O/0788/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003809499
BY EHLUK ESTATES LTD
TO REGISTER THE TRADE MARK

IN CLASSES 4, 9, 35, 37, 38 AND 39

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO. 600002682
BY ENERCOM AFRICA LIMITED

Background and pleadings

1. On 14 July 2022, EHLUK ESTATES 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 30 September 2022 in respect of the following goods and services with the services opposed underlined:

Class 4: *Energy (Electrical -); Electrical energy; Electrical energy from solar power; Electrical energy from renewable sources; Electrical energy from wind power; Electrical energy from non-renewable sources.*

Class 9: *Internet phones; Digital phones; Video phones; Ear phones; Cellular phones; Conference phones; Smart phones; VOIP phones; Cell phones; Mobile phones; Phone cases; Phone plugs; Digital cellular phones.*

Class 35: *Advertisement via mobile phone networks; Retail services in relation to mobile phones; Energy price comparison services; Procurement of contracts concerning energy supply; Billing services in the field of energy; Import-export agencies in the field of energy; Tracking and monitoring energy consumption for others for account auditing purposes; Promoting the benefits of energy efficient lighting technologies to professionals in the lighting field; Assistance and consultancy services in the field of business management of companies in the energy sector.*

Class 37: *Installation of energy-saving apparatus; Repair of energy supply installations; Construction of geothermal energy installations; Construction of wave energy power plants; Maintenance and repair of energy generating installations; Repair of energy production plants and machines; Maintenance and repair of wave energy power plants.*

Class 38: *Communications by cellular phones; Wireless cell phone services; Wireless cellular phone services; Wireless mobile phone services; Communications by mobile phones; Mobile phone communication services; Communications services by mobile phone; Television broadcasting services*

for mobile phones; Communications by means of mobile phones; Providing communication services through the use of phone cards or debit cards.

Class 39: *Energy distribution; Distribution of energy; Energy (Distribution of -); Distribution of renewable energy; Storage of energy and fuels; Distribution of energy for heating and cooling buildings; Information and advisory services in relation to the distribution of energy.*

2. On 28 December 2022, ENERCOM AFRICA LIMITED ("the opponent") partially opposed the application (against the services underlined), based upon Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition has been lodged using the Fast Track provisions. The opponent relies upon UK registration no. 3745057 for the trade mark ENERCOM AFRICA. The earlier mark was filed on 19 January 2022 and registered on 20 May 2022. The opponent identifies the following services upon which it relies:

Class 35: *Professional business consultancy; Business project management services; Management consultancy services.*

Class 42: *Advisory services relating to the use of energy; Consultancy relating to technological services in the field of power and energy supply; Engineering services in the field of energy technology.*

3. The opponent claims that the marks are similar and that the services are similar or identical, giving rise to a likelihood of confusion.

4. The mark upon which the opponent relies qualifies as an earlier trade mark pursuant to Section 6 of the Act. As the earlier mark had not completed its registration process more than five years before the application date of the applicant's mark, proof of use is not relevant in these proceedings.

5. The applicant filed a counterstatement, denying the claims.

6. 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."

7. 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.

8. 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 was it considered necessary and neither party filed written submissions in lieu. This decision has been taken following a careful consideration of the papers.

9. Neither party is professionally represented.

EU Law

10. 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 Trade Marks 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

Section 5(2)(b)

11. Section 5(2)(b) of the Act is as follows:

"A trade mark shall not be registered if because-

[…]

(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".

12. Section 5A of the Act is as follows:

"5A 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."

13. 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 services

14. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In *Canon Kabushiki Kaisha*, the Court of Justice of the European Union ("CJEU") stated that:

> "23. In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or complementary."

15. Guidance on this issue was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited ("Treat")* [1996] RPC 281. At [296], he identified the following relevant factors:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found, or likely to be found, in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

16. The General Court ("GC") confirmed in *Gérard Meric v OHIM*, Case T-133/05, paragraph 29, that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another, or vice versa.

17. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The GC clarified the meaning of "complementary" goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 82:

> "[…] there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking."

18. In *Sanco SA v OHIM,* Case T-249/11, the GC indicated that goods and services may be regarded as 'complementary' and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13*:*

> "It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes."

19. Whilst on the other hand:

> ".....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.

20. The services to be compared are as follows:

The applicant's services	The opponent's services
Class 35: *Energy price comparison services; Procurement of contracts concerning energy supply; Billing services in the field of energy; Tracking and monitoring energy consumption for others for account auditing purposes; Promoting the benefits of energy efficient lighting technologies to professionals in the lighting field; Assistance and consultancy services in the field of business management of companies in the energy sector.* **Class 37:** *Installation of energy-saving apparatus; Repair of energy supply installations; Construction of geothermal energy installations; Construction of wave energy power plants; Maintenance and repair of energy generating installations; Repair of energy production plants and machines; Maintenance and repair of wave energy power plants.* **Class 39:** *Information and advisory services in relation to the distribution of energy.*	**Class 35:** *Professional business consultancy; Business project management services; Management consultancy services.* **Class 42:** *Advisory services relating to the use of energy; Consultancy relating to technological services in the field of power and energy supply; Engineering services in the field of energy technology.*

21. The applicant's *Assistance and consultancy services in the field of business management of companies in the energy sector* (in class 35) fall within the opponent's *Professional business consultancy* and *Management consultancy services* (in class 35), as the opponent's terms are broad enough to include consultancy services in the

field of business management of companies in the energy sector. These services are identical according to the principle outlined in *Meric*.

22. The applicant's services *Energy price comparison services; Procurement of contracts concerning energy supply; Billing services in the field of energy; Tracking and monitoring energy consumption for others for account auditing purposes; Promoting the benefits of energy efficient lighting technologies to professionals in the lighting field* (in class 35), all relate to energy supply. These services would be provided by energy companies directly to their consumers. They could also be provided by sub-contractors carrying out tasks on behalf of energy companies. The services could therefore be purchased either by homeowners and businesses seeking to find an energy supplier and/or monitor their energy consumption, or by energy companies seeking to subcontract some of their work. The opponent's specification covers *advisory services relating to the use of energy* in class 42. Although the services appear in different classes, this does not prevent me from finding that they are similar as Section 60A of the Act clearly states that goods and services are not to be regarded as being dissimilar from each other on the ground that they appear in different classes under the Nice Classification. In this case, the opponent's *advisory services* in class 42 relate to the same field, i.e. the use of energy, as that of the applicant's services in class 35 and, as such, the services coincide in in their nature, relevant public, distribution channels and providers. Further, the opponent's advisory services are likely to be provided in conjunction with the applicant's energy-related services, which suggest that there is a close connection between the services in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those services lies with the same undertaking. Consequently, the services are also complementary. In my view, these services are similar to a medium degree.

23. The closest clash I can see between the opponent's services and the applicant's *Installation of energy-saving apparatus; Repair of energy supply installations; Construction of geothermal energy installations; Construction of wave energy power plants; Maintenance and repair of energy generating installations; Repair of energy production plants and machines; Maintenance and repair of wave energy power plants* (in class 37) is with the earlier *Consultancy relating to technological services in the*

field of power and energy supply; Engineering services in the field of energy technology (in class 42). This is because the term *energy technology* in the opponent's specification relates to energy efficient installations, plants and machinery, which means that the opponent's consultancy and engineering services and the applicant's maintenance, installation, construction and repair services are effectively provided in relation to the same energy installations, plants and machinery. The services coincide in their nature, relevant public, distribution channels and providers and are complementary. These services are similar to a medium degree.

24. Finally, I find that the applied-for *Information and advisory services in relation to the distribution of energy* (in class 39) is similar to the opponent's *Advisory services relating to the use of energy* (in class 42). The services have the same nature and purpose, both being advisory services relating to the same field of activity, namely that of the use and distribution of energy. The services coincide in their nature, purpose, relevant public, distribution channels and providers and are complementary. These services are either identical or similar to a very high degree.

Average consumer

25. As the case law above indicates, it is necessary for me to determine who the average consumer is for the parties' services. I must then determine the manner in which the services 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. (as he then was) 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."

26. The average consumer of the services at issue could be (a) a homeowner or a business seeking to find an energy supplier, to monitor their energy consumption, or to have energy-supply and energy-saving installations installed and/or repaired (b) an energy company subcontracting some of their work, (c) a business requiring installation and maintenance of energy power plants, energy generating installations and energy production plants and machines.

27. The services will be selected visually with the marks being seen in advertisements, brochures, leaflets and through perusal of websites. However, I do not discount that there may also be an aural component to the purchase through advice sought from sales assistants or word of-mouth recommendations. The relevant consumers will apply a range of degrees of attention when selecting the services covered by the application. This range varies from (at least) medium, for example for *energy price comparison services*, to high, for example for *Construction of wave energy power plants*.

Comparison of marks

28. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a 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 marks must be assessed by reference to the overall impressions created by the 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."

29. 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.

30. The respective marks are shown below:

The applicant's mark	**The opponent's mark**
	ENERCOM AFRICA

31. The applicant's mark consists of the word 'enercomms' presented in lower case letters and positioned below a red figurative element. When trade marks consist of both verbal and figurative elements, in principle, the verbal element has a stronger impact on the consumer than the figurative element; this is because the public will more easily refer to the marks in question by their verbal element than by describing their figurative elements. This principle applies in this case, especially given that the figurative element is likely to be perceived as a stylised letter 'E', standing for the first letter of the word 'enercomms'.

32. The opponent's mark consists of the words 'ENERCOM AFRICA' presented in capital letters. The word 'ENERCOM' will be identified as the most distinctive element of the mark having trade mark significance. The word 'AFRICA' will be identified as denoting a geographical location and signifying the origin of the services and will have less weight in the overall impression of the mark.

33. Visually, the marks coincide in the string of letters ‘ENERCOM’, which constitutes the most distinctive element of the opponent’s mark and almost the totality of the verbal element of the applicant’s mark. The only difference in the dominant and distinctive verbal elements ‘ENERCOMMS’ and ‘ENERCOM’ is in the applicant’s mark’s last two letter ‘MS’. The marks also differ in the presence of the less distinctive red figurative element in the applicant’s mark and the word ‘AFRICA’ (which is however not particularly distinctive) in the opponent’s mark. Although the applicant’s mark is presented in lower case and the opponent’s mark in presented in upper case, this difference is irrelevant because the opponent’s mark is a word-only mark, which notionally covers use in all possible fonts and typefaces. Overall, taking into account the distinctiveness of the various elements of the marks which create the aforesaid similarities and differences, the marks are visually similar to a medium degree.

34. Aurally, the figurative element in the applicant’s mark will not be articulated. Further, the difference created by the additional letter ‘M’ of the word ‘enercomms’ (in the applicant’s mark) will vanish when the marks are pronounced. The elements ‘ENERCOM’ in the opponent’s mark and ‘ENERCOMMS’ in the applicant’s mark will therefore be articulated in a nearly identical matter save for the final letter ‘S’ in ‘ENERCOMMS’. However, the presence of the word ‘AFRICA’ in the opponent’s mark (which has no counterpart in the applicant’s mark) means that the overall degree of similarity between the marks is medium to high.

35. Conceptually, neither of the marks has a meaning in English. However, in the context of the relevant services, which relate to energy supply, both the words ‘ENERCOMMS’ and ‘ENERCOM’ are likely to be perceived as invented words which evoke the word ‘ENERGY’ and are followed by a similar string of letters, namely ‘COM’ and ‘COMMS’ which would be seen as referring to the word ‘communication/communications”. There is therefore a good degree of conceptual similarity.

Distinctive character of earlier mark

36. 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)."

37. Registered trade marks possess various 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 distinctiveness of a mark can be enhanced by virtue of the use made of it.

38. The opponent makes no claim to enhanced distinctiveness through the use made of the earlier mark, therefore I only have the inherent distinctiveness of the mark to consider.

39. The earlier mark consists of the words 'ENERCOM' and 'AFRICA'. The word 'ENERCOM' is the most distinctive element of the mark and evokes the word 'ENERGY' which is descriptive in the context of the services at issue. That said, it is

followed by the string of letters ‘COM’ which will be perceived as referring to the word ‘COMMUNICATION’ (and which is neither descriptive nor allusive of the registered services) forming a new invented word with no meaning. In my view the earlier mark has a high degree of distinctiveness.

Likelihood of confusion

40. 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 marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services 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 marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

41. Confusion can be direct or indirect. The difference between these two types of confusion was explained in *L.A. Sugar Trade Mark,* BL O/375/10, where Iain Purvis Q.C. 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 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.

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)."

42. Earlier in this decision, I found the services to be identical or similar to a medium and high degree. The services will be selected visually, although I do not discount aural considerations, with the average consumer paying a degree of attention between medium and high. The marks are visually similar to a medium degree, aurally similar to a medium to high degree, and conceptually similar insofar as the dominant and distinctive verbal elements of the marks 'ENERCOMMS' and 'ENERCOM' will be perceived as invented words evoking the word 'energy' followed by the similar strings of letters 'COMMS' and 'COM' which will be associated with the word 'communication/communications. The earlier mark is distinctive to a high degree.

43. Due to the visual, and especially aural similarity, considering the coincidence in almost the entirety of the letters sequences 'ENERCOMMS' and 'ENERCOM' (which are the dominant and distinctive elements of the marks) there is a likelihood of confusion. In particular, I consider that due to the effect of imperfect recollection, the average consumer is likely to mistake the element 'ENERCOMMS' in the applicant's

mark for the element ‘ENERCOM’ in the opponent’s mark, whilst the other differences between the marks, introduced by the less distinctive figurative element and word ‘AFRICA’, will be lost. Alternatively, even if the average consumers were to notice and recollect the less distinctive differences between the marks, they would put them down to use of a brand extension or a variant mark by the opponent. Whilst the level of attention will be high for some of the services at issue, this is not sufficient to avoid a likelihood of confusion as even consumers who pay a high degree of attention are likely to experience some degree of imperfect recollection, when relying on their memory of trade marks.

44. There is a likelihood of both direct and indirect confusion.

OUTCOME

45. The partial opposition has been successful. **Subject to appeal, the application will be refused for the opposed services underlined at paragraph 1 and will proceed to registration for the unopposed services that are not underlined.**

COSTS

46. As the opponent has been successful, it is entitled to a contribution towards its costs. As the opponent is a litigant in person, the official letter of 21 April 2023 stated:

> “If you intend to make a request for an award of costs you must complete and return the attached pro-forma and send a copy to the other party”

47. On 22 May 2023, the opponent filed a completed costs pro-forma, in which it claims the following:

- 4 hours for drafting a notice of opposition and 1 hour for considering the forms filed by the other party;

48. The requests made in relation to the time spent upon preparing the notice of opposition and considering the applicant’s counterstatement appear to me to be

reasonable. The Litigants in Person (Costs and Expenses) Act 1975, the Civil Procedure Rules Part 46 and the associated Practice Direction, set the amount payable to litigants in person at £19 per hour. I therefore award costs to the opponent on the following basis:

> Preparing a notice of opposition and considering the counterstatement (5 hours) = (5 x £19) = £95

49. I therefore order EHLUK ESTATES LTD to pay ENERCOM AFRICA LIMITED the sum of £95. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of the proceedings if any appeal against this decision is unsuccessful.

Dated this 16th day of August 2023

Teresa Perks
For the Registrar