O/0651/23

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK00003675123
IN THE NAME OF FLEXOPACK SOCIETE ANONYME
COMMERCIAL AND INDUSTRIAL PLASTICS COMPANY
FOR THE FOLLOWING TRADE MARK

FlexoLid

IN CLASS 16

AND

AN APPLICATION FOR A DECLARATION OF
INVALIDITY UNDER NO. 505125 BY
KLOCKNER PENTAPLAST EUROPE GMBH & CO. KG

BACKGROUND AND PLEADINGS

1. FLEXOPACK SOCIETE ANONYME COMMERCIAL AND INDUSTRIAL PLASTICS COMPANY ("the proprietor") is the owner of the trade mark registration shown on the cover page of this decision ("the contested mark"). The contested mark was filed on 29 July 2021 and entered into the register on 28 January 2022. It stands registered for the following goods:

   Class 16: Plastic films for food packaging for industrial and commercial use; Food wrapping plastic films for industrial and commercial use; Thermoplastic polymer films for industrial and commercial food packaging; Cling film plastics for food packaging.

2. By virtue of the contested mark being filed pursuant to Article 59 of the Withdrawal Agreement between the UK and the European Union, it is deemed to have the same filing date as the proprietor's identical EUTM, being 14 October 2020. This is, therefore, the relevant date for the purpose of these proceedings.

3. On 18 July 2022, Klockner Pentaplast Europe GmbH & Co. KG ("the applicant") applied to have the contested mark declared invalid under section 47 of the Trade Marks Act 1994 ("the Act"). The application is brought under sections 3(1)(b) and 3(1)(c) of the Act and is targeted at the entirety of the proprietor's specification.

4. In respect of its 3(1)(b) ground, the applicant claims that the contested mark clearly means a flexible lid and as this is a mark that other traders could equally use to describe such goods, it is not capable of distinguishing the goods of one trader from those of another. In the absence of any distinctiveness acquired through use, the contested mark cannot be viewed as being distinctive of the goods of one undertaking. Under its 3(1)(c) ground, the applicant argues that 'Flexo' refers to something being flexible and 'Lid' means the openable (often at the top) part of a container. Given that the goods are plastic films for food packaging, they will be flexible and the contested mark is, therefore, directly descriptive of the goods for which it is registered. As there are no other elements to the contested mark, the applicant claims that it consists exclusively of a description of the goods.

Accordingly, the applicant requests that the contested mark be refused registration by virtue of the fact that it offends sections 3(1)(b) and 3(1)(c) of the Act.

5. The proprietor filed a counterstatement denying the claims made.

6. The applicant is represented by Hoffman Eitle PartmbB and the proprietor is represented by Withers & Rogers LLP. Only the applicant filed evidence, which was accompanied by written submissions. No hearing was requested and only the proprietor filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

EVIDENCE

7. The applicant's evidence came in the form of the witness statement of Debra Louise Lewis dated 14 December 2022. Ms Lewis is a UK registered Trade Mark Attorney and while the statement does not specify the firm for which she works for, the cover email makes reference to her position within the applicant's representative firm and, as such, I am willing to infer that she is duly authorised to submit evidence on behalf of the applicant. Ms Lewis's statement is accompanied by six exhibits, being DLL1 to DLL6

I do not propose to summarise the applicant's evidence or the parties' submissions here. However, I have taken them all into consideration in reaching my decision and will refer to them below, where necessary.

DECISION

9. Section 3 of the Act has application in invalidation proceedings pursuant to section 47 of the Act, which reads as follows:

"47. –

(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any

of the provisions referred to in that section (absolute grounds for refusal of registration).

Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

[…]

(4) In the case of bad faith in the registration of a trade mark, the registrar himself may apply to the court for a declaration of the invalidity of the registration.

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) […]

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made:

Provided that this shall not affect transactions past and closed."

10. Section 3(1) of the Act provides as follows:

"3(1) The following shall not be registered –

(a) […]

(b) trade marks which are devoid of any distinctive character,

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

(d) […]

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it."

11. The relevant date for determining whether the contested mark is objectionable under the above provisions is its deemed filing date, being 14 October 2020.

12. The position under the present grounds must be assessed from the perspective of the average consumer, who is deemed to be reasonably observant and circumspect.[1] While the applicant has made no submissions in respect of the identity or level of attention of the average consumer, I note that the proprietor has. The proprietor submits that the average consumer for those goods for industrial and commercial use will be those in the food packaging industry who will pay an average degree of attention during the purchasing act. As for the goods not specifically limited for industrial and commercial use, the consumer will be a member of the general public who will, again, pay an average degree of attention. I agree with the identity of the average consumer as put forward by the proprietor in that, for some goods, the consumer will be a business user in the food packaging industry and, for those not restricted as such, the consumer will be a member of the general public at large. Further, I agree that, regardless of the identity of the consumer, the attention paid be will average, or medium.

[1] *Matratzen Concord AG v Hukla Germany SA,* Case C-421/04

13. I bear in mind that the present grounds are independent and have differing general interests. It is possible, for example, for a mark not to fall foul of section 3(1)(c) but still be objectionable under section 3(1)(b): *SAT.1 SatellitenFernsehen GmbH v OHIM,* Case C-329/02 P at [25]. On this point, I note that the proprietor submits that the applicant's claim under section 3(1)(b) is made on the basis that the contested mark is descriptive of the goods at issue. As a result, the proprietor submits that there is no need to consider the claim under section 3(1)(b) and it is the 3(1)(c) ground that is determinative. Having considered the applicant's claim, I agree with the proprietor's position. While the pleadings under the 3(1)(b) ground do not directly refer to the contested mark being descriptive of a characteristic of the goods at issue, they do set out that "[t]he word 'FlexoLid' clearly means a flexible lid" thereby alluding such a claim. Further, its submissions argue that "the average consumer of such class 16 goods would not recognise the contested mark as being an indication of origin but would instead consider it to be a term that is used to describe the goods."[2] It is my view that the basis for the applicant's 3(1)(b) claim is that the contested mark is devoid of distinctive character because it is descriptive. As a result, I am of the view that the contested mark may only fall foul of section 3(1)(b) if it falls foul of section 3(1)(c). I will, therefore, give consideration to the 3(1)(c) ground first but will, for the sake of completeness, return to briefly address the 3(1)(b) ground.

Section 3(1)(c)

14. While section 3(1)(c) of the Act prevents the registration of marks which designate a characteristic of the goods and services for which they are applied for, the present case relates to the potential invalidation of a trade mark. As such, the purpose of section 3(1)(c) is not to prevent the registration of the contested mark but to invalidate it. As I have set out above, the ability to do so is by virtue of section 47 of the Act.

15. The case law under section 3(1)(c) (corresponding to article 7(1)(c) of the EUTM Regulation, formerly article 7(1)(c) of the CTM Regulation) was set out by Arnold

[2] The applicant's submissions in respect of its 3(1)(b) claim. These submissions consist of no paragraph numbers so a direct footnote is not possible

J. in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) as follows:

> "91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the Court of Justice of the European Union in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:
>
> > "33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40 , p. 1), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94, see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18 , paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461 , paragraph 24).
> >
> > 36. … due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94 . Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia , *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44 , paragraph 45, and *Lego Juris v OHIM* (C-48/09 P) , paragraph 43).
> >
> > 37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration

as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley* , paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie* , paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (Koninklijke *KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in

Article 3 of Directive 89/104, *Koninklijke KPN Nederland* , paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a ‘characteristic’ of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94 , the terms ‘the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service’, the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word ‘characteristic’ highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has

pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56)."

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97]."

16. The applicant's pleaded claim is that the proprietor's goods are plastic films for food packaging and that such goods will be flexible as this is the nature of such material and that the goods can, clearly, encompass plastic lids for food packaging. As a result, the proprietor claims that the contested mark is directly descriptive of the goods at issue. While it is not expressly claimed what characteristic the applicant claims the contested mark is descriptive for, it is my view that these pleadings give rise to an argument that the contested mark is descriptive of the kind of goods for which it is registered i.e. they are flexible lids. On this point, I accept that if the contested mark is found to be directly descriptive of such a characteristic of the goods at issue, it will fall foul of section 3(1)(c) of the Act.

17. Breaking the applicant's claim down into two parts, I am of the view that in order to succeed I must be satisfied that the contested mark is registered for goods that encompass flexible lids for food packaging. If I am satisfied on this point, I must then find that average consumers in the UK would view the contested mark as being directly descriptive of those goods. I will deal with the point regarding the actual goods at issue first, namely, whether the goods can be said to cover flexible lids for food packaging.

18. Upon the plain reading of the terms for which the contested mark is registered, I do not consider that they can reasonably be said to cover plastic lids for food packaging. I consider that this finding applies regardless of whether the goods at issue are reserved for commercial or industrial purposes or not. My reason for this is that I do not consider that there is anything inherent in the goods at issue, being "plastic films for food packaging for industrial and commercial use", "food wrapping plastic films for industrial and commercial use", "thermoplastic polymer films for industrial and commercial food packaging" and "cling film plastics for food packaging", that would imply that they cover flexible lids. Further, as I will come to discuss below, I have no evidence as to how such goods are commonly used that would point towards them being covering flexible lids.

19. Firstly, I appreciate that goods like cling film or plastic films are malleable, can very easily conform to any shape and are commonly used to wrap around various types of foodstuffs. However, I do not consider that this equates to such goods being in line with the ordinary meaning of 'flexible' i.e. something that is able to bend or be bent easily without breaking.[3] As far as I am aware (and I have nothing before me in evidence to suggest otherwise) plastic film and/or cling film are not generally described as being *flexible* goods by average consumers. By way of an illustrative example, I do not consider something like foil (which serves a similar end purpose to the goods at issue i.e. to wrap them up) would ordinarily be referred to as flexible even though it can be formed into any shape. Instead, it would simply be categorised as a type of food wrapping and I consider that a similar outcome would apply to the goods at issue. Secondly, the word 'Lid' is a widely understood term that means the cover placed on a container. While plastic film or cling film would ordinarily be purchased to cover foodstuffs, I do not consider that they are, by their definition, a type of lid and neither do I consider that such goods would readily described as such by average consumers. On this point, I appreciate that cling film may be placed on top of a bowl to cover food within said bowl, however, such use would not, in my view, be described as the use of a lid in the ordinary sense of the word. Using the same example discussed above regarding foil, I see no scenario where an average consumer would readily consider foil as a type of 'lid' simply

[3] DLL2

because it may cover food and am of the view that the same will be the case for the goods at issue.

20. In light of my comments above, I find that regardless of the understanding associated with the contested mark, it cannot be descriptive of the kind of goods at issue. As a result, I am of the view that the applicant's claim fails at this point and I, therefore, find that the contested mark is not objectionable under the section 3(1)(c) ground. Even if I were wrong to make such a finding, I do not consider that the contested mark is directly descriptive of the goods at issue either. While not necessarily required at this point, I will, for the sake of completeness, proceed to set out my reasoning for the same.

21. The applicant's position is that 'Flexo' refers to something being flexible and 'Lid' means the openable part of a container (often at the top). In support of its claim, the applicant has filed evidence consisting of a number of screenshots taken from the Cambridge Dictionary website regarding the meaning of various words.[4] I note that these screenshots show the definitions for the words 'flex', 'flexible', 'lid', the connective vowel 'O' and the words 'stripogram', speedometer' and 'clapometer' (on the basis that they show words using the connective vowel 'O'). In addition, the evidence includes a screenshot taken from a Google search for the words 'flexible lid plastic film'.[5]

22. I will discuss the dictionary evidence further below but, firstly, I wish to discuss the Google search evidence. I note that the search terms were 'flexible lid plastic film' and, as far as I understand it (and I have nothing in evidence before me to suggest anything to the contrary), Google searches simply scan the internet for the presence of the searched words on the same webpage and filter the results accordingly. On this point, I note that the first result makes no obvious reference to the search term as a whole and, instead, lists three of the four searched words at different parts of a sentence thereby taking those words completely out of context of the search term itself. Further, I note that the search was conducted in Germany on 22 December 2022 (being after the relevant date) and shows results for '.com'

[4] DLL1 to DLL4 and DLL6
[5] DLL5

websites. As a result, I fail to see how such evidence could be indicative of the understanding of the UK consumer at the relevant date. For the reasons given above, this evidence is of no assistance to the applicant's claim and I will say no more about it.

23. I turn now to the dictionary evidence filed. While this evidence is dated after the relevant date, I am of the view that the meaning of the words 'flexible' and 'lid' as contained in the definitions provided will have been widely understood across the average consumer base in the UK prior to the relevant date. This is on the basis that both 'flexible' and 'lid' are ordinary, everyday words in the English language and I do not consider it to be controversial to infer as such. As for 'flex', I accept that this will be widely understood as being short for 'flexible' and, therefore, accept the dictionary definition provided for this word also. While this may be the case for the aforementioned words, the same cannot be said for the remaining dictionary definitions provided, being the reference to the use of the letter 'O' as a connective vowel and the other compound words. I will discuss my reasons for this below.

24. Firstly, from the reading of the papers before me, it is my understanding that these additional definitions were provided to support an argument that 'FlexoLid' will be viewed as a compound word on the basis that it is common practice in British English to use the letter 'O' between two words to make a compound word. This argument somewhat contradicts the pleaded case of the applicant in that its position is that 'FlexoLid' will be seen as being made up of two elements, 'Flexo' and 'Lid'. There is no prior indication that the argument regarding a connective vowel was at issue and, as such, I am entitled to disregard it outright. However, even if it were to have been appropriately pleaded, I am not convinced that the evidence on this point is of any assistance to the applicant. The evidence regarding words that use an 'O' as a connective vowel is very limited in that it covers just three screenshots of dictionary definitions (being 'stripogram', 'speedometer' and 'clapometer') and a further two examples included within the screenshot regarding the letter 'O' (being 'chromosome' and 'filmography', although no actual definition of these words is provided). There is nothing before me to demonstrate the understanding of these words across the average consumer base in the UK and,

even if there were, there is nothing to suggest that the existence of five such words means that any use of a letter ‘o’ in the middle of a word is indicative of a compound word. On this point, it is my understanding that there are many compound words in the English language that do not include a letter ‘o’ and, further, not every word in the English language that includes a letter ‘o’ within it is a compound word. As such, I fail to see how this is of any real assistance in the present case. Taking all of the above points into account, the applicant’s arguments regarding the letter ‘o’ being seen as a connective vowel or the contested mark being viewed as a single compound words are disregarded and I will say no more about them.

25. While I am conscious that my overall assessment of the contested mark is to be based on the understanding of that mark as a whole, I am of the view that the average consumer will see it as a combination of two elements, being ‘Flexo’ and ‘Lid’. As such, I consider it necessary in the present case to consider the position in respect of these separate elements. Once I have determined the meaning of these two elements, I will move to consider the contested mark as a whole. I will take this approach on the basis that while it is ordinarily wrong to artificially dissect trade marks, I am of the view that the average consumer would readily identify that the contested mark as being made up of two elements. I will take this approach on the basis that the use of capital letters in the letters ‘F’ and ‘L’ will assist in denoting two separate elements. Further, the presence of a well-known dictionary word, being ‘Lid’, will assist in the identification of the existence of a separate element. Lastly, I note that not only has the applicant argued its case on the basis that the contested mark is made up of two elements but the submissions of the proprietor accept as such.

26. Firstly, in considering ‘Flexo’, I do not consider that it will be considered as a shorthand term for the word ‘flexible’ in the same way that ‘flex’ or ‘flexi’ may be. On this point, I accept that certain words such as ‘speedometer’ or ‘typographical’, for example, may be shortened to ‘speedo’ or ‘typo’, respectively, but I see no basis to find that ‘flexible’, which contains no ‘o’, would be ordinarily shortened to ‘Flexo’. Further, I have no evidence before me to demonstrate examples of any such shortening of ‘flexible’ by average consumers and neither is there anything pointing

to ordinary dictionary words without a letter ‘o’ being commonly shortened in a similar way. Without any evidence in support of these points, I am not willing to infer as such. Secondly, even though I do not consider ‘Flexo’ to be a shortening of ‘Flexible’, I do accept that there will be some a connection being made between the two words. However, despite such a connection being made, it will not be direct. Instead, I am of the view that the presence of the letter ‘o’ will mean that ‘Flexo’ will be viewed as an indirect and somewhat unusual play on the word and, therefore, it will not be seen as descriptive of a characteristic of the goods (insofar as they can be said to be ‘flexible’).

27. As for the word ‘Lid’, I am of the view that will be understood as put forward by the applicant in its evidence, namely that it is *a cover for a container that can be lifted up or removed*. This word is, clearly, descriptive of a characteristic of the goods (insofar as they can be said to cover ‘lids’).

28. I am of the view that when the contested mark is viewed as a whole, it will not be viewed as having its own singular meaning. Instead, it will be understood as a combination of its individual elements, the meanings of which will be in line with those discussed above. While I note my findings in respect of the word ‘Lid’, I am of the view that given what I have said above regarding ‘Flexo’, the contested mark is, as a whole, only allusive to flexible lids, not descriptive of them. As such, it is not objectionable under section 3(1)(c) of the Act.

29. For the sake of completeness, I have found throughout this decision that the contested mark is not registered for goods that can be said to be flexible lids and, even if it were, it is not descriptive of a characteristic of those goods but is, instead, allusive to those goods. The application under the 3(1)(c) ground, therefore, fails in its entirety.

Section 3(1)(b)

30. I am of the view that I can deal with this ground swiftly on the basis that, as I have set out above, the applicant’s pleaded case under its 3(1)(b) ground is that the

contested mark is devoid of distinctive character because it is descriptive. Given my findings above, it follows that as the invalidation reliant upon the 3(1)(c) ground has failed, the applicant's reliance upon the 3(1)(b) ground must also fail.

CONCLUSION

31. The application has failed in its entirety and, subject to any appeal, the contested mark may remain registered for all goods.

COSTS

32. As the proprietor has been successful, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. I note that while the proprietor did not file any evidence in these proceedings, the applicant did and, as such, the proprietor was required to consider the same. I, therefore, consider it appropriate to award some costs for this, however, given the nature of the evidence filed, I consider that any such costs awards should be reduced accordingly.

33. In the circumstances, I award the proprietor the sum of **£800** as a contribution towards its costs. The sum is calculated as follows:

Cnsidering the invalidation application and preparing a counterstatement:	£200
Considering evidence:	£300
Preparation of written submissions:	£300
Total:	**£800**

34. I hereby order Klockner Pentaplast Europe GmbH & Co. KG to pay FLEXOPACK SOCIETE ANONYME COMMERCIAL AND INDUSTRIAL PLASTICS COMPANY

the sum of £800. The above 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 conclusion of the appeal proceedings.

Dated this 10th day of July 2023

A COOPER
For the Registrar