O/0229/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004073798
BY EXCITEDSLOTHLTD
TO REGISTER THE TRADE MARK:

IN CLASS 28

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 449845
BY MASQUERADE LIMITED

BACKGROUND AND PLEADINGS

1. On 10 July 2024, ExcitedSlothLTD ("the applicant") applied to register the trade mark shown on the cover page of this decision in the United Kingdom ("the applicant's mark"). The application was published for opposition purposes on 2 August 2024, and registration is sought for the following goods:

Class 28: Game cards; Card games; Playing cards and card games; Cards [games]; Playing cards; Cards (Playing -).

2. On 17 September 2024, the application was opposed in its entirety by Masquerade Limited ("the opponent") under sections 5(1), 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 ("the Act"). For the purposes of the opposition, the opponent relies upon the following trade mark and all goods for which it is registered.

RAINBOW

United Kingdom Trade Mark ("UKTM") 3982949
Filing Date: 22 November 2023
Registration Date: 16 February 2024
Relying on all goods, namely:

Class 28: Card games; Cards [games]; Game cards; Playing cards.
("the opponent's mark")

3. The opponent's mark qualifies as an 'earlier mark' in accordance with section 6 of the Act. As it had not been registered for five years or more at the filing date of the application, it is not subject to the proof of use requirements specified within section 6A of the Act. Consequently, the opponent may rely upon all of the goods for which the earlier mark is registered without having to establish genuine use.

4. Under the section 5(1) ground, the opponent claims that the applicant's mark should be refused registration because it is identical to the opponent's mark and is to be registered for identical goods.

5. Under the section 5(2)(a) ground, the opponent claims that the parties' marks are identical and the goods are similar, and as such, there exists a likelihood of confusion.

6. Under the section 5(2)(b) ground, the opponent claims that if the marks are not identical, then they are similar and the goods are identical or similar, and as such, there exists a likelihood of confusion.

7. The applicant filed a counterstatement wherein it denied the claims against it. That being said, the applicant was silent on the goods comparison, a point I will discuss where necessary below.

8. Both parties are unrepresented. During the evidence rounds, both parties filed evidence and written submissions. Neither party requested a hearing, nor did they file written submissions in lieu of a hearing. This decision is taken following a careful review of the papers before me.

Relevance of EU law

9. 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.

EVIDENCE

10. The opponent's evidence comes in the form of the witness statement from Mr Paul Laing, dated 17 April 2025. Mr Laing is the head of production development of the opponent. The witness statement is accompanied by three exhibits, labelled Exhibit 1

to Exhibit 2.1. The exhibits comprise a copy of the registration certificate for the opponent's mark, the box lid artwork for the opponent's card game, and the box lid artwork used by the applicant.

11. The applicant's evidence comes in the form of the witness statement from Mr Ian Hannaford, dated 8 May 2025. Mr Hannaford is the Director of the applicant. His witness statement is accompanied by two exhibits, labelled Exhibit A and Exhibit B. Exhibit A is a copy of a backer report relating to a crowdfunded Kickstarter campaign for the applicant's card game 'The Rainbow'. Exhibit 2 is a copy of a social media post, dated 15 November 2023, advertising the launch of the Kickstarter campaign.

PRELIMINARY ISSUES

12. The applicant has raised points in its counterstatement, witness statement and submissions that I intend to address as preliminary issues. Before going any further into the merits of this opposition, it is necessary to explain why, as a matter of law, these points will have no bearing on the outcome of this opposition.

Applicant's alleged earlier use and submissions regarding non-use

13. The applicant contends that it had made genuine use of the mark 'THE RAINBOW' in the UK prior to the filing date of the opponent's mark and further argues that the opponent has not substantiated any meaningful reputation or market presence in the UK. However, as stated above, the opponent is not subject to the proof of use requirements specified within section 6A of the Act. Further, the opponent does not rely on section 5(3) of the Act so there is no requirement to demonstrate a reputation in support of its opposition.

14. To the extent that the applicant seeks to rely on its alleged earlier use as a defence, it is accepted that honest concurrent use may act as a defence to an opposition. However, honest concurrent use only arises in exceptional circumstances[1] and the evidence of the applicant does not demonstrate any actual use of the applicant's mark.

[1] See, for example, *Budejovicky Budvar NP v Anheuser-Busch Inc*, Case C-482/09

Further, I refer to Tribunal Practice Notice ("TPN") 4/2009, which deals with defences to claims under sections 5(1) and 5(2) of the Act. It confirms that defences based on use of the contested mark which precedes the date of registration of the earlier mark are not relevant in opposition proceedings. In *Ion Associates Ltd v Philip Stainton and Another*, BL O/211/09, Ms Anna Carboni, sitting as the Appointed Person, rejected such defences as being wrong in law. Accordingly, any claim that the applicant was trading prior to the opponent's registration is not relevant to the matter before me, and I will make no further mention of it.

Absence of confusion

15. In its counterstatement, the applicant submits:

> "The Opponent has not provided any evidence of actual confusion in the marketplace, such as misdirected mail, customer enquiries, or market surveys."

16. While this argument is noted, I refer to the case of *The European Limited v The Economist Newspaper Ltd*,[2] wherein Millett LJ stated:

> "Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff's registered trade mark."

17. On that basis, it seems clear that this line of defence can play no part in my consideration toward a likelihood of confusion.

Coexistence of Similar Elements

18. In its counterstatement, the applicant submits:

[2] [1998] FSR 283

> "There are countless other products on the market containing the element "Rainbow" for card game products, demonstrating that this element is not inherently distinctive in this filed."

19. I deduce that the main purpose of Mr Hannaford's comments is to demonstrate, amongst other things, the generic nature and alleged low distinctiveness of the opponent's mark, as well as the claimed successful coexistence of closely similar marks and similarly themed marks in the relevant marketplace. However, with regard to the distinctiveness of the opponent's mark, by virtue of the fact that it is registered means that it is assumed to possess at least some distinctive character.[3] In considering this issue, I refer to the case of *Zero Industry Srl v OHIM*, Case T-400/06, wherein the General Court ("GC") stated that:

> "73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '… there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 *GfK v OHIM – BUS(Online Bus)* [2005] ECR II-4865, paragraph 68, and Case T-29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II-5309, paragraph 71)."

20. I appreciate that the applicant has not referred to any registered UK trade marks in the present case but neither has it filed any evidence of these other claimed marks being effectively used in the market, being the point of the GC's comments in the above case. As such, the argument of the applicant is of no relevance to my decision.

[3] Formula One Licensing BV v OHIM, Case C-196/11P

Accordingly, I will proceed to make my decision by making a multi factorial assessment based on the particulars of the case before me.

DECISION

21. Section 5(1) of the Act reads as follows:

> "(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected."

22. Section 5(2) of the Act reads as follows:

> "(2) A trade mark shall not be registered if because –
>
> > (a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or
> >
> > (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

23. Section 5A of the Act states as follows:

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

Relevant law

24. Whilst relevant to section 5(2) only, the following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

> (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
>
> (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
>
> (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
>
> (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
>
> (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
>
> (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

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

Identity of the marks

25. It is a prerequisite of sections 5(1) and 5(2)(a) of the Act that the marks at issue be identical. In considering whether marks are identical, I refer to the case of S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA, Case C-291/00, wherein the Court of Justice of the European Union ("CJEU") held that:

"54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer."

26. In the present case, I acknowledge that the marks share the word 'RAINBOW', and that the opponent's mark is a word only mark, meaning that it may be used in any standard typeface and in any colour. However, the use of colour does not extend to contrived colour splits, such as that used in the applicant's mark. I consider that the

use of colour will not go unnoticed by the average consumer. Further, I do not consider that the device element in the applicant's mark would go unnoticed either. In short, I find that both of these elements contribute to the overall impression of the applicant's mark and create a clear point of visual difference between the marks. Consequently, the marks are not identical. The result of this is that the sections 5(1) and 5(2)(a) grounds of opposition fall at the first hurdle. The opposition may, however, proceed under section 5(2)(b), which I will now consider in the ordinary way.

Comparison of goods

27. The competing goods are as follows:

The opponent's goods	The applicant's goods
Class 28 Card games; Cards [games]; Game cards; Playing cards.	Class 28 Game cards; Card games; Playing cards and card games; Cards [games]; Playing cards; Cards (Playing -).

28. As stated above, the applicant has made no submissions in respect of the similarity between the goods. As such, I do not consider that the similarity of the goods is in dispute between the parties. While it would be permissible for me to proceed on the basis that the goods at issue were identical or similar, I consider that I can deal with the comparison relatively briefly. Put simply, both specifications cover the same range of goods, namely card games, game cards and playing cards. The goods are therefore self-evidently identical or, failing that, identical under the principle set out in *Gérard Meric v OHIM*, Case T- 133/05.

The average consumer and the purchasing act

29. It is necessary for me to determine who the average consumer is for the goods in question. I must then determine the manner in which the goods are likely to be selected by the average consumer in the course of trade.

30. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods in question (*Lloyd Schuhfabrik Meyer*, Case C-342/9

31. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited,* [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

32. The average consumer for the goods at issue is likely to be a member of the general public, and the goods are likely to be obtained by self-selection from the shelves of a retail outlet or an online equivalent. Visual considerations are therefore likely to dominate the selection process for the goods. That being said, I do not discount the aural component playing a role by way of mouth recommendations. The goods are likely to be inexpensive and frequently purchased. In terms of the level of attention paid, the average consumer will consider factors such as the design of the cards, the type of game offered, and any reviews from other players. Given the ordinary and relatively casual nature of these factors, I consider that the average consumer is likely to pay a low to medium degree of attention during the purchasing process.

Comparison of trade marks

33. It is clear from *Sabel BV v. Puma AG* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details.

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

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

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

35. The respective trade marks are shown below:

The opponent's mark	The applicant's mark
RAINBOW	

36. It is noted that the opponent's evidence includes an image of the packaging it uses. While this shows the use of the word 'RAINBOW' in a slightly stylised manner, I remind myself that the assessment I must make here is based on the mark as it is registered, which is a word only mark. For the avoidance of doubt, word only marks are capable of being used in any standard typeface and in any colour, be that in the manner shown in the opponent's evidence or in any other way that is covered by the notional and fair use of the same.

Overall impression

37. The opponent's mark is a word only mark consisting solely of the word 'RAINBOW'. There are no other elements to contribute to the overall impression which resides in the word itself.

38. The applicant's mark is a figurative mark consisting of the words 'THE RAINBOW' in a stylised font, appearing alongside a device resembling a deck of playing cards. Both the wording and the device are presented in a combination of colours indicative of those of a rainbow. I find that the word 'RAINBOW' is the more distinctive and dominant element of the mark. The word 'THE' (by virtue of the fact that it will solely be viewed as a definite article), the device and the stylisation used all play lesser roles.

Visual comparison

39. The word 'RAINBOW' is the only element of the opponent's mark and is replicated in the applicant's mark. The marks differ in the presence of the word 'THE', the device and the stylisation in the applicant's mark. While they play a lesser role in the overall impression of that mark, they still act as points of visual difference. I appreciate that the word 'THE' appears at the beginning of the marks (being a position that tends to have most impact)[4]. However, taking account of my earlier findings regarding the overall impression of the marks, I am of the view that they are visually similar to a medium to high degree.

Aural comparison

40. The only element of the applicant's mark that will be pronounced is the word element. The word 'RAINBOW' will be articulated identically in both marks, with the word 'THE' being a point of aural difference. Although that difference occurs at the beginning of the marks, the word 'THE' plays a lesser role in the overall impression of the applicant's mark. On this basis, I am of the view that the marks are aurally similar to a high degree.

[4] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

Conceptual comparison

41. The concept of the opponent's mark lies in the word 'RAINBOW', being an ordinary dictionary term referring to a curved band of colours that appears in the sky when sunlight passes through rain. Despite the presence of the device element in the applicant's mark, its concept is likely to arise solely from the words, 'THE RAINBOW'. The word 'RAINBOW' will be understood in the same way set out above. The word 'THE', functioning as the definite article, may be perceived as referring to a specific rainbow, but it does not alter the underlying concept conveyed by the word 'RAINBOW' itself. Taking account of the overall impression of the marks, I consider them to be conceptually identical.

Distinctive character of the earlier mark

42. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *WindsurfingChiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested

by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee,* paragraph 51)."

43. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

44. The opponent submits that its earlier mark has acquired distinctiveness for the goods in class 28.[5] Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, I do not consider that the opponent's evidence demonstrates such use, because the evidence provided shows only a registration certificate for the opponent's company and an image of its box art. There is no evidence of sales or marketing efforts that could be said to point to a level of awareness of the mark amongst the relevant consumer base. Therefore, I have only the inherent position to consider.

45. The opponent's mark is a word only mark consisting solely of the word 'RAINBOW'. Whilst the word 'RAINBOW' is an ordinary dictionary word, it does not appear to be allusive or descriptive of the goods. That being said, by virtue of it being an ordinary dictionary word, its use is not particularly remarkable from a trade mark perspective. Overall, it is my view that the opponent's mark has a medium degree of inherent distinctiveness.

Likelihood of confusion

46. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be

[5] Point 3 of opponent's submissions dated 17th April 2025

borne in mind. One such factor is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa (*Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97). As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier trade mark, the average consumer for the goods, and the nature of the purchasing process. In doing so, I must be mindful to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

47. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related.

48. Earlier in the decision I found that:

- The goods at issue are identical.

- The average consumer for the goods at issue is a member of the general public, who will pay a low to medium degree of attention during the purchasing process.

- The purchasing process for the goods is predominantly visual, although, I do not discount an aural component.

- The marks are visually and aurally similar to a medium to high degree, and conceptually identical.

- The earlier mark is inherently distinctive to a medium degree.

49. Taking all these factors into account and bearing in mind the imperfect recollection of the average consumer, it is my view that there is a likelihood of the marks being mistaken for one another, particularly given the identical goods at issue. The common element between them, namely 'RAINBOW', is the sole element of the opponent's mark and the dominant element of the applicant's mark. It is this word that the average consumer is likely to pin their recollection upon, leading them to forget which mark was accompanied by a figurative device element and which was not. Consequently, I find that there exists a likelihood of direct confusion between the marks at issue.

50. For the sake of completeness, I will also consider indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc,* Case BL O/375/10, Mr Iain Purvis QC, (as he then was) sitting as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.
>
> 17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:
>
> > (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite

distinctive in their own right ("26 RED TESCO" would no doubt be such a case).

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

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

51. These three categories are not exhaustive; rather, they were intended to be illustrative of the general approach, as has been confirmed by the Court of Appeal. I recognise that a finding of indirect confusion should not be made merely because the competing marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.[6]

52. Bearing in mind my conclusions listed at paragraph 49, I consider that even if the average consumer recalls the differences between the marks, he or she is likely to perceive the applied for mark as a variant brand originating from the opponent, leading to indirect confusion. For example, the use of 'RAINBOW' as a word mark may be that which the consumer believes to be the version of the mark used in promotional materials whereas the figurative mark is that which is used on packaging. Consequently, I find that there exists a likelihood of indirect confusion.

CONCLUSION

53. The opposition under section 5(2)(b) has been successful. Subject to any successful appeal, the application will be refused in full.

[6] *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

COSTS

54. The opponent has been successful and would ordinarily be entitled to its costs. However, the opponent is unrepresented meaning that, in order to claim its costs, it was required to file a completed costs pro-forma. It did not do so. On this point, I note that a blank costs pro-forma was provided to the opponent under the cover of a letter from the Tribunal dated 25 July 2025. This letter set out 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."

55. No costs proforma was filed but it is noted that the opponent did incur the official fee of £100 for the filing of its notice of opposition. As such, the opponent is only entitled to a costs award of £100.

56. I hereby order ExcitedSlothLTD to pay Masquerade Limited the sum of £100. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

Dated this 19th day of March 2026

Sarah Adam-Smith
For the Registrar