BL-0-0062-23

TRADE MARKS ACT 1994

IN THE MATTER OF:
TRADE MARK APPLICATION NO. 3522371

BY ZEE BEST GERMAN DONER COMPANY LTD
(Applicant/Respondent)

AND

IN THE MATTER OF
OPPOSITION NO. 422427
BY GDK INTERNATIONAL LIMITED
(Opponent/Appellant)

AND

IN THE MATTER OF
AN APPEAL TO THE APPOINTED PERSON
AGAINST DECISION NO. O/276/22
OF MS. BEVERLEY HEDLEY DATED 31 MARCH 2022

The Applicant/Respondent was represented on its own behalf by Ms. Oguzhan Erel.

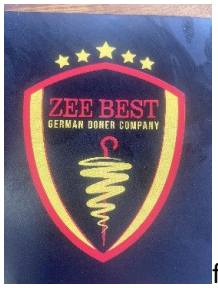
The Opponent/Appellant was represented by Ms. Karen Veitch of Lincoln IP

Hearing date: 11 July 2022.

DECISION

Introduction

1. This is an appeal against decision BL O/276/22 of Ms Beverley Hedley, sitting as a Hearing Officer on behalf of the Registrar of Trade Marks, dated 31 March 2022. By that decision the Hearing Officer

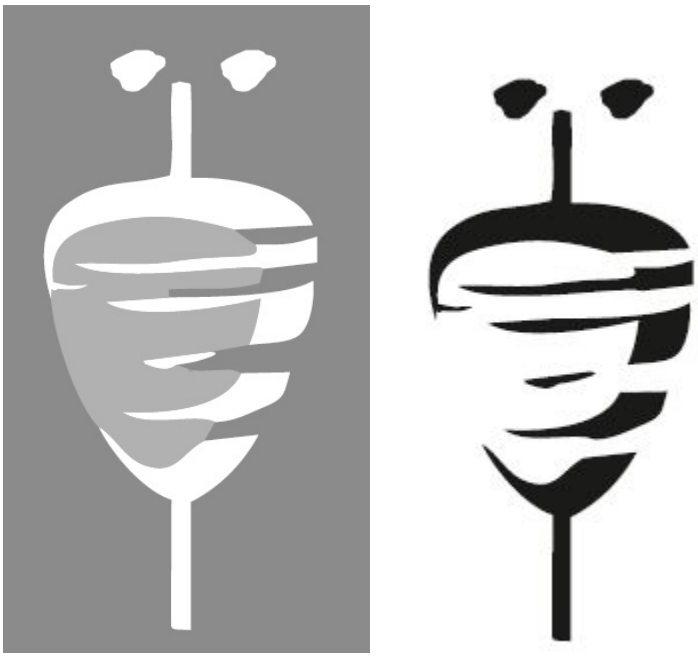
rejected Opposition No. 422427 to the registration of application No. 3522371 

for "take-out restaurant services" in Class 43.

2. The opposition was based on sections 5 (2) (b), 5(3) and 5 (4) (a) of the Trade Marks Act 1994 ("the Act"). For sections 5 (2) (b) and 5 (3) the Earlier Marks relied upon were:

1 UKTM 3066763 ("'763")

2 UKTM 3066759 ("'759"), for a series of 2 marks



Both marks were registered for services in class 43.

3. For S. 5(4) (a) the Opponent relied on the "word" mark GERMAN DONER KEBAB, and two devices identical to those covered by '759, the use of these Earlier Rights being said to date back to 2016.

4. The Applicant denied the similarity of marks whilst accepting the services were identical. It put the Opponent to proof of genuine use of the Opponent's earlier registered marks as it was entitled to do under S. 6A of the Act. Neither party requested a hearing nor filed separate written submissions in lieu (although the Opponent's TM7 effectively contained the Opponent's submissions) so the Hearing Officer decided the case on the basis of the Opponent's evidence and the pleadings before her.

The Hearing Officer's Decision

Proof of Use and Fair Specification

5. The Hearing Officer determined that the Opponent's evidence showed genuine use of the Earlier Marks for only "fast-food restaurants" [17].

Section 5 (2) (b)

6. The Hearing Officer referred herself to the standard rubric of *Sabel v Puma et al* and determined as follows.

Comparison of Goods

7. Even without the Applicant's concession, the goods were identical [20].

Average Consumer

8. The average consumer was a member of the general public exercising a medium degree of attention, mostly purchasing by visual means but with an allowance for aural considerations [22].

Distinctive character of the Earlier Marks

9. For '763 as a whole, the inherent distinctive character was determined to be normal and to reside primarily in the letters GDK and their arrangement, the stylised device of what the Hearing Officer described as a kebab rotisserie being of low distinctive character and the words GERMAN DONER KEBAB being descriptive [24]. '759, the stylised rotisserie, was held to be of a low level of inherent distinctive character [25].

10. As to enhanced/acquired distinctive character, on the evidence the Hearing Officer found that '763 had an elevated distinctiveness considered as a whole but that this did not extend to the words GERMAN DONER KEBAB. Alternatively, at best, those words had a very low level of acquired distinctiveness owing to their descriptive nature [27].]

11. '759 was found not to benefit from acquired distinctive character [28].

Comparison of Marks

12. The Hearing Officer conducted a detailed relative analysis of the marks whilst keeping in mind their distinctive and dominant elements and the need to avoid dissection. She concluded "when considered overall, the marks are not visually similar or, at best, similar to a very low degree [34].

13. Aurally, the Hearing Officer found only a low degree of similarity [35] notwithstanding the presence in both of the words GERMAN DONER.

14. Conceptually, given the shared theme of a kebab rotisserie and the words GERMAN DONER, the degree of similarity between '763 and the Contested Mark was held to be medium [36].

15. Noting the sole point of similarity as the rotisserie device and observing that the stylisation was "quite different" the Hearing Officer did not consider the marks to be visually similar but also held that if she was wrong in that, the visual similarity was low [37].

16. '759 being a device, an aural comparison was ruled out [38].

17. Conceptually, the common element of a kebab rotisserie gave rise to just a low level of similarity [39].

Likelihood of Confusion

18. Reminding herself of the relevant principles at [40], including as to imperfect recollection, the Hearing Officer went on to apply them to the facts as she had found them.

19. Direct confusion for both Earlier Marks was ruled out [41], taking into account the low levels of similarity and even allowing for, in the case of '761, that mark's enhanced distinctive character.

20. As to indirect confusion, the Hearing Officer set out the principles at [42-44]. For '761, she concluded that "any association" merely reflected the possibility consumers believed unrelated undertakings happened to be providing doner kebabs made from German meat or in a German style and that this did not justify a finding of indirect confusion [45].

21. Indirect confusion for '759 was ruled out at [46], the differences between the marks being enough to rule out the possibility that consumers would conclude the services came from the same or linked undertakings.

22. The S. 5 (2) (b) opposition therefore failed.

Section 5 (3)

23. Setting out the principles to be applied at [48-50], the Hearing Officer concluded that even allowing for the enhanced reputation/distinctiveness of '761, this was insufficient to outweigh the low levels of similarity and create the necessary "link". Alternatively, if a link was created, it would be too fleeting to give rise to damage. The S. 5(3) ground of opposition failed [53].

Section 5 (4) (a)

24. The Hearing Officer dealt first with the sign GERMAN DONER KEBAB, noting at [56] that in assessing such claims to "common law" rights under the law of passing off, allowance must be made for the descriptiveness of the sign relied on. Taking into account that the only common element was the descriptive term GERMAN DONER and factoring in the overall differences in the parties' marks, she found that the Opponent's case would have failed on misrepresentation, even if she had found that goodwill existed in GERMAN DONER KEBAB [57].

25. As to the device marks relied, given that essentially the same case (albeit with a slightly different test) had failed under S. 5 (2) (b), the Opponent's case under S. 5 (4) (a) also failed [58].

The Appeal

26. The Opponent filed an appeal on 28 April 2022. Whilst somewhat convoluted, and taking into account the way they were put in the Opponent's Skeleton, the grounds were essentially the following:

    S. 5 (2) (b)

    Distinctive Character of the Earlier Marks

1 The Hearing Officer failed to give principled reasons for finding that '759 was not "particularly distinctive" and it should have been assessed as possessing at least average/medium inherent distinctiveness.

2 Its fair specification was not limited to kebabs, so the '759 device could not be said to be ""not particularly distinctive" for the services in question".

3 The words GERMAN DONER KEBAB in '763 were "unusual" and thus not descriptive.

4 The words GERMAN DONER KEBAB and the device of '759 should have been credited with independent distinctive character enhanced by use.

Comparison of Marks

5 '763 and the Contested Mark should have been found to be visually similar to a medium degree, aurally similar to a medium if not high degree, and conceptually similar to a high degree.

6 'The Hearing Officer erred in finding that '759 and the Contested Mark were conceptually similar to only a low degree.

Likelihood of Confusion

7 The alleged errors in assessing similarity would have led to a finding of a risk of direct confusion.

8 In assessing the likelihood of indirect confusion, the Hearing Officer failed to apply the guidance of *LA Sugar v Back Beat, Inc* BL O/375/10.

9 Further, In assessing the likelihood of indirect confusion for '759, it was claimed the Hearing Officer erred as to distinctiveness and in assessing the weight of the words ZEE BEST in the Contested Mark.

S. 5 (3)

10 The Hearing Officer should have found, on the evidence, that '759 had a reputation enhanced by use.

11 The faulty assessment of the marks' similarity under S.5(2) (b) led to the wrongful dismissal of the necessary "link".

S 5 (4) (a)

12 The Hearing Officer failed to conduct an overall assessment of this ground. The acquired distinctiveness of GERMAN DONER KEBAB and the '759 device mark was not properly assessed and descriptiveness was not a bar to a finding of misrepresentation.

13 The Hearing Officer failed to take account of the aural similarity between GERMAN DONER KEBAB and the Contested Mark

27. The Hearing of the Appeal took place on 11 July 2022. The Opponent was represented by Ms Karen Veitch of Lincoln IP. The Applicant appeared in person by its representative Ms. Oguzhan Erel.

Standard of Review

28. The standard of appeal is by way of review. Neither surprise at a Hearing Officer's conclusion nor a belief that he or she has reached the wrong decision will suffice to justify interference on appeal. In order for me to interfere, I must be satisfied that there was a distinct and material error of principle in the decision or that the Hearing Officer was wrong.

29. The principles to be applied have been set out and finessed in various cases. A recent summary by Joanna Smith J in *Axogen Corporation v Aviv Scientific Ltd* [2022] EWHC 95 (Ch) at [24] neatly encapsulates them:

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

i) The appeal is by way of a review, not a rehearing (see *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17) at [52(i)]);

ii) The appeal court will allow an appeal where the decision of the lower court was "wrong" (see CPR 52.11). Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference (*NINEPLUS* O/039/21 at [14]);

iii) The decision of the lower court will be “wrong” if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant matters or taking into account irrelevant matters. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was “outside the bounds within which reasonable disagreement is possible” (*Actavis Group* at [81]);

iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question (*REEF Trade Mark* [2003] RPC per at [26]). There is a “spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision” (*TT Education* at [52(ii)]), with decisions of primary fact at one end of the spectrum and multi-factorial decisions ... 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)]).

30. I also remind myself of the comments of Mr Iain Purvis QC (as he then was) sitting as the Appointed Person in BL O-106-20 GREYBOX:

[23]…I do not consider there is any great value in debating differences between 'fairly low' and 'medium' degrees of similarity in the context of the overall assessment of likelihood of confusion. Certainly, I do not consider that such fine distinctions can properly be characterized as errors of principle. They are at best simply disagreements about the precise 'weight' to be given to a factor in the overall assessment, something which the Courts have consistently rejected as a proper ground of Appeal. Furthermore, given the lack of clarity and subjectivity of the terms in question, it is impossible to have any sensible debate on Appeal about whether the Hearing Officer was right".

31. I bear these principles in mind in reaching this decision.

Merits of the Appeal

Section 5 (2) (b)

G*round 1 – failure to give reasons - '759*

In her skeleton, Ms Veitch submitted that the Hearing Officer erred in finding that 

/  was "not particularly distinctive".

32. I did not understand there to be any dispute that the device represents, in stylised form, doner kebab meat on a rotisserie skewer.

33. At the Hearing, Ms Veitch expanded on this by submitting that "*the Hearing Officer failed to give a principled reasoning why she believed that to be the case. We would submit here that this is an abstract, figurative image and that there was no particular reason to automatically conclude that this device was "not particularly distinctive in relation to the ...services".*

34. Ms Veitch also submitted that the abstract and fanciful nature of the design of '759 should have led to a finding of "medium" inherent distinctive character.

35. The Hearing Officer considered the inherent distinctiveness of the design embodied in '759 both as a standalone mark at [25] and as part of '763 at [24]. At [24] she stated "*The device of a doner kebab rotisserie, although stylised, is not particularly distinctive in relation to the earlier services for obvious reasons; of itself, it has a low degree of inherent distinctiveness despite its stylisation".* In terms, she repeated this at [25].

36. In my view it is indeed obvious that a stylised device of meat on a skewer, of which a doner kebab rotisserie is a typical kind, may or may not be distinctive, or particularly distinctive, for "fast food restaurants" which specification includes, within its generality, doner kebab restaurants. The level of distinctiveness derived from a particular stylisation is a matter of "weight" for the Hearing Officer and is something on which reasonable judges might differ. The Hearing Officer's explanation may be short, but it shows the basis on which she has acted and is more than adequate for me to understand the her reasoning.

37. The pleaded case also pointed to a supposed inconsistency in the assessment of distinctive character as between the figurative elements in the parties' marks. It was said, in effect, that at [33] the Hearing Officer gave more weight to the stylised rotisserie device in the Applicant's mark, than she did to '759.

38. At [33] the Hearing Officer was concerned with visually comparing the marks. She found that the Applicant's rotisserie element in its mark had "*a substantial visual impact".* This is a finding on weight based on the Hearing Officer's appraisal of the Contested Mark as a whole, and it is in no way inconsistent with the Hearing Officer's findings on the distinctive character of '759.

39. In her skeleton Ms Veitch also submitted that the Hearing Officer's finding was contradicted by her later reference in [57] to the respective marks' "distinctive device elements".

40. I see no contradiction with [57]. That paragraph was concerned with a comparison of marks under S. 5 (4) (a) and makes no comment on the level of distinctive character attributable to '759, merely acknowledging — consistently with the finding at [24/25] — that it has some.

41. The complaint of inadequate reasoning in respect of the determination of the distinctive character of '759 therefore fails.

Ground 2 - The fair specification "fast food services" was not limited to kebabs so the '759 device could not be said to be ""not particularly distinctive" for the services in question".

42. Although this line was not expressly pursued at the Hearing, it was not withdrawn and I shall deal with it for completeness. Where a broad specification is relied on, with no restriction to isolate other services to which the objection might be less relevant or inapplicable, the assessment of distinctiveness will relate to the services as a whole and general reasoning may be used – see C-239/05 *BVBA Management, Training en Consultancy v Benelux-Merkenbureau* at [38] and, by analogy with descriptiveness assessments, T-359/99 *EUROHEALTH* [33]. There was no error of principle in the Hearing Officer's approach.

Ground 3 - The words GERMAN DONER KEBAB in '763 were not "exclusively descriptive".

43. The submission was that the use of the word "GERMAN" in this context is unusual, such products being usually associated with the Middle East or Turkey. This was merely the repetition of the argument put to the Hearing Officer in the Statement of Grounds of Opposition. Her conclusion at [24] was:

"Whether or not the average consumer is aware that doner kebabs actually originated in Turkey, does not mean that the words 'GERMAN DONER' or indeed, 'GERMAN DONER KEBAB' are therefore likely to be perceived as highly distinctive or, indeed, distinctive at all. On the contrary, I find that they are simply likely to indicate to the average consumer that the doner kebabs at the opponent's restaurant happen to be German as opposed to any other origin. I find that the words 'GERMAN DONER KEBAB' (and 'GERMAN DONER' alone) are descriptive and have no inherent distinctive character."

44. It may well be that consumers used to traditional Turkish kebabs will be surprised to see such a product described as being in some way "German" but surprise alone does not bestow distinctiveness on a descriptive term if it retains its descriptive power. In any event consumers, notional or real, or not unreasoning and can spot a description when they see one, even if it is new to them — see, for example, *McCain International Ltd v Country Fair Foods Ltd and another* (1981) RPC 69 (The "Oven Chips" case), per Templeton L.J. page 72, lines 37-48.

45. No other error of principle was put to me, the Opponent's submission being mere disagreement. This ground of appeal fails.

Ground 4 The words GERMAN DONER KEBAB and the device of '759 should have been credited with distinctive character enhanced by use.

46. The submissions went no further than maintaining that the evidence of use showed these elements had acquired distinctive character through such use.

47. Evaluation of the evidence was a matter for the Hearing Officer and is something with which I should be reluctant to interfere. The Hearing Officer assessed the evidence in some detail at [27-28] and it was not suggested to me that there was any error in that assessment, only that the result of it should have been different. Again, mere disagreement with a Hearing Officer is not a viable ground of appeal. This challenge fails.

Grounds 5 & 6 – Similarity of marks

48. These two grounds can be taken, and dismissed, together. The Opponent submitted, essentially, that the weight given to the various elements in the parties' respective marks was incorrect and that the Hearing Officer should have found correspondingly higher levels of similarity.

49. As per *GREYBOX,* these are just disagreements about "weight" which are rarely, if ever, a proper ground of appeal, and certainly are not in this case. These grounds therefore fail.

Grounds 7, 8 and 9 — Likelihood of Confusion

50. The case on direct confusion (Ground 7) relied on the success of the appeal as to the various aspect of similarity. The appeal having failed in those respects it goes no further here.

51. Grounds 8 and 9 essentially asserted that too much weight was given to the differentiation arising from the use in the Contested Mark of the words ZEE BEST, and that insufficient weight was given to the inherent distinctiveness of the Opponent's device.

52. Beyond disputing the weight given to the various factors, no error of principle was identified. The Hearing Officer was fully entitled to reach, through multi-factorial evaluation, the conclusions on weight that she did. All three grounds fail.

S. 5 (3)

Grounds 10 & 11 - Reputation, Link etc

53. At the hearing Ms Veitch accepted, perfectly correctly, that if I was not with her on the appeal under S. 5 (2) (b), then the case under S. 5 (3) would fare no better. The appeal under S. 5 (2) (b) having wholly failed, grounds 10 and 11 fail also.

S. 5 (4) (a)

Ground 12 – The Hearing Officer failed to conduct an overall assessment under this section, in particular because the words GERMAN DONER KEBAB had acquired distinctiveness

54. The Opponent's skeleton also expanded the pleaded case to encompass the '759 Device on the same basis. Whether that is permissible or not is immaterial in light of my findings below.

55. The Opponent's evidence was intended to show proof of use, acquired distinctive character and reputation for Sections 5 (2) (b) and (3) and the basis of rights claimed under S. 5 (4) (a).) The Hearing Officer reviewed this evidence in the context of S.5 (2) (b) at [26-28]. For GERMAN DONER KEBAB she concluded:

"I am not persuaded that the evidence, as a whole, is sufficient to show that those words, of themselves, had acquired distinctiveness through use of mark 1 as at the relevant date. If I am wrong on that, any distinctiveness they had acquired at that date is of a very low level, given, what I consider to be, the highly descriptive nature of those words".

For the '759 Device the Hearing Officer concluded that it did not benefit from use-enhanced distinctiveness.

56. From [49] it is clear the Hearing Officer had the same evidence and findings in mind for S. 5(3):

"49) I am satisfied that mark 1 had a qualifying reputation at the relevant date for fast-food restaurants, as per Case C-375/97, General Motors [1999] ETMR 950. I do not accept that the evidence establishes that mark 2, of itself, had the requisite reputation at the relevant date. The ground under section 5(3) therefore fails in relation to mark 2."

57. Given the 5 (4) (a) case is predicated on the Opponent's use of its Earlier Marks, it therefore seems to me that whilst the Hearing Officer did not expressly refer back to her previous findings from the use evidence she clearly had them in mind in considering the possibility of misrepresentation. That being so the Hearing Officer was fully entitled to conclude that, on the facts, misrepresentation was not made out for either Earlier Mark, given their non-existent/low distinctiveness..

58. Ground 12 therefore fails.

Ground 13 — The Hearing Officer failed to take account of the aural similarity between GERMAN DONER KEBAB and the Contested Mark

59. Turning now to whether aural considerations were ignored, the Hearing Officer's assessment of the marks' similarities was set out at [57]:

"The overall similarity between the earlier sign and the contested mark is clearly low. The only element in common between them is the words 'GERMAN DONER'; in all other respects they are different. Furthermore, I consider those words to be descriptive of doner products which are made from German meat or made in a German style. In these circumstances, I find that the additional words present in the applicant's mark ('ZEE BEST …. Company'), together with the distinctive device elements are sufficient to enable the relevant public to distinguish between the parties' respective fast-food restaurants."

60. Ms Veitch submitted that when verbalised, the device elements referred to by the Hearing Officer would be ignored and "the marks would be verbalised as GDK GERMAN DONER KEBAB or GERMAN DONER KEBAB versus ZEE BEST GERMAN DONER COMPANY". As for the words ZEE BEST in the later mark, it was suggested these would be seen as nothing more than a comical or laudatory way of referring to GERMAN DONER COMPANY.

61. It is true that the Hearing Officer does not expressly consider the aural issues under S. 5 (4) (a). However, these had already been considered under S. 5 (2) (b) at [35], and the comment that "the overall similarity is clearly low" is clearly drawn from that. Whilst confirmation by the Hearing Officer that she had reminded herself of this would have been helpful, there is no reason to think she did not have it in mind in carrying out her assessment or to require the assessment to be carried out again in circumstances where, in practical terms, the outcome would not differ.

62. Thus, Ground 13 fails.

Conclusion on the Merits

63. The Appeal has failed entirely. Application No. 3522371 shall proceed to registration.

Costs

64. The Applicant has succeeded and is entitled to costs. No costs were awarded by the Hearing Officer, the Applicant having made no response to a request for details.

65. At the Hearing both parties indicated that costs could be dealt with on the standard basis. On appeal, the Respondent submitted a skeleton argument and Ms. Oguzhan Erel attended the hearing of the appeal as the Applicant company's in-person representative. It therefore appears the Applicant spent time considering and responding to the appeal.

66. As an unrepresented party CPR 46.5 applies by analogy (see the decision of Mr Richard Arnold QC, acting as the Appointed Person in *South Beck*, B/L 0/160/08). The Rule provides: "

(2) The costs allowed under this rule must not exceed, except in the case of a disbursement, two-thirds of the amount which would have been allowed if the litigant in person had been represented by a legal representative…

(4) The amount of costs to be allowed to the litigant in person for any item of work claimed will be –
(a) where the litigant can prove financial loss, the amount that the litigant can prove to have been lost for time reasonably spent on doing the work; or
(b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in Practice Direction 46.

The Practice Direction 46 3.4 provides: "The amount, which may be allowed to a self represented litigant under rule 45.39(5)(b) and rule 46.5(4)(b), is £19 per hour.."

67. I direct that the Applicant provide details of any time spent or other costs incurred within fourteen days of the date of this Decision. I shall then make a subsidiary order for costs basis set out above. In default of any response from the Applicant within the time stipulated, there will be no order as to costs.

Philip Harris
Appointed Person
19 January 2023