O/0654/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003822088

BY LONDON PUFFS LTD

TO REGISTER THE TRADE MARK:

LONDON PUFFS

IN CLASS 34

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 600002625

BY STEAMWORKS VAPE LTD

BACKGROUND AND PLEADINGS

1. On 21 August 2022, LONDON PUFFS LTD ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 16 September 2022. The applicant seeks registration for the following goods:

Class 34 Electric cigarettes [electronic cigarettes]; Electronic cigarette boxes; Electronic cigarettes; Electronic cigarette cleaners; Electronic cigarette atomizers; Electronic cigarette cartomizers; Electronic cigarette cases; Cases for electronic cigarettes; Liquids for electronic cigarettes; Holders for electronic cigarettes; Liquid for electronic cigarettes; Cartridges for electronic cigarettes; Refill cartridges for electronic cigarettes; Smoking sets for electronic cigarettes; Replaceable cartridges for electronic cigarettes; Liquid nicotine solutions for electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes; Liquid solutions for use in electronic cigarettes; Electronic cigarette liquid [e-liquid] comprised of flavourings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid [e-liquid] comprised of flavorings in liquid form used to refill electronic cigarette cartridges; Liquid nicotine solutions for use in electronic cigarettes; Electronic cigarette liquid [e-liquid] comprised of vegetable glycerin; Electronic cigarette liquid [e-liquid] comprised of propylene glycol; Flavorings, other than essential oils, for use in electronic cigarettes; Personal vaporisers and electronic cigarettes, and flavourings and solutions therefor; Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Flavourings, other than essential oils, for use in electronic cigarettes.

2. The application was opposed by STEAMWORKS VAPE LTD ("the opponent") on 4 November 2022. The opposition is based upon sections 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opponent relies upon the following trade mark:

UK registration no. UK00003480973

Filing date 13 April 2020; Registration date 10 August 2020.

Relying upon all of the goods for which the earlier mark is registered, namely:

Class 34 Liquid solutions for use in electronic cigarettes; electric cigarettes; electronic cigarette cleaners; electric cigarettes; flavorings, other than essential oils, for use in electronic cigarettes; refill cartridges for electronic cigarettes; holders for electronic cigarettes; electronic cigarette liquid comprised of propylene glycol; flavourings, other than essential oils, for use in electronic cigarettes; electronic cigarette boxes; liquid nicotine solutions for use in electronic cigarettes; electronic cigarette atomizers; electronic cigarette cartomizers; electronic cigarettes for use as an alternative to traditional cigarettes; electronic cigarette liquid comprised of vegetable glycerine; personal vaporisers and electronic cigarettes, and flavourings and solutions therefor; electronic cigarettes; liquid solutions for use in electronic cigarettes; electronic cigarette cases; tobacco filters;. disposable e-cigarette device, e-cigarette device.

3. The applicant filed a counterstatement denying the claims made.

4. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20 (4) shall continue to apply. Rule 20 (4) states that:

> "(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit."

5. The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions. No leave was sought to file any evidence in respect of these proceedings.

6. Rule 62 (5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary; and the parties did not file any written submissions in lieu.

7. The opponent is represented by ZHIGANG LI, and the applicant is unrepresented.

8. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

DECISION

9. Section 5(2) reads as follows:

> "5(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 trade mark is protected
>
> (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."

10. The earlier mark had not completed its registration process more than five years before the relevant date (the filing date of the mark in issue). Accordingly, the use provisions at section 6A of the Act do not apply. The opponent may rely on all of the goods it has identified without demonstrating that it has used the mark.

Identity of the marks

11. It is a prerequisite of section 5(2)(a) that the trade marks are identical. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, 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 the average consumer."

12. The additional stylisation, "puff of smoke" device and the word "PLUS" in the opponent's mark, and the additional word "LONDON" at the beginning of the applicant's mark, all act as visual points of difference between the marks which will not go unnoticed by the average consumer. I do not, therefore, consider these marks to be identical.

13. As section 5(2)(a) requires the marks to be identical, the opponent's claim under this ground falls at the first hurdle.

14. The opposition based upon section 5(2)(a) is dismissed.

Section 5(2)(b) case law

15. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG,* Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer*

Inc, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P:

(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.

Comparison of goods

16. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court ("GC") stated that:

> "29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut für Lernsysterne v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

17. "Electronic cigarettes", "electronic cigarette boxes", "electronic cigarette cleaners", "electronic cigarette atomizers", "electronic cigarette cartomizers", "electronic cigarette cases", "holders for electronic cigarettes", "refill cartridges for electronic cigarettes", "liquid nicotine solutions for use in electronic cigarettes", "electronic cigarettes for use as an alternative to traditional cigarettes", "liquid solutions for use in electronic

cigarettes" and "flavourings, other than essential oils, for use in electronic cigarettes" appear identically in both specifications.

18. "Electric cigarettes" in the opponent's specification is self-evidently identical to "electric cigarettes [electronic cigarettes]" in the applicant's specification.

19. "Liquid solutions for use in electronic cigarettes" in the opponent's specification is self-evidently identical to "liquids for electronic cigarettes" and "liquid for electronic cigarettes" in the applicant's specification.

20. "Electronic cigarette cases" in the opponent's specification is self-evidently identical to "cases for electronic cigarettes" in the applicant's specification.

21. "Refill cartridges for electronic cigarettes" in the opponent's specification is self-evidently identical to "cartridges for electronic cigarettes" and "replaceable cartridges for electronic cigarettes" in the applicant's specification.

22. "Liquid nicotine solutions for use in electronic cigarettes" in the opponent's specification is self-evidently identical to "liquid nicotine solutions for electronic cigarettes" in the applicant's specification.

23. "Electronic cigarette liquid comprised of propylene glycol" in the opponent's specification is self-evidently identical to "electronic cigarette liquid [e-liquid] comprised of propylene glycol" in the applicant's specification.

24. "Electronic cigarette liquid comprised of vegetable glycerine" in the opponent's specification is self-evidently identical to "electronic cigarette liquid [e-liquid] comprised of vegetable glycerin" in the applicant's specification.

25. "Personal vaporisers and electronic cigarettes, and flavourings and solutions therefor" in the opponent's specification is self-evidently identical to "personal vaporisers and electronic cigarettes, and flavourings and solutions therefor" in the applicant's specification.

26. “Flavorings, other than essential oils, for use in electronic cigarettes” in the opponent’s specification is self-evidently identical to “electronic cigarette liquid [e-liquid] comprised of flavourings in liquid form used to refill electronic cigarette cartridges”, “electronic cigarette liquid [e-liquid] comprised of flavorings in liquid form used to refill electronic cigarette cartridges” and “chemical flavorings in liquid form used to refill electronic cigarette cartridges” in the applicant’s specification.

27. I consider that the applicant’s “smoking sets for electronic cigarettes” would contain an electronic cigarette, a charger, case and some refill cartridges. I therefore consider that the opponent’s “electronic cigarettes”, “refill cartridges for electronic cigarettes” and “holders for electronic cigarettes” fall within the broader category of “smoking sets for electronic cigarettes” in the applicant’s specification. I consider them identical on the principle outlined in *Meric.*

The average consumer and the nature of the purchasing act

28. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties’ goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. 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 words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

29. The average consumer for the goods will be adult members of the general public who vape. The cost of the purchase is likely to be fairly low, and the goods are likely

to be purchased reasonably frequently. However, these are all products that are intended to be inhaled into the body. The average consumer will therefore take various factors into consideration such as nicotine content and flavour. Taking all of the above into account, I consider that at least a medium degree of attention will be paid during the purchasing process for the goods.

30. The goods will often be stored behind a counter and, in order to purchase them, the consumer will need to request them aurally. Therefore, as highlighted by the applicant, for these purchases, the purchasing process will involve significant aural considerations. However, once the aural request has been made, the average consumer will have sight of the packaging at the point of purchase and so visual considerations are also relevant. I also recognise that the goods can be purchased by self-selection. In these circumstances, visual considerations will dominate the selection process. However, as advice may still be sought from sales assistants, aural considerations cannot be discounted.

Comparison of the trade marks

31. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) 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, at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, 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 relative 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."

32. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the 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.

33. The respective trade marks are shown below:

Opponent's trade mark	Applicant's trade mark
	LONDON PUFFS

34. The opponent's mark consists of the stylised word "PUFF", which is underlined, and the word PLUS underneath, all presented in capitals. I consider that when used alongside the word PUFF, the average consumer will recognise the device surrounding this word as a "puff of smoke". I note that the eye is naturally drawn to the element of the mark that can be read, and therefore, the smoke device will play a lesser role in the overall impression of the mark.

35. The applicant's mark consists of the words "LONDON PUFFS". I consider that the overall impression lies in the combination of these elements.

36. Visually, the marks coincide in the word PUFF. This acts as a visual point of similarity. However, this element is plural in the applicant's mark (PUFFS), and the mark also starts with the word LONDON. The word PUFF is stylised in the opponent's mark, which also consists of the smoke device, the horizontal line, and the word PLUS. These all act as visual points of difference. I also bear in mind that the consumer tends to pay more attention to the beginning of marks. Therefore, taking all of the above into account, I consider that the marks are visually similar to lower than a medium degree.

37. Aurally, the opponent's mark will be pronounced as PUFF-PLUS, with the device element not being articulated. The applicant's mark will be pronounced as LON-DON PUFF-SS. Therefore, the beginning of the marks differ aurally. However, as they overlap in the pronunciation of PUFF, the marks are aurally similar to lower than a medium degree.

38. Conceptually, both marks contain the noun PUFF, which carries the idea of a small amount of smoke or the act of smoking. In the opponent's mark, I consider that as the device surrounds the word PUFF, the consumer would recognise it as a "puff of smoke", which therefore reinforces the meaning of PUFF. The opponent's mark also ends in the word PLUS, which will also be given its ordinary meaning of suggesting 'something extra'. I consider that in the context of the opponent's goods, the mark as a whole would be understood being able to smoke extra from the opponent's electronic cigarettes and cartridges.

39. I consider that the word LONDON at the beginning of the applicant's mark will be understood by the average consumer as a geographical location. I consider that, when taken within the context of the goods, this element is likely to be perceived by the consumer as the location in which the electronic cigarettes and their accessories are produced or where the company is based.

40. Regardless, as the marks overlap in the conceptual meaning of PUFF, I consider that the marks are conceptually similar to a medium degree.

Distinctive character of the earlier trade mark

41. 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 C108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger [1999] ECR 1-2779, 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 promotion of 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)."

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

43. As highlighted above, the opponent's mark is composed of the underlined word PUFF, surrounded by the "puff of smoke" device, and contains the word PLUS underneath. I consider that the meaning conveyed by the mark, in the context of its goods, is that the user is able to smoke extra from their electronic cigarettes and cartridges. This is reinforced by the "puff of smoke" device. Therefore, as the opponent's mark, as a whole, is highly allusive of the opponent's goods, I consider that it is inherently distinctive to a low degree.

Likelihood of confusion

44. 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 down to the responsible undertakings being the same or related. 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 borne in mind. The first 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 vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive 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 he has retained in his mind.

45. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually and aurally similar to lower than a medium degree.
- I have found the marks to be conceptually similar to a medium degree.
- I have found the opponent's mark to be inherently distinctive to a low degree.
- I have identified the average consumer for the goods to be adult members of general public (who vape), who will select the goods primarily by aural means, although I do not discount a visual component.
- I also recognise that the goods can be purchased by self-selection. In these circumstances, visual considerations will dominate the selection process, although I do not discount an aural component.
- I have concluded that at least a medium degree of attention will be paid during the purchasing process.
- I have found the parties' goods to be identical.

46. I take into account the decision *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch) in which the court confirmed that if the only similarity between the respective marks is a common element which has low distinctiveness, that points against there being a likelihood of confusion.

47. Therefore, taking all of the above case law into account, I consider that it is important to ask, 'in what does the distinctive character of the earlier mark lie?' Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

48. The average consumer does not dissect the marks; they will be viewed as a whole. The opponent's mark, as a whole, is composed of the words "PUFF PLUS", with the word PUFF underlined and surrounded by the "puff of smoke" device, all of which are highly allusive of the opponent's goods.

49. In this instance, the common element between the marks, the word PUFF/PUFFS, is low in distinctiveness, as it is allusive of the goods, which are all used for vaping, which entails the production of puffs of smoke (or perhaps more strictly, vapour). Therefore, even bearing in mind the principle of imperfect recollection, the differences between the two marks will take on a greater significance for the average consumer than they might have otherwise.[1] The stylisation in the opponent's mark, including the stylised typeface, the underline, the "puff of smoke" device and the additional word PLUS, may not be very remarkable, however, they are visual points of difference. I also note that the beginning of marks tend to make more of an impact than the ends. I, therefore, do not consider that the average consumer would overlook the word LONDON at the beginning of the applicant's mark. I also do not consider that the average consumer would overlook the S at the end of the word PUFFS in the applicant's mark. This is particularly the case given the lower visual and aural similarity (lower than a medium degree) between the marks, and the predominantly visual and aural purchasing processes. I note that the conceptual similarity is higher than its visual and aural similarity, however, again, this is because the marks share the common PUFF/PUFFS element which is low in distinctiveness.

50. It is therefore clear that the marks are not identical, and whilst there is some similarity based on their shared word element, "PUFF", the marks have distinguishing features between them which become more significant due to both of the marks being

[1] *Nicoventures Holdings Ltd v. The London Vape Co Ltd* [2017] EWHC 3393 (Ch) Paragraph 36

lower in distinctiveness. Therefore, taking all of the above into account, I do not consider that there is a likelihood of direct confusion.

51. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C. (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

> "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 recognized 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."

52. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

53. *L.A Sugar Limited* sets out that indirect confusion 'tends' to fall in one of three main categories, though these examples provided are not exhaustive.[2] I note that the opponent has not provided any submissions as to what category this case would fall within, or presented any basis for a finding of indirect confusion.

[2] Paragraphs 16 & 17 of *L.A Sugar Limited v By Black Beat Inc*, Case BL-O/375/10

54. However, having noticed that the competing trade marks are different, I see no reason why the average consumer would assume that they come from the same or economically linked undertakings. Even though the marks share the common element; PUFF/PUFFS, as highlighted above, this element is highly allusive of the goods at issue. Therefore, I do not think that the common element is of such a level of distinctiveness that the average consumer would believe that only one undertaking would use it in relation to electronic cigarettes and their accessories such as cartridges, flavoured liquids and cases. It is more likely to be viewed as a coincidence because the word PUFF/PUFFS is highly allusive of the parties' goods. Consequently, I do not consider that the average consumer would think that the applicant's trade mark was connected with the opponent, or vice versa. Even if the opponent's mark is brought to mind, this is mere association, not confusion: see *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, paragraph 81. Therefore, I find there is no likelihood of indirect confusion.

CONCLUSION

55. The opposition is unsuccessful, and the application may proceed to registration.

COSTS

56. Award of costs in fast track proceedings are governed by TPN 2/2015. The applicant has been successful and would normally be entitled to a contribution towards its costs.

57. However, as the applicant is unrepresented, at the conclusion of the evidence rounds the tribunal wrote to the applicant and invited them to indicate whether they intended to make a request for an award of costs. The applicant was informed that, if so, they should complete a Pro Forma, providing details of their actual costs and accurate estimates of the amount of time spent on various activities associated with the proceedings. They were informed 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".

58. The applicant did not file a completed Pro Forma and paid no official fees. That being the case, I make no award of costs in this matter.

Dated this 11day of July 2023

L FAYTER

For the Registrar