

BL O/0779/24

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF CONSOLIDATED PROCEEDINGS

FOR TRADE MARK APPLICATIONS NO. 3704543, 3704560, 3704602 & 3704876

BY WAZDAN HOLDING LIMITED FOR THE TRADE MARKS

SIZZLING KINGDOM

SIZZLING MOON

SIZZLING BELLS

SIZZLING REELS

IN CLASSES 9, 28 & 41

AND THE OPPOSITIONS THERETO UNDER NO. 434488, 434489, 434490 & 434491

BY NOVOMATIC AG

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF L NICHOLAS (O/0278/24) DATED 28 MARCH 2024.

DECISION

Introduction

1. This is an appeal by Wazdan Holding Limited ("**Appellant**") from decision O/0278/24 of Ms L. Nicholas ("**Decision**") concerning the oppositions by Novomatic AG ("**Respondent**") to the Appellant's applications for the marks listed below ("**Applications**"), applied for in December 2020 in respect of the following goods and services:

Number	Mark	Goods
UK3704543 ('543 mark)	SIZZLING KINGDOM	Class 9: <i>Sound reproduction apparatus; Computer programs, downloadable; Coin-operated mechanisms; Computer gaming software; Information technology and audiovisual equipment; Sound recording apparatus; Downloadable software; Software and applications for mobile devices; Apparatus for recording images; Sound transmitting apparatus; Apparatus for the transmission of images; Computer programmes for interactive television and for interactive games and/or quizzes; Apparatus for the reproduction of images.</i> Class 28: <i>Hand-held consoles for playing video games; Coin-operated amusement machines; Games; Amusement machines,</i>

		<p><i>automatic and coin-operated; Gaming machines for gambling; Arcade games; Electronic games; Counters [discs] for games; Automatic coin-operated games; Dice; Mechanical games; Arcade game machines; Board games; Coin-operated amusement gaming machines; Amusement game machines; Apparatus for games.</i></p> <p>Class 41: <i>Electronic games services; Gaming services for entertainment purposes; Entertainment information; Gambling services; Arcade game services; Electronic game services provided by means of the internet; Interactive computer game services; Casino, gaming and gambling services; Wagering services; Bookmaking [turf accountancy]; Organisation of Sporting events; Organising of entertainment competitions; Amusement arcades; On-line gaming services; Cultural activities; Betting services; Entertainment services; Providing casino facilities [gambling]; Game services provided online from a computer network.</i></p>
UK3704560 (‘560 mark)	SIZZLING MOON	As for ‘543 mark.
UK3704602 (‘602 mark)	SIZZLING BELLS	As for ‘543 mark.
UK3704876 (‘876 mark)	SIZZLING REELS	<p>As for ‘543 mark in respect of classes 9 and 41.</p> <p>Class 28: <i>Coin-operated amusement machines; Counters [discs] for games; Automatic coin-operated games; Dice; Mechanical games; Amusement machines, automatic and coin-operated; Arcade game machines; Gaming machines for gambling; Coin-operated amusement gaming machines; Board games; Amusement game machines; Apparatus for games.</i></p>

2. The Respondent opposed the Applications under section 5(2)(b) of the Trade Marks Act 1994 in respect of all goods and services. The Respondent relied upon three mark registrations, details of which are set out below:

Number	Mark	Filing and registration date	Goods and services relied upon
UK905179387 (‘first earlier mark’)	SIZZLING HOT	20/06/2006, 07/12/2007	Class 9: <i>Software for casino and amusement arcade games, for gaming machines, slot machines or video lottery gaming machines.</i>
UK917702523 (‘second earlier mark’)	SIZZLING FORTUNES	18/01/2018, 09/05/2018	Class 9: <i>Hardware and software, in particular for casino and amusement arcade games, for gaming machines, slot machines, video lottery gaming machines, with or without prize payouts and/or for gaming via telecommunications networks</i>

			<p><i>and/or the Internet, with or without prize payouts, for gaming with or without prize payouts via the Internet or via telecommunications networks, or for gaming with or without prize payouts for use in telecommunications apparatus.</i></p> <p>Class 28: <i>Casino fittings, namely roulette tables, roulette wheels; Casino games with or without prize payouts, automated gaming machines and amusement machines, in particular for commercial use, in casinos and amusement arcades, or games of chance with prize payouts via the Internet and via telecommunications networks, games of chance with prize payouts for use on networked gaming equipment; Slot machines and/or electronic money-based gaming apparatus with or without prizes; Housings for slot machines and gaming machines; Electronic or electrotechnical gaming apparatus, gaming machines, games machines and slot machines operated by coins, tokens, banknotes, tickets or by means of electronic, magnetic or biometric storage media, in particular for commercial use in casinos and amusement arcades, with or without a prize payout; Housings for slot machines, gambling machines, automatic gaming machines and amusement machines, operated by means of coins, tokens, tickets or by means of electronic, magnetic or biometric storage media; Electric, electronic or electromechanical apparatus for bingo games, lotteries or video lottery games and for betting offices, networked or unnetworked; Electropneumatic and electric pulling machines (gaming machines).</i></p> <p>Class 41: <i>Operating casinos and gaming casinos, betting offices, bingo halls and/or lottery offices; Operating gaming establishments and arcades and/or online Internet casinos and betting platforms.</i></p>
UK918114940 (third earlier mark)	SIZZLING COIN	26/08/2019, 11/12/2019	As for second earlier mark for classes 9 and 41.

			<p><i>Class 28: Casino fittings, namely roulette tables, roulette wheels; Casino games with or without prize payouts, automated gaming machines and amusement machines, in particular for commercial use, in casinos and amusement arcades, or games of chance with prize payouts via the Internet and via telecommunications networks, games of chance with prize payouts for use on networked gaming equipment; Slot machines and/or electronic money-based gaming apparatus with or without prizes; Housings for slot machines and gaming machines; Electronic or electrotechnical gaming apparatus, gaming machines and automatic gaming machines, slot machines operated by coins, tokens, banknotes, tickets or by means of electronic, magnetic or biometric storage media, in particular for commercial use in casinos and amusement arcades, with or without a prize payout; Housings for slot machines, gambling machines, automatic gaming machines and amusement machines, operated by means of coins, tokens, tickets or by means of electronic, magnetic or biometric storage media; Electric, electronic or electromechanical apparatus for bingo games, lotteries or video lottery games and for betting offices, networked or unnetworked; Electropneumatic and electric pulling machines (gaming machines).</i></p>
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3. I shall refer to the above collectively as the “**Earlier Marks**”.
4. Each side filed evidence and written submissions, and a hearing took place on 9 November 2023. In the Decision, L. Nicholas for the Registrar held that the oppositions were successful.
5. On 25 April 2024 the Appellant filed a Notice to Appeal to the Appointed Person against the Decision under Section 76 of the Trade Marks Act 1994.

The Hearing Officer’s decision

6. The Hearing Officer held as follows (in summary, and insofar as is relevant to this appeal):
 - a. Although the Respondent was initially put to proof of use of the first earlier mark, that request was subsequently withdrawn. No proof of use being required for the second and third earlier marks, the Respondent was entitled to rely on the full specifications of the Earlier Marks.

- b. The average consumer will be both the general public and business consumers. For the goods in classes 9 and 28, the average consumer will pay either a low or medium degree of attention depending upon the cost of the goods (ranging from low for items such as dice or games which are free to play, to much higher for things like roulette tables). For the services in class 41, the average consumer will pay a medium degree of attention;
- c. The purchasing act will be primarily visual, but there may also be an aural aspect where advice is sought from sales persons or purchases are made following word of mouth recommendations;
- d. The Earlier Marks are inherently distinctive to a medium degree, with no enhanced level of distinctiveness through use;
- e. The Applications are visually similar to a medium degree; aurally similar to a medium degree; and conceptually similar to a medium degree to the Earlier Marks;
- f. The goods and services in the Applications are either identical or highly similar to those in the Earlier Marks;
- g. Whereas there is no likelihood of direct confusion, the average consumer would understand that the Applications are sub-brands of the Respondent, and indirect confusion is therefore made out.

Grounds of Appeal

- 7. The Grounds of Appeal are as follows:
 - a. **Ground 1:** The Hearing Officer erred in the assessment of the average consumer's degree of attention. The majority of the goods in classes 9 and 28 are expensive and would therefore require a higher degree of attention by the average consumer when making a purchase.
 - b. **Ground 2:** The Hearing Officer was wrong to find that the word SIZZLING was in any way striking or dominant within the Earlier Marks.
 - c. **Ground 3:** The Hearing Officer held that the second words in the Applications could be viewed as themes or features of the games etc, and the word SIZZLING is therefore the more dominant and distinctive component of the Applications. However, the Hearing Officer was wrong to solely focus on the meaning of the second words within the Applications without comparing their visual, phonetic and conceptual characteristics with the Earlier Marks.
 - d. **Ground 4:** The Hearing Officer wrongly held, in the absence of evidence, that SIZZLING would be seen as a house mark of the Respondent, such that it had a family of marks. Furthermore, the Hearing Officer did not adequately outline the special set of circumstances that led her to reach the conclusion that there was a likelihood of indirect confusion.
- 8. The Appellant's Trade Mark Attorney, Mr Tierney, expanded upon the above in his skeleton argument and at the hearing, and I set out below further details as are necessary to understand my overall conclusions. The Respondent filed a Respondent's Notice and skeleton argument and its Counsel, Mr Hicks, expanded on those arguments in the hearing. I am grateful to both advocates for their clear and detailed written and oral submissions, which I found very helpful.

Standard of review

9. The approach to be adopted in an appeal hearing has been laid down a number of times in case law. It was summarised in *Axogen v Aviv* [2022] EWHC 95 (Ch) at §24-25:

“Appellate Function

24. Although I was referred to numerous cases on the subject (including *English v Emery Demibold & Struck Ltd* [2002] 1 WLR 2409, *REEF Trade Mark* [2003] RPC 5, *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, *Shanks v Unilever Plc* [2014] RPC 29, *TT Education Ltd v Pie Corbett Consultancy* [2017] RPC 17, *Apple Inc v Arcadia Trading Limited* [2017] EWHC 440 (Ch), *Actavis Group PTC v ICOS Corporation* [2019] UKSC 1671 and *NINEPLUS O/039/21*), the approach of the appeal court to a statutory appeal under section 76(1) of the TMA is uncontroversial. I bear the following principles, relevant to the issues before me, firmly in mind:

- i) The appeal is by way of a review, not a rehearing (see *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17) at [52(i)]);
- ii) The appeal court will allow an appeal where the decision of the lower court was "wrong" (see CPR 52.11). Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference (*NINEPLUS O/039/21* at [14]);
- iii) The decision of the lower court will be "wrong" if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant matters or taking into account irrelevant matters. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible" (*Actavis Group* at [81]);
- iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question (*REEF Trade Mark* [2003] RPC per at [26]). There is a "spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision" (*TT Education* at [52(ii)]), with decisions of primary fact at one end of the spectrum and multi-factorial decisions (of the type which the parties agree were made in this case by the Hearing Officer) being further along the spectrum.
- v) In the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education* at [52(iv)], *REEF* at [28] and *Fine & Country* at [50]-[51]).
- vi) An error of principle is not confined to an error as to the law but extends to certain types of error in the application of a legal standard to the facts in an evaluation of those facts. The evaluative process is often a matter of degree upon which different judges can legitimately differ and an appellate court ought not to interfere unless it is

satisfied that the judge's conclusion is outside the bounds within which reasonable disagreement is possible (*Actavis Group* at [80]).

- vii) Another variable to be taken into account will be "the standing and experience of the fact-finding judge or tribunal" (*REEF* at [26], *Actavis Group* at [78]). Expert tribunals are charged with applying the law in the specialised fields and their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts (*Shanks* at [28] citing the warning given by Baroness Hale in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49).
 - viii) The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed; "The duty to give reasons must not be turned into an intolerable burden" (see *REEF* at [29]). The reasons need not be elaborate. There is no duty on a judge, in giving her reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what she says shows the basis on which she has acted (*English* at [17], *Fage* at [115]). The issues the resolution of which were vital to the judge's conclusions should be identified and the manner in which she resolved them explained (*English* at [19]).
 - ix) In evaluating the evidence, the appellate court is entitled to assume, absent good reason to the contrary, that the first instance judge has taken all of the evidence into account (*TT Education* at [52(vi)]).
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 O/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. I shall bear all the above in mind when reviewing the Decision.

Discussion

(1) Average consumer and the purchasing act

11. The Appellant contends that the Hearing Officer, in holding that the average consumer would pay a medium degree of attention during the purchasing act, failed to take into account that:

- a) The goods in Class 9 are such that their cost is likely to be relatively expensive;
- b) With the exception of items such as dice, counter-discs for games, and board games, the majority of Class 28 goods are those which are likely to be purchased by the owners/managers of gambling outlets and casinos, who having regard to their expertise and knowledge are likely to apply a high degree of attention when purchasing such goods; and
- c) All the services in Class 41 are of a type where the end users are either owners and managers of casinos and/or amusement arcades or adults who gamble. As a result of their knowledge and experience, such users will pay a high degree of attention when availing of such services and thus less likely to be confused.

12. For example, the Appellant contends that gaming machines typically cost many thousands of pounds, and may be in use for many years, meaning that considerable care will be taken when selecting and purchasing the same by owners of arcades etc.

13. I consider that there is force in that submission, and were I deciding this matter at first instance, I would be minded to make the finding sought by the Appellant. However, it is noteworthy that no evidence as to the typical cost and lifespan of any of the goods (or indeed services) falling within the scope of the Applications was put before the Hearing Officer, and Mr Tierney conceded that this "was not an argument that perhaps was pressed" below.

14. As I see it, in the absence of such evidence and argument, the Hearing Officer had to do her best to determine the average consumer's level of attention, and I am of the view that the conclusion she reached was one that was open to her on the evidence that was before her. It is now too late for the Appellant to contend for some higher level of attention on the basis of evidence and arguments that were not advanced before the Hearing Officer.

15. I dismiss this first ground of appeal.

(2) Distinctive character of the Earlier Marks

16. The Hearing Officer held, at §38, that she was not persuaded by the Appellant's evidence that the word SIZZLING had a lower degree of distinctive character by virtue of its alleged use in the marketplace in relation to pages relating to gambling and casino games. She then went on to say at §39:

"In Kurt Geiger v A-List Corporate Limited, BL O-075-13, Mr Iain Purvis Q.C. (as he then was) as the Appointed Person pointed out that the level of 'distinctive character' is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. As 'sizzling' is found withing all marks in question here, I will therefore begin by considering the inherent distinctiveness of that element of the earlier marks. 'Sizzling' is an ordinary dictionary term which is not allusive or descriptive of the goods and services. I therefore consider it to be inherently distinctive to a medium degree. I will now look at the earlier marks as a whole".

17. The Appellant submits that the Hearing Officer misapplied *Kurt Geiger*, insofar as this is not a case in which the word SIZZLING is striking or dominant. The Appellant draws attention to the following further passages from *Kurt Geiger* at §30:

"It is not necessary to identify one particular element of a mark as being its 'distinctive and dominant element'. It is right of course that 'in certain circumstances' there may be such an element which dominates the overall impression of a mark (see the quote from Matratzen above), but that is very often not the case, and even it is the case it does not absolve the tribunal from the obligation to consider the overall impression given by the marks as a whole".

18. I agree with the Appellant that it was not necessary for the Hearing Officer to consider *Kurt Geiger* in this particular instance, as neither word in any of the Earlier Marks dominates the overall impression. However, I do not agree that it made any material difference to her overall analysis. Her analysis can be summarised as:

- SIZZLING is not descriptive of the goods and services in question;
- SIZZLING HOT is a phrase in which the two words form a unitary term which conveys the meaning of a very high temperature. The distinctive character lies in the overall term, and neither word is more dominant than the other;
- For SIZZLING COIN and SIZZLING FORTUNES, the second word in each is allusive of the goods and services being offered. The word SIZZLING is therefore more dominant and distinctive than the second word in each case.

19. I regard the above analysis and conclusions as perfectly defensible. The Hearing Officer approached the issue in a stepwise manner, and notwithstanding her reference to *Kurt Geiger* she made it clear in §39 that she "look[ed] at the earlier marks as a whole". She did not make a finding that SIZZLING dominated the overall impression of any of the Earlier Marks, rather she held that the word was more dominant and distinctive than the second word in the second and third earlier marks.

20. I dismiss this second ground of appeal.

(3) Comparison of the marks

21. The Hearing Officer held, at §29, that in the Applications "'sizzling' is the descriptor of the word following it and again, when read together they are unusual combinations so the overall

impression lies in that combination. I believe that due to the nature of the goods and services applied for, the second words in the contested marks could be viewed as themes or features of the games etc and therefore, consider that ‘sizzling’ is once again the more dominant and distinctive component”.

22. The Appellant contends that “the Hearing Officer placed too much emphasis on the first word ‘sizzling’ and finding that it was the more dominant and distinctive component. Not enough consideration was given to the visual, phonetic and conceptual differences of the second words within the respective parties’ marks”.
23. I do not agree. The Hearing Officer was entitled to conclude that SIZZLING is more dominant than the second word in each of the Applications, for the reasons she stated. It is clear from her analyses at §§30-32 that she did take the second word into account when assessing visual, aural and conceptual similarities. The precise weight given to each word was a matter for the Hearing Officer, and she made no error of principle.
24. I dismiss this third ground of appeal.

(4) Likelihood of confusion

25. The Appellant’s criticisms of the Hearing Officer’s finding of a likelihood of indirect confusion are twofold. First, it alleges that she did not adequately outline the special set of circumstances that led her to reach that conclusion. Secondly, she wrongly treated the Earlier Marks as a family of marks.
26. Addressing the second issue first, the Hearing Officer said at §47:

“In considering indirect confusion, I must decide whether changing the second words from ‘Hot’, ‘Fortunes’ and ‘Coin’ to ‘Kingdom’, ‘Moon’, ‘Bells’ and ‘Reels’ would give rise to a finding that the average consumer would view them as being entirely logical and consistent with a brand extension. I consider this to be unlikely with the first earlier mark as this would be seen as a unitary term. However, with the second and third earlier marks, I believe that ‘Sizzling’ could be seen as the house mark, particularly as the second words are allusive of the goods and services and that ‘sizzling’ is distinctive to a medium degree. It is possible that the second words from the applicant’s marks could form the theme or be related to content of the game i.e. the game is moon themed or features bells. Therefore, they could be seen as sub-brands. Taking all of this into account, I consider there could be a likelihood of indirect confusion”.

27. The Appellant contends that the reference to “house mark” is a reference to a family of marks. The Appellant further contends that the Respondent has not provided evidence that it has developed and used a series of sub-brands based on the word SIZZLING, such as would be required to establish confusion with a family of marks.
28. The term “house mark” is a not a defined technical term in trade mark law. However, in the context of the Decision, I believe it is clear that the Hearing Officer was not using it to refer to a family of marks. Rather, it is clear from her analyses at §§29, 32, 40, 41 and 47 that throughout she considered each of the Earlier Marks individually. Her finding was that indirect confusion was likely in respect of each of the second and third earlier marks, but not the first earlier mark.
29. Turning now to the first issue, the Appellant relies on the decision of James Mellor QC (as he then was) sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/291/16), where he

said at §16 “one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion”. That decision was then considered by Arnold LJ in *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021/ EWCA Civ 1207, where he said at §13:

“As James Mellor QC sitting as the Appointed Person pointed out in Cheeky Italian Ltd v Sutaria (0/291/16) at [16] ‘a finding of likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion’. Mr Mellor went on to stay that, if there is no likelihood of direct confusion, ‘one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion’. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion.”

30. I too prefer Arnold LJ’s formulation – there must be a “proper basis”, as opposed to a “reasonably special set of circumstances” (if indeed the latter is a more onerous requirement than the former) for a finding of indirect confusion.
31. Although the Hearing Officer’s reasoning was fairly concise, in my view it sets out sufficient detail to provide a proper basis for her finding. Each of the Applications is conceptually similar, in that they carry the concept of something (KINGDOM, MOON, BELLS, REELS) being sizzling (hot). The same could be said of two of the Earlier Marks (FORTUNES and COIN), whereas SIZZLING HOT has a meaning independent of this, as recognised by the Hearing Officer. The likelihood of indirect confusion arises because the Applications would be considered to be a sub-brand or brand extension of each of the second and third earlier marks.
32. The Appellant’s skeleton argument raises a further point in relation to likelihood of confusion based on my decision in *Euro Games Technology Ltd v Wazdan Holdings Limited* (BL O/1188/23). At §30 I said “the fact that service providers invest heavily in branding, that competitors’ brands are common and often follow a logical pattern does not of itself establish “a proper basis for concluding that there is a likelihood of indirect confusion””.
33. Whereas the marks and business sectors in *Euro Games* had certain features in common with those in this dispute, I agree with the Respondent’s submission that “That was a case decided on the evidence and the facts in that case and on the basis of the Hearing Officer’s assessment. It does not establish a relevant point of principle. Therefore, it does not assist the Appellant in this case where the facts and evidence are different, and no error of principle in the Decision has been identified”.
34. I dismiss this fourth ground of appeal.

Conclusion

35. The appeal is dismissed, and the Applications are therefore refused in their entirety.

Costs

36. Clearly, the Respondent has been the successful party in this appeal. I order that the Appellant shall pay the Respondent the sum of £1,350, comprising:
 - Preparation of skeleton argument: £600; and
 - Attendance at hearing: £750.

37. The Hearing Officer's order that the Appellant should pay the Respondent £2,150 by way of costs of the hearing below still stands, and both sums should be paid within 21 days of this decision.

Dr. Brian Whitehead

14 August 2024

Representation

Mr Tierney, of Tierney IP, for the Appellant/Applicant

Mr Hicks of Counsel, instructed by Shakespeare Martineau LLP, for the Respondent/Opponent