O/0561/24

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3842488**
**IN THE NAME OF ODNAC LTD**
**TO REGISTER THE FOLLOWING TRADE MARK:**

# FIIO

**IN CLASS 21**

**AND**

**IN THE MATTER OF OPPOSITION THERETO**
**UNDER NO. 438980**
**BY BORMIOLI ROCCO S.P.A**

## Background and pleadings

1. On 25 October 2022, ODNAC LTD ("the applicant") applied to register the trade mark **FIIO** in the UK under number 3842488 ("the applicant's mark"). Registration is sought for the following goods:

> Class 21: Drinking bottles for sports; drinking bottles; sports bottles [empty]; sports bottles sold empty; bottles; stands for bottles; perfume bottles; water bottles; bottle pourers; biodegradable bottles; straws for drinking; brushes for feeding bottles; water bottles for bicycles; drinking troughs; drinking straws; drinking glasses; drinking cups; drinks containers; bottle coolers; plastic bottles; vacuum bottles; reusable bottles; glass bottles; bottle buckets; bottle openers; bottle gourds; biobased bottles; drip preventers for bottles; drinking flasks; decorative sand bottles; empty spray bottles; bottle cleaning brushes; siphon bottles for carbonated water; drinking vessels.

2. On 1 February 2023, Bormioli Rocco S.p.A ("the opponent") opposed the applicant's mark under sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 ("the Act").

3. For the purposes of its claim under section 5(2)(b), the opponent relies upon its UK trade mark number 914285142,[1] **FIDO** ("the opponent's mark"). The opponent's mark was filed on 23 June 2015 and became registered on 27 October 2015. It stands registered for the following goods, all of which are relied upon under this ground:

> Class 21: Household or kitchen utensils and containers (not of precious metal or coated therewith); glassware, including vases, glass containers for foodstuff, coupes, crucibles (laboratory), beverage glassware, bottles, jars, cups.

4. The opponent's mark qualifies as an earlier trade mark in accordance with section 6 of the Act. As it had completed its registration process more than five years before

[1] The opponent's mark is a comparable trade mark based upon pre-existing EU trade mark number 14285142. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the EU, a comparable UK trade mark was automatically created. The comparable UK mark is now recorded on the UK trade mark register, has the same legal status as if it had been applied for and registered under UK law, and retains its original filing date.

the filing date of the applicant's mark, it is subject to the use requirements specified within section 6A of the Act.

5. In its statement of grounds, the opponent contends that the competing marks are similar and that the parties' goods are identical or similar, resulting in a likelihood of confusion. The opponent states that it has used its mark for all its goods.

6. As for section 5(4)(a), the opponent claims that it has significant goodwill in relation to which it has used the sign **FIDO** ("the opponent's sign") throughout the UK since 1968. The goods for which the sign is said to have been used are *household or kitchen utensils and containers; glassware; vases; glass containers; coupes; crucibles, beverage glassware; bottles; jars; cups*. The opponent claims that use of the applicant's mark would be contrary to the law of passing off.

7. The applicant filed a counterstatement, denying the grounds of opposition. As these are the only comments received from the applicant, they are reproduced in full, and as written, below. The applicant also indicated that it would require the opponent to provide proof of use in respect of *bottles* and *glass containers.*

The opponent had following claims.
a)The opponent's mark is similar to our own mark.
b)The opponent's goods relied upon are similar to the goods that we applied for.
c)The opponent claims they have acquired significant goodwill and reputation in their mark. It is submitted that any use of the opposed mark by us in respect of the goods covered would constitute a misrepresentation to actual or potential consumers.
We totally disagree to the opponent to say our BRAND NAME is similar. There is a huge difference in FIIO and FIDO. Although we are selling Water bottles as they are selling but not in any world it justifies that I should not name my brand which may be readable as their brand name WHICH is NOT the case by the way. Having same goods doesn't justify this sort of opposition. I had my own MARKETING Startegy to let people recognize us with our own name. I request the OPPONENT to do the same. There is no way people can get confused between FIDO and FIIO.
I used this BRAND name becuase no one was selling under this brand name now if it happend to be someone with similar Brand Name, we should not be held responsible for this. We have already spent a lot of FUNDS in our own MANUFACTURING and MARKETING of our BRAND NAME. There is no going back for us,

8. The opponent is professionally represented by HGF Limited, whereas the applicant represents itself. Only the opponent filed evidence. No hearing was requested and only the opponent filed written submissions in lieu of attendance. This decision is taken following careful consideration of all the papers before me.

**Relevance of EU law**

9. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

**Evidence and submissions**

10. The opponent's evidence is given in the witness statement of Camilla Reggiani, dated 3 August 2023, and six accompanying exhibits (CR1-CR6). Ms Reggiani is Head of Legal Affairs at the opponent's parent company, a position she has held since 2012. She provides evidence of use of the opponent's mark/sign.

11. The opponent also filed written submissions dated 23 November 2023.

12. I have taken the evidence and submissions into account in reaching my decision and will refer to them below where necessary.

**Proof of use**

13. The relevant statutory provisions are as follows:

> "6A – (1) This section applies where
>
> > (a) an application for registration of a trade mark has been published,
> >
> > (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non-use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

14. As the opponent’s mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

“7. - (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day–

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day–

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A to the United Kingdom include the European Union.”

15. Moreover, section 100 of the Act states that:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

16. Pursuant to the above provisions, the relevant period for assessing whether there has been genuine use of the opponent's mark is the five-year period ending with the filing date of the application at issue, i.e. 26 October 2017 to 25 October 2022.

17. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

> "105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].
>
> 106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:
>
> (1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence

that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

18. Ms Reggiani gives evidence that the 'FIDO' mark has been in continuous use in the UK in relation to airtight glass jars since 1968. Such goods are clearly visible in product catalogues from 2016 to 2019.[2] Ms Reggiani says that these goods are distributed in the UK via a network of retailers, including Tesco and TJX UK. The opponent achieved the following UK sales in relation to products bearing the 'FIDO' mark during the relevant period:[3]

| Year | Sales (€) | Quantity |
|---|---|---|
| 2017 | 385,354 | 373,920 |
| 2018 | 639,104 | 615,624 |
| 2019 | 473,999 | 418,638 |
| 2020 | 168,497 | 110,820 |
| 2021 | 181,933 | 114,966 |

[2] Exhibit CR3
[3] Exhibit CR1

| 2022 | 160,727 | 81,456 |
|---|---|---|
| Total[4] | 2,009,614 | 1,726,858 |

19. These sales were to customers based in a variety of locations in the UK, including Watford, Grimsby, Nottingham, Sheffield, London, Leeds and Birmingham.

20. Airtight glass jars sold under the 'FIDO' mark were also presented for sale on amazon.co.uk.[5] The dates the goods were first available for purchase were March 2014, February and April 2015, January 2017 and June 2019. Reviews were posted by verified UK purchasers during the relevant period.

21. According to Ms Reggiani, the 'FIDO' mark has been subject to significant promotion in the UK, including via the opponent's social media pages. Printouts from the opponent's Instagram and Facebook pages show that they have 17,000 followers and 126,000 followers, respectively.[6] Ms Reggiani says that they show the position at the date of her statement. Although this is after the relevant period, I note that there is also evidence of multiple posts from within the relevant period that featured 'FIDO' branded products.

22. Finally, a selection of letters from the opponent's UK customers has been provided.[7] The customers confirm that they have purchased 'FIDO' branded products throughout their trade relationships with the opponent. Whilst this is noted, the letters are hearsay and I attribute little weight to them. Clearly, they were written for the purposes of these proceedings, and it would have been reasonable and practicable for the signatories to have produced witness statements in proper evidential format.

23. The evidence is not without its limitations. For example, no details of the size of the relevant market have been provided and there is no evidence to that effect. Moreover, the opponent has not given any indication as to any amounts spent on

[4] Although sales figures for 2023 have been provided, these are from after the relevant period. I also bear in mind that some of the 2017 and 2022 figures are likely to represent sales from before and after the relevant period.
[5] Exhibit CR2
[6] Exhibits CR5 and CR6
[7] Exhibit CR3

advertising goods bearing the ‘FIDO’ mark in the UK. Nevertheless, an assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole.[8] The unchallenged evidence shows that the opponent generated around €2million in turnover from the sale of around 1.7million glass jars in the UK during the relevant period. Even though it is somewhat difficult to contextualise these figures, they are not insignificant. The opponent had numerous customers in this territory, and these were relatively widespread geographically. Moreover, its customers included some large undertakings who would, themselves, have outlets across the UK. Further, ‘FIDO’ branded glass jars were available on amazon.co.uk during the relevant period, and there are reviews which suggest that products have been sold through this channel. Finally, although the social media follower figures reflect the position after the relevant period and there is nothing which establishes where those followers are based, the Instagram and Facebook posts demonstrate that there was an attempt to promote ‘FIDO’ branded goods through these platforms during the relevant period. Taking all of this into account, I am satisfied that the opponent has demonstrated genuine use of its mark.

24. I note that the applicant only put the opponent to proof of use in respect of *glass containers* and *bottles*.[9] In this regard, I remind myself that fair protection is not to be achieved by identifying and defining particular examples of goods for which there has been genuine use but, rather, the particular categories of goods they should realistically be taken to exemplify.[10] I must consider how the average consumer would fairly describe the goods shown in evidence; the task is not to describe the use made by the opponent’s mark in the narrowest possible terms, unless that is what the average consumer would do.[11] The evidence shows that the opponent has used its mark in respect of airtight glass jars, in a variety of sizes and for a variety of uses. I consider that the average consumer would fairly describe these goods as *glass jars*. These goods may be relied upon. However, there is no evidence which establishes that the opponent’s mark has been used in respect of any *bottles* or any other kinds

[8] *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T-415/09
[9] Which form part of the opponent’s *glassware, including vases, glass containers for foodstuff, coupes, crucibles (laboratory), beverage glassware, bottles, jars, cups*.
[10] *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited,* BL O/345/10
[11] *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch)

of glassware. Therefore, these goods may not be relied upon for the purposes of the opposition.

25. In light of the above, I find that the opponent may rely upon the following specification for the purposes of its claim under section 5(2)(b):

> Class 21: Household or kitchen utensils and containers (not of precious metal or coated therewith); glass jars.

**<u>Section 5(2)(b)</u>**

**Legislation and case law**

26. Sections 5(2)(b) and 5A of the Act read as follows:

> "5(2) A trade mark shall not be registered if because -
>
> > […]
> >
> > (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."
>
> "5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

27. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97*, Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case

C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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

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

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

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

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

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

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

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

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

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

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

**Comparison of goods**

28. The goods to be compared are as follows:

| The opponent's goods | The applicant's goods |
|---|---|
| Class 21: Household or kitchen utensils and containers (not of precious metal or coated therewith); glass jars. | Class 21: Drinking bottles for sports; drinking bottles; sports bottles [empty]; sports bottles sold empty; bottles; stands for bottles; perfume bottles; water bottles; bottle pourers; biodegradable bottles; straws for drinking; brushes for feeding bottles; water bottles for bicycles; drinking troughs; drinking straws; drinking glasses; drinking cups; drinks containers; bottle coolers; plastic bottles; vacuum bottles; reusable bottles; glass bottles; bottle buckets; bottle openers; bottle gourds; biobased bottles; |

| | |
|---|---|
| | drip preventers for bottles; drinking flasks; decorative sand bottles; empty spray bottles; bottle cleaning brushes; siphon bottles for carbonated water; drinking vessels. |

29. The law requires that goods be considered identical where one party's description of its goods encompasses the specific goods covered by the other party's description (and vice versa).[12] The following applied-for goods fall within the scope of the opponent's *household or kitchen utensils and containers (not of precious metal or coated therewith)* and are, therefore, to be regarded as identical:

> *Drinking bottles; bottles; stands for bottles; water bottles; bottle pourers; biodegradable bottles; straws for drinking; brushes for feeding bottles; drinking straws; drinking glasses; drinking cups; drinks containers; bottle coolers; plastic bottles; vacuum bottles; reusable bottles; glass bottles; bottle buckets; bottle openers; bottle gourds; biobased bottles; drip preventers for bottles; drinking flasks; decorative sand bottles; empty spray bottles; bottle cleaning brushes; siphon bottles for carbonated water; drinking vessels.*

30. Whilst they are all clearly types of containers, I do not consider the applicant's remaining goods, namely *drinking bottles for sports; sports bottles [empty]; sports bottles sold empty; perfume bottles; water bottles for bicycles; drinking troughs*, to be identical to the opponent's goods. This is because the ordinary and natural meaning of the opponent's goods does not cover these types of containers, i.e. sports bottles, perfume bottles and drinking troughs are not for household or kitchen uses. Moreover, sports bottles, perfume bottles and drinking toughs are not typically regarded as *glass jars*.

31. When making a comparison between goods which are not identical, all relevant factors relating to the goods should be taken into account; those factors include their

[12] *Gérard Meric v OHIM*, Case T-133/05

nature, intended purpose, method of use, trade channels, users, and whether they are in competition with each other or are complementary.[13]

32. The applicant's *drinking bottles for sports; sports bottles [empty]; sports bottles sold empty; water bottles for bicycles* and the opponent's *household or kitchen utensils and containers (not of precious metal or coated therewith)* significantly overlap in nature, method of use and intended purpose. The respective goods are all containers which may be in the form of bottles; they are all used for storing liquids for consumption. The respective goods are likely to reach the market through the same retail outlets and may be found in the same sections of those outlets. They may also be produced by the same undertakings. There is an element of competition between them insofar as an individual partaking in a sports activity may take refreshments in a sports bottle or a regular water bottle. Users also overlap. The respective goods are not important or indispensable to the use of one another and, as such, are not complementary.[14] Taking all of this into account, I find that there is a high degree of similarity between the respective goods.

33. The applicant's *perfume bottles* and the opponent's *household or kitchen utensils and containers (not of precious metal or coated therewith)* overlap in nature and intended purpose insofar as they are containers for storing liquids. They may all be in the same form and made from the same materials. As liquids can be poured into them, there is also an overlap in method of use. There is no evidence that perfume bottles and household/kitchen containers reach the market through the same trade channels or are produced by the same undertakings. It is possible, but in the absence of such evidence I do not consider it to be typical. Even if they are both available from large retail establishments, for instance, they are likely to be found in different sections of those outlets. Users may overlap. Whilst a consumer could store perfume in a household container instead of a purpose-built bottle, or store other liquids in a perfume bottle, it is unlikely; I do not consider this to give rise to any material competition between the respective goods. They are not complementary; they are

[13] See *Canon*, Case C-39/97, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281.
[14] *Boston Scientific Ltd v OHIM*, Case T-325/06

neither important nor indispensable to the use of one another. In light of all this, I find that there is a medium degree of similarity between the respective goods.

34. *Drinking troughs* and *household or kitchen utensils and containers (not of precious metal or coated therewith)* generally overlap in nature, intended purpose and method of use insofar as they are containers in which liquids are placed; they may be similar in shape and made from the same materials. However, in the absence of any evidence of *drinking troughs* for human use, it is my view that they refer to containers for providing refreshment to animals. Since the opponent's goods are for household/kitchen purposes, the overlaps described above are at a general level. To my mind, the goods are likely to reach the market through different trade channels. The opponent's goods are typically found in home stores or general retail outlets, whereas, given they are for animal use, the applicant's goods are likely to be sold through pet stores or agricultural suppliers. Users will also overlap; although drinking troughs are for animal use, they will be purchased by their owners, who may also purchase the opponent's goods. There is no competition between the respective goods; a consumer is unlikely to use a drinking trough for household storage. As they are not important or indispensable to the use of one another, the respective goods are not complementary. Balancing all the above, and as the applicant did not deny that the parties' goods are similar, I find that the goods under consideration are similar to a low degree.

**Average consumer and nature of purchasing act**

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

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The […] relevant person is a legal

> construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

36. The average consumer of the goods at issue is a member of the general public, including those who own animals (in respect of *drinking troughs*). The cost of the goods may vary, but, overall, they are relatively inexpensive. The goods are likely to be purchased relatively infrequently. Selection of the goods will not involve an overly considered thought process. However, the average consumer will consider factors such as use, design, materials used, cost and capacity. As such, it is my view that a medium level of attention will be exhibited during the purchasing process. The goods are typically purchased from retailers and their online equivalents, after viewing information on displays or webpages. Therefore, the purchasing process will be predominantly visual in nature. Nevertheless, I do not exclude aural considerations entirely as it is possible that the average consumer will receive word-of-mouth recommendations or discuss the goods with a sales assistant before making a purchase.

**Distinctive character of the earlier mark**

37. In *Lloyd Schuhfabrik Meyer*, the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *WindsurfingChiemsee* v *Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not

contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *WindsurfingChiemsee*, paragraph 51)."

38. Registered trade marks possess varying degrees of inherent distinctive character. These range from the very low, such as those which are suggestive or allusive of the goods, to those with high inherent distinctive character, such as invented words. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion. The distinctive character of a mark may be enhanced as a result of it having been used in the market.

39. The opponent's mark is in word-only format and consists of the word 'FIDO' with no other elements. The distinctive character of the mark lies in the word itself. The word 'FIDO' is an invented word with no discernible meaning in the English language. It has no descriptive or allusive qualities. I find that the opponent's mark possesses a high level of inherent distinctive character.

40. Evidence has been filed by the opponent and I am now required to determine whether it has demonstrated that its mark had an enhanced distinctive character at the relevant date of 25 October 2022. I have already assessed the evidence above and found that it demonstrates genuine use of the opponent's mark in the five years preceding the relevant date. However, the burden for establishing enhanced distinctive character is a much heavier one, in that it requires a level of knowledge of the mark amongst average consumers leading to the mark having a greater capacity to identify the goods as coming from a particular undertaking, not simply that there has been an attempt to create or maintain a market for goods under the mark. The narrative evidence suggests that use has been relatively longstanding, albeit that this is only supported by the documentary evidence from March 2014 at the earliest. Moreover,

the evidence suggests that the opponent has customers across the UK. However, a turnover in the region of €2million and the sale of around 1.7million products over a six-year period does not strike me as indicative of intensive use of the mark. Further, no information about the size of the relevant market or the share of that market held by the opponent's mark has been provided. Therefore, it is difficult to ascertain how significant these figures are. There is also a distinct lack of information about any amounts invested by the opponent in promoting its mark in the UK. The only evidence pertaining to promotion of the mark is from social media. This evidence does not show how many followers the opponent's Instagram and Facebook pages had at the relevant date. Neither is there any information about where the followers are based. Whilst I accept that goods bearing the opponent's mark appeared in posts on these channels, they had a relatively low level of engagement. On the balance of the evidence, including that preceding 26 October 2017,[15] I conclude that the distinctive character of the opponent's mark had not been enhanced above its inherent characteristics at the relevant date.

**Comparison of trade marks**

41. It is clear from *Sabel* that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo* that:

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

[15] An assessment of enhanced distinctive character is not restricted to any five-year period.

42. Therefore, it would be wrong to dissect the trade marks artificially, though it is necessary to take into account the distinctive and dominant components of the marks; due weight must be given to any other features which are not negligible and hence contribute to the overall impressions created by the marks.

43. The marks to be compared are as follows:

| The opponent's mark | The applicant's mark |
| --- | --- |
| FIDO | FIIO |

44. I note that the opponent's written submissions were accompanied by over 100 pages of previous decisions about various four-letter marks to support of its argument that the applicant's mark is similar to its mark. Whilst I acknowledge the contents of these decisions, it suffices to say that they are not relevant to the present proceedings. It is well established that prior decisions of this Tribunal are not binding. Rather than placing reliance on levels of similarity found to exist between other marks, I will conduct a full comparison between the marks at issue in these proceedings, having regard to the relevant case law principles.

45. The competing marks are in word-only format and comprise the words 'FIDO' and 'FIIO', respectively. There are no other elements which contribute to their overall impressions, which lie in the words themselves.

46. Visually, the marks are similar in that they are both four-letter words which share three letters in the same order. The beginnings of the marks are identical, a position which is generally considered to have more impact.[16] The competing marks are visually different insofar as the respective third letters are different. Overall, I find that there is between a medium and high degree of visual similarity between them.

[16] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

47. As the competing marks are both invented words, they do not have standard pronunciations. In my view, the opponent’s mark is likely to be articulated as “FI-DOH”. The likely pronunciation of the applicant’s mark is less obvious. It is possible that each letter would be articulated individually. However, to my mind, at least a significant proportion of consumers is likely to pronounce the applicant’s mark as “FY-OH”. For these consumers, the competing marks share the “F” and “OH” sounds but differ because of the “D” sound in the opponent’s mark. There is also a difference, albeit subtle, between the “I” and “Y” sounds. All in all, I find that there is between a medium and high degree of aural similarity between the competing marks.

48. The competing marks are both invented words with no obvious meanings. The conceptual position is, therefore, neutral.

**Likelihood of confusion**

49. 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. One such factor is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods, and vice versa. As mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier trade mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be mindful that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

50. 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. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis QC, sitting as the Appointed Person, explained that:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: "The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

> (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ("26 RED TESCO" would no doubt be such a case).
>
> (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as "LITE", "EXPRESS", "WORLDWIDE", "MINI" etc.).
>
> (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ("FAT FACE" to "BRAT FACE" for example)."

51. These three categories are not exhaustive. Rather, they were intended to be illustrative of the general approach.[17] I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark.[18] It has also been emphasised that, where there is no direct confusion, there must be a proper basis for finding indirect confusion.[19]

52. Earlier in this decision, I concluded that:

- The parties' goods are either identical or similar to at least a low degree;

- The average consumer is a member of the general public, who will demonstrate a medium level of attention;

- The purchasing process is predominantly visual in nature, though aural considerations have not been excluded;

- The opponent's mark possesses a high level of inherent distinctive character;

- The words 'FIDO' and 'FIIO' dominate the respective overall impressions;

- The competing marks are visually and aurally similar to between a medium and high degree, whilst the conceptual position is neutral.

53. I acknowledge that there is a difference between the competing marks, namely the third letter being an 'I' instead of a 'D'. I also accept that the marks are relatively short, each comprising four letters, and that differences may have greater impact in shorter marks. However, there is no special test for short marks.[20] The competing marks share three out of four letters in the same order and their respective beginnings are identical, a position which generally has more impact. The competing marks also end with the

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[17] As was confirmed by the Court of Appeal in *Liverpool Gin Distillery and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, paragraph 12.
[18] *Duebros Limited v Heirler Cenovis GmbH,* BL O/547/17
[19] See the Court of Appeal's comments in *Liverpool Gin Distillery*, paragraph 13.
[20] *Robert Bosch GmbH v Bosco Brands UK Limited*, BL O/301/20, paragraph 43

same letter, the difference coming in the middle of the marks. Moreover, the opponent's mark is highly distinctive. I also bear in mind that neither of the competing marks has a concept which could assist the average consumer in differentiating between them. Taking all the above factors into account, as well as the principles of imperfect recollection and interdependency, it is my view that the difference created by the letter 'I' may not be sufficient to distinguish the parties' goods; the average consumer, paying no more than a medium level of attention, may not recall the respective marks with sufficient accuracy to differentiate between them. Whilst I accept the possibility that not all consumers will be confused, that is not necessary: the question is whether there is a likelihood of confusion amongst a significant proportion of the public displaying the characteristics attributed to an average consumer.[21] I certainly consider that to be the case here. I find that there is a likelihood of direct confusion.

54. In my view, this finding only extends to the goods which I have found to be similar to a medium degree or higher. I have found that there is only a low degree of similarity between *drinking troughs* and the opponent's goods. Even though the opponent's mark is highly distinctive, it is my view that, taking account of the interdependency principle, the low level of similarity between these goods is sufficient to counteract the overall levels of similarity between the competing marks and enable the average consumer to differentiate between the parties' goods. As such, I do not consider there to be a likelihood of direct confusion. Moreover, I consider it unlikely that the average consumer would assume that there is an economic connection between the users of the marks in respect of these goods. The three shared letters are not so strikingly distinctive that the average consumer would assume that only the opponent would be using them in a trade mark. Whilst I have found that the opponent's mark is highly distinctive, consumers would not dissect it and separate three letters from the mark as a whole. Further, the differences between the competing marks are not simple additions/deletions of non-distinctive elements. Neither is the difference between the marks consistent with a logical brand extension; I can see no reason why an undertaking would remove a letter from an invented word and replace it with a different

[21] See *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41 and *Soulcycle Inc v Matalan Ltd* [2017] EWHC 496 (Ch).

letter, resulting in a different invented word. Whilst acknowledging that the categories above are not exhaustive, I can see no other basis for concluding that consumers would assume an economic connection between the parties in relation to these goods. Accordingly, I find that there is no likelihood of indirect confusion.

**Conclusion**

55. The opponent's claim under section 5(2)(b) is partially successful.

**Section 5(4)(a)**

**Legislation and case law**

56. Section 5(4)(a) states:

> "(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-
>
> > (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,
> >
> > (aa) […]
> >
> > (b) […]
>
> A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark."

57. Subsection (4A) of section 5 states:

> "(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of

application for registration of the trade mark or date of the priority claimed for that application."

58. In *Discount Outlet v Feel Good UK* [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

> "55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the Jif Lemon case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.
>
> 56. In relation to deception, the court must assess whether "a substantial number" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

59. Halsbury's Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

> "Establishing a likelihood of deception generally requires the presence of two factual elements:
>
> > (1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and
> >
> > (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

(a) the nature and extent of the reputation relied upon,

(b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;

(c) the similarity of the mark, name etc used by the defendant to that of the claimant;

(d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action".

60. There being no evidence that the applicant's mark was used before its filing date or the earliest claimed use of the opponent's sign, the relevant date for assessing this ground of opposition is the filing date of the applicant's mark, namely 25 October 2022.

**Goodwill**

61. The first hurdle for the opponent to show that it had the necessary goodwill resulting from the trading activity relied on under its sign at the relevant date. Goodwill was described in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL) in the following terms:

> "What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

62. I have already found that the evidence filed by the opponent is sufficient to support a finding that a registration identical to the opponent's sign was put to genuine use in the UK in the five-year period preceding the relevant date. For the reasons explained at paragraphs 23 and 24, as well as taking into account the additional evidence from before 26 October 2017,[22] I am satisfied that the opponent had accrued a modest, but protectable, goodwill in relation to its business in *glass jars* at the relevant date. I am also satisfied that the opponent's sign is distinctive of that goodwill.

**Misrepresentation**

63. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt LJ stated that:

> "There is no dispute as to what the correct legal principle is. As stated by *Lord Oliver of Aylmerton in Reckitt & Colman Products Ltd. v. Borden Inc. [1990] R.P.C. 341 at page 407* the question on the issue of deception or confusion is
>
> > "is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the

[22] As an assessment of goodwill is not restricted to any five-year period.

> public will be misled into purchasing the defendants' [product] in the belief that it is the respondents' [product]"
>
> The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd*. (1941) 58 R.P.C. 147 at page 175; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101."

And later in the same judgment:

> "[…] for my part, I think that references, in this context, to "more than *de minimis*" and "above a trivial level" are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993). It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion."

64. I have already found that there is a likelihood of confusion between the applicant's mark and a registered mark identical to the opponent's sign. However, I acknowledge that this was not based upon identity/similarity between *glass jars* and the applicant's goods. That being said, I am of the view that the parties are in the same field of business, i.e. household containers/kitchenware, or they at least overlap. To my mind, this overlap and the visual and aural similarities between the applicant's mark and the opponent's sign are such that there is likely to be a substantial number of consumers who will, when confronted with the applicant's mark, be deceived into believing that that the applicant's goods are those of the opponent. I consider this to be the case, even though the opponent has no more than a modest level of goodwill.

65. The exception to this finding is the applicant's *drinking troughs*, which are in an entirely different field of activity to *glass jars*. Although it is not essential under the law of passing off for parties to be engaged in the same field of activity, the absence of a

common field of activity is an important and highly relevant factor.[23] The burden for proving misrepresentation (and resulting damage) in circumstances where there is no common field of activity is a heavy one.[24] No evidence regarding misrepresentation in respect of these goods has been filed by the opponent. In the absence of any persuasive evidence, it is my view that the distance between *drinking troughs* and *glass jars*, combined with the difference between the applicant's mark and the opponent's sign, will be sufficient to avoid consumers purchasing the applicant's goods in the mistaken belief that they are the goods of the opponent.

**Damage**

66. The opponent's primary case on damage appears to be that, due to misrepresentation having occurred, there would be a loss of custom to the opponent; consumers are likely to purchase the applicant's goods under the misconception that they are goods of the opponent, leading to monetary damage. I agree that, given the visual and aural similarities between the marks and the overlapping goods, consumers may select the goods of the applicant over those of the opponent, thereby directing sales away from the opponent. In my view, such an outcome is a likely consequence of the misrepresentation described above. Therefore, I find that damage through loss of sales is foreseeable due to consumer confusion. I should add that there can be no damage in respect of use of the applicant's mark for *drinking troughs* because misrepresentation would not occur.

**Conclusion**

67. The opponent's claim under section 5(4)(a) is partially successful.

[23] *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA)
[24] See, for example, *Stringfellow v McCain Foods (G.B.) Ltd.* [1984] R.P.C. 501

## Overall outcome

68. The opposition under sections 5(2)(b) and 5(4)(a) has been partially successful. Subject to any appeal against my decision, the applicant's mark will be refused in respect of the following goods:

> Class 21: Drinking bottles for sports; drinking bottles; sports bottles [empty]; sports bottles sold empty; bottles; stands for bottles; perfume bottles; water bottles; bottle pourers; biodegradable bottles; straws for drinking; brushes for feeding bottles; water bottles for bicycles; drinking straws; drinking glasses; drinking cups; drinks containers; bottle coolers; plastic bottles; vacuum bottles; reusable bottles; glass bottles; bottle buckets; bottle openers; bottle gourds; biobased bottles; drip preventers for bottles; drinking flasks; decorative sand bottles; empty spray bottles; bottle cleaning brushes; siphon bottles for carbonated water; drinking vessels.

69. The applicant's mark may proceed to registration in the UK for the following goods, against which the opposition has failed:

> Class 21: Drinking troughs.

## Costs

70. Both parties have succeeded in part. However, the opponent has clearly enjoyed the greater measure of success. As such, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023, with an appropriate reduction to reflect the applicant's degree of success. In the circumstances, I award the opponent costs on the following basis:

| | |
|---|---|
| Preparing a statement and considering the applicant's counterstatement | £350 |
| Preparing evidence | £650 |

| | |
|---|---|
| Preparing written submissions | £400 |
| Subtotal | £1,400 |
| *Reduction of 5%* | *-£70* |
| Official fees[25] | £200 |
| **Total** | **£1,530** |

71. I order ODNAC LTD to pay Bormioli Rocco S.p.A the sum of **£1,530**. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of the proceedings if any appeal against this decision is unsuccessful.

**Dated this 18th day of June 2024**

**James Hopkins**
**For the Registrar**

[25] The official fees connected with the filing of the Form TM7 are not subject to a reduction.