

O/570/22

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS:
3676399, 3676395 AND 3676391

BY ECO-BAT TECHNOLOGIES LTD

FOR THE FOLLOWING TRADE MARKS:

ECOBAT



AND



IN CLASS 19

**AND IN THE MATTER OF CONSOLIDATED OPPOSITIONS THERETO
UNDER NOS: 425970, 425971 AND 425972
BY HOLCIM TECHNOLOGY LTD.**

BACKGROUND AND PLEADINGS

1. Eco-Bat Technologies Limited (“the Applicant”) applied to register the following trade marks in the UK:

ECOBAT

(“the First Application”)



(Series of two)
 (“the Second Application”)

AND



(“the Third Application”)

2. The applications (respectively filed on 9, 11 and 10 March 2021) were published in the Trade Marks Journal for opposition purposes on 6 May 2021, for “*Gypsum for use as building materials*” in class 19 only (identically covered in each application).

3. On 5 August 2021, Holcim Technology Ltd (“the Opponent”) opposed all three applications pursuant to section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The Opponent relies on the following trade mark:

UK00918187613 - Filing date: 23 January 2020

Date of entry in register: 30 May 2020

ECOPACT

Relying on all goods and services, namely:

Class 19: Building materials (non-metallic), Cement, concrete and clinker; Concrete building elements; Refractory materials; Blast furnaces (Cement for -); Grouting preparations; Furnaces (Cement for -); Slate powder; Slag [building material]; Components and additives (included in class 19), in particular additives for concrete; Asphalt, pitch and bitumen.

Class 37: Building construction, maintenance and repair in the field of civil engineering construction; Consultancy relating to building construction, maintenance and repair in the field of civil engineering construction.

4. The Opponent claims that the marks are similar and that the competing goods (and services) are identical or similar, resulting in a likelihood of confusion.

5. The Applicant “agrees that the goods covered by the later application[s] overlap with those covered by the earlier registration”, but contends that its trade marks are “visually, aurally and conceptually dissimilar to the Opponent's earlier trade mark”.

6. The Applicant is represented by Forresters IP LLP and the Opponent is represented by Dehns. Neither party requested a hearing, but both filed evidence and written submissions in lieu. This decision is taken following a careful perusal of the papers.

EVIDENCE AND SUBMISSIONS

7. The Opponent filed evidence in chief in the form of witness statements from Alison Hague dated 6 December 2021 (with exhibits AH1 – AH6), accompanied by written submissions and a second witness statement of 4 April 2022 (with exhibits AH7 – AH11). Ms Hague is a Patent and Trade Mark Attorney at Dehns, who is authorised to make statements on behalf of the Opponent.

8. The Applicant's evidence consists of a witness statement dated 3 February 2022 in the name of Kathryn Louise Cruse, with exhibits KLC1 to KLC4. Ms Cruse is a Chartered Trade Mark Attorney at Forresters, authorised to make this statement on behalf the Applicant.

9. As noted above, both parties filed submissions in lieu of a hearing. I do not propose to summarise the evidence and submissions here. However, I have taken them all into consideration and will refer to them below where necessary.

Decision

Section 5(2)(b)

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

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

(a) ...

(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.”

11. Given its filing date of 23 January 2020, the Opponent's mark is an earlier mark in accordance with section 6 of the Act.¹ Further, this earlier mark had not completed its registration process more than five years before the filing dates of the applications. Accordingly, it is not subject to the proof of use provisions contained in section 6A of the Act; consequently, the Opponent may rely upon all the goods and services identified, without having to demonstrate genuine use.

The principles

12. The following principles for determining whether there is a likelihood of confusion under section 5(2)(b) of the Act are gleaned from the decisions of the Court of Justice of the European Union ("CJEU") in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:²

(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;

¹ 6(1) In this Act an "earlier trade mark" means - (a) 24 a registered trade mark or international trade mark (UK), a 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 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. This is why this decision continues to make reference to the trade mark case-law of EU courts.

(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 great degree of similarity between the marks, and vice versa;

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

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

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

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

Comparison of goods and services

13. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In *Canon*, the CJEU stated at paragraph 23 of its judgment:

“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”.

14. 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 users of the respective goods or services;
- (b) The physical nature of the goods or acts of services;
- (c) The respective trade channels through which the goods or services reach the market;
- (d) 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;
- (e) 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.

15. The General Court (“GC”) confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods are not worded identically, they

can still be considered identical if one term falls within the scope of another (or vice versa):

“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 fur 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”.

16. Although the parties have pleaded extensively on this issue, I do not intend to include those submissions here. After having considered the relevant evidence and submissions, I find that the Applicant’s specification – “*Gypsum for use as building materials*” - is identical, either self-evidently or under the principle laid down in *Meri*³, to the protected goods: *Building materials (non-metallic), Cement, concrete and clinker; Concrete building elements; Grouting preparations and Components and additives (included in class 19), in particular additives for concrete.*

The average consumer and the purchasing process

17. I have detailed submissions from the parties, more so from the Opponent, regarding the average consumer and the purchasing process in relation to the competing goods. While I will not reproduce those submissions here, I have borne them in mind.

18. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer’s level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

³ *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05

19. Both parties agree that goods (and services) are directed towards tradespeople, as well as to the public at large. However, the Opponent submits that (for both groups of consumers) “the level of attention will at most be normal and in many cases will be low”, because: “The evidence shows that ‘*Gypsum for use as building Materials*’ is rather inexpensive, and even if bought in bulk still involves a comparatively small outlay when set alongside the cost of other materials or project costs. Plaster is not especially technical or sophisticated, ... and [t]here are no obvious safety issues or need for vigilance. Since plaster is invariably painted or covered over in a finished room, aesthetic considerations are largely irrelevant.”

20. I do not agree with the Opponent’s conclusions. As rightly stated by the Opponent: “The attention of consumers tends to be affected by considerations such as frequency of purchase, cost, whether there are technical or safety issues, aesthetic requirements and the contribution that the product will make to the successful outcome of the task at hand.” I consider that today’s consumer is increasingly conscious of the environmental impact of its actions and, in the building industry in particular, there is a trend towards using sustainable, eco-friendly materials (which, to my mind, is reflected in the respective trade names; ECOPACT and ECOBAT). The average consumer might also want to know whether they could live safely and comfortably with the materials by checking that they are not made with harmful chemicals (for example).⁴ Therefore, based on these considerations (including budget, durability, aesthetic appeal and performance), I agree with the Applicant’s submission in this regard, that “the level of attention will vary from average to higher than average”.

21. There is no doubt that both visual and oral considerations play a part in the purchasing process, either during the consultation of websites, brochures and at physical stores, or when orders are placed at a trade counter or over the telephone (for example).

⁴ It is apparent from the evidence that the goods can take different forms or are of different types, which also produce different effects.

Comparison of marks

22. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

23. It is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks. The marks to be compared are:

Earlier Mark	Contested Marks
ECOPACT	<p data-bbox="948 1462 1251 1554">ECOBAT (the First Application)</p>  <p data-bbox="924 1753 1275 1890">ecobat (Series of two) (the Second Application)</p>

	 <p>(the Third Application)</p>
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Overall impression

24. The Opponent's mark is a portmanteau word, consisting of two standard dictionary words, ECO and PACT. There are no other elements to contribute to its overall impression, which lies in the word itself.

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Visual Comparison

26. Visually, the marks coincide in the prefix "ECO" and the letters "A" and "T" in their respective suffixes. The Opponent submits that:

“The identical beginning of each mark significantly impacts the degree of visual similarity, especially when coupled with the very similar overall structure and identical endings.

“Both marks begin with ECO-, are almost the same length, share the same vowel “A” in the second part of each mark and are each rounded off with the same final letter T at the end.

“The only slight differences between the word marks are that letter “B” in the mark applied for replaces the letter “P” in the earlier trade mark and there is an additional penultimate letter “C” in the earlier trade mark. These differences are insignificant.

“The letter “B” is similar in shape to the letter “P”, the only difference being an extra lobe at the bottom of the letter “B”. These two letters are therefore visually similar.

“The second part of each mark –PACT and –BAT, combines with the letters ECO- at the beginning of the mark, to create two marks which overall are visually highly similar.

“The figurative elements of the marks which are the subject of the second and third application are unremarkable and scarcely differ from an ordinary representation of the word in a modern typeface. We therefore submit that the applicant’s figurative marks are also similar to the earlier trade mark to a high degree.”

27. I consider that the “only slight differences” (as the Opponent puts it) make an appreciable impact, because the composition of the additional letters underlies the difference between the marks: The earlier mark includes two letters “P” and “C”, which are not present in the later marks and the later marks include the letter “B”, which is not present in the earlier mark. These differences create a strong visual impact, making the competing marks more easily discernible. I therefore find that the respective word marks are visually similar to no more than a medium degree.

28. As I mentioned earlier, the stylisations of the Second and Third Applications are not negligible and will be noticed. However, I agree with the Opponent that these differences are not so significant so as to detract from the overall impression conveyed by the word in these later marks. Therefore, they too are considered to be visually similar to the earlier mark to no more than a medium degree.

Aural Comparison

29. The Opponent submits that: "Aurally the marks are highly similar. Each mark is pronounced as three syllables: E-CO-BAT and E-CO-PACT. The first two syllables are phonetically identical and are at the beginning of the word where they tend to capture the attention and be articulated most clearly.... Even though as a matter of principle the third syllable of a mark can in general be considered to have less impact on the overall impression, in this case the third syllables -BAT and -PACT also sound extremely similar. The initial B and P both create a harsh popping sound, flattening out into a long A and ending abruptly with a strong final letter T. Because of the similarity in harsh guttural pronunciation between a "C" and a "T", there is very little distinction phonetically between the endings "-AT" and "-ACT"."

30. The Applicant, however, "concluded that aurally the marks are dissimilar". It is clear, to my mind, that the respective marks consist of three syllables that are either identical (the first and second) or similar in length (in relation to the suffix). Further, as all the elements of which the competing trade marks are made up will be well known to the average consumer, their pronunciations are fairly predictable, and are more likely to be articulated in the manner the Opponent suggests. However, I consider that there is a clear distinction in articulation between the respective suffixes. Notwithstanding the differences at the end of the competing marks, they are still, in my view, aurally similar to a fairly high degree.

Conceptual Comparison

31. The parties are agreed that the ECO element in the marks denote ecology or ecological. The Opponent submits that: "Conceptually neither mark has any meaning save that the letters "ECO" in both marks can be understood as alluding to ecology.

To that extent the marks are conceptually similar.” The Applicant states: “When comparing the two marks in full, being, ECOBAT and ECOPACT, the overall meaning is so distinct that there is zero chance of the two being confused, even when taking into account imperfect recollections. One mark means environmental bat (or mammal) the other means environment pact (or agreement).

32. I find that the overall meaning created by ECOPACT as a unit has a different concept to ECOBAT, which does not have a single, clear and obvious meaning. Nevertheless, the element ECO, discernible in both marks, is a well-known, ordinary dictionary word/abbreviation, which carries meaning in the marks at issue, though this is altered by the addition of the respective endings. Notwithstanding the fact that the later marks (ECOBAT) have no immediately obvious meaning, there remains a recognisable degree of conceptual similarity given the marks’ composition around the common element (ECO): by reason of the fact, according to settled law, that the average consumer, “perceiving a verbal sign will break it down into verbal elements which, for [them], suggest a concrete meaning or which resemble words known to [them]”.⁵ Therefore, I find that the marks are conceptually similar to a low degree.

Distinctive character of the earlier marks

33. The degree of distinctiveness of the earlier mark is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark the greater the likelihood of confusion⁶. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91.

34. “In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods and services for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings” - *Windsurfing*

⁵ *Usinor SA v OHIM*, Case T-189/05, § 62.

⁶ *Sabel BV v Puma AG*, Case C-251/95, § 24

Chiemsee v Huber and Attenberger Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

35. Trade marks possess various 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. Further, the distinctiveness of a mark can be enhanced by virtue of the use made of it. In this case, however, the Opponent has not filed any evidence to support such a claim. Consequently, I have only the inherent position to consider.

36. In *Kurt Geiger v A-List Corporate Limited*, BL O-075-13, Mr Iain Purvis Q.C. sitting as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

"38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that 'the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion'. This is indeed what was said in *Sabel*. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it."

37. In other words, simply considering the level of distinctive character possessed by the earlier mark is not enough. It is important to ask 'in what does the distinctive character of the earlier mark lie?' Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

38. I earlier found that ECOPACT combines two words/syllables, both of which are ordinary words with recognisable meaning. ECO in particular is of low distinctive character, as it creates a clear image or message that the goods and services provided under the mark possess ecological or environmental qualities and/or are delivered with such considerations. Further, when combined with PACT, it might suggest to the average consumer that the manufacturer has made a pact to respectively produce and provide eco-friendly goods and services, and/or in choosing the eco-friendly goods and services offered by the brand, one acknowledges, or is also part of, the pact not to cause harm to the environment, as far as it relates to one's choice of building materials and activities in the construction industry (for example).

39. In its submissions the Applicant highlights the settled interpretation and treatment of the term ECO in trade mark law, as set out in the *Manual of trade marks practice*:

The terms 'ECO' and 'ENVIRO' are commonly used as a combining form denoting ecology, ecological or environmental and are widely used in relation to both the environment and environmentally friendly products. Whether used alone or as a prefix, the words 'ECO' or 'ENVIRO' will be treated as if they were the word 'ecological' or 'environmental' and an objection under section 3(1)(b) and (c) will be raised where the totality is considered descriptive.⁷

40. The Opponent contends that its trade mark “alludes to ecological or environmental soundness but is an invented word and should be recognised overall as having a high degree of distinctiveness.” The mark as a whole, to my mind, will be viewed by the average consumer as laudatory or promotional. Whatever meaning is attached to it, it is clear that it will be understood by a significant part of the relevant public as referring to the quality of the goods and services under the mark (as those that are eco- or environmentally-friendly). Therefore, taking all these considerations into account, I find the combined ECOPACT to be inherently distinctive to a low degree.

⁷ *Manual of Trade Marks Practice*, Part B: Alphabetical list of examination practice, under the letter “E”, headed: “Environmental or ecological terms”; Section last updated: January 2021.

Likelihood of confusion

41. 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 marks may be offset by a greater degree of similarity between the goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, 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.

42. I have found the competing goods to be identical. The average consumer is formed of both members of the public and business users, who will select the goods primarily through visual means, though I do not discount an aural component in the selection process. I have concluded that the level of attention exercised during the purchasing process will range from average to higher than average, depending on the consumer group and the interplay of other considerations.

43. I have found the Opponent's mark to have a low degree of distinctive character. Whilst the competing marks were found to be visually similar to no more than a medium degree, aurally similar to a fairly high degree and conceptually similar to a low degree. I have taken these factors into account in my assessment of the likelihood of confusion between the marks.

44. In approaching the question of likelihood of confusion, consideration has to be given to the cumulative effect of all of the aforesaid findings. To my mind, the cumulative effect of my findings does not suggest that confusion is likely, particularly given the low level of distinctive character of the earlier mark, the medium degree of

attention the average consumer is (at least) likely to pay in the purchasing process and the low degree of conceptual similarity between the marks.

45. Further factors of importance are the kinds of goods at issue and the type of consumers who are likely to purchase them. The identity of the goods is offset against the fact that they are purchased after some research or consideration and, generally after they have been seen (either in stores or in advertising material). It is unlikely that such consumers would confuse the marks in these circumstances.

46. At the very highest, to my view, it might be said that there was a possibility that one mark might bring the other to the mind of a small number of members of the relevant public, but I consider that it would not be sufficient to lead consumers to associate the origin of the products and services with the respective parties. It is of importance to note that what has to be identified is the likelihood of confusion and not simply that one mark brings another to mind.

47. After having carefully considered all these factors and weighed them against each other, I come to the view that, the level of attention that is likely to be paid during the mainly visual purchase and the no more than medium degree of visual similarity between the marks, in particular, means that there is no likelihood of direct confusion (where one mark is mistaken for the other). Nor do I see any reason to conclude that there is a likelihood of indirect confusion (where the average consumer believes that the relevant goods and services come from the same or economically linked undertaking(s)). Further, bearing in mind the principles and categories illustrated in *L.A. Sugar*,⁸ the common element is not so strikingly distinctive that the average consumer would expect no one other than the (same or related) proprietor to use it. As said earlier, at most there might be a fleeting bringing to mind; however, this is not enough for confusion, either of the direct or indirect kind.

48. For the avoidance of doubt, by parity of reasoning, the same conclusion applies to the position where the goods are selected by oral means. It is settled law that, in the context of the global assessment, the visual, aural or conceptual similarity of marks do

⁸ See the comments of Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10. I have also borne in mind that the categories are not exhaustive.

not always carry the same weight. As indicated earlier, consumers of the goods at issue will buy them after some consideration, based upon information that appears in specialist catalogues or on the internet (as shown in the evidence submitted by both parties), and then at the point of sale, which indicates that there will be a visual examination both of the goods and of the relevant mark/s. Further, the goods at issue cannot be considered as being goods which may be purchased impulsively, but rather following a comparison between the various offers and after some reflection. In these circumstances the aural similarity is less important than the visual similarity, and for these reasons I conclude that there exists no likelihood of confusion despite the fairly high degree of aural similarity between the respective marks.

Conclusion

49. The opposition under section 5(2)(b) fails in its entirety; and subject to any successful appeal, the application may proceed to registration.

COSTS

50. As the Applicant has been largely successful, it is entitled to a contribution towards its costs. Awards of costs in proceedings are governed by Annex A of Tribunal Practice Notice (“TPN”) 2 of 2016. Applying said TPN as a guide, I award costs to the Applicant on the following basis:

Reviewing the Notice of Opposition and filing the Counterstatement:	£300
Consideration of the Opponent’s evidence and filing of evidence	£400
Preparing written submissions and considering the other side’s submissions:	£400
Total:	£1,100

51. I order Holcim Technology Ltd to pay to Eco-Bat Technologies Limited the sum of **£1,100**. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 5th day of July 2022

**Denzil Johnson,
For the Registrar**