings on the surfaces of structures [paints]; Preparations for waterproofing [paints]; Protective coatings for waterproofing surfaces of buildings [paints]; Waterproofing compositions in the nature of paint; Waterproofing compounds [paint]; Waterproofing preparations [paint]; Coating compositions having waterproofing properties [paints or oils]; Coatings for waterproofing [except chemicals]; Preparations for use as waterproofing coatings on the surfaces of buildings [paints]; Preparations for use as waterproofing coatings on the surfaces of structures [paints]; Preparations for waterproofing [paints]; Protective coatings for waterproofing surfaces of buildings [paints]; Waterproofing compositions in the nature of paint; Waterproofing compounds [paint]; Waterproofing preparations [paint]; Coating compositions having waterproofing properties [paints or oils]; Coatings for waterproofing [except chemicals]; Non-metallic waterproofing materials in the nature of paint; Preparations for use as waterproofing coatings on the surfaces of buildings [paints]; Preparations for use as waterproofing coatings on the surfaces of structures [paints]; Preparations for waterproofing [paints]; Protective coatings for waterproofing surfaces of buildings [paints]; Metal surface treating agents [paints]; Coating compositions in the form of oils; Coating compositions in the form of paint; Coating compositions in the nature of lacquers; Coating materials for protection of surfaces exposed to galvanic corrosion; Coating materials in the nature of oils; Coating materials in the nature of paints; Coating of plastics to protect metal against damp [paints]; Coating preparations for protection against friction; Coating preparations for protection against rust; Coating preparations for protection against wear; Coating preparations having water repellent properties [paints or oils]; Coating preparations having water repellent properties [paint]; Coatings; Coatings [paints]; Coatings being inorganic [paints or oils, other than building materials]; Coatings being intumescent [paints or oils, other than building materials]; Coatings containing reflective beads; Coatings for forms [paints or oils]; Coatings for preserving against

rust; Coatings for preventing staining [other than chemicals]; Coatings for protection against the corrosive effect of acids; Coatings for use as primers; Coatings for use on walls; Coatings for waterproofing [except chemicals]; Coatings in the nature of electrolytic materials [paints]; Coatings in the nature of electrophoretic materials [paints]; Coatings in the nature of paint for use on the bottom of ships; Coatings in the nature of paint for use on wood; Coatings in the nature of paints; Coatings in the nature of paints for use in the automotive industry; Coatings in the nature of paints for use on vehicles; Coatings in the nature of sprays [paints]; Coatings to protect concrete from water [paints or oils]; Coatings to protect masonry building walls from water [paints or oils]; Coatings to protect stone from water [paints or oils].

**Class 4:** Additives, non-chemical, to motor fuel; Anti-freezing additives (Non-chemical -) for fuels; Motor fuel (Additives, non-chemical, to -); Non-chemical fuel additives; Non-chemical additives for fuels; Non-chemical additives for motor fuels; Waterproofing preparations in the form of oils for motor car ignition systems; Dispersions of paraffins in water for use in waterproofing particle boards; Waterproofing preparations in the form of oils for motor car ignition systems; Waterproofing preparations in the form of oils for motor car ignition systems; Waterproofing preparations in the form of oils for motor car ignition systems; Lubricants; Lubricants and industrial greases, waxes and fluids; Lubricants being gear oils; Lubricants containing low friction additives; Lubricants for agricultural implements; Lubricants for aircraft engines; Lubricants for cables; Lubricants for conveyor belts containing a cleaning agent; Lubricants for conveyor chains containing a corrosion inhibitor; Lubricants for conveyor chains containing a disinfecting agent; Lubricants for demounting pneumatic tyres; Lubricants for industrial apparatus; Lubricants for industrial machinery; Lubricants for machines; Lubricants for metal working; Lubricants for metallic surfaces; Lubricants for motor vehicles; Lubricants for mounting pneumatic tyres; Lubricants for plastic materials; Lubricants for polymeric surfaces; Lubricants for surgical apparatus; Lubricants for the protection of the chains of chainsaws; Lubricants for use in industrial processes; Lubricants for use in machine cutting; Lubricants for use in the machining of metal; Lubricants for use on conveyors; Lubricants for use on wire ropes; Lubricants for use with coaxial telephone cables; Lubricants for use with power cables; Lubricants

having cleaning properties; Lubricants in the nature of oils; Lubricants of agricultural origin; Lubricants of synthetic origin.

Mark 2: UK 3270291

**Class 1:** Chemical products for commercial and scientific purposes; carbon allotropes; carbon nanotube dispersions; carbon; chemical dispersions of graphite, graphene, carbon black and/or carbon; carbon black for commercial purposes; graphite and graphene for commercial purposes; unprocessed synthetic resins and plastics; adhesives for commercial purposes; emulsion agents, chemical dispersing agent; conductive adhesives for commercial purposes; chemical adhesives comprising carbon allotropes, especially for the electronic industry, for increasing of electrical and thermal conduction and for increasing of mechanical means; casting compounds comprising carbon allotropes. Graphene; graphene oxide; graphene oxide suspensions and membranes; graphene suspensions and platelets; hexagonal boron nitride (hBN) suspensions; molybdenum disulphide (MoS<sub>2</sub>) suspensions; tungsten sulphide (WS<sub>2</sub>) suspensions; chemical vapour deposition (CVD) tungsten sulphide; tungsten sulphide bulk crystals; two dimensional materials, such as hexagonal boron nitride, transition metal dichalcogenides. graphene oxide suspensions and membranes; graphene suspensions and platelets; hexagonal boron nitride (hBN) suspensions; molybdenum disulphide (MoS<sub>2</sub>) suspensions; tungsten sulphide (WS<sub>2</sub>) suspensions; chemical vapour deposition (CVD) tungsten sulphide; tungsten sulphide bulk crystals; two dimensional crystals, such as hexagonal boron nitride and transition metal dichalcogenides. Carbon nanosheets; graphenes; unprocessed plastics which include carbon nanosheets; unprocessed plastics which include graphenes; chemical agents which are composed mostly of graphenes; chemical agents which are composed mostly of powdered carbon, graphene oxide; graphene oxide suspensions and membranes; graphene suspensions and platelets; hexagonal boron nitride (hBN) suspensions; molybdenum disulphide (MoS<sub>2</sub>) suspensions; tungsten sulphide (WS<sub>2</sub>) suspensions; chemical vapour deposition (CVD) tungsten sulphide; tungsten sulphide bulk crystals; two dimensional crystals, such as hexagonal boron nitride and transition metal dichalcogenides, Chemicals for use in industry and science; chemicals for use in manufacture; conductive resins; conductive pastes; electrically

conductive raw plastics; chemical preparations having conductive properties; industrial chemicals; surface-active chemical agents; chemicals for use in the electronics industry; adhesives for use in industry; solvent type processing compositions for use in industry; chemical coatings for use in manufacture; etchants for use in manufacture; masking compounds for use in manufacture; chemical source material for the deposition of thin films upon semiconductor wafers for the manufacture of semiconductors; semiconductor silicon; chemicals for use in the semiconductor industry; chemicals used in the manufacture of semiconductor chips; doping compounds for use in the manufacture of semiconductors; masking compounds for use in the manufacture of semiconductors; industrial organic chemicals; organic acids for industrial use; non-flammable volatile organic chemical liquids; organic liquids for use in vacuum pumps; organic substances for use in manufacture; polymers for use in the analysis of organic chemicals; chemicals for use in the pharmaceutical industry; chemicals for use in the manufacture of pharmaceuticals; chemical preparations for use in the manufacture of pharmaceuticals; chemicals for use in manufacturing pharmaceuticals; chemical reagents for use in biotechnology, other than for medical or veterinary use. graphite; allotropes of carbon, carbon layers and carbon sheets; graphene and graphite being chemical products for industrial and scientific use, including but not limited to application in electronics, batteries, photovoltaic cells, inks, paints, coatings, fabrics, filtration, and composite materials; reinforcing agents (terms considered too vague by the International Bureau - rule 13.2.b) of the Common Regulations). Graphene materials, namely, carbon in the form of a two-dimensional, atomic-scale, hexagonal lattice in which one atom forms each vertex; graphene samples used for research and development; graphene composite materials made from graphene and Ni, graphene and copper, graphene and silicon dioxide, graphene and PET and graphene oxides; Chemicals used in industry, namely, carbon, resin, graphite and graphene; chemical agents for compounding impregnating, binding or coating of textiles, non-wovens and fabrics; chemicals used in the manufacture of fabric or textiles; carbon; carbon nanoparticles, including but not limited to, graphene nanoparticles; chemicals for use in industry and science; diagnostic preparations for scientific or research use; chemical preparations for general industrial manufacturing; chemical additives for lubricants; polymers and polymeric additives



for use in the manufacture of pharmaceutical preparations, medical devices, plastics, cosmetics, personal care products, coatings, adhesives, and lubricants; polymer base compositions used in the manufacture of commercial, industrial and domestic goods; graphite for industrial purposes; carbon composite materials consisting of a fibrous reinforcing structure made of carbon fibers and densified by a carbon matrix, for use in manufacturing; artificial graphite, carbon and graphene for industrial purposes; graphene oxide; graphite oxide; artificial graphite for use in the manufacture of microchips, including but not limited to, graphene; carbon for industrial purposes; carbon allotropes in raw or semi-finished form for use in manufacture; nanomaterials with morphologies tailored for use in semiconductors, electronics, displays, energy storage and transmission, photovoltaics, plastics, structural materials, and other applications; carbon allotropes in nanoscale form for use in semiconductors, electronics, displays, energy storage and transmission, photovoltaics, plastics, structural materials, and other applications; heat transfer fluids for industrial use; engineered composite materials for heat transfer or thermal management applications; engine coolants; engine lubricants;

**Class 2:** Paints, varnishes, lacquers; carbon black (paints); pigments, in particular iron pigments, pearl gloss pigments, metal effect pigments, interference pigments; powder lacquers; anti-corrosives, anti-rust preparations, dyes; unprocessed natural resins; coatings for metals, synthetic materials and paper, namely dip coat (coating compositions); metals in foil and powder form for painters, decorators, printers and artists; hardeners, drying agents, bonding agents, thickeners, fasteners, thinners and material for bleeding of paints and lacquers (all are additives for paints and lacquers); powder of common metals and their alloys and pastes made of these powders for painters and decorators; cut up foils of common metals in regular forms, in particular in leaf shape for painters, decorators, printers and artists; conductive inks, coating compounds and lacquers; coatings in the nature of paints, including plastic coatings, weatherproofing coatings, conductive coatings and coatings for protection against rust.

**Class 21:** Cookware; cooking utensils; kitchen utensils; household containers; household utensils.

Mark 3: UK3297488

**Class 1:** Graphene based anti-freeze additives; graphene based lubricants; Chemical Additives for Engines

**Class 2:** Coatings, especially for application on metal, walls, concrete, glasses, vehicles, steel plates, and other surfaces; Additives for paints; Coatings; non stick coatings; graphene based coatings; coatings to reduce friction; graphene non-stick coatings

**Class 4:** Additives, non-chemical, to motor fuel; Anti-freezing additives (Non-chemical -) for fuels; Motor fuel (Additives, non-chemical, to -); Non- chemical fuel additives; Non-chemical additives for fuels; Non-chemical additives for motor fuels; Waterproofing preparations in the form of oils for motor car ignition systems; Dispersions of paraffins in water for use in waterproofing particle boards; Lubricants; Lubricants and industrial greases, waxes and fluids; Lubricants being gear oils; Lubricants containing low friction additives; Lubricants for agricultural implements; Lubricants for aircraft engines; Lubricants for cables; Lubricants for conveyor belts containing a cleaning agent; Lubricants for conveyor chains containing a corrosion inhibitor; Lubricants for conveyor chains containing a disinfecting agent; Lubricants for demounting pneumatic tyres; Lubricants for industrial apparatus; Lubricants for industrial machinery; Lubricants for machines; Lubricants for metal working; Lubricants for metallic surfaces; Lubricants for motor vehicles; Lubricants for mounting pneumatic tyres; Lubricants for plastic materials; Lubricants for polymeric surfaces; Lubricants for surgical apparatus; Lubricants for the protection of the chains of chainsaws; Lubricants for use in industrial processes; Lubricants for use in machine cutting; Lubricants for use in the machining of metal; Lubricants for use on conveyors; Lubricants for use on wire ropes; Lubricants for use with coaxial telephone cables; Lubricants for use with power cables; Lubricants having cleaning properties; Lubricants in the nature of oils; Lubricants of agricultural origin; Lubricants of synthetic origin; Non Chemical Additives for Engines.

**Class 21:** Cookware; cooking utensils; kitchen utensils; household containers; household utensils; non stick cookware; non stick kitchen utensils.

Mark 4: EU 017478439

**Class 1:** Graphene and graphene-based polymer dispersions products used in industry; graphene and graphene-based compositions for use in the manufacture of electronic component; graphene and graphene-based materials.

**Class 2:** Coatings, especially for application on metal, walls, concrete, glasses, vehicles, steel plates, and other surfaces

**Class 5:** Composite materials comprising graphene, for medical and veterinary use.

**Class 9:** Semiconductors; Semiconductor elements; Semiconductor and display equipment components; Semiconductor wafers; Graphene wafers; Graphene wafer surface layers; graphene-based materials for diodes (LED); solar wafers and Wafers for solar cells; Sensors.

**Class 12:** Graphene-based material and components for vehicles, brake linings for aircraft landing gear, brakes for aircraft, carriage body parts, structural parts for helicopters, structural parts for trains, structural parts for trucks, structural parts for aircraft, structural parts for automobiles.

**Class 17:** Special fiber (graphene and graphene-based), not for textile use; Special fiber (graphene and graphene-based), composite-used for light-weight-components; Special fiber (graphene and graphene-based), strong-used for automobile, aircraft, space vehicle components; Special fiber (graphene and graphene-based), liquid-used and powder-used; Special fiber (graphene and graphene-based), liquid-used and powder-used; polymer resin fibres (other than for textile use); semi worked polymer resins in the forms of fibres; pre-impregnated fibre resinous material for use in moulding; resin suspensions, films, sheets and membranes; resin suspensions, films, sheets and membranes containing graphene, graphene oxide and/or derivatives of graphene; liquid resins containing graphene, graphene oxide and/or derivatives of graphene; carbon fibre; carbon fibres for use in industry; crude fibres of carbon; raw fibres of carbon, other than for textile use; carbon fibre compounds; carbon fibre felts; mineral fibres; carbon graphite materials (semi-finished products);

graphite materials (semi-finished products); carbon composite materials (semi-finished products); Oleo-adsorbent fibres containing graphene, used for treating water, air and soil contaminated with hydrocarbons and other pollutants; carbon fibres; glass fibres; plastic fibres (other than for textile use); polymer resin fibres (other than for textile use); semi worked polymer resins in the forms of fibres; pre-impregnated fibre resinous material for use in moulding; resin suspensions, films, sheets and membranes; resin suspensions, films, sheets and membranes containing graphene, graphene oxide and/or derivatives of graphene; liquid resins containing graphene, graphene oxide and/or derivatives of graphene; Special fiber (graphene and graphene-based), not for textile use; Special fiber (graphene and graphene-based), composite-used for light-weight-components; Special fiber (graphene and graphene-based), strong-used for automobile, aircraft, space vehicle components; Special fiber (graphene and graphene-based), liquid-used and powder-used; Special fiber (graphene and graphene-based), liquid-used and powder-used; polymer resin fibres (other than for textile use); semi worked polymer resins in the forms of fibres; pre-impregnated fibre resinous material for use in moulding; resin suspensions, films, sheets and membranes; resin suspensions, films, sheets and membranes containing graphene, graphene oxide and/or derivatives of graphene; liquid resins containing graphene, graphene oxide and/or derivatives of graphene.

**Class 21:** Cookware; cooking utensils; kitchen utensils; household containers; household utensils.