

**DECISION**  
**of the Fifth Board of Appeal**  
**of 19 May 2025**

In case R 1831/2024-5

**Victron Energy B.V.**

De Paal 35  
1351JG Almere  
Netherlands

Applicant / Appellant

represented by Quirijn Meijnen, Raadhuisstraat 52C, 1016DG Amsterdam, Netherlands

v

**Bayerische Motoren Werke Aktiengesellschaft**

Petuelring 130  
80809 München  
Germany

Opponent / Defendant

represented by Klaka, Delpstr. 4, 81679 München, Germany

APPEAL relating to Opposition Proceedings No B 3 126 171 (European Union trade mark application No 18 219 355)

**THE FIFTH BOARD OF APPEAL**

composed of V. Melgar (Chairperson and Rapporteur), Ph. von Kapff (Member) and R. Ocquet (Member)

Registrar: H. Dijkema

gives the following

## Decision

### Summary of the facts

- 1 By an application filed on 31 March 2020, Victron Energy B.V. ('the applicant') sought to register the word mark

### BMV

as a European Union trade mark ('EUTM') for the following list of goods as limited on 1 September 2020:

Class 9: *Battery monitors.*

- 2 The application was published on 21 April 2020.
- 3 On 16 July 2020, Bayerische Motoren Werke Aktiengesellschaft ('the opponent') filed an opposition against the registration of the published trade mark application for all the above goods.
- 4 The opposition was based on, inter alia, EUTM No 91 835

### BMW

filed on 1 April 1996 and registered on 25 February 2000 for goods and services in Classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42. The opposition was based on the following goods:


Class 9: *Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; electric apparatus and instruments (included in Class 9); electric cigar and cigarette lighters for automobiles; electrically heated clothing; clothing for protection against fire and accidents, including shoes, boots, protective helmets, goggles, sunglasses; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines and data-processing equipment; data processing programs and computer software (included in Class 9), storage mediums of every kind provided with programs; fire-extinguishing apparatus, warning signs, hazard lights; intercom systems being motorcycle accessories; data processing programs and computer software in the form of leaflets.*

Class 12: *Vehicles and parts therefor; motors for land vehicles; machine couplings and transmission components for land vehicles; automobile accessories, namely towing ropes and bars, trailer couplings, anti-burglar and anti-theft security devices, bicycle holders and bicycle lifts, roof racks, anti-skid chains, straps and clamps, head rests, air pumps, mudguards, safety belts and air bags, safety seats for children, ski carriers, sun screens and blinds, surfboard holders, tanks, wind deflectors, decorative trimming and stripes,*

*luggage trunks; motorcycle accessories, namely anti-theft devices, repair outfits for inner tubes, luggage containers, luggage racks, air pumps, pack bags, roll bars, tank rucksacks and bags, cladding; apparatus for locomotion by land, air or water.*

- 5 The grounds of opposition to this earlier right were those laid down in Article 8(1)(b) and Article 8(5) EUTMR.
- 6 The opponent submitted, inter alia, the following evidence to prove genuine use, as requested by the applicant, and the reputation of the earlier mark, as claimed by the opponent:


*On 5 January 2023 (evidence of reputation)*

- Annex A3: the Wikipedia entry on ‘BMW’, describing the opponent as a ‘German multinational manufacturer of passenger motor vehicles and motorcycles’ and the opponent’s history as an automobile manufacturer dating back to 1928. The text is in English and dated 27 December 2022.
- Annex A6: annual reports (in English) for 2013, 2016 and 2020, showing the finances of the opponent’s group. According to the documents, the sales volume of ‘BMW’ automobiles is high.
- Annex A8: excerpts from reports (in English) showing the gross media expenditure for ‘BMW’ in France and Germany for 2006-2015, which are significant.
- Annex A9: catalogues containing pictures of cars with the sign , particularly of the models ‘BMW 1’, ‘BMW M240i’, ‘BMW 230i’, ‘BMW 330i’, ‘BMW 530d’, ‘BMW 640i’, ‘BMW 750Li’, ‘BMW M760Li’, ‘BMW 8 SERIES’, ‘BMW X2’, ‘BMW X4’, and ‘BMW Z4’. The catalogues are in English and dated in 2018.



- Annexes A11-A14: reports produced by ‘ebiquity portfolio’ on the appearances of the sign ‘BMW’ in the press and on television channels and radio. They list around 200 entries for 2008-2016 in publications such as *Süddeutsche Zeitung*, *Sport Bild*, *AD Architectural Digest*, *Nordsee-Zeitung*, *Frankfurter Allgemeine*; on TV channels such as ‘RTL’, ‘NTV’, ‘PRO7’, ‘ARD’, ‘Eurosport’, ‘ZDF’, and ‘N24’; and in magazines such as *Sport-Audio*, *Auto Journal*, *Gala*, *Automobile Magazine*, *Flottes Automobiles*. These media appearances correspond to, inter alia, Germany and France, according to the reports.
- Annexes A15-17: reports produced by GfK on ‘Market and Trend Research’ for 2008-2013. The reports show that surveys were conducted among 2 400 respondents in Germany (for 2008-2012), 1 200 in France (for 2008-2012), 1 400 in France (for 2013) and 2 400 in Italy (for 2008-2013), selected from those who had purchased a new car in the previous 5 years. ‘BMW’ was named by a significant number of



respondents when asked the question: ‘Now, please think of all car manufacturers / car brands you know. Which manufacturers / brands come to your mind spontaneously?’. To the question: ‘How well do you know the following car brands? For your assessment, please use a scale from 1 to 5.’, the majority of respondents gave ‘BMW’ a score of 1-3. In the report for 2012 conducted in France, the majority of respondents named ‘BMW’ as their answer to the question: ‘For which of the following car manufacturers have you recently seen, heard or read advertising?’.

- Annexes A18-A28: various documents related to brand rankings.
  - Printouts from the website rankingthebrands.com with a list of rankings in which the sign ‘BMW’ is mentioned, corresponding to 2007-2022. There are more than 200 entries on the list, containing rankings such as ‘Best Global Brands’ (ranked 13th), ‘BrandZ Top 100 Most Valuable Global Brands’ (ranked 76th), and ‘The Most Valuable European Brands’ (ranked 6th) for 2022. The text is in English, and the printout is dated 15 December 2022.
  - Reports regarding the ‘Best Global Brands’ for 2009-2015 and 2020, produced by Interbrand, where the sign ‘BMW’ is ranked 11th-15th.
  - Reports regarding the ‘Most Valuable Global Brands’ for 2009-2016, produced by Millward Brown, where the sign ‘BMW’ is ranked 1st-2nd in the ‘cars’ category.
  - Printouts from the website reptrak.com containing ‘The 2020 Global RepTrak 100’ list, where the ‘BMW Group’ is ranked 27th. The text is in English and the printout is dated 15 December 2022.
  - An article, published in Forbes on 6 July 2012, entitled ‘The World’s Most Reputable Companies’, stating that ‘BMW’ is the ‘world’s most reputable company for 2012’. The text is in English.
  - The ‘Powering the world’s most reputable companies’ report for 2018, produced by the Reputation Institute, placing ‘BMW Group’ in 9th place.
  - ‘Best Brands’ reports for 2017-2018, produced by Best Brands, where the sign ‘BMW’ is in 1st-3rd place. Although the text is in German, the rankings are self-explanatory.
  - A ‘NetBase Brand Passion Report: Top 25 Germany Brand Love List’, produced by NetBase, for the year 2019, where ‘BMW’ appears in 3rd place. The text is in English.
  - A ‘Germany 100 2020’ report, produced by BrandFinance, for 2020, where  appears in 3rd place. The text is in English.
- Annex A51: containing the following.
  - An entry (dated 15 December 2022) in the *Duden* dictionary for the term ‘BMW’ (accompanied by the symbol ®), in German, defining it as a ‘German motor

vehicle brand. Origin: after the company Bayerische Motoren Werke AG', according to the opponent's translation.

- A Wikipedia entry on *Duden*, stating that it 'is a dictionary of the Standard High German language' and that it 'has become the preeminent language resource of the Standard High German language'. The text is in English and is dated 22 July 2022.
- A printout from the website [abkuerzungen.woxikon.de](http://abkuerzungen.woxikon.de) showing the entry corresponding to 'BMW'. The text is in German and the printout is dated 15 December 2022. According to the opponent's translation, it states that 'BMW' is an abbreviation of 'Bayerische Motoren Werke'.

*On 3 August 2023 (evidence of genuine use)*

- Annexes A71-93: catalogues containing pictures of cars with the sign , inter alia, of the models 'BMW 4er', 'BMW 2er', 'BMW 5er', 'BMW 3er', 'BMW 3er LIMOUSINE', 'BMW 6er', 'BMW 7er', 'BMW 8er', 'BMW 1er', 'BMW X1', 'X7', and 'BMW Z4'. The catalogues are in German and correspond to 2016-2019.
- Annexes A94-107: catalogues containing pictures of cars with the sign , particularly of the models 'BMW 1', 'BMW 2', 'BMW 3', 'BMW 4', 'BMW 5', 'BMW 6', 'BMW 7', 'BMW 8', 'BMW X2', 'BMW X3', 'BMW X4', 'BMW Z4', 'BMW X7'. The catalogues are in English and correspond to 2018.
- Annex A113-114: numerous invoices, dated between 23 March 2015 and 21 March 2018, issued by the opponent to clients in Germany. According to the description, the invoices were issued for 'M6 CABRIO', 'M6 Gran Coupé', 'M4 COUPÉ', 'M4 CABRIO', 'M3 LIMOUSINE', 'M2 COUPÉ', 'M5 LIMOUSINE', 'X6', and 'X5'. The prices are in euro and the invoices are in German. The prices are significant. The invoices show the sign **BMW** in their upper left part.
- Annex A116: advertisement flyers for, inter alia, the 'BMW M2 COUPÉ', 'BMW M4 COUPÉ', 'M6', 'BMW X5', 'BMW X6', 'BMW M3', and 'BMW M6 GRAN COUPÉ', accompanied by pictures of the cars. The documents are undated and in German.

7 On 22 December 2023, the applicant submitted the following evidence:

- Annex 1: a list of classes, with explanatory notes, taken from the Nice Classification, 6th edition (1992).
- Annexes 2-3: press release number 6 of 2020 of the Kraftfahrt-Bundesamt 'KBA' (the German Federal Motor Transport Authority) and its translation into English (via [www.deepl.com](http://www.deepl.com)).
- Annexes 4-5: vehicle registrations (FZ) 'New registrations and transfers of ownership of passenger cars and motorbikes by brand or manufacturer' 2020, and its English translation.

- Annex 6: several advertisements for battery monitors, showing the use in trade in the EU of ‘BM’ as an abbreviation for ‘battery monitor’ (in English), ‘*batterie monitor*’ (‘battery monitor’ in German) and ‘*batterij monitor*’ (‘battery monitor’ in Dutch) in the product names of battery monitors.
  - Annex 7: tables taken from the website [www.omniglot.com](http://www.omniglot.com) with the pronunciation of letters in Bulgarian, Dutch, English, German, French, Italian, Greek, Romanian, Spanish and Portuguese.
  - Annex 8: a printout from the website <https://www.best-selling-cars.com/europe/2018-full-year-europe-car-sales-per-eu-and-efta-country/> showing car sales in Italy, France and Germany.
- 8 By decision of 24 July 2024 (‘the contested decision’), the Opposition Division upheld the opposition in its entirety on the grounds that the opposition was well founded under Article 8(5) EUTMR. It gave, in particular, the following grounds for its decision:

*Proof of use*

- The evidence on file is sufficient to prove genuine use of the earlier EUTM No 91 835 ‘BMW’ during the relevant period (from 31 March 2015 to 30 March 2020 inclusive) in the relevant territory (at least Germany) for, at least, the following goods:

Class 12: *Cars*.

*Reputation as claimed under Article 8(5) EUTMR*

- The earlier mark has had a considerable degree of reputation in, at least, Germany, at least for *cars* in Class 12, for a substantial period (over 10 years). The sales figures (Annex A6), advertising expenditure and appearances (Annexes A8 and A11-A14), surveys (Annexes A15-17), brand rankings (Annexes A18-28) and the entry in the dictionary *Duden* (Annex A51) suggest that the trade mark has a consolidated position on the market.
- Germany, the territory in question, constitutes (taking into account its population, the market characteristics and some degree of recognition of the mark) a substantial part of the relevant territory, thereby satisfying this condition.
- In particular, the inclusion of a word in a dictionary is the expression of a fair amount of recognition on the part of the public. The opponent also demonstrates significant expenditure on media presence and cites its presence in known German media (in publications e.g. *Süddeutsche Zeitung*, *Sport Bild*, *AD Architectural Digest*, *Nordsee-Zeitung*, *Frankfurter Allgemeine*; TV channels e.g. ‘RTL’, ‘NTV’, ‘ARD’, ‘Eurosport’, ‘ZDF’; and magazines e.g. *Gala*). The reports on ‘most reputable companies’, ‘Best Brands’, ‘Top 25 Germany Brand Love List’ and ‘Germany 100 2020’ (produced by the independent sources ‘Reputation Institute’, ‘Best Brands’, ‘NetBase’ and ‘BrandFinance’) as well as the report produced by GfK on ‘Market and Trend Research’ corresponding to 2008-2013, contribute to these findings.

- These documents have a high probative value and demonstrate a considerable level of reputation enjoyed by the opponent’s earlier mark in the car industry.
- It is clear from the evidence that the earlier trade mark has been subject to long-standing and intensive use and is generally known in the relevant market.

### *The signs*

- The applicant submitted, as Annex 6, several printouts from retailers offering battery monitors, which, according to the applicant, show ‘the use in trade in the EU of “BM” as an abbreviation for “battery monitor” (in English), *batterie monitor* (“battery monitor in German”) and *batterij monitor* (“battery monitor in Dutch”) in product names of battery monitors’. However, all those retailers’ websites show the letters ‘BM’ always accompanied by the text ‘Batteriemonitor’, ‘battery monitor’, ‘*Batterie Monitor*’, or ‘*batterijmonitor*’. In none of the printouts are the letters ‘BM’ used independently, without being accompanied by the abovementioned expressions, which give context to those two letters and serve as an indication of the product for the consumers.
- The Opposition Division considers that the signs’ elements have no direct and clear meaning in connection to the goods at issue. They are, therefore, distinctive.
- Since neither sign conveys any clear or specific semantic content to the public under analysis, a conceptual comparison between the signs is not possible.
- Visually, the signs coincide in the letters ‘BM’, placed at the beginning of both signs. They differ in their last letters: ‘W’ in the earlier mark and ‘V’ in the contested sign. The shapes of these letters (‘W’ versus ‘V’) are similar, insofar as they both share inward-angled lines. This remains true even if, as pointed out by the applicant, the relevant public is deemed to be capable of distinguishing the letters of the Latin alphabet. Therefore, the signs are visually similar to, at least, an above-average degree.
- Aurally, the signs coincide in the sounds of the letters ‘B’ and ‘M’. The signs differ in the pronunciation of the signs’ last letters, ‘W’ in the earlier mark and ‘V’ in the contested sign. Therefore, the signs are aurally similar to, at least, an average degree.

### *The ‘link’ between the signs*

- The earlier mark is reputed, and the signs have a certain degree of similarity. The earlier mark has a normal degree of inherent distinctiveness, and it enjoys a considerable degree of reputation in Germany for, at least, *cars* in Class 12.
- The contested goods are, after a limitation filed by the applicant, the following: Class 9: *Battery monitors*.
- According to the applicant, although a possible overlap of the relevant public cannot be completely excluded, the relevant consumer will not see any link between the signs if used in relation to the earlier goods with a reputation (luxury cars) and the contested battery monitors. The nature and purpose of battery monitors are fundamentally different from those of luxury cars. Luxury cars belong to the high-end automobile

market and are primarily designed for personal transportation and a premium driving experience. Battery monitors are part of the power electronics and energy storage industries, serving to monitor batteries in various applications. Luxury cars prioritise a premium driving experience, while battery monitors focus on monitoring and optimising energy storage. Luxury cars target consumers who value a premium driving experience, comfort, and status. Battery monitors cater to a diverse user base, including individuals, businesses, and industries relying on battery-powered devices or systems. Therefore, battery monitors as such cannot be considered to show any proximity to luxury cars from an economic perspective. This economic reality is reflected also in the minds of the consumers, especially those consumers that form the overlapping part of the public in the present case, as explained above.

- However, there is a connection between the contested battery monitors and the goods for which the earlier mark enjoys a reputation on the market from the consumers' perspective (at least cars). The use of battery management systems in electric and hybrid vehicles is common. Battery monitors, as part of battery management systems, are important components in electric and hybrid cars that help maintain the health, performance, and longevity of the vehicle's battery pack.
- Battery monitors are responsible for monitoring charging state, voltage, current, temperature, and other parameters of the battery cells in an electric or hybrid vehicle. They ensure that the battery is charged and discharged efficiently, preventing overcharging, over-discharging, and overheating. Such monitoring optimises the performance of the vehicle and extends the life of the battery.
- As regards the relevant public, the relevant goods target both the general public and the professional public, such as professionals who use cars to perform their job and/or car dealers, among others.
- Consequently, when encountering the mark applied for, the relevant consumers in Germany will be likely to associate it with the earlier sign, that is to say, establish a mental 'link' between the signs.

#### *Risk of injury*

- The opponent claims that the use of the contested sign would take unfair advantage of the repute of the earlier trade mark and be detrimental to its repute and distinctive character.

#### *Unfair advantage (free-riding)*

- The opponent bases its claim on the argument that 'the applicant attracts to its goods all the attention and goodwill associated with the opponent as the manufacturer of "BMW" automobiles and their parts and accessories, in which the opponent has, for many decades, invested enormous amounts of time, effort and money. This is both free-riding on the coat-tails of the renowned earlier "BMW" trade marks and an attempt to take advantage of their reputation. As a result, the use of the contested application confers a commercial advantage on the applicant, without any costs or effort of the applicant's own account'.



- The applicant’s intention is not a material factor.
- The earlier mark enjoys considerable reputation among the relevant German public in relation to, at least, cars in Class 12. It has become an attractive and powerful brand on the German market in the car sector. As can be seen in the evidence provided by the opponent, the word mark ‘BMW’ is among the most reputable German brands, being frequently named in the most important German media.
- The earlier mark has a considerable reputation, and there are some similarities between the marks and an important degree of proximity between the conflicting goods from the perspective of the consumers in Germany. Consequently, it is concluded that the relevant public will make a connection between the marks; an association that will produce a commercial benefit for the applicant. There is a high probability that the use of the mark applied for may lead to free-riding: that is to say, it would take unfair advantage of the significant reputation of the earlier mark and the considerable investments undertaken by the opponent to achieve that reputation. The contested sign could take unfair advantage of the image of the earlier mark and the message conveyed by it, inferring that its goods have identical characteristics to the opponent’s goods. The use of the trade mark applied for could also lead to the perception that the applicant is associated with, or belongs to, the opponent, which could facilitate the marketing of the goods for which registration is sought.
- Therefore, the use of the contested sign is likely to take unfair advantage of the repute of the earlier trade mark in Germany.

#### *Other types of injury*

- As it has been already concluded that the contested sign would take unfair advantage of the distinctive character or repute of the earlier trade mark, there is no need to examine whether other types also apply.

#### *Due cause*

- The Opposition Division does not consider it likely that the relevant public will perceive the acronym ‘BM’ an abbreviation of ‘battery monitor’ (or the German *batterie monitor*), as claimed by the applicant, since this is not an abbreviation used in common parlance and neither of the signs at issue is accompanied by additional text clarifying any possible acronym.
- The relevant evidence submitted by the applicant (Annex 6) shows the letters ‘BM’ as an abbreviation for ‘battery monitor’ (in English), *batterie monitor* (‘battery monitor’ in German) and *batterij monitor* (‘battery monitor’ in Dutch) in product names of battery monitors, always accompanied by the expression ‘*Batteriemonitor*’, ‘battery monitor’, ‘*Batterie Monitor*’, or ‘*batterijmonitor*’. In none of the printouts are the letters ‘BM’ used independently, without being accompanied by the abovementioned expressions, which give context to those two letters and serve as an indication of the product’s nature for the consumers.
- Therefore, the applicant does not have due cause for using the contested sign.

### *Conclusion*

- The opposition is well founded under Article 8(5) EUTMR. Therefore, the contested sign must be rejected for all the contested goods.
  - Since the opposition is well founded for the part of the public to which this examination is limited, there is no need to examine the remaining part of the public.
  - Given that the opposition is entirely successful under Article 8(5) EUTMR, it is not necessary to examine the remaining ground and earlier rights invoked.
- 9 On 17 September 2024, the applicant filed an appeal against the contested decision, requesting that the decision be entirely set aside.
  - 10 On 19 November 2024, the statement of grounds of the appeal was received, and included the following evidence:
    - Annex 9: examples of use of the abbreviation ‘BM’ in relation to battery monitors.
    - Annex 10: a printout and screenshot from the website (<https://www.off-the-grid-solar.com/fr/collections/battery-monitor>) on which battery monitors are offered for sale. The screenshot shows how ‘BM’ is used in product names as a reference to ‘battery monitor’.
    - Annex 11: printouts and screenshots of the most sold ‘battery monitors’ on Amazon.de ([www.amazon.de](http://www.amazon.de)), Amazon.nl ([www.amazon.nl](http://www.amazon.nl); 18 November 2024), Amazon.it ([www.amazon.it](http://www.amazon.it)), Amazon.fr ([www.amazon.fr](http://www.amazon.fr)), Amazon.pl ([www.amazon.pl](http://www.amazon.pl)), Amazon.co.uk ([www.amazon.co.uk](http://www.amazon.co.uk)), and Amazon.se ([www.amazon.se](http://www.amazon.se)) (all printouts dated 19 November 2024, apart from that concerning the Netherlands, which is dated 18 November 2024). They also show how Amazon – by the use of the subcategories ‘> Trade, Industry & Science > Solar and wind energy > deep cycle batteries and equipment > battery monitors’ – categorises battery monitors as a product for a specialised, electro-technically skilled public.
    - Annex 12: screenshots of reviews of the Victron Energy BMV-712 smart battery monitor and the Victron Energy BMV-712 Battery Monitor on Amazon.de.
  - 11 On 21 January 2025, the opponent requested a two-week extension to the time limit.
  - 12 On 6 February 2025, the Registry of the Boards of Appeal acknowledged receipt of the extension request, and informed both parties that the Chairperson had granted the extension request. Therefore, the time limit to file the observations was extended until 15 February 2025.
  - 13 In its response received on 3 February 2025, the opponent requested that the appeal be dismissed. The opponent included the following evidence:
    - Annex A 146: printouts from the Amazon website ([www.amazon.de](http://www.amazon.de)) showing the offer of a wide range of battery monitors for automobiles under the tab ‘Best Sellers’, category ‘Automotive’, subcategory ‘Car Accessories’.

- Annex A 147: internet printouts of car dealers and from the opponent's website [www.bmw.de](http://www.bmw.de) showing the opponent's battery monitoring device 'BMW Battery Comfort Indicator'.
- Annex A 148: printouts and screenshots from the opponent's website <https://www.bmw-special-sales.com/en/topics/authority-vehicles/overview.html>, as well as the opponent's brochure 'BMW AUTHORITY VEHICLES' showing emergency vehicles such as fire-fighting vehicles, ambulances and police cars.

### **Submissions and arguments of the parties**

14 The arguments raised in the statement of grounds may be summarised as follows:

- As to their nature and purpose, battery monitors are specialised devices that track and display key data on battery health, charge levels, and power usage. These monitors are crucial in applications requiring reliable, independent power, particularly in settings where conventional power is unavailable or inconsistent. Key contexts for battery monitor use include marine environments, off-grid and renewable energy systems (e.g. solar or wind systems), emergency and backup power systems, specialised vehicles (e.g. ambulances and fire trucks), and recreational vehicles (RVs).
- The relevant public for battery monitors comprises a technically proficient group with specialised power management needs, including boat owners, RV owners, off-grid and independent power system users, speciality and emergency vehicle owners and fleet managers (e.g. government entities, public utility companies, and private contractors that manage fleets of specialised vehicles, such as ambulances, fire trucks, and military or utility vehicles).
- The relevant public is well-informed and detail-oriented, carefully assessing technical specifications and functionalities of battery monitors to meet their unique power management requirements; therefore, their awareness is heightened.
- Battery monitors are marketed and distributed via the following channels:
  - Speciality electronics and renewable energy retailers: battery monitors are sold through specialised electronics outlets, renewable energy distributors, and online platforms focused on power management and energy storage. These stores are often staffed with technical experts who provide tailored advice to customers on energy needs and specifications for applications such as solar power systems, marine installations, and off-grid living.
  - Direct business-to-business (B2B) sales: battery monitors are frequently marketed directly to businesses in sectors like renewable energy, marine electronics, and specialised vehicle manufacturing. B2B sales often involve consultations and technical customisation, catering to organisations that need advanced energy management solutions.
  - Technical online marketplaces and speciality sections on platforms like Amazon: battery monitors are commonly available on technical marketplaces and specialised energy equipment catalogues that serve a technically proficient

audience. On broader platforms like Amazon, they are typically listed in dedicated sections for wind and solar equipment, where detailed specifications (e.g. voltage ranges, current measurement capabilities, and compatibility with other energy storage components) are emphasised. These specialised sections help ensure that users can make informed choices tailored to their specific energy needs.

- To fully appreciate the scope of the earlier BMW mark, it is essential to outline the fundamental nature and purpose of cars. As complex, high-value goods, cars are primarily designed for transportation and serve as consumer lifestyle products associated with performance, comfort, and, in many cases, luxury. They are intricately tied to personal mobility and the experience of driving.
- The car-buying public primarily consists of the general public seeking personal transportation. This public values factors such as reliability, comfort, fuel efficiency, and safety, and often considers brand reputation and design when making purchasing decisions. Given the significant investment involved, these consumers typically demonstrate a high degree of attention to detail, comparing models and features to find the best fit for their needs. Therefore, their awareness is heightened when buying a car.
- Cars are primarily sold through branded dealerships and high-end showrooms. These venues are designed to provide consumers with an immersive brand experience, including test drives, vehicle customisation options, and one-on-one consultations with trained sales personnel.
- Within the battery monitoring industry, ‘BM’ functions as a widely recognised shorthand for ‘battery monitor’. Although it lacks a formal dictionary entry, the prevalence of ‘BM’ in product names from various brands underscores its acceptance as part of the sector’s standard terminology (reference is made to the submissions before the Opposition Division and to Annex 9), such as the following: EVRIGARD BM5 Wireless battery monitor; Schneider Electric XW BM48, Conext Battery Monitor; Engel Battery Monitor Hard wire BM12; Ultimate9 IDBBM20L Bluetooth Battery Monitor; Century BM 12v Battery Monitor; Heather Craft DBM-1 Battery Monitor; Ferris Battery Monitor FBM-1; Veratron IBM KIT; TBB BMK500 Battery Monitor Kit; Renogy RBM500-500 A Battery Monitor; Inventus SBM-01 battery monitor; Western Co. WBM Battery Monitor for lead batteries; Seda Smart Battery Monitoring (SBM); and Whisper Battery Monitor WBM Modular.
- All manufactures of battery monitors listed above integrate ‘BM’ in their identifiers, signalling ‘battery monitor’ to consumers and professionals alike.
- The use of ‘BM’ spans multiple manufacturers, as seen in models like the ANCEL BM200Pro, Super B SB-BM01, and Renogy RBM 500, demonstrating that ‘BM’ functions as an industry-wide term familiar to the relevant public for ‘battery monitors’. This common abbreviation not only identifies the product type but is also frequently combined with the producer’s name (e.g. SBM – ‘Studer Battery Monitor’, XBM – ‘Xantrex Battery Monitor’, FBM – ‘Ferris Battery Monitor’, RBM – ‘Renogy Battery Monitor’, WBM – ‘Whisper Battery Monitor’, WBM – ‘Western Battery

Monitor’, and BMV – ‘Battery Monitor Victron’), further highlighting its widespread use in product naming conventions across the industry.

- This consistent application of ‘BM’ within product naming conventions indicates that ‘BM’ has become an established abbreviation for battery monitors for the relevant public, facilitating easy recognition within the industry.
- The signs at issue are short and are dissimilar overall (reference is made to 26/04/2023, T-153/22, XTG (fig.) / Gtx, EU:T:2023:217).
- Visually, the signs are not similar due to their different final letters, with ‘W’ and ‘V’ producing distinct overall impressions. The signs being very short – only three letters – makes that the ‘W’ and ‘V’ distinguishes the signs and cements the significant differences between the signs.
- Aurally, there are substantial differences between the two acronyms in both English and German, using the International Phonetic Alphabet (IPA) for precise comparison.
- In English, when spelled out fully, ‘BMW’ (‘BEE-em-double-you’) has an additional syllable compared to ‘BMV’ (‘BEE-em-vee’), resulting in a longer, more complex auditory profile that affects the perception of that sign. This distinction is further underscored by the structural differences between the final sounds: ‘double-you’ (/ˈdʌbəl.juː/) versus ‘vee’ (/viː/), making BMW inherently distinct in length and phonetic complexity.
- When focusing on the letters themselves, the final sounds are crucially distinct: ‘W’ in BMW is a voiced labiovelar approximant (/w/), creating a soft, continuous sound, while ‘V’ in BMV is a voiced labiodental fricative (/v/), yielding a sharper, more abrupt sound. This articulation contrast further separates the two acronyms aurally.
- In German, BMW is pronounced /beː ʔɐm ˈveː/ (ending in a voiced sound ‘vay’), whereas BMV is pronounced /beː ʔɐm ˈfaʊ/ (‘fow’), with ‘V’ as a voiceless labiodental fricative. This unvoiced quality makes the ‘faʊ’ ending more prominent in speech than ‘veː’, creating a distinct auditory separation.
- Therefore, a detailed phonetic analysis demonstrates that the signs are aurally dissimilar in English and German, due to differences in syllable structure, consonant articulation, and sound duration.
- Conceptually, the applicant asserts that ‘BMW’ alone possesses a strong and unmistakable conceptual identity, widely recognised by both the general public and the relevant public. BMW’s association with cars is deeply ingrained in consumer perception across Germany and the EU. This widely acknowledged association with cars gives ‘BMW’ a unique conceptual meaning, immediately setting it apart from any mark not associated with cars, including ‘BMV’. Given this strong identity, it is implausible for consumers to confuse ‘BMW’ with a mark in an unrelated sector, such as battery monitors.
- Reference is made to the PICARO / PICASSO judgment (12/01/2006, C-361/04 P, PICARO / PICASSO, EU:C:2006:25, § 56), which found that conceptual differences

alone can effectively counterbalance visual and phonetic similarities if one mark holds a distinct and readily recognised meaning for the public.

- Reference is also made to the ‘XTG’ judgment (26/04/2023, T-154/22, XTG, EU:T:2023:218, § 57) regarding conceptual dissimilarity where industry-specific abbreviations carry distinct brand associations.
- In a parallel manner, the present case involves a mark with an even stronger conceptual identity. The letters ‘BMW’ evoke an instant association with BMW’s established reputation for cars. This well-known association makes it unlikely for the relevant public in the present case to confuse BMW’s reputation with unrelated products like battery monitors, even if they bear the mark ‘BMV’.
- Additionally, the relevant public for battery monitors would further distinguish ‘BMV’ as unrelated to ‘BMW’. This audience, accustomed to technical abbreviations, would interpret ‘BM’ in BMV as shorthand for ‘battery monitor’ adding an extra layer of differentiation between ‘BMW’ and ‘BMV’. However, this nuance is unnecessary to establish the clear conceptual separation based solely on BMW’s reputation as a car brand. BMW’s distinct identity alone as a reputed car brand sufficiently distinguishes it from the ‘BMV’ mark.
- In conclusion, the strong conceptual identity of the ‘BMW’ mark, rooted in the public’s consistent association with automobiles, creates a clear and immediate distinction from the ‘BMV’ mark. As confirmed by the Opposition Division, the ‘BMW’ mark holds a strong reputation as a car brand. This robust conceptual identity of the ‘BMW’ mark creates a clear and immediate distinction from the ‘BMV’ mark. Even if the Board were to identify some visual and/or phonetic similarities between the marks, these would be counteracted by the strong conceptual difference between ‘BMW’ and ‘BMV’.
- The Opposition Division should have concluded that the signs are not similar, and the opposition should fail for that reason.
- As to the assessment of the link and the claim of unfair advantage, the Opposition Division erred in several respects, including in determining the relevant public.
- The primary audience for battery monitors consists of a technically proficient, niche group. The relevant public for battery monitors therefore differs substantially from the general car-buying public or automotive professionals. While the applicant acknowledged a ‘possible overlap’, this overlap is strictly limited to a narrow subset of the general public who, in addition to being car buyers, may have specific technical needs for a power solution (e.g. a car owner who also uses an off-grid power system). This limited acknowledgement does not imply a broad consumer overlap, nor does it include automotive professionals or dealers as relevant battery monitor consumers. The Opposition Division mischaracterises the relevant public, artificially broadens its scope and introduces irrelevant consumer groups, such as car dealers, who have no need for battery monitors at all.
- There is no similarity between the signs: if there is any degree of similarity, it is below average.

- As to the nature of the goods and the relevant public, there are fundamental differences between *cars* and *battery monitors* (according to the Canon Test):
  - Nature and purpose: battery monitors are sophisticated technical devices designed for monitoring and optimising energy storage. They serve distinct purposes within energy management systems. In contrast, cars focus on mobility, comfort, and status and have a completely different nature and purpose.
  - Relevant public / end users: battery monitors cater to a niche, technically proficient audience, including renewable energy enthusiasts, off-grid living users, and marine and RV owners. In contrast, cars target a broader public interested in transportation, comfort, and lifestyle.
  - Goods not complementary and/or in competition: cars do not require external battery monitors to function. Traditional vehicles, relying on internal combustion engines, use alternators to recharge their batteries and manage power distribution, eliminating the need for standalone battery monitors. Even in modern electric and hybrid vehicles, integrated battery management systems are embedded components within the vehicle's electrical and power systems. These internal systems are specifically designed by car manufacturers to handle all power management and are not accessible or purchasable as standalone products. In contrast, standalone battery monitors are used exclusively in applications where independent battery systems require external management, such as in boats, recreational vehicles (RVs), off-grid power setups, and specialised industrial uses. These monitors are marketed and sold entirely separately from cars, and battery monitors and cars are in no way in competition, further emphasising the lack of overlap.
  - Usual origin of the goods: battery monitors and cars come from different undertakings. Car manufacturers do not also sell battery monitors, and, vice versa, manufacturers of battery monitors do not sell cars. The opponent does not sell battery monitors. The applicant does not sell cars. The battery monitor market exists within the broader power electronics and renewable energy sector, where established players specialise in energy storage, conversion, and monitoring systems. The opponent operates within the automotive industry, particularly in luxury vehicles, and does not participate in the energy storage and management market, making the production channels and distribution frameworks distinctly separate.
  - Distribution channels: battery monitors and cars are sold through entirely distinct trade channels. The sales environments and marketing strategies are different.
- The relevant public is accustomed to differentiating between the distinct goods battery monitors and cars. The relevant public is unlikely to assume a connection between these goods, as the goods are dissimilar.
- The Opposition Division incorrectly found a connection between the opponent's cars and the contested battery monitors, citing the integration of battery monitoring systems within electric and hybrid vehicles. This assumption, however, overlooks the fundamental differences in how components integrated in a car and standalone

products are perceived and marketed. This assumption also disregards the completely dissimilar nature, function, purpose and origin of cars and battery monitors.

- The Opposition Division’s assumption of a connection between battery monitors and cars relies solely on the integration of battery monitors within electric and hybrid cars. Yet integrated battery monitors in cars are internal components, unseen by consumers, who do not consider them standalone products or part of the car’s accessory market. The mere fact that battery monitors are embedded within electric and/or hybrid cars does not imply a market connection. Analogous examples further illustrate this distinction between products integrated in cars and standalone consumer products.
- Integrated battery monitors in cars are unseen by consumers and considered inseparable from the car. Standalone battery monitors, however, are distinct products with specialised purposes. Analogous distinctions include: (i) built-in car speakers versus home audio speakers, (ii) smartphone cameras versus standalone cameras, and (iii) integrated car air conditioning versus standalone air-conditioning units.
- The relevant public for battery monitors consists of technically knowledgeable consumers who prioritise energy management features. This contrasts sharply with car buyers, who emphasise brand reputation, status, and reliability.
- The ‘strong reputation’ of BMW for *cars* does not extend to *battery monitors* and does not create a link with the contested sign. Given that battery monitors and cars are dissimilar, and considering the relevant public, who would perceive BMW as strongly associated with cars, as well as the distinct conceptual, visual and phonetic differences between the signs, no meaningful link would be established.
- There is no likelihood of confusion: the signs and the goods are dissimilar.
- The Opposition Division should have concluded that there would be no mental link made between the signs, in particular because of (i) the differences between the signs, including the different conceptual meaning, (ii) the goods being dissimilar and (iii) the nature of the relevant public.
- Even if the signs are considered similar to a low degree and the goods are considered slightly related, overall, there can be no link between the signs on a proper assessment of all the relevant factors. Therefore, there can be no unfair advantage or any other damage/injury under Article 8(5) EUTMR.
- Regarding unfair advantage, the Opposition Division did not substantiate its position with specific evidence. There must be concrete evidence that the characteristics or positive associations of the earlier mark would transfer to the later mark.
- The Opposition Division’s analysis failed to establish any such transfer, overlooking the necessity of proving that the reputation of the ‘BMW’ mark would enhance the marketability or perceived quality of battery monitors marked ‘BMV’. Given the distinct markets, the relevant public and differing consumer expectations, there is no evidence that such a transfer would occur.



- The opponent’s claim fails to satisfy these essential elements under the ‘Intel’ judgment:
  - Concrete and non-hypothetical risk requirement: the opponent fails to present any tangible evidence that applicant’s use of ‘BMV’ in the battery monitor market could realistically undermine the opponent’s reputation as a car brand.
  - Necessity of defining the relevant public: the relevant public is, due to their technical expertise, less inclined to make superficial associations based on similar letter combinations. The relevant public prioritises specific operational criteria and reliability metrics relevant to their niche needs. The relevant public’s heightened technical awareness and focus on functionality make it implausible that they would draw a link between a battery monitor and a car brand, as these products are fundamentally distinct.
  - Consumer perceptions and expectations within the relevant public: the relevant public’s focus on technical specifications within the battery monitoring field makes any link with opponent’s reputation as a car brand improbable.
  - Requirement of demonstrable economic impact on consumer behaviour: the opponent presents no objective evidence that the applicant’s ‘BMV’ mark would cause consumers to alter their behaviour or perception of the opponent’s cars.
- The opponent’s characterisation of *battery monitors* as ‘typical and necessary automotive accessories’ is both inaccurate and misleading. Cars with a gas or diesel motor, including those produced by the opponent, do not require standalone battery monitors, as their electrical systems rely on alternators to automatically regulate and maintain battery charge without any external monitoring devices. Battery monitors, by contrast, are essential in specialised applications involving separate, dedicated power systems, such as those in off-grid installations, RVs, marine vessels, and emergency vehicles. In these contexts, continuous power management is critical to ensuring reliable operation, whether for powering medical equipment in ambulances or maintaining backup energy systems in isolated or remote environments.
- Even in electric vehicles (EVs), battery monitoring is fully integrated into the vehicle’s battery management system (BMS), fundamentally distinct from the applicant’s standalone battery monitors, which serve entirely different technical and operational purposes.
- The opponent’s assumption about the ‘relevant public’ mistakenly targets general car-buying consumers instead of the actual relevant public.
- As illustrated in the brochure submitted as Annex A53, the applicant’s battery monitors are used in speciality vehicles requiring independent, reliable power sources, such as ambulances, recreational vehicles (RVs), and military vehicles. Unlike standard consumer automobiles, which rely on integrated battery management within the primary vehicle system, these speciality vehicles demand standalone battery monitors to support their separate power systems, which are essential for critical functions beyond basic vehicle operation.

- The sole reason the applicant selected ‘BMV’ for its battery monitors is as an abbreviation for ‘Battery Monitor Victron’, consistent with industry practice. Use of ‘BM’ is not ‘coincidental’, as can be seen by the numerous examples provided from many different sectors of energy management, since different manufacturers of battery monitors all use ‘BM’ in their product/brand names (e.g. BMV-700, BMK, XW-BM48) indicating that ‘BM’ is used as a description of the product ‘battery monitor’.
- BMV appeals exclusively to a specialised consumer base, built independently on its technical reliability and distinct product functionality, without drawing from BMW’s established reputation for cars.
- Annex 11 shows Amazon websites where *battery monitors* are listed as a subcategory of ‘Deep Cycle Batteries and Accessories’, which is a subcategory of ‘Solar and Wind energy’, this product group being listed as a subcategory of ‘Business, Industry & Science’. This underscores that battery monitors target a specialised public distinct from the general car-buying public. Reference is further made to screenshots of bestselling *battery monitors* on Amazon in Germany, the Netherlands, France, Poland, Sweden, the United Kingdom and Italy.
- Annex 12 demonstrates reviews of the Victron Energy BMV-712 smart battery monitor and the Victron Energy BMV-712 battery monitor from the Amazon Germany website showing that *battery monitors* are perceived as an electronic device for power management and bought because of technical specifications, reliability and high technical quality standards.
- The Victron Energy BMV-712 smart battery monitor and the Victron Energy BMV-712 battery monitor are both in the top 10 bestselling battery monitors in Germany on Amazon.de. (19 November 2024). The Victron Energy BMV-712 smart battery monitor has 437 reviews on Amazon with a ranking of 4.7 / 5 (latest review on 7 November 2024). The Victron Energy BMV-712 battery monitor has 1 317 reviews on Amazon with a ranking of 4.7 / 5 stars (latest review on 21 September 2024). Example of a five star review:
 

*“The Victron Energy BMV-712 Smart Battery Monitor is a highly recommended product. As is well known, the name Victron stands for the highest quality, and this device also meets the highest standards in every respect.”*
- The above is an example of one of many positive reviews that clearly demonstrate that the reputation of the applicant’s products is built entirely on the applicant’s own achievements and expertise in the field of power electronics.
- Relevant products manufactured by the applicant on 19 November 2024 demonstrating the applicant’s reputation on the *battery monitor* market: (i) on Amazon Germany ([www.amazon.de](http://www.amazon.de)), 13 out of 36 bestselling ‘battery monitor’ (*batteriemonitore*) products (more than a third of all bestselling battery monitors in Germany); (ii) on Amazon Netherlands ([www.amazon.nl](http://www.amazon.nl)), 5 out of 9 listed bestselling ‘*accumonitors*’ (battery monitors); (iii) on Amazon France ([www.amazon.fr](http://www.amazon.fr)), 2 out of 7 listed bestselling ‘*Moniteurs de Batterie*’ (battery monitors); (iv) on Amazon Poland ([www.amazon.pl](http://www.amazon.pl)), 6 out of 6 listed (100 %) of the bestselling ‘*monitor stanu*

*akumulatorów*’ (battery monitors); (v) on Amazon Sweden ([www.amazon.se](http://www.amazon.se)), 2 out of 4 listed bestselling ‘Batteriskärmar’ (battery monitors); (vi) on Amazon United Kingdom ([www.amazon.co.uk](http://www.amazon.co.uk)), 5 out of 25 listed bestselling battery monitors; (vii) in Italy, 3 out of 7 listed bestselling ‘*monitor di stato per batteri*’ (battery monitors).

- At no point in its communications, as demonstrated by the materials submitted by the opponent (Annexes A 53 and A 55, excerpts from the applicant’s website, [www.victronenergy.com](http://www.victronenergy.com)), has the applicant alluded to the opponent’s ‘BMW’ mark.
- There is no indication that the technical purpose of the applicant’s battery monitors could, even indirectly, capitalise on BMW’s brand identity.
- The opponent’s claim that the applicant benefits commercially ‘without any costs or effort’ is similarly unsupported. The applicant has built a distinct reputation in the battery monitoring market, grounded in technical proficiency, quality, and market-specific investment. Unlike the opponent, which markets to a general car-buying public, the applicant’s ‘BMV’ mark is recognised by the relevant public for *battery monitors*.
- There is no unfair advantage in the present case, where the applicant’s ‘BMV’ mark is used exclusively on battery monitors, specialised products marketed to a technically informed audience, entirely distinct from the general public that associates the opponent’s brand with cars. Consumers of *battery monitors* prioritise features such as precision in power management and technical compatibility – qualities with no connection to the opponent’s reputation for cars.
- Even if ‘BM’ in the term ‘BMV’ were not viewed as an abbreviation for ‘Battery Monitor’, the mark BMV clearly aligns with industry practice for functional, technical descriptions in the field (the power electronics market).
- While the Opposition Division has focused on unfair advantage, it is also evident that neither of the two other types of injury (dilution or tarnishment) applies here.
- As to dilution, there is no mental association between the marks, nor is there any evidence that the economic behaviour of the opponent’s consumers would be affected.
- As to tarnishment, BMV has a respected reputation in its specialised field, which is entirely distinct from the car market. The nature and reputation of BMV’s use make it highly unlikely to harm BMW’s repute.
- Regarding *due cause*, should the Board examine this point, the applicant asserts that it has due cause to use ‘BM’ within ‘BMV’, as the ‘BM’ abbreviation serves a descriptive function in the battery monitor industry, facilitating understanding and clarity for consumers.
- The Opposition Division incorrectly assumes that the relevant public exposed to the abbreviation ‘BM’ includes the general consumer, who may not recognise ‘BM’ as an abbreviation for ‘battery monitor’ without additional explanatory text. This assumption overlooks that battery monitors are specialised products, primarily used by a knowledgeable public, such as electrical engineers, technicians, and off-grid power users, including boat and RV owners, who are familiar with industry-specific

terminology. This technically proficient audience is likely to interpret ‘BM’ as shorthand for ‘battery monitor’ without requiring further explanation. The Opposition Division’s failure to accurately identify the relevant public leads to an erroneous conclusion about how ‘BM’ would be understood in this niche market.

- The Opposition Division disregarded the fact that technical abbreviations, particularly in specialised markets like battery technology, do not need broad public recognition to be understood by a knowledgeable audience. The relevant public would recognise ‘BM’ as shorthand for ‘battery monitor’ without requiring additional clarification.
- Reference is made to the ‘GigaFlex’ decision (02/06/2010, R 1000/2009-1, GigaFlex / FLEX (fig.) et al.), where the Board emphasised that ‘FLEX’ was widely understood as describing product functionality and lacked any proprietary significance when used alone, supporting its non-exclusive use in ‘GigaFlex’. The Board’s finding of due cause in ‘GigaFlex’ applies directly here. Just as ‘FLEX’ was deemed a freely usable term descriptive of flexibility, ‘BM’ serves for the relevant battery monitor buying public as an abbreviation, readily understood as referring to *battery monitors*.
- Given the relevant public’s familiarity with technical abbreviations, ‘BM’ in ‘BMV’ would be understood as a descriptive element directly related to the product category rather than as an indicator of brand origin. The use of the abbreviation ‘BM’ meets a practical need to communicate product functionality to a knowledgeable, attentive audience, who will not be confused or misled by its use in this context.
- The Opposition Division’s reliance on previous appeal decisions (23/11/2010, R 240/2004-2, Waterford Stellenbosch (fig. mark) / Waterford; 15/06/2009, R 1142/2005-2, Marie Claire (fig. mark) / Marie Claire et al.; 25/04/2001, R 283/1999-3, Hollywood / Hollywood) is misplaced, as these cases do not apply to the present context: (i) the ‘Waterford/Stellenbosch’ case involved ‘Stellenbosch’, a well-known geographical indication with cultural significance in wine production, unlike ‘BM’, which holds no geographical or cultural meaning and is simply a technical abbreviation for ‘battery monitor’ among informed consumers; (ii) the ‘Hollywood’ case protected ‘Hollywood’, which evokes glamour in entertainment, appealing to a broad audience – by contrast, ‘BM’ is a neutral, descriptive term in a specialised technical market, lacking any broader brand association; (iii) the ‘Marie Claire’ case addressed the use of a famous magazine name with luxury connotations; ‘BM’, however, carries no public recognition or luxury associations, being merely a technical descriptor in the battery monitor industry.
- These cases deal with marks that have strong reputational or cultural associations which, if used in unrelated contexts, could lead to brand dilution. In contrast, ‘BM’ does not carry such associations and is solely a descriptive term within a technical context, making these cases irrelevant.
- The Opposition Division’s assertion that ‘BM’ always requires explanatory text is inaccurate. While some instances of ‘BM’ include explanatory text, there are also examples where ‘BM’ appears independently, without the full term ‘battery monitor’. Both types of usage support that ‘BM’ is commonly recognised as an abbreviation within the industry, functioning as a shorthand understood by the relevant public.

- Allowing ‘BM’ to remain available as shorthand for ‘battery monitor’ serves the public interest by promoting clear, accessible product information and upholding fair competition. Consumers, especially in technical fields, rely on industry-standard abbreviations to efficiently identify product functions. Restricting the use of ‘BM’ would prevent competitors from using this descriptive term, limiting consumers’ ability to fully understand and compare product offerings. Furthermore, the descriptive nature of ‘BM’ benefits both the industry and the relevant public by providing a straightforward way to convey product information. Preserving open access to abbreviations like ‘BM’ supports transparency, empowers consumers to make informed decisions, and aligns with trade mark principles that prevent the monopolisation of common terms.
- The Opposition Division’s focus on retailer websites that include ‘BM’ with ‘battery monitor’ overlooks the fact that many retailers combine terms for clarity or search engine optimisation, which does not diminish ‘BM’ as a standalone identifier.
- Real-world usage of ‘BM’ without accompanying text in battery monitors, along with consumers’ right to accessible product information, further supports the need to treat ‘BM’ as an open, descriptive term. A proper understanding of the relevant public and the abbreviation’s role in the industry reveals that ‘BM’ serves an essential function for clarity in the marketplace, benefiting both fair competition and consumer awareness.
- Overall: (i) the conflicting signs are dissimilar; (ii) even if the signs are considered to have a low degree of similarity and the goods are considered slightly related, a proper assessment of all relevant factors shows that no link could reasonably be established; (iii) there is no evidence of any unfair advantage being taken by the applicant, nor any evidence of exploitation of the opponent’s reputation; and (iv) the applicant’s use of the descriptive abbreviation ‘BM’ for ‘battery monitor’ constitutes a valid due cause.
- The contested mark should be allowed to proceed to registration.

15 The arguments raised in response to the appeal may be summarised as follows:

- The findings on the earlier mark’s genuine use were not challenged.
- The applicant’s arguments regarding the similarity of the signs and the unfair advantage are convincing.
- The issue of whether the letters ‘BM’ have a descriptive meaning is not relevant for the assessment of similarity in the present case, because it is far-fetched to assume that the relevant consumers will dissect the contested mark ‘BMV’ and the earlier mark ‘BMW’ into two parts, namely into ‘BM’ and ‘V’ on the one hand, and ‘BM’ and ‘W’ on the other. The signs do not give rise to such a perception and artificial dissection: the sequence of letters ‘BM’ is not visually distinct or divided from the ‘V’ or ‘W’, but rather the letters have the same uniform typeface and are joined together in a single word element.
- It was not proved that ‘BM’ is a commonly used abbreviation for ‘battery monitors’. All the examples provided by the applicant show that the letters ‘BM’ are used as a

part within a product name, such as ‘EVRIGARD BM5 Wireless battery monitor’ and ‘Schneider Electric XW BM48, Conext Battery Monitor’.

- It may be pure coincidence that several manufacturers also use the letter sequence ‘BM’ as part of their product names to differentiate their products. For example, as can be clearly seen from the illustration of the applicant’s battery monitor (see Annex 11), it uses the sign ‘BMV’ as a trade mark to distinguish its products from those of other manufacturers and not to describe its products by using the letters ‘BM’ within the mark ‘BMV’.
- If one enters the terms ‘BM’, ‘BM abbreviation’ or ‘BM meaning’ in the Google search engine, no hints of that meaning are found at all (see Annex A 139).
- In any event, the list of goods covered by the earlier mark ‘BMW’ does not include *battery monitors*.
- Against this background, the relevant public will perceive the signs in their entirety as the single letter sequences ‘BMV’ and ‘BMW’, without any specific descriptive meaning in the context of the relevant goods.
- The Opposition Division’s findings on the similarity of the signs are endorsed.
- Aurally, only the pronunciation in German is relevant, and the letter ‘V’ can also be pronounced like a ‘W’ (/ve:/) in German. This makes the signs aurally even more highly similar. Although the ‘v’ can be also pronounced as /'fao/ (‘fow’), this pronunciation is still similar to the ‘W’ /'ve:/ (‘wee’) because of the f- and w-sounds.
- Nevertheless, not only does the German public pronounce the letters ‘V’ and ‘W’ very similarly, but so too do other relevant consumers in the EU, such as the Dutch- and the Hungarian-speaking parts of the public (see Annexes A 50 and A 141). In any event, the phonetic difference in the final single letters is negligible for the German public.
- Conceptually, the sole likely scenario in which there could be a conceptual overlap between ‘BMV’ and ‘BMW’ is if the contested sign ‘BMV’ were to evoke the famous brand ‘BMW’, which not only stands for famous cars but also for the opponent in the minds of the relevant public. Due to the high degree of similarity between the signs, the outstanding reputation and fame of the ‘BMW’ brand and the connection between the relevant goods, ‘BMV’ calls to mind the famous brand ‘BMW’. The signs are therefore conceptually identical to this extent.
- The applicant’s reference to the ‘Picasso’ judgment is irrelevant, as the applicant mixes up the criteria for Article 8(1)(b) EUTMR and Article 8(5) EUTMR. The same applies to the cited ‘XTG’ judgment.
- The Opposition Division’s findings on the ‘link’ between the signs are also endorsed.
- It is correct and sufficient that the Opposition Division relied on the general public (the average German consumer), since the relevant goods (battery monitors on the one hand and cars on the other) target both the general public (as battery monitors and cars are both consumer goods) and the professional/specialised public.

- Therefore, all the applicant's statements about its assumption that the relevant public for battery monitors is a 'technically proficient, niche group' ('technically knowledgeable consumers') different from the general car-buying public or automotive professionals are irrelevant.
- *Battery monitors* are also used in the automotive sector, as proved by the opponent (see Annexes A 134, A 135, A 136, and A 137).
- Even the applicant offers battery monitors to the automotive sector and its cars (Annexes A 53, A 55, A 135). It is not possible to exclude all relevant car owners who also buy car accessories such as battery monitors. Of course, Amazon also has a 'Best Sellers' tab for the 'Automotive' category and the 'Car Accessories' subcategory. If one searches for 'battery monitors', a wide range of corresponding goods appear, which once again supports the opponent's view (Annex A 146).
- The undisputed fact that consumers buy cars as well as battery monitors, which are a typical car accessory for controlling the charge level of automobile batteries and which are also offered by major car manufacturers for their motor vehicles (Annexes A 54 A 135 and A 137), leads to the correct assumption that the general public (i.e. the average German consumers) are the relevant public in the present case. The question of whether there is a 'link' between the signs must be assessed solely on that basis.
- The Opposition Division's findings on the connection between battery monitors and cars are also endorsed. Article 8(5) EUTMR explicitly applies to cases where the goods and services are dissimilar, too; therefore, all the applicant's related arguments are irrelevant.
- Battery monitors and cars are similar. The contested *battery monitors* as vehicle accessories can be complementary to *cars* (e.g. batteries) and may be distributed through the same channels and are sold to the same end consumer by the same kind of enterprise, namely vehicle manufacturers (08/12/2015, B 2 380 478 and 20/09/2013, B 1 722 902).
- As shown above, many car manufacturers also offer automobile accessories like batteries, battery chargers, battery monitors, and charger starter kits, including the opponent (Annexes A 54, A 135, A 137). The evidence on file shows also the opponent's battery monitoring device (Annexes A 135 and A 147 from [www.bmw.de](http://www.bmw.de)).
- Battery monitors are an automobile accessory (i.e. in each car there is a battery) or part. Electric cars only function with batteries, and a battery monitor is part of these cars.
- A 'battery monitor' is a device that monitors the voltage on a battery and indicates when the battery is low. It indicates how much energy or charge is left in the battery bank at any time. It constantly measures the energy or charge flow into and out of a battery bank and calculates how much energy or charge is left in the battery bank. It may also include functions such as charging, remaining capacity estimation, safety monitoring, unique ID, temperature measurement, and non-volatile (NV) parametric storage (see Annex A 132).

- Furthermore, *battery monitors* are integrated within electric and hybrid cars.
- In the context of the assessment of the prerequisite ‘taking unfair advantage’, *battery monitors* become factually a car accessory or, in the case of electric cars and hybrid cars, they become a part of the motor vehicle and therefore factually a car part.
- Overall, there is a considerable degree of proximity between the conflicting goods, and the signs are highly or even sufficiently similar from the perspective of the consumers in Germany to give rise to a likelihood of confusion. Therefore, the link between the marks was correctly established.
- Regarding ‘unfair advantage’, the Opposition Division’s findings are endorsed. It is highly probable that the use of the almost identical mark ‘BMV’ for battery monitors (being an automotive accessory or part for controlling and monitoring automobile batteries) may lead to free-riding.
- The decisive point is that the applicant’s battery monitors are produced and intended for motor vehicles (see the applicant’s online catalogue in Annex A 53).
- The opponent has been offering special motor vehicles requiring an extra power supply under the brand ‘BMW’ for over 60 years (emergency vehicles, e.g. fire-fighting vehicles and ambulances, as well as police cars) (Annex A 148).
- Therefore, the opponent’s mark also covers the range of motor vehicles for which the applicant offers its battery monitors under the sign ‘BMV’.
- It is irrelevant that the applicant asserts that it has built up a distinct reputation in the battery monitoring market, grounded in technical proficiency, quality, and market-specific investment, and that its products are independently reputable. The same applies to the applicant’s submission that its battery monitors BMV-712 and BMV-712 are bestseller products on Amazon Germany with high rankings (Annex 12) and have bestseller status on Amazon in the Netherlands, France, the United Kingdom, Italy and Poland (Annex 11).
- It is also irrelevant that the sole reason for the applicant’s selection of ‘BMV’ for its battery monitors is that ‘BM’ stands for battery monitor and the use of ‘BMV’ as an abbreviation for ‘Battery Monitor Victron’ is consistent with industry practice. Moreover, it is unfounded and wrong to claim that ‘BM’ is a common abbreviation for battery monitor.
- It is also irrelevant that the applicant has not referred or alluded to the opponent’s ‘BMW’ mark in its communication, submitted by the opponent (Annexes A 53 and A 55, information from the applicant’s website, [www.victronenergy.com](http://www.victronenergy.com)).
- Lastly, it is irrelevant whether the applicant has had any intention to be associated with the ‘BMW’ brand or derive benefit from its reputation.
- Overall, there is a clear risk of injury through ‘taking unfair advantage’ (free-riding).
- Regarding use without due cause: (i) ‘BM’ is not a descriptive term for ‘battery monitor’ and, in fact, the applicant has not applied for the sign ‘BM’ but for ‘BMV’



which is a distinctive term almost identical to ‘BMW’; (ii) the relevant public is the general consumer, who will not artificially separate the part ‘BM’ from the overall sign ‘BMV’ and recognise it as an abbreviation of ‘battery monitor’.

- The applicant’s argument remains unproven. Consequently, there is no need to keep the sign ‘BM’ available for use and to prevent the monopolising of a common term.
- Even the new examples provided by the applicant show that ‘BM’ appears with the full term ‘battery monitor’: (i) Super B SB-BM01 batterij monitor and (ii) AMPS Battery Monitor BM1.
- Even if only one of the arguments put forward by the applicant were successful, the applicant would not need to use the letter combination ‘BMV’ to refer to ‘battery monitors originating from Victron’. There are many other combinations that the applicant could use instead, such as ‘VBM’, ‘BM-Victron’ ‘Victron BM’, etc.
- The applicant has failed to show due cause for using the sign ‘BMV’.

### **Reasons**

- 16 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible.

#### *Scope of the appeal*

- 17 The applicant appealed the contested decision in its entirety, as the application was refused for all the goods for which protection was sought (Article 67, first sentence EUTMR).
- 18 Therefore, the Board will assess the contested decision in full.

#### *Confidentiality requests*

- 19 The opponent requested that the evidence on reputation of the earlier mark (submitted on 5 January 2023; see paragraph 6) be treated as confidential vis-à-vis third parties because of its special interest in keeping them confidential. Therefore, the Opposition Division described the evidence in general terms without disclosing sensitive commercial information.
- 20 The applicant requested that its submissions at the appeal stage be treated as confidential.
- 21 In accordance with Article 114(4) EUTMR, files may contain certain documents that are excluded from public inspection (e.g. parts of the file that the party concerned shows a special interest in keeping confidential).
- 22 In the event that a special interest in keeping a document confidential, in accordance with this provision, is invoked, the Office must check whether that special interest is sufficiently shown. Such a special interest exists because of the confidential nature of the document or its status as a trade or business secret.

- 23 In the present case, the Board confirms that there is no need to refer to any evidence that would divulge data that is not otherwise available from publicly accessible sources, and therefore properly deemed confidential.

*Admissibility of the evidence submitted before the Boards of Appeal*

- 24 According to Article 95(2) EUTMR, the Office may disregard evidence that is not submitted in due time by the party concerned.
- 25 Pursuant to Article 27(4) EUTMDR, the Board of Appeal may accept facts or evidence submitted for the first time before it only where those facts or evidence meet the following requirements: (a) they are, on the face of it, likely to be relevant for the outcome of the case and (b) they have not been produced in due time for valid reasons, in particular where they are merely supplementing relevant facts and evidence which had already been submitted in due time, or are submitted to contest findings made or examined by the first instance of its own motion in the decision subject to appeal.
- 26 The applicant submitted new evidence with its statement of grounds (Annexes 9 to 12 referred to in paragraph 10 above) showing (i) the abbreviation ‘BM’ as indicating ‘battery monitors’ in the relevant market (used in product names), (ii) battery monitors being categorised as a product for a specialised electro-technically skilled public, and (iii) reviews of the applicant’s Victron Energy BMV-712 smart battery monitor and the Victron Energy BMV-712 Battery Monitor on Amazon.de.
- 27 The opponent also submitted new evidence with its response (Annexes A 146 to A 148) showing (i) the offer of a wide range of battery monitors for automobiles, (ii) the opponent’s battery monitoring device ‘BMW Battery Comfort Indicator’ and (iii) the opponent’s emergency vehicles, such as fire-fighting vehicles, ambulances and police cars.
- 28 In the present case, the documents submitted before the Boards of Appeal refer to the requirements of Article 8(5) EUTMR, as they mainly relate to the link between the conflicting signs and the claim of due cause. Firstly, the additional evidence is, *prima facie*, relevant for the outcome of the present case, as the Opposition Division concluded, *inter alia*, that there is a connection between the contested *battery monitors* in Class 9 and the goods for which the earlier mark enjoys a considerable reputation at least on the German market (i.e. *cars* in Class 12), and that the applicant has failed to establish due cause for using the contested mark (accordingly, the opposition was fully upheld and the EUTM application was rejected in its entirety). Secondly, the information and evidence produced at the appeal stage are supplementary to the arguments and documents presented before the Opposition Division and the Board in relation mainly to the risk of injury of the earlier mark, as well as the establishment of due cause for using the contested mark (10/01/2024, T-504/22, *Fantasia BAHIA PRINCIPE HOTELS & RESORTS* (fig.) / *FANTASIA HOTELES* (fig.) et al., EU:T:2024:2, § 29-30, 37-38). Finally, there is nothing to suggest negligence or delaying tactics in the present case (18/07/2013, C-621/11 P, *Fishbone / FISHBONE BEACHWEAR* (fig.), EU:C:2013:484, § 36). As both parties disputed the evidence submitted on many different points, this justifies the submission of additional supplementary evidence in reply to the reciprocal criticism.
- 29 It follows that the applicable criteria for accepting the belated evidence under Article 95(2) EUTMR and Article 27(4) EUTMDR have been fulfilled. Therefore, all the

facts and evidence submitted by both parties will be taken into account as admissible by the Board.

*Article 8(5) EUTMR (reputation)*

- 30 According to Article 8(5) EUTMR, an opposition to an application for an EUTM may be based on an earlier mark that has a reputation in the European Union or on an earlier national mark with a reputation in the Member State concerned, even though the earlier mark is registered for goods or services that are not similar to the goods or services covered by the application, provided that the use without due cause of the trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.
- 31 Although the primary function of a mark is that of an indication of origin, the fact remains that a mark also acts as a means of conveying other messages concerning, inter alia, the qualities or particular characteristics of the goods or services which it covers or the images and feelings which it conveys. To that effect, each mark has an inherent economic value independent of and separate from that of the goods or services for which it is registered. The messages conveyed, inter alia, by a mark with a reputation, or that are associated with it, confer on that mark a significant value that deserves protection, particularly because, in most cases, the reputation of a mark is the result of considerable effort and investment on the part of its proprietor (22/03/2007, T-215/03, VIPS / VIPS, EU:T:2007:93, § 35; 07/12/2022, T-623/21, Puma / Puma (fig.), EU:T:2022:776, § 19; 24/05/2023, T-509/22, BimboBIKE (fig.) / BIMBO et al., EU:T:2023:281, § 19; 21/12/2022, T-4/22, PUMA (fig.) / PUMA (fig.) et al., EU:T:2022:850, § 18).
- 32 The application of Article 8(5) EUTMR is therefore subject to the following conditions:
  - (i) The earlier mark has a reputation in the territory in which it is registered. That reputation must pre-date the contested mark's filing date, must exist in the relevant territory and must relate to the goods and/or services on which the opposition is based.
  - (ii) The signs are identical or similar.
  - (iii) Risk of injury, namely the use of the contested mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.
  - (iv) There is no due cause justifying the use of the mark applied for.
- 33 These conditions are cumulative, and failure to satisfy one of them is sufficient to render that provision inapplicable (25/05/2005, T-67/04, Spa-Finders, EU:T:2005:179, § 30; 06/07/2012, T-60/10, Royal Shakespeare, EU:T:2012:348, § 20-21; 28/02/2024, T-184/23, BERTRAND PUMA La griffe boulangère (fig.) / PUMA (fig.) et al., EU:T:2024:133, § 18).

*Reputation of earlier EUTM No 91 835 'BMW'*

- 34 In order to satisfy the requirement of reputation, the earlier mark must be known to a significant part of the public concerned by the goods and services covered by the mark

(26/06/2019, T-651/18, HAWKERS (fig.) / HAWKERS (fig.) et al., EU:T:2019:444, § 15 and the case-law cited). The Court has held in this regard that a mark does not need to be known by a specific percentage of the relevant public in order to be regarded as having a reputation (06/02/2007, T-477/04, TDK / TDK, EU:T:2007:35, § 49), or for it to have a reputation throughout the relevant territory as long as it has a reputation in a substantial part of it (06/10/2009, C-301/07, PAGO, EU:C:2009:611, § 27; 16/10/2018, T-548/17, ANOKHI / Kipling, EU:T:2018:686, § 94 and the case-law cited).

- 35 In the context of the assessment of reputation, account must be taken of all the facts relevant to the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the amount spent by the undertaking in promoting it (25/05/2005, T-67/04, Spa-Finders, EU:T:2005:179, § 34; 02/10/2015, T-624/13, Darjeeling, EU:T:2015:743, § 75). However, the above list being merely illustrative, it cannot be required that proof of the reputation of a mark pertains to all these elements (08/11/2017, T-754/16, CC, EU:T:2017:786, § 101; 26/06/2019, T-651/18, Hawkers, EU:T:2019:444, § 24).
- 36 The opponent claimed before the Opposition Division that its EUTM No 91 835 ‘BMW’ has a reputation in the European Union for the following goods in Class 12: *cars*.
- 37 The Opposition Division concluded that the earlier mark has had a considerable degree of reputation in, at least, Germany, at least for *cars* in Class 12, for a substantial period (over 10 years prior to the filing date of the contested mark, that is prior to 31 March 2020). The sales figures (Annex A6), advertising expenditure and appearances (Annexes A8 and A11-A14), surveys (Annexes A15-17), brand rankings (Annexes A18-28) and the entry in the *Duden* dictionary (Annex A51) suggest that the trade mark has a consolidated position on the market.
- 38 The Board notes that this conclusion was not disputed by the parties.
- 39 In the absence of arguments to dispute the contested decision’s findings, the Board may lawfully adopt the reasoning of the contested decision, which then becomes an integral part of the Board’s own decision (13/09/2010, T-292/08, OFTEN / OLTEN et al., EU:T:2010:399, § 48; 11/09/2014, T-450/11, GALILEO (fig.) / GALILEO, EU:T:2014:771, § 36; 06/02/2020, T-135/19, LaTV3D / TV3, EU:T:2020:36, § 19). Following the examination of the evidence submitted by the opponent, the Board sees no obvious reason to reverse the contested decision’s correct findings and hereby endorses the contested decision’s reasoning and conclusion regarding the reputation of the earlier mark.
- 40 Therefore, the Board confirms that that the earlier mark has been subject to long-standing and intensive use and enjoys a considerable level of reputation in the relevant market (car industry).
- 41 In this regard, the public amongst whom the earlier trade mark must have acquired a reputation is that public concerned by that trade mark, that is to say, depending on the product or service marketed, either the public at large or a more specialised public, for example traders in a specific sector (14/09/1999, C-375/97, Chevy, EU:C:1999:408, § 24; 25/05/2005, T-67/04, Spa-Finders, EU:T:2005:179, § 34, 41). In the present case, the goods covered by the earlier mark (*cars* in Class 12) target both the public at large and the professional public, such as professionals who use cars to perform their job and/or car

dealers, among others. Therefore, the relevant public will display a high degree of attention, considering that *cars* in Class 12 are not purchased on a daily basis, may be relatively expensive, and have specific technical features and potential safety risks (19/05/2021, T-324/20, *kugoo* (fig.) / *Kuga* et al., EU:T:2021:280, § 22-23, in relation to various types of vehicles, including *cars*; 26/04/2023, T-153/22, *XTG* (fig.) / *Gtx*, EU:T:2023:217, § 21, regarding *retail services in relation to vehicles*, regardless of whether the cars purchased are new or second-hand).

- 42 The relevant territory is the European Union, the earlier sign being an EUTM.

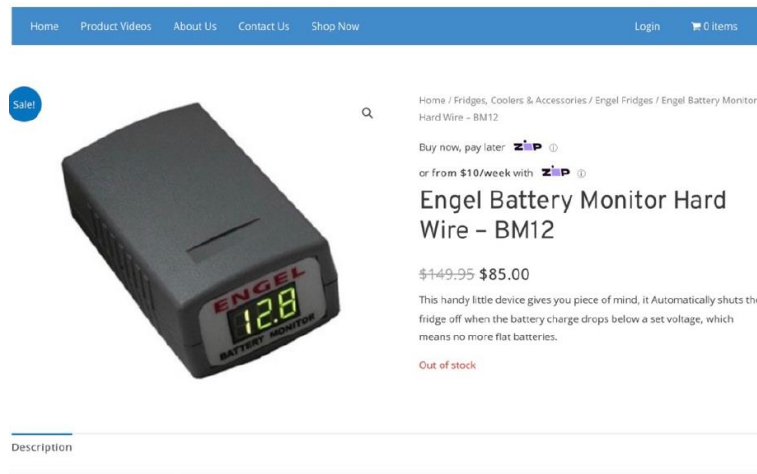
*Similarity between the signs*

- 43 The types of injury referred to in Article 8(5) EUTMR, where they occur, are the consequence of a certain degree of similarity between the earlier and later mark, by virtue of which the relevant section of the public makes a connection between those two marks, that is to say, establishes a link between them even though it does not confuse them (14/09/1999, C-375/97, *Chevy*, EU:C:1999:408, § 23; 27/11/2008, C-252/07, *Intel*, EU:C:2008:655, § 30; 28/02/2024, T-184/23, *BERTRAND PUMA La griffe boulangère* (fig.) / *PUMA* (fig.) et al., EU:T:2024:133, § 19).
- 44 In this regard, according to case-law, in order to satisfy the condition that the signs at issue must be identical or similar, laid down by Article 8(5) EUTMR, it is not necessary to prove that there is, on the part of the relevant section of the public, a likelihood of confusion between the earlier mark with an alleged reputation and the mark applied for. It is sufficient for the degree of similarity between those marks to have the effect that the relevant section of the public establishes a link between them (28/02/2024, T-184/23, *BERTRAND PUMA La griffe boulangère* (fig.) / *PUMA* (fig.) et al., EU:T:2024:133, § 27; 21/04/2021, T-44/20, *DEVICE OF TWO INTERLOCKING ELEMENTS* (fig.) / *DEVICE OF TWO BOLD BLACK* CapapplicantCLES OVERLAPPING (fig.), EU:T:2021:207, § 23).
- 45 The comparison of the signs at issue must, insofar as the visual, phonetic and conceptual similarity are concerned, be based on the overall impression given by the signs, bearing in mind, in particular, their distinctive and dominant elements (28/02/2024, T-184/23, *BERTRAND PUMA La griffe boulangère* (fig.) / *PUMA* (fig.) et al., EU:T:2024:133, § 28).
- 46 The signs to be compared are:

<b>BMW</b>	<b>BMV</b>
<i>Earlier mark</i>	<i>Contested sign</i>

- 47 Both signs are word marks. The protection that results from registration of a word mark concerns the word mentioned and not the specific graphic or stylistic elements accompanying that mark (13/02/2007, T-353/04, *CURON* / *EURON*, EU:T:2007:47, § 74; 18/11/2020, T-21/20, *K7* / *K7*, EU:T:2020:550, § 40). It follows that a word mark may be used in any form, in any colour or font type (23/03/2022, T-146/21, *Deltatic* / *Delta*, EU:T:2022:159, § 56).
- 48 The applicant extensively argues that the relevant public will perceive both signs as acronyms/abbreviations, namely ‘BMW’ as ‘(B)attery (M)onitor of ‘W’ (with no specific

meaning) and ‘BMV’ as ‘(B)attery (M)onitor of ‘(V)ictron’ or ‘V’ (with no specific meaning)’. In this regard, the applicant submitted several printouts of retailers offering battery monitors to show the use in trade in the EU of ‘BM’ as an abbreviation for ‘battery monitor’ (in English), *batterie monitor* (in German) and *batterij monitor* (in Dutch) in product names of battery monitors (Annexes 6, 9 and 10), claiming that the term is widely used in the relevant sector and referring, among others, to the examples below (Engel Battery Monitor Hard wire BM12; Ferris Battery Monitor FBM-1; Renogy RBM500-500 A Battery Monitor; and Whisper Battery Monitor WBM Modular):



Home / Fridges, Coolers & Accessories / Engel Fridges / Engel Battery Monitor Hard Wire - BM12

Buy now, pay later: or from \$10/week with


**Engel Battery Monitor Hard Wire - BM12**

~~\$149.95~~ \$85.00

This handy little device gives you piece of mind, it Automatically shuts the fridge off when the battery charge drops below a set voltage, which means no more flat batteries.

Out of stock

Description



**Ferris Battery Monitor FBM-1**

bluepelicanmarineconsignment (215)  
92.6% positive Seller's other items Contact seller

**US \$95.00**  
or Best Offer

Condition: New other (see details)

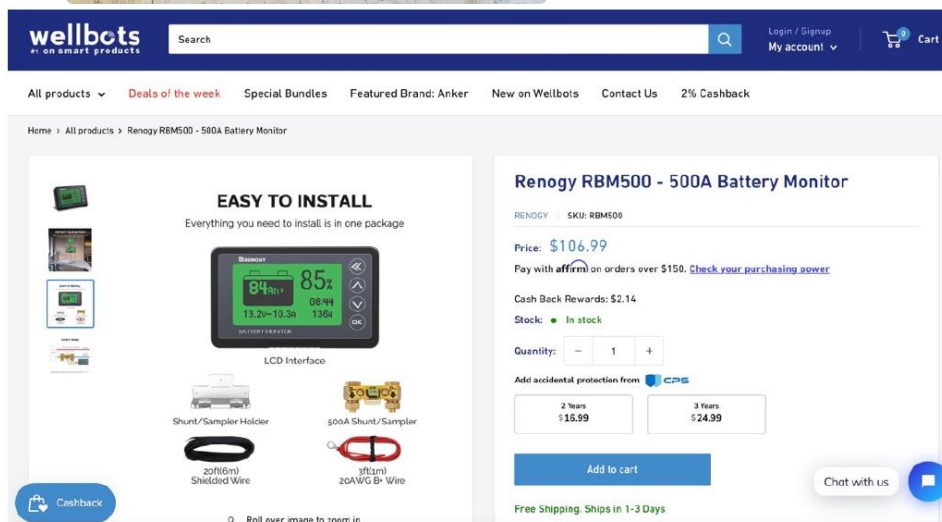
Buy It Now

Add to cart

Make offer

Add to watchlist

Shipping: US \$3794 eBay International Shipping See details  
Located in: Alameda, CA, United States



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Home > All products > Renogy RBM500 - 500A Battery Monitor

**Renogy RBM500 - 500A Battery Monitor**

RENOGY SKU: RBM500

Price: **\$106.99**

Pay with on orders over \$150. [Check your purchasing power](#)

Cash Back Rewards: \$2.14

Stock: In stock

Quantity: 1

Add accidental protection from

2 Years \$15.99 3 Years \$24.99

Add to cart

Free Shipping Ships in 1-3 Days  
This item qualifies for 2% Cashback

Chat with us

**EASY TO INSTALL**  
Everything you need to install is in one package

LCD Interface

Shunt/Sampler Holder 500A Shunt/Sampler

20ft(6m) Shielded Wire 3ft(1m) 20AWG B+ Wire

Cashback

Roll over image to zoom in



- 49 According to the applicant, the common abbreviation ‘BM’ not only identifies the product type but is also frequently combined with the producer’s name (e.g. SBM – ‘Studer Battery Monitor’, XBM – ‘Xantrex Battery Monitor’, and FBM – ‘Ferris Battery Monitor’), further highlighting its widespread use in product naming conventions across the industry. The applicant thus claims that the pattern of ‘BM’ as part of product names helps consumers interested in buying battery monitors associate this element with battery monitoring devices.
- 50 However, the Board observes that all the examples provided by the applicant (Annexes 6, 9 and 10) contain an expression explaining the abbreviation ‘BM’. Furthermore, as correctly observed by the Opposition Division, the terms that would be connected to the signs’ acronyms are not present in the signs at issue to support the relevant public’s perception (01/02/2023, T-568/21, GC GOOGLE CAR (fig.) / Google et al., EU:T:2023:37, § 34, stating that the public is accustomed to perceiving and interpreting commercial signs combining an expression and an abbreviation of the initials of that expression). The Board also concurs with the Opposition Division that it is unlikely that the relevant public will have that information when encountering the signs (B)attery (M)onitor of ‘W’ (for ‘BMW’) and (B)attery (M)onitor of ‘(V)ictron’ (for ‘BMV’). As the opponent observes, there is nothing to suggest a dissection of the signs between the two first letters and the third one (e.g. a hyphen, such as ‘BM-W’ or ‘BM-V’). Moreover, in the submitted examples, the abbreviated company identifier was followed by the abbreviation of ‘battery monitor’, whereas the trade mark applied for is not ‘VBM’ but ‘BMV’.
- 51 The applicant submits that the Opposition Division has overestimated the similarity of the signs at issue by giving disproportionate weight to the identity between the first two letters of the signs at issue and has not paid enough attention to the global impression produced by those signs.
- 52 In that regard, the Board notes that the contested sign entirely reproduces the earlier mark’s two first letters ‘BM’. Admittedly, the two signs differ in their last letters, ‘W’ in the earlier mark and ‘V’ in the contested sign. Moreover, the signs at issue are both short, since they comprise verbal elements of three letters each.

- 53 However, regarding the question of whether a difference in one letter can exclude similarity between marks comprising two and three letters respectively, no general rule can be derived from case-law. Although the relevant public may perceive differences more clearly in the case of abbreviations, whether the difference in one letter can lead to a different overall impression must be assessed on a case-by-case basis (20/06/2019, T-389/18, WKU / WKA et al., EU:T:2019:438, § 56-59 and the case-law cited; EUIPO Trade mark Guidelines, version of 31/03/2024, Part C Opposition, Section 2 Double identity and likelihood of confusion, Chapter 4 Comparison of signs, 3 Similarity between the signs, 3.4 Comparison of signs, [3.4.6 Other principles to be taken into account in the comparison of signs](#)).
- 54 In principle, even in the case of short marks, the consumer normally attaches more importance to the first part of words (20/06/2019, T-389/18, WKU / WKA et al., EU:T:2019:438, § 60 and the case-law cited; 13/07/2022, T-176/21, Ccty / CCVI BEARING INDUSTRIES (fig.) et al., EU:T:2022:449, § 53).
- 55 **Visually**, the signs are similar to an above-average degree. The signs coincide in the letters ‘BM’, placed in the same order at the beginning of both signs. They differ in their last letters: ‘W’ in the earlier mark and ‘V’ in the contested sign. The shapes of these letters (‘W’ versus ‘V’) are similar, insofar as they both share inward-angled lines, as correctly observed by the Opposition Division. The Board notes that the last upper-case letters ‘W’ and ‘V’ differ only slightly, as they are written in a very similar way, and ‘V’ resembles a half-‘W’ (compare 17/09/2008, T-10/07, FVB / FVD, EU:T:2008:380, § 47, where the last upper-case letters, ‘B’ and ‘D’, were considered to differ only slightly, since the additional horizontal line in the letter ‘B’ can easily escape the eye of an average consumer). This remains true even if, as pointed out by the applicant, the relevant public is deemed capable of distinguishing the letters of the Latin alphabet.
- 56 In the imperfect image of the conflicting signs which the consumers will keep in their mind, the common letters, the fact that they follow one another, their position at the beginning of the sign and the fact that they each form the main part of the mark are therefore more important than the only difference, which is that of the letters ‘W’ and ‘V’ at the end of the signs. The difference consisting of a single letter is therefore not significant enough to distract consumers’ attention from the visual similarities between the signs at issue (20/06/2019, T-389/18, WKU / WKA et al., EU:T:2019:438, § 63).
- 57 **Aurally**, the signs coincide in the sounds of the letters ‘B’ and ‘M’. The signs differ in the pronunciation of the signs’ last letters, ‘W’ in the earlier mark and ‘V’ in the contested sign (in German ‘ve:’ and ‘fau’ / ‘fow’, respectively). However, that difference between the signs is not sufficiently significant to counteract the phonetic similarity resulting from the phonetic identity between the first two letters of the signs, ‘B’ and ‘M’, in Germany and throughout the European Union. As stated above, the consumers generally attach greater importance to the initial part of words and only rarely have the chance to make a direct comparison between the different marks but must rely on the imperfect aural image of them that they have retained in their mind (20/06/2019, T-389/18, WKU / WKA et al., EU:T:2019:438, § 67).
- 58 **Conceptually**, neither sign has a meaning for the public in the relevant territory (the European Union and, especially, Germany), as analysed above. Even if the relevant public were to perceive the marks at issue as abbreviations, that fact could not, in itself, make a conceptual comparison of the marks at issue possible (14/12/2022, T-530/21, PL (fig.) /



PL (fig.) et al., EU:T:2022:818, § 108-109). Since a conceptual comparison is not possible, the conceptual aspect does not influence the assessment of the similarity of the signs.

- 59 Overall, and considering that (i) the reputed earlier mark ‘BMW’ is almost entirely contained in the contested sign and (ii) the only slight difference between the signs arises from the presence of their last letters ‘W’ and ‘V’ respectively, the Board concludes that the marks under comparison, taken as a whole, display an average degree of similarity.

*Existence of a link between the signs*

- 60 The types of injury referred to in Article 8(5) EUTMR, where they occur, are the consequence of a certain degree of similarity between the marks at issue, by virtue of which the relevant part of the public makes a connection between those marks, that is to say, establishes a link between them. The existence of such a link in the mind of the relevant public between the mark applied for and the earlier mark is therefore an implied essential precondition for the application of Article 8(5) EUTMR (05/06/2018, T-111/16, *The Rich Prada*, EU:T:2018:328, § 29).
- 61 The existence of a link between the marks in conflict, as well as the existence of a serious risk that any of the infringements provided for in Article 8(5) EUTMR will be committed in the future, must be assessed globally, taking into account all factors relevant to each case, including, inter alia, the following criteria: (1) the degree of similarity between the marks in conflict; (2) the degree of proximity or differentiation between the goods or services, as well as the relevant public; (3) the strength of the earlier mark’s reputation; and (4) the strength of the distinctive character of the earlier mark, whether intrinsic or acquired through use (27/11/2008, C-252/07, *Intel*, EU:C:2008:655, § 41, 68; 24/03/2011, C-552/09 P, *TiMiKinderjoghurt*, EU:C:2011:177, § 56; 05/06/2018, T-111/16, *THE RICH PRADA / PRADA* (fig.) et al., EU:T:2018:328, § 30; 06/07/2022, T-288/21, *ALove* (fig.) / *LOVE* (fig.), EU:T:2022:420, § 67).

*(1) The degree of similarity between the signs*

- 62 According to case-law, the more similar the trade marks, the more likely it is that the later sign will bring the earlier mark with a reputation to the mind of the relevant public (27/11/2008, C-252/07, *Intel*, EU:C:2008:655, § 44). However, the fact that the marks are similar or identical is not sufficient to conclude that there is a link between those marks (27/11/2008, C-252/07, *Intel*, EU:C:2008:655, § 45).
- 63 In the present case, as detailed above, the Board considers the signs similar to an average degree overall.

*(2) The strength of the earlier mark’s reputation*

- 64 In assessing the existence of a link between the marks in conflict, it may be necessary to take into account the strength of the earlier mark’s reputation (27/11/2008, C-252/07, *Intel*, EU:C:2008:655, § 53). The greater the reputation of the earlier mark, the more easily it can be the subject of an infringement (14/09/1999, C-375/97, *Chevy*, EU:C:1999:408, § 30; 27/11/2008, C-252/07, *Intel*, EU:C:2008:655, § 69; 18/06/2009, C-487/07, *L’Oreal*, EU:C:2009:378, § 44).

- 65 It has been established above that the earlier mark enjoys a considerable reputation in the European Union (at least in Germany) in relation to *cars* in Class 12, as it has been subject to long-standing and intensive use and is generally known in the relevant market (the car industry).

*(3) The degree of the earlier mark's distinctive character*

- 66 The more distinctive the earlier mark, whether inherent or acquired through the use which has been made of it, the more likely it is that, confronted with a later identical or similar mark, the relevant public will call that earlier mark to mind (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 54).
- 67 As demonstrated above, the earlier mark 'BMW' is inherently distinctive to an average degree, as it is meaningless in relation to *cars* in Class 12; furthermore, it has acquired a high degree of distinctive character as a result of long use and promotional efforts on the opponent's part, as well as due to its consolidated position amongst the most recognised brands in Germany and worldwide.

*(4) The degree of closeness or similarity between the goods and the relevant public*

- 68 When assessing the link between the signs for the application of Article 8(5) EUTMR, the goods and services at issue need not necessarily be similar within the meaning of Article 8(1)(b) EUTMR. The wording of Article 8(5) EUTMR is clear: it may be invoked in support of an opposition if the goods and services under comparison are identical or similar or are not identical or similar (22/03/2007, T-215/03, VIPS / VIPS, EU:T:2007:93), § 33; 05/07/2016, T-518/13, MACCOFFEE, EU:T:2016:389, § 76).
- 69 It is apparent from case-law that the fact that the goods in question are different does not preclude a certain proximity between them (04/10/2017, T-411/15, GAPPOL (fig.) / GAP et al., EU:T:2017:689, § 193). The concepts of 'similarity' and 'proximity' between the goods in question should not be confused. The similarity between the goods and services covered by the marks at issue does not constitute a condition for the application of Article 8(5) EUTMR, whereas it does constitute one of the cumulative conditions for the application of Article 8(1) EUTMR. The concept of the 'proximity' between the goods and services, for the purposes of the application of Article 8(5) EUTMR, must be understood as the existence of a simple connection between those goods and services (04/10/2018, T-150/17, FLÜGEL /... VERLEIHT FLÜGEL et al., EU:T:2018:641, § 79; 30/03/2022, T-445/21, Copalli / Compal et al., EU:T:2022:198, § 48).
- 70 The Board notes that the factor at the centre of the applicant's criticism of the contested decision's conclusion on the 'link' is the nature of the goods covered by the marks at issue, including the degree of closeness or dissimilarity between those goods.
- 71 The earlier mark enjoys a reputation for *cars* in Class 12, which target both the general and professional public with a high degree of attention, as demonstrated above.
- 72 The contested sign seeks protection for *battery monitors* in Class 9, and the applicant claims that these goods target only a niche specialised public with a high degree of attention (reference is made, inter alia, to Annex 11, showing Amazon's subcategories for energy-related products, where *battery monitors* appear as a subcategory of deep-cycle

batteries and equipment). In particular, the applicant argues that the relevant public for *battery monitors* comprises a technically proficient group with specialised power management needs (e.g. boat owners, recreational vehicle owners, off-grid and independent power system users, speciality and emergency vehicle owners and fleet managers).

- 73 However, the evidence on file, as a whole, does not allow the Board to safely conclude that *battery monitors* target only a ‘specialised electro-technically skilled public’, as claimed by the applicant. For example, a boat owner or a recreational vehicle owner interested in battery monitors might not be an expert in the relevant technical field and therefore look themselves at the relevant specialised websites (as indicated by the applicant via the evidence on file) and/or ask advice and guidance from an expert.
- 74 The Board therefore concludes that *battery monitors* target both the general and professional public, are also not purchased regularly and require a certain technical know-how (like *cars* in general); therefore, the degree of attention is indeed high (compare 26/04/2023, T-153/22, XTG (fig.) / Gtx, EU:T:2023:217, § 22-26, with regard to *retail services in relation to vehicles* and *retail services relating to batteries and accumulators*).
- 75 The Board further concurs with the Opposition Division’s finding that there is a connection between the contested *battery monitors* and the goods for which the earlier mark enjoys a reputation on the market from the consumers’ perspective (at least *cars*). The use of battery management systems in electric and hybrid vehicles is common. *Battery monitors*, as part of battery management systems, are important components in electric and hybrid cars that help maintain the health, performance, and longevity of the vehicle’s battery pack. Indeed, *battery monitors* are responsible for monitoring charging state, voltage, current, temperature, and other parameters of the battery cells in an electric or hybrid vehicle. They ensure that the battery is charged and discharged efficiently, preventing overcharging, over-discharging, and overheating. Such monitoring optimises the performance of the vehicle and extends the life of the battery.
- 76 This conclusion can be confirmed by the applicant’s submissions on the key contexts for battery monitors, which include, inter alia, specialised vehicles (e.g. ambulances and fire trucks) and recreational vehicles.
- 77 In this regard, the opponent had already shown before the Opposition Division that many car manufacturers also offer automobile accessories like batteries, battery chargers, battery monitors, and charger starter kits (including the opponent itself; see Annexes A 54, A 135, A 137), and provided supplementary evidence (i) of its own battery monitoring device ‘BMW Battery Comfort Indicator’, promoted by the opponent, and various car dealers (Annex A 147 supplementing Annex A 135), as well as (ii) of its own emergency and authority vehicles, such as fire-fighting vehicles, ambulances, and police cars, where *battery monitors* are crucial, as argued by the applicant itself (Annex A 148).



- 78 Therefore, as correctly noted by the opponent, the fact that battery monitors may have various applications, or whether they are a standalone product or an internal component, cannot call into question the fact that battery monitors are also used in connection with cars. They are even offered by car manufacturers, as mentioned above.
- 79 Accordingly, the Board is convinced that there is an established market practice showing that *battery monitors* are used, inter alia, also in *cars*, whether as an automobile accessory in conventional cars (to control the charge level of the car battery) or as an indispensable part in electric and hybrid cars, recreational vehicles (RVs) and specialised vehicles such as ambulances and fire trucks, where a dependable auxiliary power supply is essential (use of *battery monitors* as an integrated part of a battery management system).

*(5) Conclusion on the existence of a link*

- 80 In light of all the relevant factors, in particular the high degree of recognition and considerable reputation in Germany, as well as the inherent distinctiveness of the earlier mark, the overall average degree of similarity between the conflicting signs, and the proximity or close connection of the contested *battery monitors* in Class 9 with the opponent's *cars* in Class 12, the relevant public would naturally be led to immediately establish a mental link between the contested mark and the opponent's reputed earlier mark.
- 81 In particular, as correctly concluded by the Opposition Division and as can be seen from the evidence on file, it cannot be ruled out that the contested sign might bring the earlier mark to the mind of the relevant public. This is particularly true because of the earlier mark's very successful presence in the car market, which makes it highly probable that the relevant public (including the public interested in both conventional and recreational and/or specialised cars with enhanced battery management needs) will naturally expect the opponent to expand its own already successful car manufacture business activities by also offering *battery monitors* under the earlier reputed mark.
- 82 In the present case, such a link is not only possible but likely, given the similarity between the signs, the reputation of the earlier mark in the car industry, market realities and consumer expectations.
- 83 The condition related to the existence of a link is therefore fulfilled.

*Use which would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier mark*

- 84 As stated above, Article 8(5) EUTMR implies that the three types of injury referred to therein, where they occur, are the consequence of the fact that the relevant public establishes a link between the signs at issue, even though it does not confuse them. The existence of such a link in the mind of the relevant public between the mark applied for and the earlier marks is therefore an implied essential precondition for the application of Article 8(5) EUTMR (21/12/2022, T-4/22, PUMA (fig.) / PUMA (fig.) et al., EU:T:2022:850, § 70).

- 85 However, such a link, although a necessary condition, is not in itself sufficient to establish the existence of one of the types of injury against which Article 8(5) EUTMR ensures protection for the benefit of the trade mark with a reputation.
- 86 In that regard, the types of injury against which Article 8(5) EUTMR ensures protection for the benefit of trade marks with a reputation are, firstly, detriment to the distinctive character of the earlier trade mark, secondly, detriment to the repute of that mark and, thirdly, unfair advantage taken of the distinctive character or the repute of that mark (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 27; 04/03/2020, C-155/18 P, C-156/18 P, C-157/18 P & C-158/18 P, BURLINGTON / BURLINGTON ARCADE et al., EU:C:2020:151, § 73).
- 87 Just one of those three types of injury suffices for that provision to apply (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 28; 04/03/2020, C-155/18 P, C-156/18 P, C-157/18 P & C-158/18 P, BURLINGTON / BURLINGTON ARCADE et al., EU:C:2020:151, § 74).
- 88 Although the proprietor of the earlier trade mark is not required to demonstrate actual and present injury to its mark for the purposes of Article 8(5) EUTMR, it must, however, prove that there is a serious risk that such an injury will occur in the future (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 38; 04/03/2020, C-155/18 P, C-156/18 P, C-157/18 P & C-158/18 P, BURLINGTON / BURLINGTON ARCADE et al., EU:C:2020:151, § 75).
- 89 The concept of ‘taking unfair advantage of the distinctive character or the repute of the mark’ – also referred to as ‘parasitism’ and ‘free-riding’ – is not linked to the damage suffered by the mark, but to the advantage gained by the third party from the use of the identical or similar sign. That concept includes, in particular, cases in which, as a result of a transfer of the image of the mark or of the characteristics projected by it towards the goods or services designated by the identical or similar sign, there is obvious exploitation of the mark with a reputation (18/06/2009, C-487/07, L’Oréal, EU:C:2009:378, § 41; 28/05/2020, T-677/18, GULLÓN TWINS COOKIE SANDWICH (fig.) / OREO et al., EU:T:2020:229, § 119), with the result that the marketing of those goods or services is made easier by that association with the earlier reputed mark (22/03/2007, T-215/03, VIPS / VIPS, EU:T:2007:93, § 40).
- 90 Where a third party attempts, through the use of a mark similar to a mark with a reputation, to ride on the coat-tails of that mark in order to benefit from its power of attraction, its reputation and its prestige, and to exploit, without paying any financial compensation and without being required to make efforts of his or her own in that regard, the marketing effort expended by the proprietor of the earlier mark in order to create and maintain the image of that mark, the advantage resulting from such use must be considered an advantage that has been unfairly taken of the distinctive character or the repute of that mark (01/03/2018, T-85/16, Position of two stripes on a shoe, EU:T:2018:109, § 49 and the case-law cited).
- 91 In order to benefit from the protection introduced by Article 8(5) EUTMR, the proprietor of the earlier mark is not required to demonstrate that the type of damage to its mark that is referred to in that provision is actual and present (03/05/2018, T-662/16, Styriagra / VIAGRA, EU:T:2018:242, § 64).
- 92 When it is foreseeable that such injury will ensue from the use which the proprietor of the mark applied for may be led to make of its mark, the proprietor of the earlier mark cannot be required to wait for this actually to occur in order to be able to prohibit that use. The

proprietor of the earlier mark must, however, prove that there is a serious risk that such an injury will occur in the future (03/05/2018, T-662/16, Styriagra / VIAGRA, EU:T:2018:242, § 64 and the case-law cited).

- 93 Such a conclusion can be drawn on the basis of logical deductions resulting from an analysis of the probabilities and by taking account of the normal practices in the relevant commercial sector and all the other circumstances of the case (28/05/2021, T-509/19, Flügel /... Verleiht Flügel et al., EU:T:2021:225, § 151).
- 94 In order to determine whether the use of the contested sign takes unfair advantage of the distinctive character or the repute of the earlier trade mark, it is necessary to undertake a global assessment, taking into account all factors relevant to the circumstances of the case, which include the strength of the mark's reputation and the degree of distinctive character of the mark, the degree of similarity between the marks at issue and the nature and degree of proximity of the goods or services concerned (14/09/2022, T-417/21, ITINERANT (fig.) / RAPPRESENTAZIONE DI UN PAPERIO (fig.), EU:T:2022:561, § 105).
- 95 In the present case, the opponent claims that the applicant's use of the contested sign will take unfair advantage of and be detrimental to the reputation and distinctive character of the earlier trade mark.
- 96 The Opposition Division agreed with the opponent, concluding that the contested sign would take unfair advantage of the earlier mark's reputation in Germany.
- 97 In the statement of grounds of the appeal, the applicant argues that (i) the lack of concrete evidence, (ii) failure to define the relevant public accurately, and (iii) inability to demonstrate probable consumer behavioural impact indicate that the opponent has not established the claim of 'unfair advantage' under Article 8(5) EUTMR.
- 98 In particular, the applicant claims that it enjoys a reputation as a high-quality manufacturer of power electronics, which is entirely attributable to its years of dedication to developing proprietary power electronics products, including *battery monitors* (reference is made to Annex 12, showing Amazon rankings and reviews of the Victron Energy BMV-712 smart battery monitor and the Victron Energy BMV-712 battery monitor). According to the applicant, the high ratings, the Amazon bestseller status of the applicant's *battery monitors* (on Amazon in Germany, the Netherlands, France, the United Kingdom, Italy and Poland), and the positive reviews show that the applicant has established a strong and independent reputation for quality, based on the technical performance and reliability of its products, and this success is not derived from or dependent on the reputation of BMW. Moreover, according to the applicant, consumers of *battery monitors* prioritise features such as precision in power management and technical compatibility, qualities with no connection to the opponent's reputation for cars.
- 99 As can be inferred from the evidence on file, and as also expressly stated by the applicant: (i) the 'BMW' brand is among the leading brands in the car industry, and its *cars* are associated with an image of reliability, comfort, fuel efficiency, and safety for the relevant German public, whereas (ii) the qualities that the relevant German public would appreciate in *battery monitors*, as an electronic device for power management, are technical specifications, reliability and high technical quality standards. The Board notes that, contrary to the applicant's assertion, the abovementioned 'quality categories' overlap

significantly. For example, both *cars* and *battery monitors* are expected to be reliable, to meet high-quality standards and to guarantee efficiency.

- 100 As already established above, there is a proximity or close connection between the opponent's *cars* in Class 12 and the contested *battery monitors* in Class 9. This will allow the qualities of the opponent's famous goods to be attributed to the contested goods. This is particularly so because there is an established market practice showing that *battery monitors* are used, among others, also in *cars*, whether as an automobile accessory in conventional cars (to control the charge level of the car battery) or as an indispensable part in electric and hybrid cars, recreational vehicles (RVs) and specialised vehicles such as ambulances and fire trucks, where a dependable auxiliary power supply is essential (use of *battery monitors* as an integrated part of a battery management system).
- 101 It follows that the earlier mark's very successful presence in the car industry makes it highly probable that the relevant public (including the public interested in both conventional and recreational and/or specialised cars with enhanced battery management needs) will naturally expect the opponent to expand its own already successful car manufacture business activities by also offering *battery monitors* under the earlier reputed mark. Accordingly, the image of reliability and quality of the earlier mark would easily be transferred to the contested application. Furthermore, the opponent proved that it manufactures/offers its own 'BMW Battery Comfort Indicator' battery monitoring device (Annex A 147 supplementing Annex A 135), as well as its own emergency and authority vehicles such as fire-fighting vehicles, ambulances, and police cars, where battery monitors are crucial, as argued by the applicant itself (Annex A 148).
- 102 Therefore, there is a probability of free-riding in the present case. The opponent has put forward a coherent line of argument showing how unfair advantage would occur, and that it is indeed likely in the ordinary course of events. The long-standing use and considerable recognition of the earlier mark (for many decades) make it probable that consumers' economic behaviour would be swayed in favour of the contested goods solely because they are commercialised under the contested sign. This would result in a transfer of the goodwill of the earlier reputed mark in favour of the contested mark. Consequently, as held by the opponent, the economic advantage would consist in exploiting the effort expended to establish the reputation and the image of its earlier trade mark, without paying any compensation in exchange. Moreover, the opponent proved that the applicant has already started using the contested sign 'BMV' for battery monitors which are offered to the automotive sector and its vehicles (Annexes A 53 and A 55 containing screenshots and brochures from the applicant's website [www.victronenergy.com](http://www.victronenergy.com), <https://www.victronenergy.com/battery-monitors>).





### BMV-702 (Black)

The BMV-702 (Black) is a high precision battery monitor. The essential function of a battery monitor is to calculate ampere hours consumed and the state of charge of a battery. Ampere hours consumed are calculated by integrating the current flowing in or out of the battery.

To read more about the full BMV range & accessories, see [this blog](#).

#### Models:

6.5 - 95V

[Where to buy](#)

[Downloads & Support](#)



103 For the sake of completeness, the Board recalls that the applicant's intention is not a material factor (28/04/2021, T-509/19, Flügel / ... Verleiht Flügel et al., EU:T:2021:225, § 134). Taking unfair advantage of the distinctiveness or the repute of a trade mark may be a deliberate decision, for example, where there is clear exploitation and free-riding on the coat-tails of a famous mark, or an attempt to trade upon the reputation of a famous mark. However, taking unfair advantage does not necessarily require a deliberate intention to exploit the goodwill attached to someone else's trade mark. The concept of taking unfair advantage concerns the risk that the image of the mark with a reputation or the characteristics that it projects are transferred to the goods and services covered by the mark applied for, with the result that the marketing of those goods and services is made easier by that association with the earlier mark with a reputation (22/03/2007, T-215/03, VIPS / VIPS, EU:T:2007:93, § 40; 30/01/2008, T-128/06, CAFÉ TORREFACTO...CAMELO... / CAMEL, EU:T:2008:22, § 46; 19/06/2008, T-93/06, MINERAL SPA / SPA, EU:T:2008:215, § 40).

104 For an opposition to be well founded under Article 8(5) EUTMR, it is sufficient if only one of the three types of injury referred to therein is found to exist. In the present case, as it has been established that the contested application would take unfair advantage of the reputation of the earlier mark for all the contested goods subject to the appeal (*battery monitors* in Class 9), there is no need to examine whether other types of injury also apply.



*Due cause*

- 105 The applicant claims that, in any event, it has due cause to use the contested mark. To demonstrate this, the applicant provides the evidence referred to in paragraphs 7 and 10 above (especially Annexes 6, 9 and 10).
- 106 According to case-law, ‘due cause’ for the use of a sign similar to a trade mark with a reputation is an expression of the general objective of the EUTMR, which is to reconcile, on the one hand, the interests of the proprietor of a trade mark in protecting its essential function and, on the other hand, the interests of a third party in using, in the course of trade, such a sign to designate the goods and services it sells (06/02/2014, C-65/12, *The Bulldog et al. / Red Bull Krating-Daeng*, EU:C:2014:49, § 41, 43; 30/05/2018, C-85/16 P & C-86/16 P, *KENZO ESTATE / KENZO*, EU:C:2018:349, § 90; 25/10/2023, T-384/22, *ESTRELLA DE CASTILLA* (fig.) / *Estrella*, EU:T:2023:672, § 164).
- 107 The concept of ‘due cause’ cannot therefore only encompass objectively overriding reasons but may also relate to the subjective interests of a third party that makes use of a sign identical with or similar to the trade mark with a reputation (30/05/2018, C-85/16 P & C-86/16 P, *KENZO ESTATE/KENZO*, EU:C:2018:349, § 86).
- 108 It is for the applicant to demonstrate the existence of due cause for the use of the mark applied for (27/11/2008, C-252/07, *Intel*, EU:C:2008:655, § 39). Indeed, where the proprietor of the earlier mark has shown that there is either actual and present injury to its mark or, failing that, a serious risk that such injury will occur in the future, it is for the proprietor of the later mark to establish that there is due cause for the use of that mark (07/12/2010, T-59/08, *NIMEI LA PERLA MODERN CLASSIC*, EU:T:2010:500, § 34; 06/07/2012, T-60/10, *ROYAL SHAKESPEARE*, EU:T:2012:348, § 67).
- 109 In that regard, whether there is due cause which makes it possible to use a mark which adversely affects a mark with a reputation is a matter which must be interpreted restrictively (16/03/2016, T-201/14, *SPA WISDOM / SPA et al.*, EU:T:2016:148, § 65; 09/09/2020, T-669/19, *Primus / Primus et al.*, EU:T:2020:408, § 121).
- 110 According to the applicant, there is an overriding public interest for the non-monopolisation of the abbreviation ‘BM’. The applicant claims, in particular, that it has due cause to use the letters ‘B’ and ‘M’, since those letters are used in trade as an abbreviation of ‘battery monitor’, and that this abbreviation will be understood as such by the relevant public. In this regard, the applicant criticises the Opposition Division for (i) misidentifying the relevant public (as *battery monitors* are specialised products, primarily used by a knowledgeable public, e.g. electrical engineers, technicians, and off-grid power users, including boat and RV owners, all familiar with industry-specific terminology), and (ii) providing an inconsistent reasoning on the recognition of abbreviations.
- 111 As demonstrated above, the earlier mark ‘BMW’ has an average degree of inherent distinctiveness and may therefore be regarded as neither descriptive nor devoid of distinctive character in relation to *cars*.
- 112 As explained above, the Board does not consider it likely that the relevant public will perceive the acronym ‘BM’ as an abbreviation of ‘battery monitor’ (or the German *batterie monitor*), as claimed by the applicant, since this is not an abbreviation used in common

parlance and, in principle, the relevant public tends to see single letters as acronyms when they are accompanied by the text of the corresponding terms.











- 113 In the present case, none of the signs are accompanied by additional text clarifying any possible acronym. The applicant submitted several printouts of retailers offering battery monitors (Annex 6), which, according to the applicant, show the use in trade in the EU of ‘BM’ as an abbreviation for ‘battery monitor’ (in English), *batterie monitor* (‘battery monitor’ in German) and ‘batterij monitor’ (‘battery monitor’ in Dutch) in the product names of battery monitors. However, all these retailers’ websites always show the letters ‘BM’ accompanied by the expressions ‘Batteriemonitor’, ‘battery monitor’, ‘Batterie Monitor’, or ‘batterijmonitor’. In none of the printouts are the letters ‘BM’ used independently, without being accompanied by the abovementioned expressions, which give context to those two letters and serve as an indication of the nature of the product for the consumers. This can be confirmed by the following examples, mentioned by the applicant both at first instance and at the appeal stage (Annexes 6, 9 and 10):

*Super B SB-BM01 batterijmonitor*



*AMPS Battery Monitor BM1*



				
Victron Energy - Smartshunt 500A/50mV	Victron Energy - BMV-712 Battery Monitor, bluetooth communication	Midnite Solar - MN-BCM, Battery Capacity Meter	Go Power - GP-BMK-25, Battery Monitoring Kit	Victron Energy - Battery Monitor BMV-702
\$144 <sup>02</sup>	\$228 <sup>24</sup>	\$156 <sup>50</sup>	\$119 <sup>99</sup>	\$197 <sup>72</sup>
ÉPARGNEZ \$63.11	ÉPARGNEZ \$35.01		ÉPARGNEZ \$30.01	ÉPARGNEZ \$84.73
				
Victron Energy - Battery Monitor BMV-700	Victron Energy - Smartshunt 1000A/50mV	Magnum - ME-BMK, Battery monitor	Go Power - GP-BMG, Battery Manager Kit	Victron Energy - SmartShunt 2000A/50mV
\$158 <sup>67</sup>	\$238 <sup>00</sup>	\$312 <sup>99</sup>	\$320 <sup>99</sup>	\$324 <sup>66</sup>

- 114 Consequently, the applicant did not sufficiently establish that it cannot reasonably be required to abstain from use of the mark (e.g. because its use of the sign is a generic use to

indicate the type of goods). All examples provided by the applicant show that the abbreviation ‘BM’ is used with the accompanying expression ‘battery monitors’, so the consumers’ right to accessible product information is guaranteed by the relevant market’s practice itself. In other words, if the descriptive nature of ‘BM’ standing for ‘battery monitor’ was indeed evident for the relevant market, as claimed by the applicant, the product descriptions appearing in the applicant’s search results would not all be accompanied by the relevant explanatory text.

- 115 In the Board’s view, the applicant has failed to prove that the letters ‘BM’ are very widespread and frequently used as an abbreviation in the *battery monitor* sector. The mere fact that, according to the applicant, part of the contested trade mark (‘BM’) is an acronym or abbreviation of ‘battery monitor’ (or, in German, *batterie monitor*) is not sufficient to prove due cause for using the contested sign ‘BMV’. Consequently, the letters ‘BM’ have not become so necessary to the marketing of battery monitors that the applicant could not reasonably be required to refrain from using the mark applied for.
- 116 In any event, the fact that a term is very common and frequently used because of a meaning inherent in it is relevant in the context of the assessment of the risk of dilution, but does not allow a finding of due cause (25/10/2023, T-384/22, ESTRELLA DE CASTILLA (fig.) / Estrella Galicia (fig.) et al., EU:T:2023:672, § 166).

### *Conclusion*

- 117 Given that the opposition is entirely successful under Article 8(5) EUTMR, it is not necessary to examine the remaining ground and earlier rights invoked.
- 118 In light of the above, the appeal must be dismissed, the contested decision fully confirmed, the opposition fully upheld, and the contested mark refused registration in its entirety.

### **Costs**

- 119 Pursuant to Article 109(1) EUTMR and Article 18 EUTMIR, the applicant, as the losing party, must bear the opponent’s costs of the opposition and appeal proceedings.
- 120 As to the appeal proceedings, these consist of the opponent’s costs of professional representation of EUR 550.
- 121 As to the opposition proceedings, the Opposition Division ordered the applicant to bear the opposition fee of EUR 320 and the opponent’s representation costs, which were fixed at EUR 300. This decision remains unaffected. The total for both proceedings is therefore EUR 1 170.

**Order**

On those grounds,

THE BOARD

hereby:

- 1. Dismisses the appeal.**
- 2. Orders the applicant to bear the opponent's costs in the appeal proceedings, which are fixed at EUR 550. The total to be paid by the applicant in the opposition and appeal proceedings is EUR 1 170.**

Signed

V. Melgar

Signed

Ph. von Kapff

Signed

R. Ocquet

Registrar:

Signed

H. Dijkema

