O/0147/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER 4040817
IN THE NAME OF JBX ENTERPRISES LTD
FOR THE TRADE MARK

NODSE

IN CLASS 3

AND

THE OPPOSITION THERETO UNDER NUMBER 448946
BY NAOS

Background and pleadings

1. JBX Enterprises Ltd ("the applicant") filed an application for the trade mark NODSE (number 4040817) on 18 April 2024 ("the relevant date") for the following goods in class 3:

> *Baby wipes; Baby care products (Non-medicated -); Hair grooming preparations; Hair styling preparations; Hair care preparations; Cosmetic kits; Kits (Cosmetic -); Cosmetics all for sale in kit form.*

2. NAOS ("the opponent") opposes the application under sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 ("the Act"). The opponent relies upon the following earlier international trade mark registration ("the earlier mark") for its section 5(2)(b) ground:

666559

Nodé

International registration date: 10 January 1997; UK designation date: 14 December 1998; date of UK protection: 10 September 1999.

Class 3: *Bleaching preparations and other substances for laundry use; cleaning, polishing, grease removing and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions.*

3. Under section 5(2)(b) of the Act, the opponent claims that the parties' goods are identical or similar and that the marks are visually and phonetically highly similar, differing by only one letter, leading to a likelihood of confusion.

4. Under section 5(4)(a) of the Act, the opponent claims that it has used the sign corresponding to its earlier mark throughout the UK since 1997 in relation to the same goods as are protected by its earlier mark. The opponent claims goodwill in the business distinguished by the sign and it claims that use of the application is contrary

to the law of passing off because its use would cause misrepresentation and damage to the opponent's goodwill.

5. The applicant filed a defence and counterstatement, denying the grounds of opposition. It puts the opponent to proof of the use of its mark in relation to its sign. The counterstatement is the only documentation from the applicant, so I reproduce here the operative part:

> "We respectfully assert that the trademark "NODSE" is distinct and dissimilar from the trademark "Nodé" in both appearance and phonetics. The term "NODSE" consists of a different arrangement of letters and lacks any diacritical marks, unlike "Nodé," which includes an accent on the letter "e." This results in a divergent visual presentation and pronunciation. Moreover, "NODSE" is exclusively used as a brand name for a single product - a Baby Grooming Kit - within the UK Amazon Marketplace. The product title on Amazon does not include the word "NODSE," and there is no branding or marketing centered around the term "NODSE."
>
> Furthermore, our trademark application for "NODSE" is specifically limited to Class 3 for "Baby wipes; Baby care products (Non-medicated); Hair grooming preparations; Hair styling preparations; Hair care preparations; Cosmetic kits; Kits (Cosmetic); Cosmetics all for sale in kit form." These goods are distinctly different from those associated with "Nodé," which pertain to "Bleaching preparations and other substances for laundry use; cleaning, polishing, degreasing and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices." Given the specific and limited use of "NODSE" for a distinct product category, the absence of prominent branding, and the clear distinction in the classes of goods, we believe there is minimal, if any, likelihood of confusion with "Nodé" in the marketplace. Therefore, we respectfully request that the opposition be withdrawn, as the trademarks are sufficiently different in nature, usage, and classification."

6. The opponent is represented by Mathys & Squire LLP and the applicant represents itself. The applicant is a litigant in person and its counterstatement reflects its

inexperience in these matters. It has clearly denied a likelihood of confusion and put the opponent to proof that it has used its mark. These are matters which feature analogously, albeit with different terminology, in passing off and the marks/signs and the goods are the same as for the section 5(2)(b) ground. Consequently, I consider that goodwill, misrepresentation and damage were put in issue in the defence.[1] Only the opponent filed evidence, which was accompanied by written submissions. Neither party requested to be heard and only the opponent filed written submissions in lieu of attending a hearing. I make this decision after careful consideration of all the papers on file, referring to them as necessary.

Proof of use

7. Section 6A of the Act states:

> "(1) This section applies where
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> > (a) an application for registration of a trade mark has been published,
> >
> > (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
> >
> > (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.
>
> (1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.
>
> (2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

[1] I note that the Tribunal directed the applicant to review its first version of the counterstatement in which it had not addressed whether the parties' goods were identical or similar, but nothing was said by the Tribunal (or the opponent) about the counterstatement in relation to the passing off ground. The applicant subsequently amended the counterstatement, denying that the goods were identical or similar.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

8. The relevant period for proof of use is the five years ending on the filing date of the contested application: 19 April 2019 to 18 April 2024. The burden of proof lies with the opponent, as the proprietor of the earlier mark, to show genuine use because Section 100 of the Act states:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

9. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:[2]

> "105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].
>
> 106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:
>
> (1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].
>
> (2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at[36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

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

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

10. In its written submissions in lieu of a hearing, the opponent states that its witness statement and exhibits "demonstrate that the trade mark has been put to genuine use in the relevant period for cosmetics, namely hair care preparations in class 3. The Opponent submits that this would be a fair specification for the purpose of this Opposition, based on the proof of use provided."

11. The opponent's evidence has been provided by Marie Helleboid who is its General Counsel Brand Strategy & Defence. Ms Helleboid states that the earlier mark is shown in Exhibit MH1, which comprises UK-specific catalogues from 2023 and 2024. I can see that the presentation of the earlier mark on the goods is that of a secondary trade mark, Bioderma being a 'house brand'. For example:[3]

[3] Page 40 of Exhibit MH1

12. Ms Helleboid states that the opponent sells its goods online to UK customers via its NAOS website (naos-store.co.uk) and via listings on the Amazon UK website. Exhibit MH3 contains the following:

- a print of an Amazon listing for Bioderma Nodé shampoo, priced at £11.89. Ms Helleboid states that this was first made available on 7 February 2013, although the print shows the first available date as 24 November 2015. Ms Helleboid states that the listing shows customer reviews from 2016 to 2024, but I can only see reviews from other countries. However, a print further along in the exhibit does show the first available date as being 7 February 2013 for a twin pack of this shampoo, with one review from a UK customer in 2016, and several reviews between July 2019 and February 2024;
- a print of an Amazon listing for Bioderma Nodé DS+ shampoo, shown as first available on 3 January 2022, with two UK customer reviews from 2023;
- prints of NAOS store listings for the Nodé shampoo and the Nodé DS+ shampoo, with a UK customer review from 20 May 2020 (for the latter) and UK customer reviews for the former from 2020 and 2022;

- three Wayback Machine (the internet archive) screenshots from the opponent's website, dated 26 January 2021, 19 May 2022 and 2 December 2023 showing Nodé shampoo.

13. Ms Helleboid states that Nodé goods are also sold via a range of large online UK retailers, including Look Fantastic and Sephora, and that they are sold in pharmacies across the UK. She adduces copies of webpages from Look Fantastic, Sephora, Escentual and Landys Chemist.[4] The pages show Nodé shampoo and approximately 20 customer reviews which can be dated to within the relevant period (excluding a number of repetitions of the same reviews).

14. The final piece of evidence which Ms Helleboid provides is a table which includes the unit sales and total sales figures for Nodé shampoo between 2018 and 2024. I note the following UK figures for 2019 to 2024 (also noting that only part of the years 2019 and 2024 are within the relevant period):

Year	Units sold	Value sold (£)
2019	4,691	16,524
2020	4,219	23,582
2021	5,185	26,286
2022	8,196	45,760
2023	7,896	39,270
2024	8,191	52,979
Total	38,378	204,401

15. The genuine use provision is not for the purpose of assessing economic success or large-scale commercial use, and even minimal use may qualify as genuine use if it is the sort of use that is appropriate in the economic sector concerned for preserving or creating market share for the relevant goods or services.[5] The hair care sector is vast, but it has many brands within it. I note that the opponent has only sold three types of shampoo (shown above at paragraph 11) but despite this fact and the fact

[4] Exhibit MH4
[5] General Court, Case T-334/01 *MFE Marienfelde GmbH v OHIM*; also *Ansul*

that the level of sales of Nodé goods in the UK during the relevant period is small, the sales have been consistent over the period and have also shown steady growth. The mark was put to genuine use in the UK during the relevant period.

16. The opponent submits that a fair specification is "cosmetics, namely hair care preparations". 'Namely' has the effect of restricting whatever the goods or services are which come after that word; i.e. the coverage would be limited to 'hair care preparations'.[6] Neither 'hair care preparations' nor 'shampoo' appear as terms in the specification of the earlier mark. The question is, therefore, whether hair care preparations and/or shampoo is covered by other terms in the specification of the earlier mark.

17. The specification of the earlier mark is:

> *Bleaching preparations and other substances for laundry use; cleaning, polishing, grease removing and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions.*

18. The specification does include *hair lotions*, but in my view these are not the same as shampoo. Shampoo is for cleaning the hair, whereas hair lotions are for protecting the hair, such as against the effect of repeated use of heated appliances such as hairdryers and straighteners, or applying as an aid to setting the hair in a particular style. Hair lotions do not clean the hair. The opponent has not suggested that *hair lotions* covers the goods which it has sold; instead, the opponent has submitted that it should be able to rely upon "cosmetics, namely hair care preparations". This suggests that it views hair care preparations as a sub-set of cosmetics and that its goods are not hair lotions. In any event, I find that shampoos are not hair lotions which have a different purpose and are not covered by the term *hair lotions* in the opponent's specification.

19. The opponent's specification includes *cosmetics*. In *La Mer Technology, Inc v OHIM,* Case T-418/03, the General Court stated as follows (my emphasis):

[6] T-549/14 *Lidl Stiftung & Co v EUIPO*, General Court

"110. As regards the assessment of the similarity of the goods in question, it must be stated, as the Board of Appeal correctly noted in paragraph 33 of the contested decision, that 'cosmetics' in the Community trade mark application include 'cosmetics of a marine product base', so that they are identical.

111. So far as concerns 'soaps, perfumery, essential oils, hair lotions, dentifrices, toiletries' in the Community trade mark application, it should be stated that they share hygiene and cosmetic properties. The cosmetic products of the earlier mark may also be used for hygiene purposes. As was stated in paragraphs 77 to 84 above, soaps and bath additives are used not only for cleaning the skin but also for making the skin more beautiful and claim therefore to have cosmetic properties. On that point, in paragraph 33 of the contested decision the Board of Appeal correctly noted that beautification is not obtained only by the use of traditional means, such as make-up or other cosmetics, but also through the use of products which, although they may be hygienic, serve beauty purposes as well: for example, soap that is composed in a manner whereby there is only a minimum of skin dehydration, thus leading to a more beautiful skin or dentifrices that, in addition to cleaning teeth, also make them whiter.

112. Moreover, those products may be sold in the same sales outlets and be directed at an identical category of consumers. In addition, quite often the manufacturers of those products are the same.

113. Finally, the applicant itself concedes, in its complaint alleging that the Board of Appeal ought to have made an additional distinction between the goods, that besides the cosmetics which are identical, all the other products are, to differing degrees, similar to those bearing the earlier mark.

<u>114. The Board of Appeal was therefore right to take the view, in paragraph 33 of the contested decision, that 'soaps, perfumery, essential oils, hair lotions, dentifrices, toiletries' under the Community trade mark and 'cosmetics of a marine product base' under the earlier mark are very similar."</u>

20. The General Court found that there was similarity but it did not find identity between cosmetics (of a marine product base) and other personal hygiene goods, including toiletries which I consider covers shampoo. Shampoo may have cosmetic properties, such as making the hair look nicer because it's clean, but that does not make it a cosmetic, according to the natural and usual meaning of that term in relation to goods, which I consider is understood as pertaining to bodily decoration (such as make-up) and skincare. I find that *cosmetics* does not cover shampoo.

21. Finally, although the opponent has made no submissions that *cleaning preparations* in the earlier specification covers the goods in relation to which it has used the earlier mark, for completeness I will consider whether *cleaning preparations* covers shampoo. I consider, the natural and usual meaning of 'cleaning preparations' has to be seen in the context of the other goods with which they are listed: polishing, grease removing and abrasive preparations.[7] These are not goods for personal use. In *Aveda Corporation v Dabur India Limited*, [2013] EWHC 589 (Ch), Arnold J (as he then was) agreed at paragraph 60 with the registrar's hearing officer that 'cleaning, polishing, scouring and abrasive preparations' were not for use on the body and that the natural meaning of the unqualified term is that of household or industrial preparations, particularly since all four adjectives appear in the same term. At paragraph 61, the judge also found that cleaning, polishing, scouring and abrasive preparations were not similar to the opponent's "skin care products, namely … cleansing lotions" and/or "body cleansing lotions". The judge considered that these were the closest of the opponent's goods to the applicant's cleaning, polishing, scouring and abrasive preparations. I note that the opponent in that case also had cover for shampoo, but that was clearly not considered to be as close, even to 'cleaning preparations'. It follows that, if further away from closer goods which were found to be dissimilar, then shampoo also must be dissimilar. I find, in any case, that the present opponent's use of the earlier mark in relation to shampoo is not covered by any of its specification terms, including cleaning, polishing, grease removing and abrasive preparations.

[7] See, for example, *Rise Construction Management Ltd and ors v Barclays Bank Plc* BL O/635/17 at paragraph 47, Mr Phillip Johnson, sitting as the Appointed Person

22. As the goods in relation to which the earlier mark has been used are not covered by the specification of the earlier mark, the opponent may not rely upon this mark for its section 5(2)(b) ground which, accordingly, fails.

Section 5(4)(a)

23. Section 5(4)(a) states:

> "(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-
>
> > (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,
> >
> > (aa) […]
> >
> > (b) […]
>
> A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark."

24. Subsection (4A) of Section 5 states:

> "(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application."

25. The three elements which the opponent must show are well known. In *Discount Outlet v Feel Good UK* [2017] EWHC 1400 (IPEC), Her Honour Judge Melissa Clarke, sitting as a Deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

"55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the Jif Lemon case (Reckitt & Colman Product v Borden [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56 In relation to deception, the court must assess whether *"a substantial number"* of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

26. The concept of goodwill was explained in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217, at 223:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

27. The evidence shows that the opponent, at the relevant date, had a level of goodwill in its business associated with the sign Nodé in relation to shampoo. However, the opponent's pleaded goodwill is in relation to the same goods as it relies upon for its section 5(2)(b) ground. It has not relied upon use of its sign in relation to shampoo or any broader terms which cover shampoo.

28. In *Mercis B.V. v Bunnyjuice, Inc*, Dr Brian Whitehead, sitting as the Appointed Person, considered an appeal on the basis that the registrar's hearing officer had been too 'granular' in their assessment of the evidence of goodwill, stating that goodwill attaches to a business rather than to isolated goods and services:[8]

[8] Case BL O/0064/24

"57…In trade mark law, the analysis of proof of use, reputation and enhanced distinctive character needs to be performed on a granular basis, looking at each of the individual goods and services in turn. I have already said that the Hearing Officer carried out this exercise with care, such that his conclusions in respect of the trade mark issues cannot be faulted. In passing off law, however, goodwill attaches to a business, rather than to isolated individual goods and services. Of course, when assessing goodwill, it is necessary to ask, "What is the nature of the business?", but it is not appropriate to break the business down at the same level of granularity as is done for assessing trade mark use etc."

29. In that case, the hearing officer had found that the use shown did not cover all of the goods and services relied upon in the opponent's statement of case, whereas the Appointed Person found that the appellant (the opponent) had, at an appropriate level of granularity, made out goodwill in a business "which might be described as "merchandising goods in relation to a children's book character, including computer games, stationery and associated goods, drinking and eating vessels, bedding, clothing and toys".

30. The present case seems to me to turn on a different point. In the appeal, a number of goods had been relied upon by the opponent and the task was not to decide whether use had been found for all of them: the goodwill was attached to a merchandising business selling some of those goods as examples of merchandising. The goods themselves had been relied upon. However, in the present case, the opponent set out its stall in its statement of case - its pleadings - as a business selling a list of goods which does not include the only good it has actually sold. Its Nodé business is solely in three types of shampoo (one of which was only sold in 2022 and then only 990 units were sold) and it has not relied upon goodwill in relation to shampoo or a business in hair care preparations. This is also not a case of goodwill in relation to a pleaded good which is then not subject to the parameters of section 5(2)(b) comparison of goods case law.[9] The issue is that the opponent does not rely in its pleadings upon the only good for which it has used its sign. **The section 5(4)(a) ground fails.**

[9] *Harrods Limited v Harrodian School Limited* [1996] RPC 697

Overall outcome

31. The opposition fails. The application may proceed to registration.

Costs

32. The applicant has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Tribunal Practice Notice 1/2023. As the applicant is unrepresented, at the conclusion of the evidence rounds the tribunal invited it to indicate whether it intended to make a request for an award of costs and, if so, to complete a pro-forma indicating a breakdown of its actual costs, including providing accurate estimates of the number of hours spent on a range of given activities relating to the prosecution of the opposition; it was made clear to the applicant that "if the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded".[10] Since the applicant did not respond to that invitation within the timescale allowed (nor has any response been received from the applicant prior to the date of the issuing of this decision), and as the applicant has not incurred any official fees in defending its application, I make no order as to costs.

Dated this 24th day of February 2026

Judi Pike
For the Registrar

[10] Letter dated 15 January 2025