Intellectual Property Office

BL O/0856/25

18 September 2025

**TRADE MARKS ACT 1994**

BETWEEN

| | |
|---|---|
| Bargain Busting Limited | Claimant |
| and | |
| Shenzhen SKE Technology Co. Ltd | Defendant |

PROCEEDINGS

Determination of the Registrar's action in respect of a court order concerning registration of a trade mark (application number 3786148 CRYSTAL BAR).

HEARING OFFICER J E Porter

For the Claimant:
Mr Stephen Lowry (Brandsmiths SL Ltd)

For the Defendant:
At the CMC: Ms Fiona Horlick KC and Mr Richard Davies KC (instructed by Stobbs (IP) Limited)
At the hearing: observer present only (Stobbs (IP) Limited)

Case Management Conference: 10 September 2025
Hearing: 12 September 2025

## DECISION

### Introduction

1 This decision concerns a procedural dispute about how and when the Registrar should act when a court order states that a trade mark application should proceed to registration – but when there are ongoing proceedings seeking to vary the order and seeking permission to appeal the court's decision.

### Background to the dispute

2 On 8 November 2024, Mrs Judi Pike, a hearing officer acting on behalf of the Registrar, issued a decision (BL O/1063/24) concerning opposition to a number of trade mark applications.

3 Only one of the applications in suit is relevant for the present purposes – which is application number 3786148 for the mark CRYSTAL BAR, in the name of Bargain Busting Limited ("BBL"). That application was opposed by Shenzhen SKE Technology Co. Ltd ("SKE"). The hearing officer decided that the opposition failed

and that the trade mark application could therefore proceed to registration. On 29 November 2024, SKE appealed the hearing officer's decision to the High Court.

4 On 1 July 2025, the High Court issued its decision ([2025] EWHC 1629 (Ch)), upholding the hearing officer's decision. The resulting court order ("the order") was issued on 4 July 2025 and sealed on 7 July 2025, with paragraph 1 stating that the appeal was dismissed.

**The dispute over the order**

5 Central to the dispute is paragraph 2 of the order which states that the trade mark application in question "shall proceed to registration".

6 Paragraph 4 of the order sets the deadline for seeking permission to appeal as 25 July 2025. The only other substantive provisions are paragraphs 3 and 5 of the order, which deal with costs and serving of the order.

7 On 14 July 2025, the Registrar's staff at the Intellectual Property Office ("IPO") sought an update from the parties on the status of the appeal proceedings.

8 In reply on 15 July, Brandsmiths (as the legal representatives for BBL) sent a copy of the order and asked the IPO to "please update the status of the mark to reflect that it is now registered".

9 On 16 July, Stobbs (as the legal representatives for SKE) wrote to the IPO pointing to the appeal deadline within the order, asking that "no registry updates are effected at present", and saying that an update would be provided "in due course at that deadline".

10 On the same day, Brandsmiths replied to the IPO, contending that the order to register was not contingent on whether SKE applied for permission to appeal. It had, they said, "immediate effect" and was not stayed by applying for permission to appeal.

11 On 17 July, Stobbs confirmed SKE's intention to appeal by the deadline and gave reasons why the Registrar should hold off from registration in light of that fact. Further exchanges took place on 17 and 18 July with the parties maintaining their positions and providing further submissions. In particular, Stobbs stated that they would "seek Brandsmiths' agreement to vary the Order, and if not given, apply to the court to vary the Order". Brandsmiths stated that this was "clear acknowledgment that our interpretation of the Order is correct", and reiterated the point in a further email to the IPO on 28 July.

12 On 25 July, SKE sought permission to appeal the High Court's decision and, on 29 July, they made an application to vary the order at the High Court.

13 Stobbs wrote to the IPO on 29 July to confirm that SKE had sought permission to appeal, and explained that SKE's application to vary the order sought "to clarify" that registration "shall be stayed pending determination of any application for permission to appeal and, if granted, final resolution of any such appeal". They requested that the status of the trade mark application remain unchanged until the court had decided upon both the application to vary the order and permission to appeal.

14 From 18 August onwards, some further correspondence and submissions to the IPO left the matter unresolved. On 27 August, the IPO asked the parties to confirm the status and expected timing of the application to vary the order, and whether they wished to be heard on the disputed point. After further points arose concerning the holding of a hearing (upon which I touch below), a hearing was held via video conference on 12 September.

**The two issues**

15 The main issue to be decided is this: if the order is clear that registration "shall proceed", and is not contingent upon permission to appeal either being sought or being granted, then does the Registrar proceed to registration in the knowledge that he is pre-empting the court's active consideration of whether to give permission to appeal and whether to vary the order (where the variation would stay registration)?

16 A preliminary issue also arose in the run-up to the hearing. In their 17 July correspondence, Brandsmiths reserved the right for BBL to "be heard on this matter". On 26 August, Stobbs asked that before any decision was taken "the UKIPO should hear from all parties". However, by that time, BBL's view of the point had changed. On 27 August, Brandsmiths wrote to say that "the registrar is not making a decision" and "there is no mechanism for a hearing to take place in respect of this issue". At the beginning of the hearing, I therefore took this as a preliminary point.

**Related court actions**

17 SKE's ongoing court applications which seek permission to appeal and to vary the order are central to the disputed point. However, I turn briefly to other actual or contemplated court actions which are in some way related to this matter.

18 First, Brandsmiths shared court documents with the IPO on 18 August, showing that BBL had filed an action for contempt of court against four parties – SKE, Stobbs and two Stobbs employees. Brandsmiths wrote directly to the IPO on the matter on 21 August.

19 Second, they wrote to the IPO on 27 August to say that, unless registration took place by 4pm the following day, "we will bring a claim in the High Court against the IPO to compel it to register the mark".

20 To the best of my knowledge, at the time of making this decision no High Court claim against the IPO has been filed. Had such a claim been filed, I would very likely have had to consider whether it was appropriate for my decision-making to continue.

21 Third, Brandsmiths wrote again to the IPO on 28 August reiterating their deadline but also saying that "by not registering the mark and continuing to breach the Order, the IPO and any individuals involved in the decision not to register the mark will be in breach of the Order and may be liable for contempt of court".

22 The existence of BBL's court action for contempt, and Brandsmiths' suggestion that the IPO or members of its staff may be in contempt, have not been factors in my decision – which has been made for the reasons that I set out below.

23 However, the existence of the contempt action did have an effect on the hearing which took place before me, and I now turn briefly to this point.

**The application to vacate the hearing**

24 The parties reached swift agreement that the hearing would be held on 12 September, and I was grateful to them and their representatives for doing so.

25 However, Stobbs wrote to the IPO on 9 September to say that, until the contempt matter had been resolved, "any further submissions from SKE or Stobbs to the UKIPO carry a clear risk of prejudicing the [contempt] application. Given that a respondent to an application for contempt of court has a right to silence, SKE and Stobbs are left in an impossible position in respect of the IPO hearing". They sought to have the hearing vacated, which BBL resisted.

26 This resulted in a case management conference on 10 September, where I heard submissions from the parties' representatives. I then issued a brief reasoned decision by email later that same day, with my conclusion being that the hearing should proceed. For completeness, my decision is reproduced in the Annex to this decision.

27 In the event, a representative from Stobbs observed the hearing on behalf of SKE, but did not participate for the reasons given at the case management conference.

**The law**

28 The following statutory provisions are relevant to this matter.

29 First, under the Trade Marks Act 1994, section 38(1) and (2) provides for opposition to a published trade mark application as follows:

> *(1) When an application for registration has been accepted, the registrar shall cause the application to be published in the prescribed manner.*
>
> *(2) Any person may, within the prescribed time from the date of the publication of the application, give notice to the registrar of opposition to the registration.*
>
> *The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.*

30 In terms of the registration of marks, section 40(1) says this:

> *(1) Where an application has been accepted and—*
>
> *(a) no notice of opposition is given within the period referred to in section 38(2), or*
>
> *(b) all opposition proceedings are withdrawn or decided in favour of the applicant,*
>
> *the registrar shall register the trade mark, unless it appears to him having regard to matters coming to his notice since the application was accepted that the registration requirements (other than those mentioned in section 5(1), (2) or (3)) were not met at that time.*

31 Section 63 requires the Registrar to maintain a register of trade marks. In particular, section 63(2) says this:

*(2) There shall be entered in the register in accordance with this Act—*

*(a) registered trade marks,*

*(b) such particulars as may be prescribed of registrable transactions affecting a registered trade mark, and*

*(c) such other matters relating to registered trade marks as may be prescribed.*

32 Rules 46-53 prescribe a number of specific matters under section 63(2)(c).

33 Turning to decisions of the Registrar, rule 63 says this:

*(1) Without prejudice to any provisions of the Act or these Rules requiring the registrar to hear any party to proceedings under the Act or these Rules, or to give such party an opportunity to be heard, the registrar shall, before taking any decision on any matter under the Act or these Rules which is or may be adverse to any party to any proceedings, give that party an opportunity to be heard.*

*(2) The registrar shall give that party at least fourteen days' notice, beginning on the date on which notice is sent, of the time when the party may be heard unless the party consents to shorter notice.*

*(3) This Rule shall not apply to fast track opposition proceedings.*

34 Section 76 deals with appeals from decisions of the Registrar, and section 76(1) in particular says this:

*(1) An appeal lies from any decision of the registrar under this Act, except as otherwise expressly provided by rules.*

*For this purpose "decision" includes any act of the registrar in exercise of a discretion vested in him by or under this Act.*

35 Rule 70 then says this:

*(1) Except as otherwise expressly provided by these Rules an appeal lies from any decision of the registrar made under these Rules relating to a dispute between two or more parties in connection with a trade mark, including a decision which terminates the proceedings as regards one of the parties or a decision awarding costs to any party ("a final decision") or a decision which is made at any point in the proceedings prior to a final decision ("an interim decision").*

*(2) An interim decision (including a decision refusing leave to appeal under this paragraph) may only be appealed against independently of any appeal against a final decision with the leave of the registrar.*

36 Finally, also of relevance is rule 52.16 of the Civil Procedure Rules, which states:

*52.16 Unless—*

*(a) the appeal court or the lower court orders otherwise; or*

*(b) the appeal is from the Immigration and Asylum Chamber of the Upper Tribunal,*

*an appeal shall not operate as a stay of any order or decision of the lower court.*

37 Some caselaw was also drawn to my attention, to which I refer in my assessment below.

**Assessment – preliminary issue**

38 As I have already noted, the preliminary issue concerned BBL's view that "the registrar is not making a decision" and that "there is no mechanism for a hearing to take place in respect of this issue".

39 I heard Mr Lowry's submissions on this point at the beginning of the hearing and I then gave a brief oral decision. For that reason, I do not need to go through Mr Lowry's points in detail, but in brief he focussed on the wording of rule 63 and the contention that the decision to register the mark has been made by the High Court, and so there is no decision left for the Registrar to take. It was, he said, "the simplest of simple matters and there is no mechanism for a hearing to take place in respect of this issue". He argued that the Registrar could not decide that the mark could not proceed to registration and neither could he decide to delay – and that anything the Registrar did other than proceed to registration was "in essence, it becoming an arbiter of whether the order is good or bad".

40 Mr Lowry did agree, when I put it to him, that this view was not universally held and that SKE disagreed that the Registrar had no choice in the matter. In brief, I decided that there was a dispute over how and when the Registrar should act in light of the High Court's decision. However strongly held the view of one party is, and however much it may or may not turn out that the strongly held view is entirely correct, it seemed to me that, when the parties are in disagreement on any matter under the Act or Rules, the Registrar shall give them an opportunity to be heard under rule 63 before taking any adverse action.

41 For completeness, the part of the transcript containing my brief reasoned decision is reproduced in the Annex to this decision

**Assessment – main issue**

42 BBL's position is that the order is clear on its face that registration "shall proceed", and it makes no provision for appeal. They submit that an application seeking leave to appeal does not make the order ineffective. They point to CPR rule 52.16, which states that – unless a court orders otherwise – an appeal does not operate as a stay of any order or decision of a lower court.

43 They also submit that an application to vary the order does not make the order ineffective, and it remains as it stands unless or until the court agrees to vary it. As Mr Lowry summarised it at the hearing: "Unless and until the order is varied or stayed, it must be obeyed".

44 Mr Lowry relied principally upon *R (on the application of Majera (formerly SM (Rwanda)) v Secretary of State for the Home Department* [2021] UKSC 46 ("*Majera*"). The substance of the matter concerned immigration, conviction and bail but, as paragraph 1 of the Supreme Court's judgment says:

> *This appeal raises a question of constitutional importance; whether the Government (or, indeed, anyone else) can lawfully act in a manner which is inconsistent with an order of a*

*judge which is defective, without first applying for, and obtaining, the variation or setting aside of the order.*

45 Mr Lowry pointed out that the question was framed in terms of applying for and obtaining a variation or setting aside of the order.

46 He took me to paragraphs 44-46 of *Majera*. In paragraph 44, the Supreme Court says that it is "a well established principle of our constitutional law that a court order must be obeyed unless and until it has been set aside or varied by the court", and notes that this is a principle "authoritatively stated in *Chuck v Cremer* (1846) 1 Coop temp Cott 338; 47 ER 884, in terms which have been repeated time and again in later authorities". Mr Lowry drew my attention to the passage from *Chuck v Cremer* cited by the Supreme Court and in particular the statement that "As long as it [the order] existed it must not be disobeyed".

47 In paragraph 45 of *Majera*, the Supreme Court states that there is a "legal duty to obey a court order which has not been set aside" and that "this is a rule of law, not merely a matter of good practice". In paragraph 46, the Court refers to this rule being applied in *Hadkinson v Hadkinson* [1952] P 285 and to Romer LJ's statement that "The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void". The Supreme Court references the approval of that passage in subsequent judgments of the Privy Council and the House of Lords.

48 Mr Lowry also drew my attention to paragraph 45 of *Majera* in which the Supreme Court cites with approval paragraph 52 of *R (Evans) v Attorney General (Campaign for Freedom of Information intervening)* [2015] UKSC 21; [2015] AC 1787 saying that (subject to being overruled by a higher court or a statute) a court decision "cannot be ignored or set aside by anyone, including (indeed it may fairly be said, least of all) the executive". Mr Lowry's submission was that the IPO is part of the executive, which I have no difficulty accepting.

49 BBL's earlier written submissions also pointed to *Director of Public Prosecutions v T* [2006] EWHC 728 (Admin); [2007] 1 WLR 209. Richards LJ observed that "the normal rule in relation to an order of the court is that it must be treated as valid and be obeyed unless and until it is set aside. Even if the order should not have been made in the first place, a person may be liable for any breach of it committed before it is set aside". This was also quoted in *Majera* at paragraph 47.

50 Mr Lowry submitted that SKE appeared to believe that the order was somehow unclear, invalid or irregular and thus sought to amend it. But in his submission this was irrelevant in light of the principles set out above.

51 He also referred to the correspondence from the IPO of 27 August, in which the Registrar said that his preliminary view was that the order is clear that registration "shall proceed" and that registration is not contingent upon permission to appeal either being sought or being granted, but that the Registrar "must also take into account that proceedings are currently before the Court which seek to vary the Order, such that the Order would be suspended pending any appeal. The Registrar is concerned not to be seen to disrespect the Court by pre-empting the outcome of the application to vary the Order".

52 In Mr Lowry's submission, this concern was answered by the caselaw he relied upon – namely that the presence of an application to vary an order is not enough to stop the order being acted upon and, by not wanting to pre-empt a potentially varied order, the Registrar had in effect disobeyed the order in existence.

53 SKE's position was fleshed out as the correspondence developed. Their initial letter noted the deadline for seeking permission to appeal and simply requested that "no registry updates are effected at present", and a day later they confirmed their intention to appeal.

54 Their position in the ensuing correspondence was that registration should not proceed "until after either permission to appeal is refused, or, if it is granted, the final determination of any appeal". Their view was that proceeding to registration during the 21 day appeal period "effectively deprives the parties' legal rights to appeal under paragraph 4 of the court order".

55 They further argued that the trade mark status was "not confirmed full or final", and contended that Brandsmiths' statement on 17 July that a court could "later decide that the mark should not be registered" was agreement with SKE's position – namely that the court could still decide that the mark should not be registered.

56 On wider impacts, they contended that the IPO "is under a public duty to maintain the register of trade marks ensuring they are as accurate as possible". They said it was wasting IPO time to register and then reverse registration of the mark, and that third parties "may also be misled by the status" which would cause "significant injustice to the parties involved and the general public".

57 As I have already noted, once SKE had applied to vary the order and had sought leave to appeal, Stobbs wrote to the IPO to request that the status of the trade mark application remain unchanged until the court had decided upon both of those applications.

58 SKE's request – to leave the register unchanged until routes of appeal have been exhausted – is one that, in broad terms, is very familiar to the IPO Tribunal and to its users. It arises from the long-standing practice set out in *Planet Epos Ltd v Nettec Solutions Ltd* ("POINT FOUR") BL O/373/02.

59 At paragraph 13 of POINT FOUR, the Appointed Person notes that neither the Trade Marks Act nor the Rules "have anything to say regarding the suspensive effect or otherwise of appeals" but that, in the absence of any such provisions "the Registrar has adopted the almost universal practice of suspending all decisions pending the outcome of any appeal, unless there is a direction to the contrary".

60 She goes on to conclude at paragraph 14 that "the Registrar's practice of suspending all decisions is not only within her inherent power but also procedurally efficient, and sensible and desirable pending the outcome of an appeal".

61 Although not made in direct submission to me, I was sighted on some discussion of POINT FOUR contained in a document relating to SKE's application to the court to vary the order.

62 Paragraph 15 of a witness statement dated 19 August 2025 from a Stobbs representative refers to the Registrar's established practice and to POINT FOUR. It says that "It was not understood or appreciated that the wording of paragraph 2 of the Court's Order would have the effect of overriding this usual practice or was intended to have this effect". It also contends that the Registrar's practice "would include any subsequent appeal to the Court of Appeal or Supreme Court", pointing to section 7 of the Manual of Trade Marks Practice concerning Tribunal appeals.

63 BBL made some submissions on these points in their correspondence to the IPO of 21 and 27 August 2025. They pointed to the qualification made in POINT FOUR that the Registrar's action was suspended "unless there is a direction to the contrary", and contended that it applied in this case – since the order provided an "unequivocal direction for registration". Second, they said that the Manual and flow chart within it did not support the POINT FOUR practice when it came to orders from the court. Third, they suggested that the POINT FOUR practice was seemingly contrary to CPR rule 52.16.

64 I deal with the Manual and practice point first. Statements in the Manual or other IPO guidance are of course not binding. Nevertheless, as a statement of current practice section 7 of the Tribunals section of the Manual seems entirely clear. It says that, if a decision of the Tribunal is appealed, "the implementation of the decision will be suspended until the appeal process has been concluded" (my emphasis). The flow chart which follows sets out the two appeal routes, and shows that the court route may not be concluded until the Supreme Court is reached. Thus in my view the Manual gives clear guidance that the Tribunal applies the POINT FOUR practice at all levels of appeal.

65 Even if I am wrong and the Manual is not clear, it is nevertheless the Tribunal's practice. It took that approach in this case. At first instance, once the hearing officer had decided that the mark could proceed to registration, the Registrar held off from registering the mark, pending any appeal to the High Court, and then did not act to register the mark during the appeal proceedings. The Registrar then enquired about the appeal outcome, continued to leave the register unchanged, and asked SKE to confirm whether permission to appeal to the Court of Appeal had been sought.

66 SKE's request that the register remain unchanged until the outstanding court applications had been decided was, in my view, consistent with current and long-standing Tribunal practice. I am not aware that the practice has been challenged until now, which I suspect is because one of two situations usually occurs.

67 One is that any court order caters explicitly for the appeal period and any possibility of further appeal. Doing so leaves the parties, the Registrar and the wider public in a welcome position of certainty and transparency, and there is much to be said for it.

68 The other is that, absent any such provision in an order, the parties are nevertheless, out of practicality or pragmatism or for some other reason, content to await the end of the appeal period before seeking to have the register changed.

69 Since neither of those two situations applies in this case, it raises the question of whether the POINT FOUR practice should apply only to an appeal from a decision of the Registrar, or should continue to apply more generally upon any further appeal.

70 The practical issues caused by updating the register based on a decision where an appeal is still possible apply equally at any level of decision and appeal. Those issues go to the points that SKE noted about the duty of the Registrar to maintain an accurate register and the adverse impacts of registering and then potentially reversing a registration.

71 I share those concerns. It is clearly unsatisfactory for rights to come on and off the register, leaving third parties and the wider public in a position of considerable uncertainty. Having rights appear and disappear (or vice versa) may raise significant questions over the status of infringing acts, and third party terms may be needed to regularise the position of parties. It may also lead to considerable uncertainty in proceedings where the existence of earlier registered rights is relied upon.

72 However, despite the practical concerns, I conclude that POINT FOUR does not establish that the Registrar can leave the register unchanged in light of a court order.

73 The POINT FOUR decision was concerned with the effect of an appeal from a decision of the Registrar, not an appeal from a court decision. As part of her reasoning, the Appointed Person noted CPR rule 52.7 (the forerunner to CPR rule 52.16) regarding the effect of an appeal on a court order, and noted that the trade marks legislation made no such provision. She applied caselaw regarding the Registrar's inherent power to regulate procedure in the absence of express provisions, and concluded that the Registrar had the power to regulate his own procedure in this regard.

74 As already discussed, she concluded that the Registrar could generally suspend his own decisions pending appeal. This is opposite to the CPR position which, as discussed, defaults to appeals not being suspensive of court decisions.

75 The Appointed Person explicitly acknowledged the existence of the CPR rule in her reasoning, and the default position it provides. I do not consider that she thought that the Registrar was able to regulate procedure in a way which over-rode the CPR provision. On the contrary, she was solving the problem of how the Registrar should act in the absence of any express provision telling him how to deal with register updates pending any appeal of a Registrar's decision. That absence applied only to the first appeal from the Registrar's own decision. There was no absence of express provision, as the Appointed Person herself noted, when it came to the position regarding appeals from court decisions. For that reason, I do not think POINT FOUR practice applies to an appeal from a court decision, whether that court decision is by way of an appeal from a decision of the Tribunal or is a first instance court decision.

76 My discussion on this point started from BBL's point regarding Tribunal practice and the Manual. Having decided the point, BBL's other two points on POINT FOUR (see paragraph 63) now fall away, since they were arguments which were predicated on a position that POINT FOUR was found to apply to appeals from court decisions.

77 In my view what governs matters in this situation is CPR rule 52.16. The order requires the mark to proceed to registration and makes no provision for a stay either for the appeal period or a further appeal. The default position of CPR rule 52.16 applies because the court has not ordered otherwise. Hence the possibility of appeal does not have suspensive effect upon the order. Furthermore, whether SKE

regard the order as unclear or otherwise flawed, or seek to vary it for other reasons, the caselaw discussed above makes clear that SKE's application to vary the order does not remove the obligation to act upon the order in its present form.

78 On a final point, I asked the parties if they could address me on the effect in the present case of the requirement in section 40(1) that the Registrar shall register a trade mark where "all opposition proceedings are withdrawn or decided in favour of the applicant".

79 At the hearing, Mr Lowry's submission was that the provision had "no bearing on the current state of affairs" and did not impact the order or what it says. His point was that the opposition proceedings had concluded and then the appeal proceedings were further decided in BBL's favour.

80 He reiterated his point that a potential future event changing the order did not alter the fact that the trade mark should proceed to registration, and he pointed out that section 40(1) did not use the term "finally decided" or "without appeal". Thus, he submitted, it is not necessary for all appeal routes to be exhausted before the mark is registered and trying to interpret section 40(1) in that way would conflict with CPR rule 52.16. He further argued that section 40 is not exhaustive of all circumstances in which a trade mark may be placed on the register – for example it does not, he said, exclude a court from making an order compelling registration.

81 Thus, in answer to my question as to whether there was a basis for saying that opposition proceedings are, in the present case, essentially still underway, Mr Lowry says they are not – and the applications to vary the order and seek permission to appeal are irrelevant to the question.

82 Upon further consideration of this point, I must return to wording of the statute. The section 40(1) condition is not couched in terms of opposition (or appeal) proceedings being underway or ongoing, but in terms of the issuing of a decision ("decided in favour of the applicant"). A decision has been issued in favour of the applicant and so the condition in section 40(1)(b) is satisfied. The provision does not answer how and when the register should be updated to reflect that decision. The answer to that, for the reasons I have explained above, comes from elsewhere.

**Conclusion**

83 I conclude that the Registrar should proceed to register the mark in accordance with paragraph 2 of the order as soon as administratively possible, despite proceedings before the court which seek to vary the order and seek permission to appeal.

**Practical consequences**

84 If the court decides in due course to vary the order while a possible appeal on the substantive decision remains possible, the Registrar will need to decide upon the best course of action. Subject to anything further the court orders, this may be to "unregister" the mark and revert it to application status, and Mr Lowry suggested this could be done as a rectification.

85 If the court decides in due course not to vary the order, but an appeal is nevertheless permitted to take place, the court may need to consider how to regularise a position where an appeal concerning an opposition is taking place but the right in question is already registered – since the Act seems clear that only applications, not registered marks, can be opposed.

86 I am taking the opportunity to highlight that these situations may arise and may need solving. I make no finding as to what route might be best, if either of these circumstances were to arise.

**Appeal, and the effect of the appeal period on this decision**

87 Under section 76, decisions of the Registrar are appealable as-of-right (save for certain circumstances in rule 70 which do not apply here).

88 As I have set out above, under POINT FOUR, the Registrar can suspend implementation of his own decisions (but not court decisions) pending appeal.

89 I have decided in the present case that – given the terms of the order as it stands and CPR rule 52.16 – registration should proceed despite the possibility of further appeal. It would therefore seem perverse to conclude that registration should nevertheless then be delayed because of the possibility of an appeal from this decision itself.

90 SKE has the right to appeal my decision but, unusually, the Registrar should not await expiry of the appeal period before acting upon this decision.

91 Any appeal must be lodged within 28 days after the date of this decision.

**Costs**

92 I invite the parties to make submissions on costs within 28 days after the date of this decision.

**Dr J E PORTER**
Chief Hearing Officer, acting for the Registrar

## ANNEX – PRELIMINARY DECISIONS

### I. Decision regarding the application to vacate the hearing, issued to the parties by email at 5pm on 10 September 2025

1. I am grateful for the parties' attendance at the CMC held today at 2pm at short notice. This was held in order to deal with the application by SKE made late yesterday afternoon to vacate the hearing on Friday this week.

2. Ms Horlick KC set out the effect that the ongoing contempt proceeding has on the ability of SKE and their representatives to make submissions at Friday's hearing. She reminded me of the Article 6 ECHR right to a fair trial. SKE also asks that the Registrar awaits directions from the court as to the application to vary the Order and Mr Davis KC explained that these directions were being sought on Tuesday next week. He confirmed that these were being sought in order to give clarity regarding timings and a hearing on the variation application. Overall, SKE says that it is unfair for the hearing to proceed in these circumstances.

3. BBL resists these points and seeks for the hearing to proceed (while Mr Lowry maintained his more fundamental position that this is not a matter upon which the Registrar can properly hold a hearing).

4. I am very mindful of the overriding objective and in particular the need to deal both expeditiously and fairly with proceedings. Needless to say, this is a particularly unusual and highly awkward situation with, in my view, no obviously satisfactory solution. Nevertheless, I must find the best way of dealing with the point that has arisen.

5. The substantive point which is in dispute before the Registrar is the question of whether he should act upon the Order now, regardless of the potential for further outcomes at the court, or should await those further outcomes.

6. It seems to me that the inevitable consequence of SKE's position today is that – before I decide whether the right answer is to implement the Order now or await further court outcomes – I should await one or more further court outcomes. Thus, if the hearing is vacated, the Registrar has prematurely and unfairly given an answer to the substantive point. To put it another way, if SKE's arguments are accepted as to why the hearing is vacated, then it seems to me that those arguments must continue to apply while certain court proceedings remain ongoing – which could be for some time. In that scenario, the Registrar would have, for all practical purposes, decided that he should not act until various Court outcomes had arisen.

7. Therefore, while I heard and understood the points made about SKE's difficulties, I think the better option in all the circumstances is that the hearing proceeds. If SKE does not attend the hearing, I have their written submissions thus far, which I can take into account – albeit I heard Mr Davis KC allude to further submissions that SKE would have wanted to make had they been free to do so.

8. The hearing will proceed and I would be grateful if SKE can confirm with the Tribunal by close of play tomorrow (Thursday 11th September) whether they will wish to participate, or to observe, or not to attend.

**II. Transcript of oral decision regarding whether the Registrar is able to hear the matter under rule 63, given at the hearing on 12 September 2025**

THE CHIEF HEARING OFFICER: Yes, thank you. If I have understood it, the consequence of what you are saying, and I shall just generalise the point a little bit here to come away from, but the consequence of what you are saying is that when the Registrar is in a position where he is being asked to act administratively in some way, and he has one party telling him that he should act in a particular way and another party telling him that he should act in a different way, I think what you are saying is that the Registrar needs to assess in some way whether there is any basis for disagreement and then, on the basis of that assessment, decides whether he should just go ahead regardless of what he is hearing, or whether he should engage in the Rule 63 process to resolve the matter.

I think that is the general approach that you are offering to me, if I have understood it correctly. You are saying, yes, there is a dispute between the parties but the matter is not one on which there is any basis for dispute, therefore the Registrar should not hear the matter and should just take an administrative action.

MR. LOWRY: Precisely, Sir. The Registrar has already made the comment that it is a clear and unambiguous order, that the mark shall proceed to registration. That was the preliminary view and, obviously, we are offered the possibility of a hearing to try and bring the matter to conclusion but, yes, it is a clear and unambiguous order.

THE CHIEF HEARING OFFICER: Thank you very much. Obviously, I have given this matter some thought in advance of the hearing so that we can decide now how to proceed. The position I think you are putting forward is, in fact, not correct. I think it is very unattractive to suggest that the Registrar needs to make that sort of initial assessment when a matter is in dispute as to whether Rule 63 is engaged or not. I do not see a basis for the Registrar invoking that step. However strongly held the view of one party is, and however much it may or may not turn out that the strongly-held view is entirely correct, it seems to me that when the parties are in disagreement on any matter under the Act or Rules, the Registrar shall give them an opportunity to be heard before taking any adverse action.

I do not think there is any dispute here that there is a proceeding under the Act or Rules. I do not think there is any dispute that the Registrar's action one way or the other may be adverse. Ultimately, Mr. Lowry, I think that is the position. However strongly held the views, the Registrar has

a dispute before him, he is being given submissions going in completely different directions, and I do not think it is correct that he makes some sort of initial assessment about whether there can reasonably be a dispute on the matter before going on to offer a hearing and decide it.

MR. LOWRY: Sir, can I just respond, just briefly?

THE CHIEF HEARING OFFICER: Of course, yes. I think I have come to the end of my train of thought, so please do, thank you.

MR. LOWRY: My understanding and interpretation of Rule 63 is that it is only engaged when the Registrar is making a decision that is adverse to one of the parties involved.

THE CHIEF HEARING OFFICER: Yes.

MR. LOWRY: I think there may be some misunderstanding here. My primary point was there is not a decision for the Registrar to make because that has already been made by the High Court and Deputy Judge Michael Tappin KC. That was the point. I mean, I followed on with to say otherwise would be that the IPO or Registrar would become the arbiter of the High Court order as to whether or not it was good or bad.

THE CHIEF HEARING OFFICER: Yes, I understand that point that you have made. I agree that there is not a substantive decision for the Registrar to make in terms of what has been made by the Court. What I am deciding is that there is, nevertheless, a dispute over the Registrar's decision on how and when to act. There is a dispute over how and when the Registrar should act in light of the High Court's decision and that is why I think Rule 63 is engaged.

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