BL O/0236/25

ON APPEAL TO THE APPOINTED PERSON

IN THE MATTER OF
the Trade Marks Act 1994 (the "TMA")
-and-
United Kingdom Trade Mark Application No. 3809067 for  **(series of two) (the "Application")**
in the name of Jonathan Mark Kendrick (the "Respondent")
-and-
Opposition No. 436881 thereto (the "Opposition")
by Triumph Designs Limited (the "Appellant")

DECISION

Introduction

1. This is an appeal from the decision in this matter of Joanne Roberts (the "**Hearing Officer**"), dated 15 April 2024 (the "**Decision**").

2. On 13 July 2022 Jonathan Kendrick filed an application to register the following series of device marks (the "**Marks"**):

in Class 12 for the following goods:

Class 12: *Bicycles; electric bicycles; e-bikes; motorcycles; motorbikes; electric*

motorcycles; electric motorbikes; electrically operated scooters; parts, fittings and spare parts for the aforesaid goods.

I will, like the Hearing Officer, refer to the Mark with the black background as Mark (ii).

3. Triumph Designs Limited filed an opposition on 14 October 2022. That Opposition was brought under section 5(2)(b) of the TMA, in reliance upon Triumph Designs earlier United Kingdom Trade Mark Registration No. 3252095 for the word mark ROCKET (the "**Earlier Mark**").

4. The Earlier Mark is registered for the following goods:

Class 12: *Motorcycles; mopeds; scooters; bicycles; e-bikes; e-bicycles; powered two-wheeled vehicles; tricycles; quad bikes; land vehicles; parts and fittings for all the aforesaid goods*

5. Neither party filed evidence.

The Decision

6. The Hearing Officer made the following findings:

6.1. the goods of the Mark and Earlier Mark (the "**Goods**") were identical (§§15 – 20);

6.2. the average consumer of the Goods was likely to include members of the general public and business users, who would pay at least a medium degree of attention during the purchasing process (§24);

6.3. the purchasing process for the Goods was primarily visual, although aural considerations could not be disregarded entirely (§24);

6.4. a proportion of average consumers might not perceive the "O" in the Marks as a figurative letter "O" but instead would see it as a decorative device element (§30);

6.5. the element "ROKiT" plays the greater role in the overall impression of the Marks (§31);

6.6. the Marks and the Earlier Mark were visually similar to a low degree (§32);

6.7. the Marks and the Earlier Mark were aurally similar to a low to medium degree (§33);

6.8. when "*the word "ROKiT" or "R-KiT" is combined with "BY" ("BY ROKiT / BY R-KiT"), the words were likely be perceived as identifiers regarding the origin of the goods at issue*" (§38);

6.9. the Marks and the Earlier Mark were conceptually dissimilar (§38);

6.10. the Marks had no more than a medium degree of inherent distinctive character (§42);

6.11. the Marks would not be directly confused with the Earlier Mark (§46), and

6.12. the Marks would not be indirectly confused with the Earlier Mark (§51).

7. On this basis the opposition failed.

The Approach to this Appeal

8. This appeal is by way of a rehearing. The approach to such a rehearing was summarized by Mr. Daniel Alexander KC sitting as the Appointed Person in *TT Education Ltd v Pie Corbett Consultancy Ltd* [2017] RPC (17) 655 (AP), at [14]-[56] and subsequently approved and applied by Joanna Smith J in *Axogen v Aviv* [2022] EWHC 95 (Ch) as follows:

> "24. Although I was referred to numerous cases on the subject …, the approach of the appeal court to a statutory appeal under section 76(1) of the TMA is uncontroversial. I bear the following principles, relevant to the issues before me, firmly in mind:
>
> i) The appeal is by way of a review, not a rehearing (see *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17) at [52(i)]);
>
> ii) The appeal court will allow an appeal where the decision of the lower court was "wrong" (see CPR 52.11). Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference (*NINEPLUS* O/039/21 at [14]);
>
> iii) The decision of the lower court will be "wrong" if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant matters or taking into account irrelevant matters. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible" (*Actavis Group* at [81]);
>
> iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question (*REEF Trade Mark* [2003] RPC per at [26]). There is a "spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision" (*TT Education* at [52(ii)]), with decisions of primary fact at one end of the spectrum and multi-factorial decisions (of the type which the parties agree were made in this case by the Hearing

> Officer) being further along the spectrum.
> v) In the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education* at [52(iv)], REEF at [28] and Fine & Country at [50]-[51]).
> vi) An error of principle is not confined to an error as to the law but extends to certain types of error in the application of a legal standard to the facts in an evaluation of those facts. The evaluative process is often a matter of degree upon which different judges can legitimately differ and an appellate court ought not to interfere unless it is satisfied that the judge's conclusion is outside the bounds within which reasonable disagreement is possible (*Actavis Group* at [80]).
> vii) Another variable to be taken into account will be "the standing and experience of the fact-finding judge or tribunal" (*REEF* at [26], Actavis Group at [78]). Expert tribunals are charged with applying the law in the specialised fields and their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts (Shanks at [28] citing the warning given by Baroness Hale in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49).
> viii) The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed; "The duty to give reasons must not be turned into an intolerable burden" (see *REEF* at [29]). The reasons need not be elaborate. There is no duty on a judge, in giving her reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what she says shows the basis on which she has acted (*English* at [17], Fage at [115]). The issues the resolution of which were vital to the judge's conclusions should be identified and the manner in which she resolved them explained (*English* at [19]).
>
> ix) In evaluating the evidence, the appellate court is entitled to assume, absent good reason to the contrary, that the first instance judge has taken all of the evidence into account (*TT Education* at [52(vi)]).

9. This appeal primarily concerns criticisms of the Hearing Officer's evaluative decisions. I therefore also bear in mind the guidance given by the Supreme Court in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8 (albeit I understand this guidance to be consistent with the decision in *Axogen*), where Lords Briggs and Kitchin explained at [49]-[50]:

> "… on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.
>
> On the other hand, it is equally clear that, for the decision to be "wrong" under CPR 52.21(3), it is not enough to show, without more, that the appellate court might have arrived at a different evaluation."

First and Third Grounds of Appeal

10. The First and Third Grounds of Appeal both relate to the Hearing Officer's comparisons

of the Marks and the Earlier Mark, and it is convenient to deal with them together.

Ground 1

11. The Appellant submitted that whilst the Hearing Officer correctly stated the applicable test for comparing the Marks and the Earlier Marks, she applied that test incorrectly. In particular, it submitted that the Hearing Officer focused artificially on the detailed similarities and differences between the Marks and the Earlier Mark and therefore failed to consider them as a whole.

12. I start by noting that the fact that a decision sets out detailed similarities and differences when comparing marks does not necessarily lead to the conclusion that the Hearing Officer has fallen into error. As the decision of the CJEU in *Bimbo SA v OHIM* at [34] makes clear, a decision on the overall impression necessarily includes an analysis of the components of the marks being compared:

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

13. To address whether the Hearing Officer went further than this and artificially dissected the marks, and in order to address the points under Ground 3 (which are detailed criticisms of the comparison exercise) I turn now to the Hearing Officer's decision on the comparisons.

Overall Impression

14. The Hearing Officer's approach to comparing the Marks and the Earlier Marks is somewhat complicated by the way it is structured. In particular before dealing with each of the visual, aural and conceptual comparisons, the Hearing Officer presents a section called "Overall Impression". Contrary to its title this section does not set out the Hearing Officer's entire conclusions on the overall impression but instead addresses some important aspects of those comparisons up front.

15. The Hearing Officer's principal conclusions in this section are:

15.1. the word “ROKiT” plays a greater role in the overall impression of the marks due to its size and the fact that it contains the figurative letter “O”;

15.2. the words “e-BIKES” and “BY” were descriptive in nature and played a lesser role;

15.3. the horizontal line in both of the Marks and the black rectangular background in Mark (ii) would have little impact on the consumer, and

15.4. the overall impression in the Earlier Mark, resides in thew word “ROCKET” resides in the word itself, which is an ordinary dictionary word.

16. I deal with the Appellant’s criticisms of these findings below.

Visual Comparison

17. The Appellant submitted that the Hearing Officer erred as follows:

17.1. by reaching the wrong conclusion on the significance and meaning to the average consumer of the stylized “O”;

17.2. by failing to assess the overall impression of the Marks properly and instead overanalyzing the detail elements of the Marks (i.e. the Ground 1 reasons);

17.3. by failing to take into account the size and prominence of “ROKiT” in the Marks and the Earlier Marks;

17.4. by over emphasizing the importance of “eBikes” and “BY” when carrying out the visual comparison (and did so by placing too much weight on their presence at the beginning of the Marks), and

17.5. by placing undue weight on the differences between the Marks and the Earlier Mark.

18. On the first point (see para 17.1) the Appellant criticized the Hearing Officer for reaching a conclusion argued for by neither party. I do not regard this as being a material error on the part of the Hearing Officer. Whilst it might be somewhat unusual to disagree with the submissions of both parties on a point such as this, the question is ultimately one for the Hearing Officer’s own appreciation. The Appellant’s submissions identified no other flaw

in the Hearing Officer's analysis on this point (in the sense meant in *Lifestyle Equities*). The Hearing Officer was therefore entitled to reach the view that she did.

19. Turning to the second point (see para 17.2). The Appellant correct in pointing out that engaged in a very detailed visual comparison of the Marks and the Earlier Marks. That comparison extends to an examination of the exact number of letters in the marks, the placement of those letters, and the use of upper- and lower-case lettering. If this was the only relevant analysis performed by the Hearing Officer, I might have some concern that she had lost sight of the requirements set out *Bimbo*. However, this section does not stand alone; it must be read in the light of her previous section "Overall Impression". In that section it is clear, in my view, that the Hearing Officer did step back and take a more global view of Marks and Earlier Mark. Taking these matters together, my view is the Hearing Officer's detailed visual comparison does not indicate that she failed to carry out the correct comparison by reference to the overall visual impression given respectively by the Marks and the Earlier Mark. Instead, it is indicative of her carrying out the analysis that *Bimbo* requires.

20. I likewise reject the remaining criticisms made of the Hearing Officer's visual comparison (see paragraphs 17.3 – 17.5). It is clear from the Hearing Officer's analysis that she carried out a careful visual comparison in accordance with the established legal principles. In my view nothing submitted by the Appellant identifies the kind of flaw that is discussed in *Lifestyle Equities CV*. The Appellant's submissions are instead no more than bare criticisms of the weight and emphasis placed on certain factors.

21. I therefore reject the criticisms of the Hearing Officer's visual comparison (both under Ground 1 and Ground 3).

Aural Comparison

22. The Appellant submitted that the Hearing Officer:

    22.1. failed to assess the overall impression of the marks properly (i.e. the Ground 1 reasons);

    22.2. placed too much weight on the differences between the Marks and the Earlier

Mark;

22.3. placed too much weight on the importance of "eBikes" and "BY" (and did so by placing too much weight on their presence at the beginning of the Marks);

22.4. erred by relying on her finding in relation to the perception of the "O" in "ROKiT", and

22.5. erred by reason of her finding in relation to the perception of the "O" in "ROKiT".

22.6. failed to consider the Appellant's submissions that the average consumer would likely omit the descriptive elements "eBIKES" and "BY" when pronouncing the Marks.

23. The Appellant's arguments under Ground 1 were less developed in relation to the aural comparison. This is not surprising as the Hering Officer's aural analysis did not descend to the same level of detail as her visual analysis. In my view the level of detail adopted by the Hearing Officer in relation to her aural analysis was entirely consistent with the principles set out in *Bimbo*. I therefore dismiss this submission.

24. The submissions summarized in paragraphs 22.2 – 22.5 above are all submissions which go to the weight the Hearing Officer gave to various factors before her. None of the submissions, in my view, discloses an identifiable flaw in the Hearing Officer's reasoning.

25. The submission summarized in paragraph 22.6 above requires a little more consideration. The Appellant submitted to the Hearing Officer that the average consumer would likely omit sounding the descriptive elements eBIKES and BY when pronouncing the Marks. In support of this submission, it relied upon the decision of the General Court in *GRE v OHMI – Villiger Sohne* **T-206/12**. That decision is not available in English. However, the Appellant submitted, and I accept, that General Court upheld without material additional comment, the finding of the Board of Appeal at paragraph 41 of its decision in the same matter (R0411/2011-1). That paragraph together with paragraph 39 to which it refers state as follows:

> 39. The words "LIBERTE" and "Libertad" are all obvious. The only different letters are the last (or the last two) of seven (respectively eight letters). Although the colours and forms of the registration mark differ in comparison to the earlier word marks, like the smaller word elements "americana blend" and "La", they do not, however, loose themselves from the whole of the opposite brands and thus constitute subordinate elements. These distinctions, although they cannot be completely ignored, do not play a decisive role in comparing signs. In this respect, the presence of the common language "LIDBERT" in both characters allows for a finding that there is an average similarity between the trade marks (see Judgment of 23 November 2010, T-35/08, ' Artesa Napa Valley, par. 44).

> 41. From a sound point of view, it is undisputed that the terms "LIBERTE" and "Libertad" of the two brands are very similar. As already stated in recital 39 above, the latter words are different only in their last letters. The additional work elements of 'American blend' and 'La' are also likely to be omitted as secondary elements of both brands in their designation by the transport industry (see judgment of 13 April 2005 in Case T-286/03 " Right of Sport", paragraph 74). Thus, contrary to the view of the notifying party, it can be assumed that there is a high degree of similarity.

26. As these passages show, the decision turned on its own facts. It follows that T-206/12 does no more than support the submission that the Hearing Officer was entitled to find, if the facts justified it, that the words eBIKE and BY could be omitted. It does not assist in deciding whether they should, on the facts of this case, have been omitted from the aural comparison.

27. I agree that that Hearing Officer did not refer to these submissions in the Decision. Nor did she refer to T-206/12. However, it is quite clear that she had the role of the elements eBIKES and BY firmly in mind: finding a) they played a lesser role in the overall impression of the Marks (Decision, §31) and b) when addressing how the Marks were likely to be pronounced (Decision, §33). Those findings reject, on the facts, the submission that eBIKES and BY should have been ignored for the purposes of the aural comparison.

28. I therefore find there to be no error in principle with the Hearing Officer's decision on the aural comparison.

Conceptual Comparison

29. The Appellant submitted that the Hearing Officer erred by failing to justify her finding that ROKiT would be perceived as an invented word with no clear meaning, or alternatively, R-KiT (a finding which the Appellant submitted, arose only because of the Hearing Officer's finding in relation to the "O" in the Marks").

30. I begin by noting, as the Hearing Officer noted, correctly, that for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer (see *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29).

31. Turning to the facts, the Hearing Officer summarized the conflicting positions of the parties as follows [§§35-36]:

> Conceptually, the [Appellant] has stated in its written submissions, that from the public's

perspective, there is no distinction between the signs, on the basis that the applicant's invented word "ROKiT" would be perceived as a misspelling of the word and earlier mark "ROCKET". Therefore, on this basis, the opponent submits that the marks at issue all indicate that the goods come from a single source and that source has an identical conceptual meaning.

The [Respondent] disagrees with this viewpoint, stating in their submissions in lieu that the marks are conceptually dissimilar on the basis that the word "ROKiT" in their mark will not be perceived as a misspelling of the word "ROCKET", but rather will be perceived as a misspelling of the slang term "ROCK IT".

32. The Hearing Officer's rejected both these submissions and found as follows [§38],

38 In the case of the applicant's marks, as "eBIKES" is a known dictionary term, consumers will likely immediately recognise the term as referring to "electric bikes". This word is likely to be perceived as descriptive in relation to some of the applicant's goods. I find that the word "ROKiT" will be perceived as an invented word with no clear meaning. In the event that the figurative letter "O" in the word is perceived merely as a decorative figurative element rather than a letter, the word will likely be perceived as "R-KiT", with the capital letter "R" merely being perceived as just that, and the word "KiT" being perceived as an ordinary dictionary word, which typically refers to a set of items kept together. However, as a whole, the word "R-KiT" has no clear meaning. Either way, when the word "ROKiT" or "R-KiT" is combined with "BY" ("BY ROKiT / BY R-KiT"), the words will likely be perceived as identifiers regarding the origin of the goods at issue. Accordingly, I find the opponent's mark and the applicant's marks to be conceptually dissimilar.

33. The Hearing Officer cannot, in my view, be criticized for failing to justify her finding. It is clear she has directed her mind to the relevant factors. With the exception of the OHIM decisions discussed below, the Appellant does not suggest there were any other factors that should have been considered, or that the Hearing Officer considered factors she should not have done. Furthermore, the level of detail at which Hearing Officer approach this issue is broadly similar to the level of detail adopted by both the Appellant and Respondent.

34. The Appellant submitted that the Hearing Officer failed to take into account two OHIM decisions that were put before her in support of their submission on the conceptual meaning of the Marks, namely *NEC Display Solutions Europe v OHMI* T-501/08 and *Cabel Hall Citrus v OHIM*, T-488/07). These are again cases that firmly turn on their own facts. The Appellant did not point to any principle or approach in these cases that it asserted that the Hearing Officer had failed to apply. These cases therefore do not establish an error on the

part of the Hearing Officer.

35. It follows from the reasons given above that I dismiss the Appellant's criticisms of the Hearing Officer's findings on the conceptual comparison. For all the reasons given above I also dismiss both the First and Third Grounds of Appeal.

Second Ground of Appeal

36. The Appellant submits that the Hearing Officer, despite directing herself to apply the interdependency principle, erred by failing to do so. The underlying basis of that submission was that given the following findings it was inevitable that she should have gone on to find a likelihood of confusion:

    36.1. a low degree of visual similarity between the Marks and the Earlier Mark.

    36.2. a low – medium degree of aural similarity between the Marks and the Earlier Mark, and

    36.3. the purchasing act was both visual and aural.

37. I disagree. In my view there is no basis for the submission that the Hearing Officer having addressed her mind to the issue of interdependency, failed to apply the necessary principles. This is made clear by her analysis at paragraph 44 of the Decision:

> Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other. While indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective goods may be offset by a greater degree of similarity between the marks and vice versa. I must bear in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing act. To do so, I must recognise that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind

38. I also reject the submission that the findings of fact set out in paragraph 36.1-36.3, must inevitably lead to a finding that there was a likelihood of confusion. Whilst they are important factors of the likelihood of confusion analysis, they are not the only factors the Hearing Officer had to weigh up (as paragraph 44 makes clear).

39. I therefore reject this ground of appeal.

Fourth Ground of Appeal

40. Under this Ground the Appellant submitted that the Hearing Officer erred by:
    40.1. an incorrect application of the law
    40.2. applying her incorrect findings as to the level of similarity between the Marks and the Earlier Marks.

41. I have already dismissed the second submission above. I turn now to the various points made in relation to the Hearing Officer's application of the law.

Application of the "Wrong Threshold"

42. The Appellant submitted that the Hearing Officer failed to apply the right threshold when considering the likelihood of confusion. In particular, it submitted that if the Hearing Officer *"had taken into account real world consumer behaviour, by applying the principles of imperfect recollection and the facts that consumers are unlikely to be able to make a direct comparison of the marks, she would have found there to be a likelihood of confusion between the Marks and the Earlier Marks"*.

43. There is in my view no merit in this submission and in particular the assertion that the Hearing Officer failed to address imperfect recollection or the unlikelihood of consumers making a direct comparison. As paragraph 44 of the Decision (quoted above) makes clear, both points were firmly in the Hearing Officer's mind.

Direct Confusion

44. The Appellant submitted that the Hearing Officer erred in law by discounting the possibility of direct confusion as "unlikely" on the basis that the Earlier Mark was not replicated in the "Marks". I disagree. It is clear from the Decision, that the Hearing Officer's conclusion on direct confusion was not made solely *"on the basis that the Earlier Mark was not replicated in the Marks"*. On the contrary, this was only one of several factors weighed by the Hearing Officer.

45. The Appellant also submitted that:

45.1. the Hearing Officer should have placed more weight on the impact of the aural similarity, and

45.2. the Hearing Officer overemphasized the elements "eBIKES" and "BY".

46. These submissions criticize no more than the precise weight given to two factors in the Hearing Officer's evaluation. That makes them precisely the kinds of evaluative decisions that I should not interfere with on appeal.

Indirect Confusion

47. The Appellant submitted that the Hearing Officer should have found that indirect confusion would occur because the average consumer would consider the products to come from the same "stable", that is from the same proprietor. The Hearing Officer rejected this submission on its facts (Decision, §51). The Appellant criticized this finding for effectively the same reasons that it raised under Ground 1. As I have discussed and dismissed these reasons above, I need not deal with them further here.

48. The Appellant also criticized the Hearing Officer for failing to mention expressly that the list of categories of indirect confusion set out in *L. A. Sugar v By Back Beat Inc*, Case O/375/10 in was not exhaustive. The difficulty with this submission is twofold. First, it is not suggested that the Hearing Officer found that the category was closed. Second, the Appellant failed to identify which extra class of indirect confusion the Hearing Officer had rejected as not being capable of amounting to indirect confusion.

49. For all these reasons I dismiss Ground 4.

Ground 5

50. The Appellant's final ground of appeal is summarized in its skeleton as follows:

> "In light of the above, even if each of the above errors is not, in and of itself, sufficient to overturn the Hearing Officer's finding of no likelihood of confusion, the cumulative effect of the above errors mean that the Hearing Officer came to a decision which no reasonable hearing officer could have come to on the correct application of the relevant legal principles and based on the evidence before her"

51. The Appellant could not identify authority in support of this assertion. Nor am I aware of

any. On the contrary, it appears to me to be inconsistent with the approach set out in *Axogen*. Each ground of appeal is binary: i.e. it is either made out or it is not. If it is not made out, then the ground discloses no error capable of justifying intervention by this tribunal (see *Axogen*). In my view that takes the ground out of play entirely, regardless of whether my decision on the ground was a finely balanced one or not. Whether or not some of the arguments advance in afailed ground (e.g. a particular example of a failure to consider certain evidence adequately) are relevant to detailed arguments under another ground is another matter, but that is not what was being suggested here by the Appellant.

52. I therefore dismiss this ground of appeal.

Submissions in relation to the Applicant's Previous Conduct

53. The Appellant preyed in aid that this is the sixth attempt to secure rights in the Marks. It also submitted (correctly) that on five previous occasions the Appellant had withdrawn its application after receiving a cease-and-desist letter. The Appellant submitted that this conduct indicated that the Marks were too close to the Appellant's rights. It was also submitted that the conduct made it possible to infer that the Applicant thought that its mark applied for was too close to the earlier marks.

54. In my view neither contention is relevant to the matters issue on this appeal as it does not engage any part of the Hearing Officer's decision. Furthermore, the very thin commentary made Respondent's previous conduct does not, in any event, shed any useful light on the question of registrability of the Marks.

Conclusion

55. For the reasons set out above I dismiss this appeal. The Respondent is entitled to a contribution to its costs which I assess in the sum of £1500. The Respondent is also entitled to the sum of £550 ordered in respect of its costs before the Hearing Officer (but stayed pending resolution of any appeal). Both sums shall be paid within 21 days of the date of this decision.

GEOFFREY PRITCHARD
THE APPOINTED PERSON
3 March 2025