

O/0876/24

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 3926873
IN THE NAME OF KITSLIMY BEAUDELAB LTD
TO REGISTER AS A TRADE MARK**

KITSLIMY
Beau⁺
de Lab

IN CLASS 5

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 600003148
BY BEAUTYLAB LIMITED**

BACKGROUND AND PLEADINGS

1. On 26 June 2023, KITSLIMY Beaudelab LTD (“the applicant”) applied to register the trade mark shown on the cover page of this decision in the United Kingdom. The application was accepted and published for opposition purposes on 6 October 2023, in respect of the following goods in class 5:

Class 5: *Nutritional supplements; Preparations of vitamins; Multivitamin preparations; Vitamin and mineral preparations; Dietary supplements; Vitamin preparations; Vitamin A preparations; Vitamin B preparations; Vitamin C preparations; Mixed vitamin preparations; Vitamin D preparations; Dietary supplements; Herbal dietary supplements for persons special dietary requirements; Dietary supplements in powder form; Dietary supplements consisting of vitamins; Vitamin supplements; Vitamin and mineral supplements; Mineral supplements; Vitamin tablets.*

2. The application is opposed by Beautylab Limited (“the opponent”). The opposition was filed on 15 December 2023 under the fast-track procedure and is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the goods in the application. The opponent relies upon the following series of two marks:

BeauLab

BEAULAB

UK trade mark registration number 3922087

Filing date: 13 June 2023

Registration date: 8 September 2023

Registered in Classes 3, 5 and 35

Relying on some goods and services only in classes 5 and 35, as listed in the table under paragraph 12 of this decision.

3. The above series of marks qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application date for the contested mark, it is not subject to the use provisions contained in section 6A of the Act.

4. The opponent submits that the marks are visually, phonetically and conceptually similar and that the applicant's goods in class 5 are identical or similar to the goods in class 5 relied upon under the earlier mark and are similar to the services relied upon by the opponent in class 35, leading to a likelihood of confusion, which includes a likelihood of association. The opponent requests an award of costs in its favour.

5. The applicant filed a counterstatement denying the claims of a likelihood of confusion, although it admits to there being similarity between the applicant's goods and the goods and services relied upon for the opposition. The applicant submits that the application "must be allowed registration".

6. Neither party requested leave to file evidence or for an oral hearing in this fast-track opposition. Only the opponent elected to file written submissions which will be referred to as and where appropriate during this decision. Therefore this decision is taken following careful consideration of the papers on file.

7. In these proceedings, the opponent is represented by Laytons LLP and the applicant is represented by Bonamark Limited.

DECISION

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

Section 5(2)(b)

9. Section 5(2)(b) is relied on and reads as follows:

“5(2) A trade mark shall not be registered if because -

(a) ...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

10. Section 5A states:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

11. I am guided by the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (“OHIM”)*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods and services

12. The goods and services to be compared are:

Opponent's goods and services	Applicant's goods
<p><u>Class 5</u></p> <p><i>Pharmaceutical preparations; other than toiletries; chewing gum for medical purposes; dietetic substances for medical use; vitamins; nutritional supplements; mineral food supplements; dietetic food and substances adapted for medical or veterinary use; food for babies; dietary food supplements; dietary supplements; dietary supplements for humans and animals; dietary supplements with a cosmetic effect.</i></p>	<p><u>Class 5</u></p> <p><i>Nutritional supplements; Preparations of vitamins; Multivitamin preparations; Vitamin and mineral preparations; Dietary supplements; Vitamin preparations; Vitamin A preparations; Vitamin B preparations; Vitamin C preparations; Mixed vitamin preparations; Vitamin D preparations; Dietary supplements; Herbal dietary supplements for persons special dietary requirements; Dietary supplements in powder form; Dietary supplements consisting of vitamins; Vitamin supplements; Vitamin and mineral supplements; Mineral supplements; Vitamin tablets.</i></p>
<p><u>Class 35</u></p> <p><i>Retail services in relation to pharmaceutical preparations, chewing gum for medical purposes, dietetic substances for medical use, vitamins, nutritional supplements, mineral food supplements, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary food supplements, dietary supplements, dietary supplements for</i></p>	

<i>humans and animals, dietary supplements with a cosmetic effect.</i>	
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13. Where goods or services in the specification of one party are included in a broader term from the other party's specification, those goods or services are considered to be identical: See *Gérard Meric v OHIM*, Case T-133/05 at [29].

14. For the purposes of considering the issue of similarity of the goods, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark*, BL O-399-10, at [5].

15. While I note that in its counterstatement the applicant admits that its goods are similar to the goods and services relied upon by the opponent, it has not said to what degree it considers them similar. I will therefore proceed to make my own comparison of the degree of similarity between the parties' respective goods.

16. The term "*nutritional supplements*" is covered under class 5 of both the applicant's and the opponent's specifications, as is the term "*dietary supplements*" (which appears twice in the applicant's specification). The goods are self-evidently identical.

17. The opponent's broad term "*dietary supplements*" in class 5 encompasses the applicant's "*Herbal dietary supplements for persons special dietary requirements; Dietary supplements in powder form*" and as such the goods are identical as per the principle outlined in *Meric*.

18. *Preparations of vitamins; Multivitamin preparations; Vitamin ... preparations; Vitamin preparations; Vitamin A preparations; Vitamin B preparations; Vitamin C preparations; Mixed vitamin preparations; Vitamin D preparations; Dietary supplements consisting of vitamins; Vitamin supplements; Vitamin ... supplements; Vitamin tablets.*

All of the above goods are encompassed by the opponent's broad terms "*vitamins*" and "*dietary supplements*" in class 5, rendering the goods *Meric* identical.

19. The applicant's wide terms "... *mineral preparations*; ... *mineral supplements*; *Mineral supplements*" include the opponent's "*mineral food supplements*" and as such they are identical as per *Meric*.

The average consumer and the nature of the purchasing act

20. The average consumer is a legal construct, deemed to be reasonably well informed and reasonably circumspect: see *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), paragraph 60. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97, at [26].

21. The opponent submits that the average consumer of the goods at hand will be the general public who would pay no more than a medium level of attention when accessing or selecting the goods.

22. I agree with the opponent that the average consumer for the overlapping goods, being dietary supplements including vitamins, will most likely be the general public.¹ The goods are sold through a range of channels including 'drug stores' and supermarkets, via physical stores and online. The overlapping goods are likely to be self-selected from the shelves of such stores and will be a predominantly visual purchase, although I do not discount oral considerations such as advice from sales representatives. Given the nature of the goods, they are likely to be selected in order to boost the users' dietary needs. Overall, I consider a medium degree of attention will be paid during the purchase of the goods at issue.

Comparison of marks

23. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its

¹ In contrast with the opponent's "*pharmaceutical preparations*" such as prescription drugs and generic medicines which would warrant a high level of attention from both the general public and professional consumers: *Olimp Laboratories sp. z o.o. v EUIPO*, Case T-817/19, EU:T:2021:41 at [39 – 42].

various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated in *Bimbo SA v OHIM* Case C-591/12P, that:

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

24. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

25. The respective trade marks are shown in the table below:

Opponent’s trade marks	Applicant’s trade mark
<p data-bbox="204 1332 363 1368"><u>Series of 2</u></p> <p data-bbox="405 1458 584 1496">BeauLab</p> <p data-bbox="389 1603 600 1641">BEAULAB</p>	<p data-bbox="935 1447 1262 1496">KITSLIMY</p> <p data-bbox="1027 1514 1262 1641">Beau⁺Lab de</p>

Overall impression

26. The opponent’s mark has been registered as a series of two marks, pursuant to section 41(2) of the Act. They each comprise identical elements, being the word

“BEAULAB”. The first mark in the series is presented as one word “BeauLab” with the letters B and L in upper case and the remaining letters in lower case in a standard black typeface, with the second mark presented in the same standard black typeface in capital letters. The registration of a word mark gives protection irrespective of capitalisation: see *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17. For convenience, I will from this point refer to the series in the singular, though my comments should be taken as referring equally to both marks in the series, unless expressed otherwise. As the mark contains no other elements, the overall impression rests in the word as presented.

27. In its counterstatement, the applicant submits that its mark is “*Kitslimy + BeauLabeled*” although it has provided variant word orders for the “*BeauLabeled*” elements. The mark consists of several elements, all presented in a standard black typeface: the word “KITSLIMY”, presented in upper case, is situated centrally above the word “Beau” which is in title case. The word “Lab”, which appears to be in a slightly smaller font size, runs vertically from top to bottom with the letters turned 90° sideways, with the first letter, being the capitalised letter “L”, situated to the right of the letter “u” in “Beau” and directly beneath the letter “M” of “KITSLIMY”. Slightly higher than, and to the right of the sideways letter “L” is a plus sign, “+”, which is positioned beneath the letter “Y” of the “KITSLIMY” element. The letters “de” are positioned horizontally directly below the letters “au” of the word “Beau” and to the left of the sideways letter “b” of the “Lab” element. In my view, given its size and its central position at the top of the mark, I consider the invented word “KITSLIMY” to be the dominant element and to have the most impact in the composite sign, playing the greatest role in the overall impression of the mark. The other elements play a secondary role, although they would not go unnoticed.

Visual comparison

28. I note that in *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the General Court (“GC”) noted that the beginning of words tend to have more visual and aural impact than the ends, although I accept that this is not always the case.

29. The applicant's mark contains the elements "KITSLIMY", "+", "Beau", "de", and "Lab", presented as previously described, while the opponent's mark contains the word "BEAULAB/BeauLab", presented as a single word, which is encompassed entirely within the applicant's mark, albeit presented as two separate words. However, the "KITSLIMY", "de" and "+" elements in the applicant's mark are not present in the opponent's mark and thus create visual disparity between the marks, with the presentation of the marks at issue creating a further point of difference between them. To my mind, the somewhat haphazard arrangement of the individual elements in the applicant's mark makes a significant visual impact in comparison to the opponent's singular word mark, and further serves to diminish the visual similarities between the common elements of the contested marks. Considering the marks as a whole, I find there to be a low degree of visual similarity between them.

Aural comparison

30. I note the respective submissions on the word order of the applicant's mark, and that both parties have submitted that the "KITSLIMY" element would be likely to be pronounced first. Given its presentation, to my mind, if articulated in full, the applicant's mark would most logically be pronounced as either "KITSLIMY and Beau de Lab" or "KITSLIMY plus Beau de Lab". The commonality with the opponent's mark would therefore be in the elements "Beau" and "Lab", with the opponent's mark voiced in its entirety as two syllables, "BOH-LAB", as compared to the seven syllables of the applicant's mark, "KIT-SLY-ME-AND-BOH-DAY-LAB" or alternatively "KIT-SLY-ME-PLUS-BOH-DAY-LAB". However, in whichever way the consumer pronounces the "+" sign and in whichever order it articulates the last three syllables of the applicant's mark, I find the marks to be aurally similar to a low degree, given the difference in length and that the Beau and Lab elements are voiced towards the end of the applicant's mark. That being said, I consider that a significant proportion of consumers would only voice the dominant "KITSLIMY" element within the applicant's mark, which, as per *El Corte Inglés*, has the most impact at the start of the mark. To those consumers, the marks are aurally dissimilar.

Conceptual comparison

31. For a conceptual message to be relevant, it must be capable of immediate grasp by the average consumer - Case C-361/04 P *Ruiz-Picasso and others v OHIM* [2006]².

32. The opponent submits that the word “beau” appears in dictionaries with meanings including “a man who is greatly concerned with his appearance” and “a male lover or sweetheart”, while the word “Lab” is likely to be understood as an informal reference to a laboratory. It submits that while the word “KITSLIMY” in the applicant’s mark has no meaning, both marks have an element conveying the same or a similar concept, and that there is a medium degree of conceptual similarity between the marks.³ In its counterstatement, the applicant submits that its mark “gives off a slight French impression”. It submits that the “Beau” element stands for a boyfriend, however, it further submits that the opponent’s mark “BeauLab” has no meaning and therefore the marks convey different conceptual impressions and possess a low level of conceptual similarity.

33. I am guided by *Sabel*, and I consider that when viewing the respective marks as a whole, the consumer is likely to see each mark as comprising random terms which together do not convey any immediate conceptual message. However, I acknowledge the submissions on the possible meanings of the “Beau” and “Lab” elements common to both marks which the average consumer may recognise and understand, leading to a low degree of conceptual similarity between the marks.

Distinctive character of the earlier marks

34. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. The factors I must take into account in assessing the level of distinctive

² Paragraph 56.

³ Page 6 of the opponent’s written submissions in lieu of a hearing.

character were set out by the CJEU in *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97:

“23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

35. Registered trade marks possess varying degrees of inherent distinctive character, being lower where they are allusive or suggestive of a characteristic of the goods and services, ranging up to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use made of it. The opponent has not claimed that its mark has enhanced distinctiveness and no evidence of use has been filed. Therefore, I only have the inherent characteristics of the mark to consider.

36. Earlier in this decision, I acknowledged the opponent’s submissions on the meaning of the individual words “Beau” and “Lab” which together do not, in my view, immediately convey any particular message. I agree that the earlier mark neither describes nor alludes to the goods and services for which the mark is registered. Considering the mark as a whole, I consider it to be inherently distinctive to between a medium to high degree.

Likelihood of confusion

37. There is no simple formula for determining whether there is a likelihood of confusion. It is clear that I must make a global assessment of the competing factors (*Sabel* at [22]), keeping in mind the interdependency between them i.e. a lesser

degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (*Canon* at [17]). I must consider the various factors from the perspective of the average consumer, bearing in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind (*Lloyd Schuhfabrik* at [26]).

38. There are two types of possible confusion: direct, where the average consumer mistakes one mark for the other, or indirect, where the average consumer recognises that the marks are different, but assumes that the goods and/or services are the responsibility of the same or connected undertakings. The distinction between these was explained by Mr Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v Back Beat Inc*, Case BL-O/375/10. He said:

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

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

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even

where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

39. The above are examples only which are intended to be illustrative of the general approach. These examples are not exhaustive but provide helpful focus.

40. Earlier in this decision, I considered the applicant’s goods and those of the opponent to be either self-evidently identical or identical as per the principle outlined in *Merix*. I found that during the selection process, the level of attention of the average consumer, being the general public, would be to a medium degree, with the goods at issue being a predominantly visual purchase, although I did not discount oral considerations. I considered the competing trade marks to be visually similar to a low degree, while aurally, the marks were similar to a low degree when all the elements which make up the applicant’s mark were voiced, but aurally dissimilar when only the “KITSLIMY” element of the applicant’s mark were articulated. Conceptually, I considered it likely that a significant proportion of consumers would see each mark as a whole as comprising random terms which together do not convey any immediate conceptual message. However, to the average consumer who recognises and understands the meanings of the individual elements “Beau” and “Lab”, common to both marks, this would result in a low degree of conceptual similarity between them. I found the opponent’s earlier mark to be inherently distinctive to a medium to high degree.

41. While allowing that the average consumer is unlikely to see the marks side-by-side and will therefore be reliant on the imperfect picture of them they have kept in their mind, I consider it unlikely that they would mistake one mark for the other. In my view,

the average consumer will notice and recall the dominant “KITSLIMY element of the applicant’s mark which is not present in the opponent’s mark but be unsure of the additional elements which make up the applicant’s mark. Even where the additional elements are noticed and recalled, the differences between the marks as a whole are too great for confusion to arise. I find this in spite of the degree of inherent distinctive character possessed by the earlier mark, and even though the respective goods are held to be identical, which offsets a lesser degree of similarity between the marks. Consequently, I do not consider there is any likelihood of direct confusion.

42. Taking into account the previously outlined guidance of Mr Iain Purvis Q.C. (as he then was), in *L.A. Sugar*, I will now consider whether there might be a likelihood of indirect confusion. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor Q.C. (as he then was), as the Appointed Person, stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, he pointed out that it is not sufficient that a mark merely calls to mind another mark. This is mere association not indirect confusion.

43. In *Liverpool Gin Distillery Ltd and others v Sazerac Brands, LLC and others* [2021] EWCA Civ 1207, Lord Justice Arnold referred to the comments of James Mellor QC (as he then was) sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said (at [16]) that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Lord Justice Arnold added that there must be “a proper basis” for concluding that there is a likelihood of indirect confusion when there is no likelihood of direct confusion.

44. I acknowledge that the categories listed by Mr Iain Purvis Q.C. (as he then was) are not exhaustive. I have made a multi-factorial assessment of the various considerations in play, however, I do not see anything which would lead the average consumer into believing that one mark is a sub-brand or brand extension of the other or assume that there is an economic connection between the undertakings. Even where the consumer identifies and recalls that the words “Beau” and “Lab” are present in both marks, they are likely to put it down to coincidence. I therefore find no likelihood of indirect confusion.

45. The opposition fails under section 5(2)(b) of the Act.

CONCLUSION

46. The applicant has been successful. Subject to any successful appeal, the application by KITSLIMY BeauDeLab LTD may proceed to registration.

COSTS

47. The applicant has been successful and is therefore entitled to a contribution towards its costs. Awards of costs in fast-track opposition proceedings are governed by Tribunal Practice Notice (“TPN”) 1/2023. Applying the guidance in that TPN, I award the applicant the sum of £250, which is calculated as follows:

Considering a notice of opposition and preparing a counterstatement: £250

Total: £250

48. I therefore order Beautylab Limited to pay KITSLIMY BeauDeLab LTD the sum of £250. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 10th day of September 2024

Suzanne Hitchings
For the Registrar,
the Comptroller-General