BL O/0312/26

TRADE MARKS ACT 1994

TRADE MARK APPLICATION
NO. UK00003875050

and

IN THE NAME OF
FARM ORIGINALS LIMITED

AND

OPPOSITION NO. OP000440979
BY ORIGIN COFFEE (HOLDINGS) LIMITED

AND

IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON
BY
FARM ORIGINALS LIMITED
AGAINST DECISION O/0470/25
DATED 28th MAY 2025

MS. ANNE BASHIR (of Murgitroyd & Company) appeared for the Appellant.
MR. MARK WILDEN of Counsel (instructed by Bryers Intellectual Property Ltd) appeared for the Respondent.

APPEAL DECISION

Introduction & Background

1. This is an appeal by Farm Originals Ltd ("FOL") from a decision of the Registrar's Hearing Officer Mr. John Williams, No. BL O/0470/25 dated 28 May 2025.

2. FOL had applied for the registration of mark No. UK00003875050 on 6 February 2023. On 23 May 2023 the application was opposed by Origin Coffee (Holdings) Limited ("OCL"). After routine

extensions, the deadline for FOL to file its defence to the opposition on Form TM8 along with its counterstatement was set for **10 January 2025**.

3. Unfortunately, FOL's representatives, Murgitroyd, erroneously entered the TM8 deadline as **25** January 2025, with the result, in short, that the correct deadline was missed.

4. On 21 January the Registry informed the parties that in default of the filing of the Form TM8, it was minded to treat OCL's opposition as unopposed. This follows from R. 18 (2) of the Trade Mark Rules 2008 (as amended). The Registry gave FOL/Murgitroyd the opportunity, as is usual, to seek a hearing and file evidence to reverse the Registry's preliminary view. Murgitroyd duly sought a hearing and filed evidence to explain the default.

5. It is well settled that in circumstances such as these the Registry can only exercise its discretion to allow an applicant to continue to defend an opposition if there are extenuating circumstances or compelling reasons to do so[1]. The Registry preliminarily determined that Murgitroyd's reasons for missing the deadline did not amount to either and refused to admit FOL's defence. As a result, the matter went to a hearing on 16 May 2025.

The Evidence Before the Hearing Officer

6. Evidence for FOL/Murgitroyd was given by 2 witnesses, Ms Bashir as the Attorney within Murgitroyd who had conduct of the matter for FOL, and Ms. Yvonne McSorley, who was the Director in Murgitroyd responsible for, *inter alia* the firm's internal docketing services.

7. Ms Bashir's evidence was, in summary, that:

    1) Murgitroyd had a records system whereby one team member would enter a deadline and it would be checked by another team member;
    2) As the responsible attorney, Ms Bashir would be notified of the deadline, amongst others, which she would then "periodically" check.
    3) On this occasion, as she put it, she "*conducted a "sense check" of the pink slip, in that I checked that the deadlines to file the counterstatement and the end of the cooling off period matched, I checked that they were approximately in 9 months' time, and that it was the Applicant's deadline and not the Opponent's deadline. I also cross-checked the deadlines on the pink slip with what appeared on the letter".*
    4) Nevertheless, she did not spot the erroneous date of 25 January 2025.

[1] *KIX trade mark* 0/035/11 and *Mercury trade mark* 0/050/12

5) Whilst noting she had suffered a recent family bereavement, (the death of her mother) she could not "*comment on whether this had any bearing on my not picking up the error"*

8. Ms McSorley's evidence confirmed the basic procedures followed by Murgitroyd and added "*Despite taking every precaution, and having tried and tested procedures in place that are followed carefully, there is always the possibility of human error, which appears has occurred in this instance."* At the Hearing, however, Ms Bashir gave hearsay evidence that Ms McSorley was unable to confirm that the records team had conducted its cross-check of the deadline in this case.

Intervening Applications

9. Meanwhile:
    1) On 29 August 2023, OCL filed UK00003950813 (ORIGIN Logo) also covering Class 43. This registration is dated after the date of filing of the Applicant's Mark (6 February 2023), but well before the Applicant's defence deadline of 10 January 2025.
    2) Another unidentified Applicant had filed an intervening application which was potentially to be the basis for an opposition against remedial applications filed by FOL, subject to any priority derived by FOL from No. UK00003875050.

The Hearing Officer's Decision

10. The Hearing Officer set out the relevant law as follows, and there is no suggestion of any error in this respect:

> 25. The filing of a Form TM8 in opposition proceedings is governed by rule 18 of the Trade Mark Rules 2008 ("the Rules"). The relevant parts read as follows:
> "18. (1) The applicant shall, within the relevant period, file a Form TM8, which shall include a counter-statement.
> (2) Where the applicant fails to file a Form TM8 or counter-statement within the relevant period, the application for registration, insofar as it relates to the goods and services in respect of which the opposition is directed, shall, unless the registrar otherwise directs, be treated as abandoned.
> (3) Unless either paragraph (4), (5) or (6) applies, the relevant period is the period of two months beginning immediately after the notification date.
> (4) This paragraph applies where—
> (a) the applicant and the person opposing the registration agree to an extension of time for the filing of Form TM8;
> (b) within the period of two months beginning immediately after the notification date, either party files Form TM9c requesting an extension of time for the filing of Form TM8; and
> (c) during the period beginning on the date Form TM9c was filed and ending nine months after the notification date, no notice to continue on Form TM9t is filed by the person opposing the registration and no request for a further extension of time for the filing of Form TM8 is filed on Form TM9e, and where this paragraph applies the relevant period is the period of nine months beginning immediately after the notification date."

26. The combined effect of Rules 77(1), 77(5) and Schedule 1 of the Rules means that the time limit in rule 18, which sets the period in which the defence must be filed, is non-extensible other than in the circumstances identified in Rule 77(5) which states:
"A time limit listed in Schedule 1 (whether it has already expired or not) may be extended under paragraph (1) if, and only if –
(a) the irregularity or prospective irregularity is attributable, wholly or in part, to a default, omission or other error by the registrar, the Office or the International Bureau; and
(b) it appears to the registrar that the irregularity should be rectified."
27. There is no suggestion that there has been any irregularity on the part of the Tribunal. Consequently, the only basis on which the applicant may be allowed to defend the opposition proceedings is if I exercise in its favour the discretion afforded to me by the use of the words "unless the registrar otherwise directs" in Rule 18(2).
28. Sitting as the Appointed Person in *Kickz*, Mr Geoffrey Hobbs KC held that the discretion conferred by Rule 18(2) can be exercised only if there are "extenuating circumstances". And sitting as the Appointed Person in *Mark James Holland and Mercury Wealth Management Limited* (BL-O-050-12) ("*Mercury*") Ms Amanda Michaels KC held that there must be "compelling reasons" to justify the Registrar exercising that discretion. In considering relevant factors, Ms Michaels referred to the criteria established in *Music Choice Ltd's Trade Mark* [2006] R.P.C. 13 ("*Music Choice*"), which provides guidance applicable by analogy when exercising the discretion under rule 18(2)…"

11. Having set out the law, the Hearing Officer identified and applied the guidance from *MUSIC CHOICE* to determine whether or not there were extenuating circumstances or compelling reasons to justify the exercise of the Registrar's discretion in FOL's favour:

28 (continued)*The factors are as follows:*

The circumstances relating to the missing of the deadline including reasons why it was missed and the extent to which it was missed

29. As confirmed by Ms Bashir's witness statement, "I received the official letter from the UKIPO setting out the timelines for the extension of the cooling off period and filing the counterstatement in this opposition, following the filing of the TM9e, in my email in-box on 18th April 2024."

30. On 23 April 2024, the relevant deadline – 10 January 2025 – was entered erroneously into Murgitroyd's case management system by a member of its ISG as 25 January 2025.

31. Ms McSorley said in her witness statement that all deadlines are reviewed carefully and that the ISG's procedures are tried and tested.

32. Ms Bashir had understood that "when deadlines are entered on our records, one member of the ISG team enters the deadline, whilst another checks that the dates are entered correctly." However, at the hearing, Ms Bashir said that she had spoken to Ms McSorley that morning and been advised that second checks do not always take place.

33. Ms Bashir conducted a "sense check" of the deadline recorded on the "pink slip" – that the date of the expiry of the final nine month cooling off period and date of the deadline for submission of the Form TM8 and counterstatement were one and the same. This sense check also included checking that the expiry date/deadline was in approximately nine months' time.

34. On clicking on the link to the Tribunal's letter in the Attorney Workflow Hub, Ms Bashir did not notice that the date on the pink slip and the date on the Tribunal's letter differed.

35. Ms Bashir was therefore working towards a deadline of 25 January 2025 and "the error regarding the deadline being entered incorrectly only came to light" when Ms Bashir received the letter from the Tribunal dated 21 January 2025 informing her that the deadline for filing the Form TM8 and counterstatement had been missed.

36. The Form TM8 and counterstatement was subsequently received on 4 February 2025.

The nature of the opponent's allegations in its statement of grounds

37. The opposition was brought under sections 5(2)(b) and 5(4)(a) of the Act. There is nothing to suggest that the opposition was without merit.

The consequences of treating the applicant as defending or not defending the opposition

38. If the applicant was allowed to defend the opposition, the proceedings would continue, and the matter would be determined on its merits. If, however, the applicant was not allowed to defend the opposition, its application would be deemed abandoned, and the applicant would lose its filing date of 6 February 2023. It is possible to re-file an application and I am told that the applicant has in fact already defensively filed two new applications. However, I am told that a separate potential opponent has emerged who has made a new application for its mark and whose filing date would now pre-date that of the applicant's new applications.

39. If the applicant was treated as not defending the opposition, it would be subject to significant delay, costs and uncertainty due to, its representatives argue, no fault of its own, its representatives having made an error.

Any prejudice caused to the opponent by the delay

40. The opponent has said that, given that the opposition has been ongoing for two years, the further delay involved in re-running these proceedings would not be significant. But the opponent has incurred costs in relation to the deadline for filing the Form TM8 being missed, not least costs relating to preparing for and attending this hearing.

41. The applicant has recognised that prejudice would be caused to the opponent in terms of costs if the late filed Form TM8 was to be admitted. It has said that this could be compensated for via an award of costs off the scale to take account of the delay and the costs of preparing for and attending this hearing.

Any other relevant considerations such as the existence of related proceedings between the parties

42. There are no other relevant considerations.

43. Having addressed each of the relevant factors as proposed in Music Choice, I need to decide whether the applicant's witness statements and subsequent comments at the hearing revealed extenuating circumstances or compelling reasons that would enable me to exercise my discretion to allow the proceedings to continue.

44. After carefully considering the expected detriment to the applicant in the event that discretion was not exercised in its favour, I find that the loss of a filing date and then the enactment of further proceedings on much the same basis is often the consequence of a failure to comply with the non-extensible deadline for filing a Form TM8. The emergence

of a new potential opponent as a result of what would be a later filing date is also to be expected. This factor is not, therefore, particularly compelling.

45. I am told that the deadline for submitting a Form TM8 and counterstatement was entered in error whereby the year was entered as the day. However, I do not have any information or screenshots before me that show what date format Murgitroyd's case management system uses. What I can say is that the error was more than just a simple transposition of digits when typing.

46. Furthermore, Ms Bashir's checking process was not particularly rigorous. Her "sense check" was rough and ready, and on clicking on the link to the Tribunal's letter in the Attorney Workflow Hub, Ms Bashir did not notice that the date on the pink slip and the date on the Tribunal's letter differed.

47. Ms McSorley attests to all deadlines being reviewed carefully and the ISG's procedures being tried and tested. However, it appears that second checks do not always take place, and in this instance an error was not picked up during the checking process.

48. Having taken all of the relevant factors into account, I am not satisfied that the reasons why the Form TM8 and counterstatement were filed late are particularly compelling, nor do they constitute extenuating circumstances sufficient to permit the Registrar to exercise its discretion under rule 18(2). I am in agreement with the opponent in finding that the applicant was "the author of its own misfortune".

12. The inevitable result was that the application was deemed abandoned.

Grounds of Appeal

13. FOL filed an appeal under S.76 of the Trade Marks Act 1994 ("the Act"). The grounds of appeal alleged the Hearing Officer erred as follows:

1) In not considering the fact that the Opponent had themselves on 29 August 2023 filed UK Trade Mark No. UK00003950813 (ORIGIN Logo), which post-dates the date of filing of UK Trade Mark Application No.UK00003875050 (hereinafter referred to as "the Opposed Application") which was filed on 6 February 2023, and which was an intervening trade mark;

2) In not considering whether any detriment to the Opponent could be addressed in costs;

3) in not assessing this matter in accordance with the guidance set out in the Civil Procedure Rules 1998, both (i) in respect of the Opponent's intervening trade mark and (ii) in putting the Applicant to undue and unnecessary uncertainty, since any inconvenience to the Opponent, by their representatives' own admission, can be addressed through costs off the scale.

4) by misrepresenting the checks that Ms Bashir conducted on the dates entered by Murgitroyd's Internal Support Group on its records as being "rough and ready".

5) in disregarding the UKIPO's own TPN Notice 5/2007 (incorrectly referred to in the Grounds as TPN 4/2009),which states that cross-examination should be requested if the veracity of evidence is being questioned, and further erred by agreeing with the Opponent's representative that it was acceptable to disregard it.

6) in not giving any weight to the effect on events of Ms Bashir's mother's passing, only because Ms Bashir chose not to discuss it at the hearing.

14. At the hearing before me, which was held remotely, FOL was represented by Ms Bashir of Murgitroyd, and OCL was represented by Mr Mark Wilden of Counsel, instructed by Bryers Intellectual Property Ltd.

Standard of Review

15. I understood the parties to be in agreement as to the relevant standard, which has been repeated many times albeit in various restated forms. An appeal is by way of review, not a rehearing. It is well established that before I can interfere with the decision of the Hearing Officer I must be satisfied that there was a distinct and material error of principle in the decision or that the Hearing Officer was wrong. The relevant principles were set out in *Axogen Corporation v Aviv Scientific Limited* [2022] EWHC 95 (Ch) at [24].

16. In particular, in the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other (as here), 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 v Pie Corbett Consultancy* [2017] RPC 17 at [52(iv)], *REEF Trade Mark* [2003] RPC 5 at [28] and *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11 at [50]-[51]).

17. As to the exercise of discretion by the Registrar, in BL O/675/25 *COCO7* Mr Iain Purvis KC noted at [19] that "Matters of discretion are not fertile grounds for an appeal unless the Hearing Officer exercising that discretion has made a serious error of law or a clear error of principle or has made serious errors of fact which underlay, materially, the exercise of that discretion".

18. I bear these principles in mind.

Assessment

Ground 1 – Failure to take into account the Opponent's Intervening application No. 3950813

19. This Ground of appeal goes to the third of the *MUSIC CHOICE* factors considered by the Hearing Officer as set out above, namely:

> *The consequences of treating the applicant as defending or not defending the opposition*

20. At [29] the Hearing Officer noted the existence of an intervening application filed by a third party but concluded at [44] that this was something to be expected and not particularly compelling. He did not, however, make any reference to No. 3950813.

21. Ms Bashir submitted that by reason of that intervening application, if the FOL's application was refused, the Opponent had the "unfair" advantage of relying in future on an additional basis of opposition, which would not be subject to proof of use. Ms Bashir also explained that at the hearing she had voiced concern that the Hearing Officer seemed confused by the references to the various intervening applications, but that he had stated he would look at these in the skeleton arguments.

22. Mr Wilden countered that the Hearing Officer could be seen to have had that application in mind and that, in any event, I should not interfere simply because the Hearing Officer's views could have been better expressed (per *Volpi v Volpi* [2022] EWCA Civ 464 at [2 (vi)]).

23. In my view, on any sensible reading of the Hearing Officer's decision on this issue, he plainly forgot to deal with the Opponent's intervening application No. 3950813 ('813) when considering the consequences of treating the applicant as defending or not defending the opposition. The parties' relative positions in the light of that filing, and the advantage potential for the Opponent, was a key element of FOL's case, and was clearly more relevant than the filing of an unconnected third party. Thus, I would have expected the Hearing Officer to mention this application in his reasoning. To that extent, therefore, I agree with FOL.

24. The question, however, is whether it would have made any difference. In my judgment, it does not. Although Ms Bashir sought to portray '813's filing as being in some way "opportunistic", in fact it was filed well before the deadline was missed. I know from my own experience that it is not unusual for a party to an opposition to reinforce its trade mark portfolio with new filings during the course of the proceedings, since the proceedings often give rise to reasons to do so, be those of overall portfolio maintenance or as part of entirely justifiable and reasonable litigation strategy. Clearly, OCL did not know at the time '813 was filed - well over a year beforehand - that FOL's attorneys would miss a deadline, so they cannot be said to have been seeking, or to have obtained, an unfair advantage thereby.

It is not as though OCL filed '813 immediately they realised the deadline had been missed in the hope of obtaining an edge.

25. As the Hearing Officer noted, the emergence of a new potential opponent as a result of what would be a later filing date is to be expected. That is equally true between parties. It is part and parcel of everyday contentious trade mark practice. Although I asked her, Ms Bashir was not entirely clear as to whether Murgitroyd was aware of the intervening filing prior to the missed deadline, but whether they knew about it or not, given it is not uncommon for adversarial parties to file new applications, care in handling deadlines is all the more important. Thus, in my judgment this factor is no more compelling than the existence of any third-party application.

26. The outcome is that whilst the Hearing Officer was in error, it makes no difference to the ultimate assessment of this factor.

Ground 2 – failure to consider whether the default could be addressed by costs

27. This goes to the fourth *MUSIC CHOICE* factor, "*The consequences of treating the applicant as defending or not defending the opposition".*

28. Ms Bashir contended that the Opponent had accepted there was little prejudice caused by the delay and that such delay as there was, could be compensated by FOL's offer to pay off-scale costs. As she put it in her skeleton argument, "*the Hearing Officer erred in not accepting that adequate compensation was available given the Appellant's/Applicant's offer to pay costs off the scale if successful in retaining the earlier filing date, as referred to in Paragraph 41 of the Decision."*

29. I can accept that this is a factor to be taken into account, but a Hearing Officer is not bound to consider it is a determinative one. As Mr Wilden submitted, it is a question of weight and balance as part of the evaluation of all of the various factors. The Hearing Officer noted that the prejudice was not great and that such an offer had been made at [40-41]. At [48] he said that he had taken all of the relevant factors into account, and whilst he did not expressly identify this particular issue in his summing up there is nothing to suggest he ignored it, and I conclude he gave it very little weight overall, as he was fully entitled to do. Furthermore, I agree with Mr Wilden's submission that even if the Hearing Officer had given more weight to this issue it would not have swayed him, given his finding as to the chain of unforced errors that gave rise to the default.

30. Ground 2 is dismissed.

Ground 3 – Failure to apply the Civil Procedure Rules

31. Ms Bashir's submissions on this ground were, in effect, that the Hearing Officer should have approached the matter as an application for relief from sanctions on the same basis as R. 3.9 of the Civil Procedure Rules.

32. This is a field that had been ploughed over several times without success – see, for example, the comments of Mr Geoffrey Hobbs KC in BL O/240/20 *TESCON* at 41-44, including at [42 (3)]that:

> "there is no general power to grant relief from sanctions in Registry proceedings under the 1994 Act and 2008 Rules: *BOSCO* Trade Mark (BL 0/399/15; 21 August 2015)".

33. Ms Bashir also widened her challenge to include an alleged failure by the Hearing Officer to apply the "overriding objective" of dealing cases justly and at proportionate cost, an objective enshrined in CPR 1 and which has been imported into the Registry's practice. Ms Bashir set out a number of ways in which the Hearing Officer supposedly erred in evaluating the case against the overriding objective.

34. However, as Mr Wilden pointed out, the overriding objective does not apply to fetter a decision maker's evaluative decision of fact, it concerns how rules are applied.

35. Furthermore, Ms Bashir made submissions on this issue to the Hearing Officer, so to that extent this is simply seeking a rehearing.

36. In any event, I am satisfied that the application of the overriding objective is inherent in the Hearing Officer's approach, and in the practice and principles he applied.

37. Ground 3 is dismissed.

Ground 4 – The Hearing Officer erred in fact by misrepresenting the checks that Ms Bashir conducted on the dates entered by Murgitroyd's Internal Support Group on its records as being "rough and ready".

38. Ms Bashir's complaint is that, in her view, the words "rough and ready" are factually wrong. Instead, she made a "genuine error" which should have then amounted to an "extenuating circumstance".

39. I have no doubt the errors were genuine, in that they were simple mistakes of the kind that humans can easily make. However, the fact that an error was "genuine" does not, of itself, make it an "extenuating circumstance". As observed by Mr Geoffrey Hobbs KC in *TESCON* at [32]:

> I readily accept that human error is not necessarily inconsistent with the existence of extenuating circumstances or compelling reasons for permitting invalidity proceedings to be defended in the exercise of the discretion conferred by rule 41(6). I would, for example, regard it as appropriate for the discretion to be exercised in favour of permitting a claim for invalidity to be defended in circumstances where it was clearly established that the failure to comply with a filing deadline of (say) **12 February 2020** was the result of an unnoticed keystroke error which caused the due date to be incorrectly entered in an otherwise reliable record keeping system as (say) **21 February 2020**. It is nonetheless clear that the test to be applied cannot be taken to permit or require all human errors to be treated as excusable for the purposes of rule 41(6). There must, in other words, be a fact specific evaluation for the purpose of determining whether the particular error in question should or should not be treated as excusable in the circumstances of the case at hand.

40. It is clear from the Decision that the Hearing Officer did not solely rely on Ms Bashir's checks. He reviewed and took into account all of the mis-steps, including those of Murgitroyd's records process that led to the error and concluded that the error was not excusable.

41. As to the words used, I can understand why Ms Bashir might be uncomfortable with the Hearing Officer's characterisation and I might not have used that exact language myself, although to be fair to the Hearing Officer, I am sure it would have had equivalent tenor. On Ms Bashir's own evidence she conducted only what she herself called a "sense check" (a term which by its very nature suggests it was not a "thorough" check) of the relevant deadline and that the deadline was "approximately" in nine months' time. Against that background, the Hearing Officer was entitled to evaluate and characterise the way her checks were carried out in the way and words that he did. As per *Volpi v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [2 (1)] an appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong, and Ms Bashir's complaint comes nowhere close to that. Furthermore, I agree with Mr Wilden that even if those words had not been used, the outcome would have been the same.

42. Ground 4 is dismissed.

Ground 5 – Failure to Follow Tribunal Practice Note TPN 5/2007 – Cross-examination

43. The reference in the Grounds of Appeal to TPN 4/2009 was incorrect. During the Hearing it was established that the correct TPN was 5/2007. This TPN states, in summary, that the veracity of a witness's evidence cannot be called into question unless the witness has been challenged through submission, contrary evidence or cross-examination.

44. Ms Bashir's position was that the Hearing Officer allowed OCL's representative before him, Ms Jo Pritchard of Bryers Intellectual Property Limited, to challenge the veracity of Ms Bashir's evidence through her skeleton and submissions without allowing proper cross-examination as per TPN 5/2007.

Mr Wilden countered that nowhere was it stated by Ms Bashir where the Hearing Officer had disregarded the TPN. In any event, the Decision clearly approached the evidence as if it was true.

45. I agree with Mr Wilden. The Hearing Officer noted TPN 5/2007 and Ms Bashir's concerns at [18]. He listed Ms Pritchard's comments on the evidence at [19], specifically her response to Ms Bashir that *"it was part of her role to highlight weaknesses in the evidence and to prepare a critique of it on behalf of her client"*. None of the criticisms then listed amount to an invitation to doubt the truth of the evidence given, but merely to permissible criticisms going to its weaknesses, weight and probative value.

46. Ground 5 is dismissed.

Ground 6 - The Hearing Officer erred in not giving any weight to the effect on events of Ms Bashir's mother's passing only because Ms Bashir chose not to discuss it at the hearing

47. This is, of course, a sensitive and highly personal issue for Ms Bashir and, like the Hearing Officer before me, I am sorry for her loss.

48. The Hearing Officer dealt with this at [50]:

> "I should also say that I note that at paragraph 8 of Ms Bashir's witness statement, that her mother passed away on 31st March 2024 and that she could not comment on whether this had any bearing on her not picking up the error in the pink slip. This matter was only briefly touched on by Ms Bashir during the hearing and in Ms Pritchard's skeleton arguments she states at paragraph 20.10 that, "If Ms Bashir is not able to comment on this, it is not possible for any other party, on the information that is available to us, to extrapolate anything from paragraph 8 to support the claim to extenuating circumstances." While I am sorry to hear of Ms Bashir's bereavement, I find that I have to agree with Ms Pritchard on this point."

49. Ms Bashir's submission was, in effect, that despite her own reluctance to comment or rely on her bereavement as a factor, the Hearing Officer should have assumed that it was a factor. As she put it in her skeleton, "*It does not take much imagination, however, to recognise that grief has a material effect."*

50. Whilst I recognise the strength of personal feeling behind the submission, the fact is the Hearing Officer can only proceed on the basis of the evidence before him, not assumptions, and Ms Bashir had made a positive choice not to give evidence on that issue. In any event, as Mr. Wilden pointed out, to focus on Ms Bashir's personal circumstance is *"to confuse the Appellant with the Appellant's representative. The Appellant was (and is) represented by a firm: Murgitroyd & Company. It is to be expected that the firm will be accountable for its processes, one of which is the accurate recording of deadlines (as failed in this case)"*. In that respect I observe that, had it been intended to press this point, then given the potential for a conflict of interest it would have been preferable for Murgitroyd to handle this matter via an alternative attorney, with Ms Bashir appearing as a witness.

51. In the circumstances the Hearing Officer dealt with the matter in a responsible and sensitive evaluative manner and I have no hesitation in agreeing with his evaluation.

52. Ground 6 is dismissed.

Conclusion

53. Of the six grounds of appeal, five have failed outright. As regards Ground 1, whilst I agree with the Appellant that the Hearing Officer overlooked the '813 intervening application in assessing the consequences of treating the applicant as defending or not defending the opposition, in my judgment that makes no difference to the ultimate outcome.

54. It follows that the appeal is dismissed in its entirety. FCL's application No. UK00003875050 is treated as abandoned in its entirety.

Costs

55. The appeal having been unsuccessful OCL is entitled to its costs which I assess at £1500, this sum, in addition to the £700 awarded by the Hearing Officer, the total of £2200 to be paid by Farm Originals Limited to Origin Coffee (Holdings) Limited within 21 days of the date of issue of this Decision.

56. I will make a separate formal order only if asked to do so.

Philip Harris
Appointed Person
13 April 2026