BL O/0994/26

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004062583 FOR THE FOLLOWING TRADE MARK IN CLASS 18 IN THE NAME OF ABDULWAHED BIN SHABIB DISTRIBUTION



AND IN THE MATTER OF APPLICATION FOR A DECLARATION OF INVALIDITY NO. CA000510022 BY SAMSONITE IP HOLDINGS S.À R.L

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF N. R. MORRIS DATED 17 JULY 2026 WITH NUMBER O/0619/26

DECISION

Introduction

1. This is an appeal by Abdulwahed Bin Shabib Distribution (the "**Proprietor/Appellant**") from the decision of the Hearing Officer, Mx N. R. Morris, dated 17 July 2026 with number O/0619/26 (the "**Decision**").

2. The Decision concerns the late filing by the Proprietor of a Form TM8 and counterstatement in invalidity proceedings brought by Samsonite IP Holdings S.àr.l. (the "**Applicant/Respondent**") against UK trade mark registration no. UK00004062583 (the "**AMERICAN TRAVELLER Mark**").

3. The Hearing Officer declined to exercise the discretion under rule 41(6) of the Trade Marks Rules 2008 (the "**Rules**") to permit the Proprietor to defend the invalidity proceedings. The consequence was that the Proprietor was to be treated as not opposing the invalidity application and the AMERICAN TRAVELLER Mark declared invalid.

4. There are three matters for determination on this appeal:

    a. the Proprietor's appeal against the Hearing Officer's refusal to exercise the discretion under rule 41(6);

    b. the Proprietor's application to introduce further evidence; and

    c. the Applicant's renewed application for security for costs.

Background

5. The AMERICAN TRAVELLER Mark was filed on 12 June 2024 and registered on 11 October 2024 in respect of goods in class 18.

6. On 15 January 2026, the Applicant applied to have the AMERICAN TRAVELLER Mark declared invalid pursuant to sections 47, 5(2)(b), 5(3), 5(4)(a) and 3(6) of the Trade Marks Act 1994 (the "**Act**"). The application was filed without prior notice to the Proprietor.

7. On 2 February 2026, the Registry served the Form TM26(I) and accompanying statement upon the Proprietor and set a deadline of 2 April 2026 for filing a Form TM8 and counterstatement. The accompanying letter expressly drew attention to rule 41(6) and to the consequences which might follow if the deadline were missed.

8. No Form TM8 was filed by 2 April 2026.

9. On 17 April 2026, the Registry communicated its preliminary view that the Proprietor should be treated as not opposing the application and explained that, if the Proprietor disagreed with that view, it must file the Form TM8 and a witness statement setting out the reasons for failing to meet the deadline by 1 May 2026.

10. On 29 April 2026, the Proprietor filed a Form TM8 together with the witness statement of Mr Abdulwahed Ahmad Rashed Bin Shabib, founder and owner of the Proprietor. In summary, the Proprietor submitted that the United States airstrikes on Iran had a direct and material impact on its normal business operations in the United Arab Emirates, affecting its ability to process, review and submit time-sensitive filings in the usual timely manner.

11. On 7 May 2026, the Registry communicated its preliminary view that, after consideration of the information provided by the Proprietor, it proposed to allow the late-filed Form TM8 to proceed to be examined to determine its admissibility.

12. On 21 May 2026, the Applicant objected to that preliminary view and requested a hearing. At the same time, it applied for security for costs against the Proprietor in the sum of £4,250.

13. A hearing took place on 16 June 2026. The Applicant was represented by Mr James Appleyard of HGF Limited and the Proprietor by Ms Gail Nicol of Lincoln IP. In summary, the Applicant submitted that it could demonstrate that the Proprietor was conducting normal business operations during the relevant period. In particular, it explained that the Proprietor was continuing to receiving “in-person walk-in events at [its] office in Dubai on 15 and 29 March 2026”.

14. At the conclusion of the hearing the Hearing Officer directed the Applicant to put into evidence its case concerning the walk-in recruitment events said to have taken place

during the period of disruption relied upon by the Proprietor. On 18 June 2026 the Applicant filed a witness statement of Mr James Richard Appleyard with exhibits JRA1 and JRA2.

15. On 19 June 2026, the Registry wrote to the parties concerning that evidence. Among other things, it explained that the deadline for the Proprietor to file evidence in response remained 4 pm on 22 June 2026. The Proprietor filed written submissions on 22 June 2026.

16. On 17 July 2026, the Hearing Officer issued the Decision. Having considered the factors identified in *Music Choice Ltd's Trade Mark* [2005] RPC 18, she concluded that the evidence did not demonstrate extenuating circumstances or compelling reasons which prevented compliance with the 2 April 2026 deadline. She therefore declined to exercise the discretion under rule 41(6).

17. Having reached that conclusion, the Hearing Officer held that it was unnecessary for her to determine the Applicant's application for security for costs. She also made no order for costs, having regard to TPN 1/2023 and the fact that the invalidity proceedings had been commenced without prior notice.

18. On 12 August 2026, the Proprietor filed its Notice of Appeal and Grounds of Appeal. It also applied to admit further evidence.

19. On 4 September 2026, the Applicant filed its Respondent's Notice. By accompanying correspondence, it renewed its application for security for costs, stating that the appeal increased the costs exposure against which it had originally sought protection. The Applicant relied upon its application dated 21 May 2026 and indicated that it would provide further submissions concerning the additional costs of the appeal if required.

20. Both parties requested that the appeal be addressed on the papers.

Grounds of Appeal

21. The Proprietor invites me to set aside the Decision. In support of this, it advances six grounds of appeal, summarised as follows:

    a. Ground 1: The Hearing Officer took account of evidence filed after the hearing without affording the Proprietor an opportunity to respond;

    b. Ground 2: The Hearing Officer made findings that the Proprietor had consciously chosen not to direct resources to the invalidity proceedings, which were findings not open to her on the material;

    c. Ground 3: The Hearing Officer treated the adequacy of the explanation for default as a threshold condition, rather than one factor in the multi-factorial balance which the authorities require;

    d. Ground 4: The Hearing Officer wrongly discounted the consequences of refusing relief because they were the ordinary consequences of non-compliance;

    e. Ground 5: The Hearing Officer's findings concerning remote working were unsupported by evidence and inconsistent with her holding that the Proprietor's representative could not properly file Form TM8 without instructions; and

f. Ground 6: The Hearing Officer failed adequately to explain how she resolved the evidence concerning the recruitment events.

22. The Proprietor additionally applies for permission to rely upon further evidence concerning its corporate governance and litigation approval procedures, its remote-working arrangements and its recruitment activities.

Standard of Review

23. The principles to be applied to an appeal are well established. They were summarised by Joanna Smith J in Axogen Corp v. AVIV Scientific [2022] EWHC 95 (Ch) [24] as follows:

> "... 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)]).

24. Further guidance has also been given by the Supreme Court in Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc [2025] UKSC 25 at [93] to [95].

25. As to the way in which appellate courts should approach writing judgments, the Court of Appeal in Unik Bond SA v. Catbalogan Holdings Sarl [2025] EWCA Civ 1594 has given the following guidance:

> “59. In Re Portsmouth City Football Club Ltd (in liquidation) [2013] EWCA Civ 916, [2013] Bus LR 1152 Mummery LJ (with whom Rimer and Underhill LJJ agreed) posed the question at [36]:
>
> > “What sensible purpose could be served by this court repeating in its judgments detailed discussions of every point raised in the grounds of appeal and the skeleton arguments when they have already been dealt with correctly and in detail in the judgment under appeal? No purpose at all, in my view.”
>
> 60. He continued at [38]:
>
> > “The proper administration of justice does not require this court to create work for itself, for other judges, for practitioners and for the public by producing yet another long and complicated judgment only to repeat what has already been fully explained in a sound judgment under appeal. If the judgment in the court below is correct, this court can legitimately adopt and affirm it without any obligation to say the same things over again in different words. The losing party

will be told exactly why the appeal was dismissed: there was nothing wrong with the decision appealed or the reasons for it."

26. I have kept the above principles in mind when considering this appeal.

Rule 41(6)

28. Given the importance of Rule 41(6) to this appeal, I have set it out in full below (my emphasis):

> "The proprietor shall, within two months of the date on which a copy of Form TM26(I) and the statement was sent by the registrar, file a Form TM8, which shall include a counter-statement, otherwise the registrar may treat the proprietor as not opposing the application and registration of the mark shall, unless the registrar otherwise directs, be declared invalid."

29. It was common ground below that, the deadline having been missed, the ordinary power to extend the prescribed period was unavailable and that the Proprietor therefore depended upon the discretion contained in the words "unless the registrar otherwise directs".

30. In Music Choice's Trade Mark [2006] RPC 13 [65], Mr Geoffrey Vos QC (as he was then) addressed this discretion explaining:

> … it would be inappropriate to set out factors which would circumscribe the exercise of that discretion. Plainly, however, the discretion must be exercised on the premise that the time limit in r.33(6) is inextensible, and that there must be compelling reasons for the proprietor to be treated as opposing the application, notwithstanding his failure to comply with an inextensible time limit."

31. In the context of the case before him, he then set out five factors for consideration when exercising the discretion:

> "(1) The circumstances relating to the missing of the deadline including reasons why it was missed and the extent to which it was missed.
>
> (2) The nature of the applicant for invalidity's allegations in its statement of grounds.
>
> (3) The consequences of treating the IR holder as opposing or not opposing the application for invalidity.
>
> (4) Any prejudice caused to the applicant for invalidity by the delay.
>
> (5) Any other relevant considerations, such as the existence of related proceedings between the same parties."

32. The Hearing Officer adopted these five factors, while also referring to *Kickz v Wicked Vision* (BL O/035/11), *Mark James Holland v Mercury Wealth Management* (BL O/050/12) and TESCON (O/240/20).

33. The issue on this appeal is principally not the identification of those principles, but their application to the discretion available to the Hearing Officer. As such, I remind myself that I should not interfere merely because I might have exercised the discretion differently. Intervention is justified where the decision-maker erred in law or principle, took account of

an irrelevant matter, failed to take account of a relevant matter, or reached a conclusion outside the range properly open to her.

Discussion

Ground 1: Post-hearing evidence

27. The Proprietor contends that the procedure adopted below was unfair because the Applicant filed evidence concerning recruitment events following the hearing, and that the Proprietor had no opportunity to answer it.

28. That contention is not borne out by the contemporaneous correspondence. On 19 June 2026 the Registry expressly confirmed that the Proprietor's deadline for filing evidence in response was 4 pm on 22 June 2026. The Proprietor then filed written submissions on 22 June addressing the Applicant's post-hearing evidence concerning recruitment activity. It is therefore not merely the case that the Proprietor was afforded an opportunity to respond: it exercised that opportunity. The factual premise upon which Ground 1 is advanced is accordingly incorrect.

29. Ground 1 therefore fails.

Ground 2: Alleged deliberate deprioritisation

30. The Proprietor challenges the Hearing Officer's observations at [28] and [43] that appropriate priority had not been given to protecting its intellectual property rights and that it had "apparently, chosen not to direct resources to the matter of the invalidation claim against it".

31. I accept that the latter observation could have been better expressed. The evidence did not establish a conscious decision by an identified decision maker to consider the invalidity proceedings and positively decide not to defend them. Taken literally, the phrase "chosen not to direct resources" went further than the evidence established.

32. The appellate question is, however, whether that infelicity was material to the exercise of discretion. I do not read the Decision as depending upon a positive finding of deliberate default. Read in context, the Hearing Officer was addressing the causal relationship between the disruption upon which the Proprietor relied and the missed deadline. The essential concern was that the evidence spoke of the effect upon businesses in the UAE in general terms but did not sufficiently particularise how that disruption affected this Proprietor's ability to give the instructions necessary to defend these proceedings. The continuation of some business activities formed part of that evaluation. The imprecise formulation did not materially affect the outcome.

33. Ground 2 therefore fails.

Ground 3: Alleged threshold approach

34. The Proprietor submits that the Hearing Officer treated the inadequacy of the explanation for the missed deadline as a threshold condition and thereby failed to undertake the multifactorial exercise required by *Music Choice*.

35. I do not consider that this is a fair reading of the Decision. The Hearing Officer expressly identified the Music Choice framework and considered:

    a. The circumstances surrounding the missed deadline;

    b. The nature of the Applicant's allegations;

    c. The consequences of treating the Proprietor as defending or not defending the invalidity application;

    d. The prejudice to the Applicant; and

    e. The existence of related proceedings.

36. Some of her conclusions upon those matters were favourable to the Proprietor. In particular, she recognised the serious consequence of refusing relief and was unpersuaded by significant elements of the Applicant's case concerning prejudice and the relevance of related proceedings.

37. Against that background, I do not interpret her conclusion at [45] as treating the explanation for default as a legal gateway rendering the other considerations irrelevant. Rather, the Hearing Officer regarded the inadequacy of the causal explanation as carrying substantial and ultimately decisive weight.

38. The identification of a relevant consideration does not dictate the weight to be attributed to it. The Hearing Officer was entitled to conclude that one consideration substantially outweighed others.

39. Ground 3 therefore fails.

Ground 4: Consequences of refusal

40. The Hearing Officer expressly recognised that refusal would have serious consequences for the Proprietor. The AMERICAN TRAVELLER Mark would be declared invalid and the Proprietor would lose its filing date.

41. She nevertheless concluded that those consequences were not particularly compelling in the circumstances because they commonly followed failure to comply with the non-extensible deadline.

42. I do not interpret the Hearing Officer thereby to have excluded the consequences from consideration. They were expressly considered and described as serious. The fact that a consequence is ordinary does not render the *Music Choice* factor empty of content. It remains relevant to consider whether the consequences in the particular case possess features going beyond the ordinary consequence contemplated by rule 41(6). Nothing in *Music Choice* requires every listed factor to carry positive or decisive weight for the defaulting party merely because it exists. The criticism is therefore concerned with the weight attributed to a factor properly identified, rather than a failure to consider it.

43. Ground 4 therefore fails.

Ground 5: Remote working and instructions

44. This ground requires closer consideration.

45. I agree with the Proprietor that there is a distinction between the technical ability to communicate or file electronically and the organisational ability of a client to obtain the internal authority necessary to provide instructions. The Hearing Officer's observation about electronic filing did not, by itself, establish that the Proprietor's internal authorisation machinery was functioning normally.

46. However, the burden lay upon the Proprietor, as the party seeking a favourable exercise of the rule 41(6) discretion, to establish why it could not give instructions. The Hearing Officer's central criticism was that the evidence before her did not establish that proposition with sufficient particularity. The much more detailed account of the Proprietor's internal governance arrangements and executive approval procedure appears in the evidence which the Proprietor now seeks to introduce on appeal. That was not the evidential case which the Hearing Officer had before her.

47. Even if the Hearing Officer's technically focused observation is left out of account, the underlying evidential deficiency remains. An appeal is not an opportunity to supplement deficiencies in the evidence presented below by providing, after the event, the particularised explanation whose absence formed part of the Hearing Officer's reasoning.

48. I therefore do not consider that the conceptual distinction identified by the Proprietor establishes a material error in the Decision.

49. Ground 5 therefore fails.

Ground 6: Recruitment evidence

50. The Hearing Officer recorded both the Applicant's evidence concerning walk-in recruitment events and the explanation advanced by Ms Nicol that those events had been arranged before the military strikes. The Hearing Officer did not expressly say whether she accepted or rejected that explanation.

51. The procedural record shows that the Proprietor filed written submissions on 22 June 2026 in response to the post-hearing recruitment evidence. The Hearing Officer was therefore not considering the Applicant's material in a vacuum. Given that the Hearing Officer had directed the Applicant to put its case concerning recruitment into evidence, it would nevertheless have been preferable expressly to identify the conclusion reached upon the competing treatment of that material and the weight, if any, attributed to it.

52. That being said, the duty to give reasons should not be turned into an intolerable burden. A decision maker is not required to address expressly every argument or item of evidence, provided that the issues vital to the conclusion can be identified and the basis upon which they were resolved is apparent. The mere fact that the Hearing Officer did not expressly refer to a particular item of evidence does not, without more, establish that it was overlooked. A decision must be read fairly and as a whole, and the reasons may be sufficient where the basis upon which the relevant issue was resolved is apparent from the decision: see *English v Emery Reimbold & Strick* [2002] EWCA Civ 605.

53. The essential reasoning in the Decision is apparent. The Hearing Officer was not satisfied that the Proprietor's own evidence sufficiently demonstrated how the events relied upon

caused its failure to provide instructions and file the Form TM8. That conclusion did not depend upon the recruitment evidence. It was available on the Proprietor's own evidence. Accordingly, although the Hearing Officer could have dealt more expressly with this matter, I do not consider that the omission constitutes a distinct and material error undermining her conclusion.

54. Ground 6 therefore fails.

Note

55. The Grounds of Appeal also rely upon the Proprietor's prompt response after the Registry's preliminary view of 17 April 2026. The Form TM8 and supporting witness statement were filed on 29 April 2026, within the remedial deadline of 1 May 2026. Although the Hearing Officer did not separately identify prompt remediation as an additional factor, the chronology and the 27-day period of default were expressly before her. Reading the Decision as a whole, there is no sufficient basis for concluding that this feature was overlooked.

56. I have also considered whether the matters identified under Grounds 2, 5 and 6, although individually insufficient, cumulatively undermine confidence in the exercise of discretion. They do not. Each concerns the expression of the reasoning rather than the central conclusion that the evidence failed to establish with sufficient particularity the causal link between the regional disruption and this Proprietor's inability to provide instructions.

Further evidence

57. The Proprietor seeks permission to introduce four items of evidence identified as Exhibits A, B, C and E.

58. The starting point is the familiar guidance in *Ladd v Marshall* [1954] 1 WLR 1489. The matters to be considered include:

    a. Whether the evidence could, with reasonable diligence, have been obtained for use below;

    b. Whether the evidence, if admitted, would probably have an important influence upon the result, although it need not be decisive; and

    c. Whether the evidence is apparently credible.

59. In trade mark proceedings those considerations are not a straitjacket. In *Hunt-Wesson Inc's Trade Mark Application* [1996] RPC 233 [241-242], Laddie J took the view that statutory monopolies bring in different considerations from cases between purely private litigants:

> "In Ladd v. Marshall the court was concerned with private litigation between two parties. If one of them failed to produce evidence which was relevant and helpful until too late, only it would suffer the consequences. However that is not the case here. An opposition may determine whether or not a new statutory monopoly, affecting all traders in the country, is to be created. Refusing permission to an opponent who files evidence late affects not only him but also may penalise the rest of the trade. That is particularly the case where, as here, it is alleged that the applicant is trying to monopolise a well known geographical location. Secondly, although the

matter is not clear, it is probable that if the evidence is excluded and the opponent, as a result, loses then he will be able to return again in separate proceedings to seek rectification of the register. An advantage of allowing in the evidence at the appeal stage is that it may well avoid a multiplicity of proceedings. Thirdly the hearing before the High Court is a rehearing. In my view the more appropriate course to adopt now is to look at all the circumstances, including those factors set out in Ladd v. Marshall and to decide whether on the particular facts the undoubted power of the court to admit fresh evidence should be exercised in favour of doing so. With this in mind it seems to me that in any case the following matters (and there may well be others) are likely to be relevant:

> 1. Whether the evidence could have been filed earlier and, if so, how much earlier.
>
> 2. If it could have been, what explanation for the late filing has been offered to explain the delay.
>
> 3. The nature of the mark.
>
> 4. The nature of the objections to it.
>
> 5. The potential significance of the new evidence.
>
> 6. Whether or not the other side will be significantly prejudiced by the admission of the evidence in a way which cannot be compensated, e.g. by an order for costs.
>
> 7. The desirability of avoiding multiplicity of proceedings.
>
> 8. The public interest in not admitting onto the register invalid marks."

60. The Court of Appeal considered the principles to be applied in trade mark cases in *El Du Pont De Nemours & Company v S.T. Dupont* [2003] EWCA Civ 1368, [2004] FSR 15. Its findings were summarised by Arnold J in *Omega Engineering v Omega* [2010] EWHC 1211 (Ch), [2010] FSR 26, [97]:

> "The principles to be applied on an application to adduce further evidence in support of an appeal to the High Court against a decision of the Registrar in an inter partes case were considered by the Court of Appeal in DU PONT Trade Mark [2003] EWCA Civ 1368, [2004] FSR 15. In summary, these are as follows: (i) the factors set out in Ladd v Marshall [1954] 1 WLR 1489 are basic to the exercise of the discretion; (ii) Ladd v Marshall is no longer a strait-jacket, on the contrary the matter is to be looked at in the round to see that the overriding objective is furthered; and (iii) in the particular context of trade mark appeals, the additional factors set out in Hunt-Wesson Inc's Trade Mark Application [1996] RPC 233 may be relevant."

61. That said, an appeal is not ordinarily an opportunity for a party to repair deficiencies in its evidential case once those deficiencies have been identified by the Hearing Officer.

Exhibits A, B and E

62. Exhibits A and E contain significantly greater detail concerning the Proprietor's governance structure and litigation approval procedure. Exhibit B concerns temporary remote-working arrangements.

63. The Proprietor accepts that Exhibits A, B and E could, with reasonable diligence, have been obtained before the hearing (see [94] of the Grounds of Appeal). That weighs materially against their admission. Moreover, the evidence is directed substantially to the deficiency identified by the Hearing Officer, namely the absence of a sufficiently particular explanation of how the events relied upon prevented this Proprietor from giving instructions before expiry of the deadline. Admission would therefore involve permitting the Proprietor to improve on appeal the evidential case which it elected to place before the Hearing Officer.

64. I recognise the seriousness of the consequences for the Proprietor. I have also considered the nature of the AMERICAN TRAVELLER Mark, the fact that the invalidity grounds will not be determined on their merits if the appeal is dismissed, the apparent credibility of the proposed evidence and the public interest in the accuracy of the Register. Those considerations do not, however, outweigh the fact that the evidence could reasonably have been filed before the Hearing Officer and is now relied upon to remedy the precise deficiency identified in the Decision.

65. I therefore refuse permission to rely upon Exhibits A, B and E.

Exhibit C

66. Exhibit C stands differently in that it is directed specifically to the recruitment evidence filed by the Applicant following the hearing.

67. The Registry expressly afforded the Proprietor an opportunity to respond to that evidence, with a deadline of 4 pm on 22 June 2026. The Proprietor did avail itself of that opportunity by filing written submissions on 22 June. It did not, however, seek to place before the Hearing Officer evidence of the kind now contained in Exhibit C, nor does it appear to have sought further time to obtain such evidence.

68. The relevant question is not whether the particular witness statement now tendered existed on 22 June 2026. It is whether the substance of the evidence could, with reasonable diligence, have been provided then.

69. I have not been given a sufficient explanation of why the evidence could not have been obtained and filed within the period allowed, or why an application could not have been made for further time if the evidence could not reasonably be assembled by 22 June 2026.

70. Had the Hearing Officer treated the occurrence of recruitment events as demonstrating that those responsible for litigation decisions were themselves able to function normally, Exhibit C might have been material to that inference. Exhibit C says that the recruitment campaign had been approved before the disruption, the interviews were scheduled in advance, HR managed the process, and neither the legal department nor the Group Owner was involved.

71. However, establishing that HR possessed delegated authority to conduct pre-arranged recruitment activity does not establish that executive decision-makers were unable to

authorise the TM8. The Hearing Officer's essential conclusion concerned the absence of particularised evidence showing why those responsible for litigation instructions could not give them. Exhibit C would not probably have an important influence upon that conclusion.

72. The Hearing Officer's conclusion did not require a positive finding that the recruitment activity disproved the Proprietor's case. It rested primarily upon the absence of sufficiently particular evidence connecting the regional disruption with the inability to provide instructions.

73. I therefore refuse permission to rely upon Exhibit C.

Security for costs

74. The Applicant originally applied for security for costs in the sum of £4,250 in respect of the underlying invalidity proceedings. The Hearing Officer deferred that application because it would arise only if the late TM8 were admitted. Having decided not to admit the Form TM8, she concluded that it was unnecessary to determine the application.

75. By its letter dated 4 September 2026, the Applicant renewed its application in respect of the costs of this appeal, on the basis that the appeal required it to incur further costs.

76. I have now determined the appeal. There are therefore no further costs of defending this appeal in respect of which security is required. The Applicant's entitlement to the costs actually incurred falls to be dealt with by the costs order below.

77. In those circumstances it is unnecessary for me to determine the application for security for costs.

Conclusion

78. Standing back from the individual grounds, the Hearing Officer was required to determine the relevant facts, apply the principles governing rule 41(6), consider the factors identified in *Music Choice* and exercise a discretion.

79. There were undoubtedly matters weighing in the Proprietor's favour. The default was 27 days. Once the Registry issued its preliminary view on 17 April 2026 and provided a deadline of 1 May 2026, the Proprietor filed its Form TM8 and witness statement on 29 April 2026. The Hearing Officer regarded the prejudice to the Applicant as limited and recognised that refusal would have a serious consequence for the Proprietor.

80. However, the existence of factors pointing in different directions is inherent in the exercise of a discretion of this nature. The question for me is not whether, had the matter been mine to decide at first instance, I would necessarily have attributed precisely the same weight to each of those matters. The Hearing Officer identified the relevant legal principles, considered the relevant factors and concluded that the evidence failed sufficiently to demonstrate how the exceptional circumstances relied upon caused this Proprietor to miss the deadline.

81. I have also identified certain respects in which the Decision might have been more clearly expressed. In particular, the observations concerning the Proprietor having "chosen" not to direct resources to the invalidity proceedings, the technically focused discussion of remote filing and the treatment of recruitment evidence could have been expressed with greater

precision. None of those matters, individually or cumulatively, constitutes a distinct and material error which undermines the Hearing Officer's central conclusion.

82. Taken individually or cumulatively, the grounds do not establish a material error of law or principle, an identifiable flaw undermining the cogency of the Decision, or a conclusion outside the bounds within which reasonable disagreement was possible. Much of the Proprietor's case ultimately invites me to place different weight upon matters which were before the Hearing Officer and thereby substitute my own exercise of the rule 41(6) discretion. That is not the function of this appeal.

Disposition

83. The appeal is dismissed.

84. The Proprietor's application to introduce Exhibits A, B, C and E as further evidence on the appeal is refused.

85. The Decision of the Hearing Officer therefore stands. The late-filed Form TM8 and counterstatement are not admitted and the application for invalidity will be treated as undefended in accordance with rule 41(6).

86. For the reasons given at paragraphs 74 to 77 above, it is unnecessary to determine the Applicant's renewed application for security for costs.

Costs

87. The Hearing Officer made no order for costs below. That conclusion reflected the circumstances of the undefended invalidity application and TPN 1/2023. There is no appeal against that costs order and I do not disturb it.

88. The position on appeal is different. The Proprietor elected to challenge the Decision and the Applicant has successfully resisted the appeal. The Applicant is therefore entitled to a contribution towards its costs of the appeal.

89. Having regard to the nature and extent of the Grounds of Appeal and the further-evidence application, the Respondent's Notice, the fact that the appeal was determined without an oral hearing, and the applicable Registry scale, I award the Applicant £500. The Proprietor shall pay the Applicant this sum within 21 days of the date of this Decision.

Antony Craggs
Appointed Person
6 November 2026

Representation

Proprietor/Appellant: Pablo Albert Catalá, Genuine IP Law
Applicant/Respondent: Tanya Waller, HGF Limited