

**BL O/0738/25**

TRADE MARKS ACT 1994

IN THE MATTER OF  
TRADE MARK APPLICATION NO.  
UK00003771879

**SHORTIE**

IN CLASSES 9, 36 AND 42  
IN THE NAME OF  
SHORTS INTERNATIONAL LIMITED

AND

IN THE MATTER OF OPPOSITION  
NO. 434970 BY  
GOOGLE LLC

IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON  
BY  
SHORTS INTERNATIONAL LIMITED  
AGAINST DECISION NO.O/0496/24  
DATED 30 MAY 2024

MR. DANIEL SELMI of Counsel (instructed by Tennant IP Limited )appeared for the Appellant/Applicant  
MS. VICTORIA JONES of Counsel (instructed by Fieldfisher LLP) appeared for the Respondent/Oponent

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DECISION

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**Introduction & Background**

1. This is an appeal by Shorts International Limited (“the Applicant”) against decision BL O/0496/24 of Mrs E Fisher, sitting as a Hearing Officer on behalf of the Registrar of Trade Marks, dated 30 May 2024.
2. On 30 March 2022,the Applicant applied to register the trade mark

SHORTIE

under No. 3771879 in respect of:

*Class 9: Downloadable electronic data files featuring artwork, text, images, audio, video and non-fungible tokens; Downloadable computer software for managing digital and virtual blockchain-based tokens; Downloadable computer application software for blockchain-based platforms, namely, software for digital exchanges for virtual items; Downloadable computer software for creating, accessing, reading, and tracking information in the field of non-fungible tokens on a block chain.*

*Class 36: Virtual currency services; Digital tokens in the nature of issuance of tokens of value; cryptocurrency trading and exchange services, namely, providing a digital currency or digital token; blockchain services, namely, providing a digital currency or digital token for use by members of an online community via a global computer network; issuance of digital tokens of value; financial exchange, namely, digital token exchange services; cryptocurrency financial trading services; cryptocurrency and digital token transfer services; currency trading, namely, on-line real-time digital token trading; issuance of non-fungible tokens of value used with blockchain technology; issuance of non-fungible tokens of value used with blockchain technology to represent a collectible item; issuance of non-fungible tokens of value used with blockchain technology for data storage and content access limitation.*

*Class 42: Software as a services (SAAS) featuring software which allows members to receive, access, spend, trade and manage cryptocurrency, digital currency, digital tokens, non-fungible tokens, digital collectibles and digital assets; providing a website featuring technology which allows members to receive, spend, trade and manage cryptocurrency, digital currency, digital tokens and digital assets.*

(“the Application”).

3. The Opponent filed a notice of opposition on 14 July 2022. The Opponent objected under Sections 3 (1) (b), (c) and (d) of the Trade Marks Act 1994 (“the Act”) claiming that “SHORTIE” was devoid of distinctive character, was descriptive and had become customary in trade in relation to all the goods and services of the application on the basis that “SHORTIE” is diminutive of the word “SHORT” or “SHORTS”, which both refer to short films.
4. The Applicant defended the Opposition, denying the Opponent’s claims in their entirety.

## **The Hearing Officer's Decision**

5. In summary the Hearing Officer found that:

- a) Under S. 3 (1) (c) of the Act, SHORTIE was descriptive for “*Downloadable electronic data files featuring audio and video*” in class 9 (and in particular that SHORTIE could describe the length of such goods);
- b) Being objectionable under S. 3 (1) (c) for descriptiveness, the Application was also objectionable under section 3(1)(b) because it was non-distinctive for the same goods.
- c) The objection under S 3 (1) (d) failed.
- d) The Application was refused for “*downloadable electronic data files featuring audio and video*” but permitted to proceed for the remaining goods and services.

6. Although the Opposition had been partially successful, overall the Applicant had enjoyed greater success. The Hearing Officer therefore awarded the Applicant costs of £1045.

## **The Appeal & Respondent's Notice**

7. The Applicant filed an appeal under S.76 of the Act on 27 June 2024. The Grounds of Appeal were, in summary:

Ground 1: the Hearing Officer erred in equating height (which refers to how tall an object is, and is consistent with those usages), with length (which refers to how long an object is):

Ground 2: The Hearing Officer applied the wrong legal test to the issue of descriptiveness under S. 3 (1) (c) of the Act.

Ground 3: the Hearing Officer held that 'short films' would be encompassed by the contested goods and that the evidence of use of SHORTIE in relation to short films was relevant to the assessment of descriptiveness. There was little or no evidence of SHORTIE being used in relation to the length of short films and so the Hearing Officer erred in relying on this to support a finding that descriptive use was “reasonably foreseeable”

Ground 4: The aforesaid errors led to an incorrect finding that SHORTIE was descriptive of “*downloadable electronic data files featuring audio and video*” and, consequently, to an incorrect finding of non-distinctiveness under S. 3 (1) (b).

8. The Opponent filed a Respondent's Notice on 23 July 2024. For the most part, it sought the maintenance of the Hearing Officer's Decision for the reasons she gave. In addition, it asked that even if there was any

doubt as to the Decision, it should nevertheless be upheld in line with the established authorities constraining appellate intervention.

### **Standard of Appeal**

9. The standard of appeal is well-known. It is limited to a review, not a re-hearing, and I should only interfere with the Hearing Officer's findings if the decision was wrong. The judgment of Joanna Smith J. in *Axogen Corporation v Aviv Scientific Limited* [2022] EWHC 95 (Ch) commencing at [24] is an appropriate summation of the detail of the approach to be followed:

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;
- 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;
- 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";
- iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question. There is a "spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision", 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.
- 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;
- vii) Another variable to be taken into account will be "the standing and experience of the fact-finding judge or tribunal". 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.
- 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". 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. 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.
- 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.

25. In the context of appeals relating to the likelihood of confusion, an evaluative issue described by Mr Iain Purvis QC sitting as an Appointed Person in ROCHESTER Trade Mark BL 0/049/17 at [31] as "indeterminate and open to debate", Mr Purvis QC went on to say this at [33 ]:

" ... the reluctance of the Appointed Person to interfere with a decision of a Hearing Officer on likelihood of confusion is quite high for at least the following reasons:

(i) The decision involves the consideration of a large number of factors, whose relative weight is not laid down by law but is a matter of judgment for the tribunal on the particular facts of each case (ii) The legal test 'likely to cause confusion amongst the average consumer' is inherently imprecise, not least because the average consumer is not a real person

(iii) The Hearing Officer is an experienced and well-trained tribunal, who deals with far more cases on a day-to-day basis than the Appellate tribunal

(iv) The legal test involves a prediction as to how the public might react to the presence of two trade marks in ordinary use in trade. Any wise person who has practised in this field will have come to recognize that it is often very difficult to make such a prediction with confidence. Jacob J (as he then was) made this point in the passing off case *Neutrogena v Golden* [1996] RPC 473 at 482:

'It was certainly my experience in practice that my own view as to the likelihood of deception was not always reliable. As I grew more experienced I said more and more "it depends on the evidence. "' Any sensible Appellate tribunal will therefore apply a healthy degree of self-doubt to its own opinion on the result of the legal test in any particular case.

34. I shall therefore approach this appeal on the basis that in the absence of a distinct and material error of principle, I ought not to interfere with the decision of the Hearing Officer unless I consider that his view on the issue of likelihood of confusion was clearly wrong in the sense that it was outside the range of views which could have been reasonably taken on the established facts''''.

10. This has been reinforced by the recent judgment of the Supreme Court in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8 at [49]-[50], per :

"49 . ... 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.

50. 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."

11. In *Shenzhen Ske Technology Co Ltd V Bargain Busting Limited* [2025] EWHC 1629 (Ch) Michael Tappin KC noted at [25]:

"In its judgment in [Iconix v Dream Pairs \[2025\] UKSC 25](#) (handed down on the morning of the hearing before me) the Supreme Court (at [95]) reiterated what it had said in *Lifestyle Equities v Amazon* [\[2024\] UKSC 8](#) at [49]-[50], namely that on a challenge to an evaluative decision of a first instance judge an appeal court should "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"; it emphasised that it is not enough to show that the appellate court might have arrived at a different conclusion."

12.I also note the comments of Mr Geoffrey Hobbs KC at [8] of BL O/0639/24 *LIFE'S*, that a

"...Decision is not liable to be set aside by this Tribunal on appeal unless it can be regarded as rationally insupportable, whether by reason of an identifiable flaw in the treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account a material factor, which undermines the cogency of the conclusion, or for being contrary to principle or plainly wrong: *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8 at paras [46] to [50] per Lord Briggs and Lord Kitchin SCJJ (with whom Lord Hodge, Lord Hamblen and Lord Burrows SCJJ agreed); *Volpi v Volpi* [2022] EWCA Civ. 464 at paras [2], [3] per Lewison LJ (with whom Males and Snowden L.JJ agreed).

13.I bear these principles in mind, in particular the constraints on an appellate tribunal in reviewing a decision-taker's first instance multifactorial evaluation.

### **Merits of the Appeal**

#### **Ground 1 – SHORTIE as a descriptor for length**

14.By his skeleton argument Mr Selmi confirmed Ground 1 was no longer pursued, and that the Appellant accepted the Hearing Officer's factual finding that SHORTIE would be understood as meaning something short (in height and/or length).

#### **Ground 2 - The Hearing Officer Applied the Wrong Legal Test under S. 3 (1) (c)**

15.The Hearing Officer's approach to the S. 3 (1) (c) issue commenced at paragraph [12] where she directed herself by reference to the summary of the applicable principles set out by Arnold J. (as he then was) in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch). This included (at [91]):

"50. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56)"

16. It was not suggested the Hearing Officer erred in this respect although Mr Selmi submitted that mere recitation did not validate the test actually applied.

17. The Hearing Officer went on to assess the S. 3 (1) (c) case as follows:

13. The evidence that includes a definition of or reference to the word “SHORTIE” can be summarised very briefly:

- i. JA4 – an extract from ‘dictionary.com’ which defines “SHORTIE” as an informal noun meaning “a person or thing that is extremely short”.
- ii. JA9 – an extract from ‘thesaurus.plus’ which states that “‘short film’ and ‘shortie’ are semantically related”.
- iii. JA19 – an extract from ‘londonsurffestival.com’ which refers to “THE SHORTIES”: the name given to a short film competition for surf filmmakers.
- iv. JA20 – an extract from ‘surfgirlmag.com’ which refers to the same competition as that in JA19.

14. JA4 accords with my own understanding of the definition of “SHORTIE”. Whilst I do not consider dictionary.com to be a trusted authority given that its content is based primarily on an American dictionary, Collins dictionary also defines “SHORTIE” as an informal noun in British English meaning “a person or thing that is extremely short”. It is my view that this definition will be understood by the majority of people in the UK.

15. I am satisfied that the word “SHORTIE” may be used in relation to things that are short. I therefore move on to considering whether “SHORTIE” is objectionable for the applicant’s goods and services on the basis that it is descriptive of a characteristic of them.

16. Short films, the term repeatedly referred to by the opponent in its submissions, is not a term that appears in the applicant’s specification. However, there is one term that gives me pause for thought: *downloadable electronic data files featuring artwork, text, images, audio, video and non-fungible tokens*. The usual way of referring to the measurement of data files is by their size. However, I consider that length would be a characteristic of some of these goods – specifically those featuring audio and video – and that, therefore, “short” would be an appropriate way in which to describe the length of such goods. Since “SHORTIE” is known as meaning something short, it follows that it is not beyond the realms of possibility that “SHORTIE” could be seen as describing the length of *downloadable electronic data files featuring audio and video*; in my view, the same does not apply to the remainder of the same term. Since ‘short films’ would be encompassed by the aforementioned term, evidence of use of “SHORTIE” in relation to short films is relevant for my assessment.

17. The applicant’s answer to the opponent’s section 3(1)(c) case is, essentially, that (i) “SHORTIE” is not exclusively descriptive of any of the goods and services applied for, (ii) the opponent has not filed appropriate evidence of use of “SHORTIE” to substantiate such a claim, and (iii) “SHORTIE” is not and would not be used by the relevant public to describe any of the goods and services applied for. Further, it argues that the definitions of “SHORTIE” do not prove that the relevant public uses this word commonly.

18. I accept that the only evidence of “SHORTIE” being used in relation to short films are two exhibits relating to a short film competition for surf filmmakers named “THE SHORTIES”. Such use might constitute use as a brand name and I bear in mind that use by others as a brand name is not enough to engage section 3(1)(c).6 However, “THE SHORTIES” could also be a reference to ‘shortie wetsuits’ given the competition is surf-

related, or it could be a suggestion that the competition relates to short films. In any case, the fact that it is being used in relation to short films may suggest it is reasonably foreseeable use of the word in relation to such goods.

19. Regardless, it does not matter whether “SHORTIE” is currently used to describe short films. Although the matter must be judged at the relevant date, the enquiry under section 3(1)(c) is forward looking. In accordance with the case law cited at paragraph 12, above, it is not necessary to show that a description was already in use at the relevant date, but that the sign could be used and recognised as a description in the future. I am satisfied that the latter has been shown.

20. As to the point about “SHORTIE” not being commonly used, I find it goes nowhere. I have already found that the majority of the general public will understand that “SHORTIE” means something that is short: whether it was in common use at the relevant date is not a determinative factor, at least not for section 3(1)(c).

21. I uphold the opponent’s opposition under section 3(1)(c) in relation to the following goods:

*Class 9 Downloadable electronic data files featuring audio and video.”*

18. Mr Selmi’s objection focussed on paragraph [16] and the Hearing Officer’s use of the phrase:

“it is not beyond the realms of possibility that “SHORTIE” could be seen as describing the length of [the contested goods]”.

19. This, Mr Selmi argued, was the wrong test. He argued that there were two parts to the test. In addition to the formulation set out in [50] of *Technopol*, (that a sign can only be refused for descriptiveness if it is reasonable to believe it will be recognised as such in context), there was a second requirement that:

*“...the average consumer must immediately and without further reflection make a definite and direct association with the contested goods and the association must be such as to be immediately and unambiguously perceived.”*

20. Mr Selmi referred to Case C-273/05 P *OHIM v Celltech R&D Ltd* at [40], which he submitted illustrated how the Court of Justice applied these principles in practice by expressly characterising a descriptive meaning of a term to be “such as to be immediately and unambiguously perceived” by the relevant consumers in relation to a mark’s specification.

21. I observe that, in fact, *CELLTECH* was superseded by *TECHNOPOL* so it is difficult to view it as a strict application of the *TECHNOPOL* formulation.

22. Mr Selmi's criticism of the Hearing Officer's phraseology in [16] was that she did not expressly use the *CELLTECH* terminology (which he described as the "correct" test) nor did she say that it was "reasonable" for consumers to think SHORTIE was descriptive.

23. For the Opponent, Ms Jones submitted that the Hearing Officer had guided herself correctly on the relevant law and test for descriptiveness. She also pointed out that in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) Arnold J had commented (at [95]) on these two formulations of the test thus:

*"I do not see any real difference between these statements of principle and those in Technopol, in particular at [50], and if there is a real difference it is the latter that should be given effect to."*

24. In other words, rather than the two separate limbs of the test proposed by Mr Selmi, the different formulations amounted to one and the same thing, the *TECHNOPOL* formulation being the default approach.

25. Ms Jones also emphasised the principle that *"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"* and reminded me that the courts have warned against arguments that concentrate on particular verbal expressions that the decision maker used rather than engaging with the substance of their findings (*Volpi v Volpi* [2022] EWCA Civ 464 at [65]).

26. Mr Selmi had sought to anticipate this point of "better expression" in his initial submissions. He had argued that the Hearing Officer's findings were not so much lacking in clarity as incorrect or inconsistent given her finding that the Application was not descriptive as an indicator of length for other goods applied for. Thus, he submitted, if SHORTIE was not descriptive of the length of *"downloadable computer software for managing blockchain tokens"* then logically it should not be descriptive of *"Downloadable electronic data files featuring audio and video"* as well.

27. Ms Jones' response was that this was, in effect, an attempt to argue that SHORTIE was not descriptive. As she rightly pointed out, the Hearing Officer's findings on the descriptiveness or otherwise of the elements of the specification were not contested on this appeal, the complaint being that the wrong legal test was applied.

28. With regard to the Appellant's criticism of paragraph 16 of the Decision, Ms Jones submitted that this reflected a finding of fact rather than the application of the legal test, and that the latter could be derived from looking at the wider assessment in paragraphs [13-21].

29. I agree with the Opponent. Whilst the Hearing Officer may not have used the exact terminology of the legal test as set out in *TECHNOPOL*, or as applied in *CELLTECH*, it is manifestly clear she had the correct test at the forefront of her mind throughout (per her self-direction at [12]) and, looking at her analysis in its totality, that she applied it.

30. Thus, the phrase used at [16], of which complaint is made, that *"it is not beyond the realms of possibility that "SHORTIE" could be seen as describing the length of "downloadable electronic data files featuring audio and video"* is little more than an alternative way of saying that, as a matter of fact, it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description. This becomes even more clear when one considers the preceding sentence, *"However, I consider that length would be a characteristic of some of these goods – specifically those featuring audio and video – and that, therefore, "short" would be an appropriate way in which to describe the length of such goods"*. In my view these findings clearly show the Hearing Officer had the *Technopol* test in mind.

31. The Hearing Officer was even more clear at [18] when, having reviewed the evidence, she said *"In any case, the fact that [SHORTIE] is being used in relation to short films may suggest it is reasonably foreseeable use of the word in relation to [the Refused Goods]."*

32. There is no requirement that a Hearing Officer slavishly repeats the relevant legal test when carrying out their evaluative role, as long as it can be seen the test was borne in mind and that, notwithstanding any difference of expression, it can be clearly seen that the proper test was applied. Bearing in mind the authorities on appellate intervention as previously set out and looking at the totality of the Hearing Officer's reasoning, I am satisfied that the Hearing Officer applied the correct legal test and that there is no basis for me to interfere.

33. This Ground of appeal is dismissed.

### Ground 3 – Evidence of SHORTIE being used for short films

34. The Opponent had supported its case with evidence from Jude Reed Anthony, a solicitor with the Opponent's representatives, showing some use of SHORTIES in the context of a surfing/film event. The Hearing Officer tackled this evidence at [18]:

18. I accept that the only evidence of "SHORTIE" being used in relation to short films are two exhibits relating to a short film competition for surf filmmakers named "THE SHORTIES". Such use might constitute use as a brand name and I bear in mind that use by others as a brand name is not enough to engage section 3(1)(c). However, "THE

SHORTIES” could also be a reference to ‘shortie wetsuits’ given the competition is surf-related, or it could be a suggestion that the competition relates to short films. In any case, the fact that it is being used in relation to short films may suggest it is reasonably foreseeable use of the word in relation to such goods.

19. Regardless, it does not matter whether “SHORTIE” is currently used to describe short films. Although the matter must be judged at the relevant date, the enquiry under section 3(1)(c) is forward looking. In accordance with the case law cited at paragraph 12, above, it is not necessary to show that a description was already in use at the relevant date, but that the sign could be used and recognised as a description in the future. I am satisfied that the latter has been shown.

35. As can be seen, the Hearing Officer referred on this evidence, at least to some extent, to conclude that it was reasonably foreseeable SHORTIE could be used to describe short films, either at the relevant date of 30 March 2022, or in the future.

36. The Applicant’s complaint is that the Hearing Officer’s conclusion does not follow, given that she had acknowledged the evidence could also be interpreted as use of SHORTIES as a brand name or as a reference to wetsuits. Given the uncertainty as to the nature of the term’s use, no stock (or rather weight) should have been given to the use of SHORTIE as a description for films either currently or as a reasonably foreseeable possibility in the future.

37. Arguments about weight, particular the weight to be attributed to evidence, are rarely, if ever, fertile grounds for appeal. The Applicant has not identified any particular error of principle in the Hearing Officer’s approach. Rather the complaint is simply a disagreement with the Hearing Officer’s assessment.

38. In any event, it is clear at [18] that the Hearing Officer was fully aware that SHORTIES had a number of possible meanings and that in so far as it pertained to the length of films the evidence was assessed for no more or less than it was worth. Furthermore, this had little, if any, bearing on the outcome. At [19] the Hearing Officer made it clear it did not matter one way or the other whether SHORTIE was currently in use as a description for the length of films. Her decision rested on being satisfied that future descriptiveness had been shown by the other materials before her, a multifactorial evaluative conclusion she was fully entitled to make.

39. In the absence of any clear error, this Ground of Appeal is dismissed.

#### Ground 4 - combination of errors and distinctiveness

40. This ground of appeal merely contended that the “errors” relied on for grounds 2 and 3 led to the erroneous finding that the Contested Mark was descriptive and that this carried through to the finding that the mark was non-distinctive under S. 3 (1) (b) of the Act. Since this ground of appeal was dependent on the success of grounds 2 and 3, the appeal on those grounds having failed this ground is also dismissed.

## **Overall Outcome**

41. The Appeal is dismissed in its entirety. The Hearing Officer's Decision is upheld in all respects. The Application is refused for:

*Class 9 Downloadable electronic data files featuring audio and video.*

42. As per the Decision, the Application may proceed to registration for the following goods and services:

*Class 9 Downloadable electronic data files featuring artwork, text, images and non-fungible tokens; Downloadable computer software for managing digital and virtual blockchain-based tokens; Downloadable computer application software for blockchain-based platforms, namely, software for digital exchanges for virtual items; Downloadable computer software for creating, accessing, reading, and tracking information in the field of non-fungible tokens on a block chain.*

*Class 36 Virtual currency services; Digital tokens in the nature of issuance of tokens of value; cryptocurrency trading and exchange services, namely, providing a digital currency or digital token; blockchain services, namely, providing a digital currency or digital token for use by members of an online community via a global computer network; issuance of digital tokens of value; financial exchange, namely, digital token exchange services; cryptocurrency financial trading services; cryptocurrency and digital token transfer services; currency trading, namely, on-line real-time digital token trading; issuance of non-fungible tokens of value used with blockchain technology; issuance of non-fungible tokens of value used with blockchain technology to represent a collectible item; issuance of non-fungible tokens of value used with blockchain technology for data storage and content access limitation.*

*Class 42 Software as a services (SAAS) featuring software which allows members to receive, access, spend, trade and manage cryptocurrency, digital currency, digital tokens, non-fungible tokens, digital collectibles and digital assets; providing a website featuring technology which allows members to receive, spend, trade and manage cryptocurrency, digital currency, digital tokens and digital assets.*

## **Costs**

43. The Opponent as the successful party is entitled to costs. Both parties indicated they were content with costs to be awarded on the standard scale (per TPN 2/2016).

44. In the proceedings below, notwithstanding the opposition succeeded in part for a small element of the specification applied for, overall the Applicant achieved more success. Consequently the Opponent, Google LLC, was ordered to pay the Applicant Shorts International Limited the sum of £1045.

45. On this appeal, Google LLC as the Opponent has been wholly successful. My starting point is that as the unsuccessful Appellant, Shorts International Limited should pay Google LLC the sum of £2000. From this should be deducted the sum of £1045 ordered against Google LLC below, leaving a sum due to Google LLC of £955.

46. Thus I order Shorts International Limited to pay Google LLC the sum of £955, payable within 21 days from the date of issue of this Decision.

Philip Harris  
Appointed Person

7<sup>th</sup> August 2025

