

O/1156/23

TRADE MARKS ACT 1994

**IN THE MATTER OF THE REQUEST FOR PROTECTION IN THE UK BY BEREAL
FOR INTERNATIONAL TRADE MARK REGISTRATION NO. 1647102**

BeReal

IN CLASSES 9, 18, 25, 35, 38, 41, 42 AND 45

**AND THE OPPOSITION THERETO
UNDER NO. 434629 BY BEREAL WEAR LIMITED**

Background and pleadings

1. On 26 November 2021, BeReal (“the holder”) requested protection in the UK for the international trade mark registration BeReal (number 1647102). A French priority date of 18 June 2021 is claimed and protection is requested in classes 9, 18, 25, 35, 38, 41, 42 and 45. Following publication for opposition purposes, the request for protection in class 25, for “Clothing; footwear; headwear” was opposed by BeReal Wear Limited (“the opponent”) on 28 June 2022.

2. The opposition is brought under sections 5(1), 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon the following earlier UK trade mark registration:

3562154

BeReal[®]

Clothing for cyclists; Clothing for gymnastics; Clothing for leisure wear; Clothing for men, women and children; Clothing for sports; Clothing.

Filing date: 30 November 2020; registration date: 18 June 2021.

3. The opponent claims that the holder has developed the same trade mark as its own and that it will confuse the opponent’s clients, partners, retailers, consumers and followers. The opponent states that it works with reputable partners and retail stores and that it does not want any other party misusing its brand and causing confusion.

4. The holder filed a defence and counterstatement on 7 November 2022, stating that the opponent’s claims about use of its earlier mark are irrelevant to the grounds. The holder does not, in terms, deny that the marks are the same or similar or that the goods are the same or similar. The holder begins its counterstatement with “For the avoidance of doubt, the Applicant [the holder] puts the Opponent strictly to proof of all claims in its form TM7.” A claim of a likelihood of confusion is implicit in the opposition

having been filed under sections 5(1), 5(2)(a) and 5(2)(b) of the Act. The counterstatement concludes “In light of the above we request that the Opposition be rejected on its merits and that an award of costs is made in favour of the Applicant.” Both parties have proceeded on the basis that the opposition is contested.

5. The holder is represented by Barker Brettell LLP. The opponent has been represented by Digip IP since the commencement of the evidence rounds, having until that point represented itself. Neither party filed evidence. The opponent filed written submissions during the evidence rounds. Although the holder initially requested a hearing, it later withdrew this request.¹ Neither party filed written submissions in lieu of a hearing. I make this decision after a careful consideration of all the papers on file.

Legislation

6. Section 5(1) of the Act states:

“A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.”

7. Section 5(2) of the Act states:

“(2) A trade mark shall not be registered if because—

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

¹ The request for a hearing was withdrawn by email on 8 September 2023.

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

8. Section 5A of the Act states:

“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.”

Section 5(1) ground

9. This ground requires that the parties’ 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:²

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

10. The holder’s mark is recorded on the international register (administered by the World Intellectual Property Organisation) as a figurative mark. The opponent’s mark is recorded on the UK trade mark register also as a figurative mark. However, to all intents and purposes they are simply word marks because the ® in the opponent’s mark is a mere indication that the mark is a registered trade mark. Despite my view that the parties’ marks are word-only marks, I will proceed on the basis that the marks are figurative. The marks are:

² 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 upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to the case law of the EU courts.

Opponent's mark	Holder's mark
BeReal [®]	BeReal

11. Both parties' marks are represented with an upper case B and R, with the remainder of the letters in lower case. If I were considering the marks as word-only marks, the differing fonts would make no difference.³ In any event, I find that the fonts used are almost identical and that the differences between them would go unnoticed.

12. Section 5(1) also requires that the goods are identical. The parties' respective specifications are:

Earlier mark	Contested mark
<i>Clothing for cyclists; Clothing for gymnastics; Clothing for leisure wear; Clothing for men, women and children; Clothing for sports; Clothing.</i>	<i>Clothing; footwear; headwear</i>

13. Both parties' marks contain the identical term clothing.

14. The law requires that goods/services be considered identical where one party's description of its goods/services encompasses the specific goods/services covered by the other party's description (and vice versa).⁴ The holder's specification includes 'headwear'. Headwear is a form of clothing, worn on the head. I find that the holder's 'headwear' is identical to the opponent's 'clothing'.

15. I find that socks fall within both clothing and footwear, in which case 'clothing' and 'footwear' in the parties' respective specifications are identical.

³ See, for example, the decision of Mr Iain Purvis QC, sitting as the Appointed Person, in *Groupement des Cartes Bancaires v China Construction Bank Corporation*, Case BL O/281/14 at [21].

⁴ *G rard Meric v OHIM*, Case T-33/05, General Court of the European Union.

16. That being the case, all the holder's goods are identical to the opponent's goods. There is double identity because the marks and the goods are identical. Confusion is presumed in cases of double identity. The section 5(1) ground succeeds.

Section 5(2)(a)

17. I have already set out my findings that the parties' marks are identical. In case I am wrong about footwear being identical to clothing, I will make a comparison between footwear and clothing on the basis that 'footwear' covers goods as defined in the online Oxford English Dictionary: "Outer coverings for the feet, such as shoes, boots, etc."⁵

18. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the CJEU stated at paragraph 23 of its judgment:

"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 are complementary."

19. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited ("Treat")* [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

20. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* the General Court ("GC") stated that complementary means:⁶

⁵ Accessed on 27 November 2023.

⁶ Case T-325/06.

“82 ... there is a close connection between [the goods], 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...”.⁷

21. ‘Clothing’ includes socks which have a degree of similarity of purpose with ‘footwear’, both types of goods covering the feet. Socks and footwear have a highly similar method of use, and they share channels of trade and users.⁸ They are similar to a medium to high degree.

22. As regards the comparison between ‘clothing’ and ‘footwear’, I note that, in *AVEX Inc v OHIM*, the GC stated:⁹

“26 As regards, more particularly, the relationship between the ‘clothing’ covered by the earlier trade mark and the ‘footwear and boots’ covered by the trade mark applied for, the Board of Appeal took the view that those goods were similar because they have the same purpose, they are often sold in the same places and several manufacturers and designers deal with both those types of goods (paragraph 32 of the contested decision). The generality of that assessment may be called in question in the light of the lack of substitutability of those goods and the absence of evidence to support the assessment. However, in view of the sufficiently close links between the respective purposes of those goods, which are identifiable in particular in the fact that they belong to the same class, and the specific possibility that they can be produced by the same operators or sold together, it may be concluded that those goods may be linked in the mind of the relevant public. In that connection, the various Community and national decisions concerning trade marks on which the applicant relies do not detract from that conclusion in so far as the factual background to those decisions, as regards the signs and goods at issue, displays significant differences from the present case. The goods at issue must

⁷ In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is capable of being the sole basis for the existence of similarity between goods and services.

⁸ See *Advance Magazine Publishers, Inc. v OHIM*, Case T-509/12, GC.

⁹ Case T-115/02, GC.

therefore be regarded as similar within the meaning of Article 8(1)(b) of Regulation No 40/94 even if they are so in only a limited way.”

23. Considering the usual factors, I find that the purpose of the respective goods is similar in that all the goods are intended to protect the body from the elements and/or wear and tear, and to keep the body warm. It might also be said that all the goods are usually intended to help the wearer look good. Apart from socks, which I have already covered, although at a high level of generality all the goods are worn on the body, they are worn on different parts of the body. This means that there is only a low degree of similarity as regards method of use. Overall, I find that there is a medium degree of similarity between the opponent’s clothing and the holder’s ‘footwear’ (apart from the socks comparison above, where it is medium to high).

24. The principles set out below for determining whether there is a likelihood of confusion under section 5(2)(b) of the Act are taken from the decisions of the CJEU 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. Although points (c) to (f) are not relevant where marks are identical (because there are no differences to compare), the remainder of the principles are applicable to section 5(2)(a) and to whether there is a likelihood of confusion. I set out the full list of principles here for convenience, because I go on to deal with section 5(2)(b) later in this decision.

The principles

(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.

25. The average consumer for the parties' goods is the general public. By and large, consumers pay a medium degree of attention to quality, material, fit, suitability and aesthetics. The earlier mark has no more than a normal degree of distinctive character, being allusive to appearing as one really or naturally is: to be real. One of the principles states that a lesser degree of similarity between goods may be offset by a greater degree of similarity between the trade marks. The trade marks are identical and the similarity between the goods is at least medium. There is a likelihood of confusion under section 5(2)(a) in respect of footwear.

Section 5(2)(b)

26. In case I am wrong that the parties' marks are identical, I will make a finding under section 5(2)(b) which applies where marks are similar and the goods are either identical or similar leading to a likelihood of confusion. Added to my consideration of the factors above under section 5(2)(a) is that the goods will be selected mainly from displays in shops, or from catalogues and websites. This means that the selection process is predominantly visual, which accords with case law.¹⁰ The marks are visually highly similar. As I have found above, the difference in fonts is so insignificant as to go unnoticed. That leaves the only difference being the ®. Even if that is articulated, which I doubt, the marks are still highly similar aurally. The concept of BeReal is the same in each mark, an exhortation to be real, and the only other feature is the ®. This will be understood as referring to a reference to a registered trade mark and will be given no, or little, weight by the average consumer in their recollection of the parties' marks. Given all the other factors in play, including the interdependency principle, there is a likelihood of confusion under section 5(2)(b) in relation to all of the holder's goods.

¹⁰ *Quelle AG v OHIM*, Case T-88/05, GC.

Procedural history and the impact on these opposition proceedings

27. This opposition has required two case management conferences (“CMCs”) late in the proceedings. The first of these took place on 7 June 2023 and concerned the Tribunal’s refusal of the holder’s extension of time request to file evidence. I confirmed the refusal at the CMC. In between the appointment of the CMC and it taking place, other events took place, as set out in my letter to the parties of 8 June 2023:

“The CMC was originally scheduled because the Tribunal gave a preliminary view to refuse the holder’s extension of time request of two months to file its evidence (request dated 9 May 2023). Two days prior to the CMC taking place, the holder informed the Tribunal that it had filed a cancellation action against the opponent’s earlier mark and requested suspension of the proceedings pending the outcome of the cancellation action. The cancellation action has not yet been examined for admissibility and so has not been served upon the present opponent, but I have seen a copy of it. There is a single ground pleaded, under section 5(4)(a) of the Act, with the claim that the present holder is entitled to restrain the present opponent from use of its trade mark in class 25 because the holder has goodwill in the UK from March 2020, predating the filing of the registered mark by about 9 months, in respect of social media software and mobile application (app); online social networking services.

There is also another opposition by the present holder, 439390, which has been filed against an application by the present opponent in class 3 (3851546), relying upon the holder’s IR which is the subject of the present opposition proceedings. The ground in that opposition is section 5(3) of the Act.

It has taken nine months to the day since the formal notice of opposition was served upon the holder for it to file a cancellation action. It did not file one when it filed its notice of defence and counterstatement. I do not accept the explanations for the delay in taking this action, nor for the failure to file evidence on time. I was told that there are ‘special circumstances’ given there is a global dispute. Ms Zaidi refuted the suggestion that there is a global dispute. I was given no indication as to how the settlement negotiations referred to in the

holder's extension request had proceeded. It was confirmed at the CMC that no evidence has been put together: it is "under consideration". I also do not accept that the delays caused by the opponent's deficiencies in its original TM7 and its evidence have any bearing on a) the delay of 9 months in bringing a cancellation action and b) the failure to make any progress in compiling evidence. The deficiencies in the original TM7 meant that the holder knew that an opposition had been filed on 16 July 2022. The deficiency in the opponent's evidence was that factual statements were made as submissions, instead of proper evidential format. The evidence was due on 22 February 2023 and was filed in time, on 21 February 2023. The deficiency was flagged by the Tribunal on 27 February 2023 and was rectified by the opponent on the same day: 27 February 2023. One could take the view that there was no delay at all; alternatively, the delay amounted to 6 days. In any event, the holder's period for filing evidence did not commence until 6 March 2023, a further week later.

I consider that the preliminary view to refuse the extension of time request was correctly given because the reasons provided were insufficient. I did not receive any information at the CMC which alters my view.

That means the present opposition has concluded the evidence rounds and it remains to consider the impact of opposition 439390 and the cancellation action upon the present proceedings. My decision in respect of opposition 439390 is that it should not be consolidated with the present proceedings. This is because even if the present opposition proceedings were ultimately to be successful, the holder's IR would still be protected for classes 9, 18, 35, 38, 41, 42 and 45 (because only class 25 is opposed). The holder has relied upon those classes for its opposition 439390. I make no decision regarding the request to suspend that opposition in the defence and counterstatement because no preliminary view has been issued about that request, and the present opponent (the applicant in that opposition) has not had the opportunity to consider the same and ask for a CMC if necessary.

My decision with regard to the request by the holder to suspend the present opposition pending the outcome of the cancellation action is that the request is

refused. The cancellation action is too late in the day: 9 months after the opposition was served and 7 months after the defence and counterstatement were filed. The explanations given for the delay are unsatisfactory and insufficient, as detailed above. The evidence rounds are concluded and this opposition is ready for a decision stage. The parties will be given a choice as to whether a decision is made from the papers or after a hearing. The Tribunal will write separately in that respect.”

28. There were further developments which resulted in a second CMC, held on 2 August 2023. The holder objected to me not considering, at the first CMC, consolidation of the present opposition with its cancellation action, as opposed to the suspension which it had requested. My letter of 4 August 2023 after the second CMC said:

“The CMC was requested by the holder because the Tribunal gave a preliminary view on 23 June 2023 to refuse consolidation with its cancellation application against the opponent’s earlier mark. The context of the preliminary view is that:

- The Tribunal refused the holder’s extension of time request, made on 9 May 2023, to file its evidence;
- I held a CMC to consider the extension of time refusal on 7 June 2023. I upheld the preliminary view to refuse the request because the holder’s reasons were insufficient and the evidence was only “under consideration”, even at that point, in a section 5(1), 5(2)(a) and 5(2)(b) opposition (the opponent filed no evidence);
- Two days before the CMC, the holder filed a cancellation action against the opponent’s earlier mark;
- The day before the CMC, the holder asked the Tribunal to suspend the opposition proceedings pending the outcome of the cancellation action, made on the basis of 9 months antecedent use in relation to a social media application, to attack the opponent’s mark which is registered in class 25;

- I refused to allow the suspension because of the delay in bringing the cancellation action, and the unsatisfactory reasons given for the delay.

Following my letter of 8 June 2023 which gave my decision and directions as a result of the CMC, the holder expressed its surprise that the Tribunal had not consolidated the proceedings. At the second CMC two days ago, the holder said that it was clear that the proceedings were so interlinked that they should be consolidated. This is the opposite to what it claimed in June: that there should be a suspension, in which the proceedings are obviously kept separate. In answer to my question about why the holder now claimed that the proceedings should be joined when it had previously asked for suspension in which they are kept separate, the holder said that since its request for suspension had not been successful, it now sought consolidation.

At no point at the previous CMC nor in correspondence prior to the CMC was consolidation mentioned by the holder. It seems to me that the holder seeks to circumvent the refusal of the suspension request. It is incorrect, as set out in its skeleton argument, that the delay in bringing the cancellation action is not a factor to be considered and that delay is not referred to in the Trade Marks Manual. The opposite is the case; the Manual says, at paragraph 4.4, that one of the considerations regarding consolidation is:

- “the stages of the respective proceedings and whether it will save cost to consolidate the proceedings or lead to unacceptable delay”.

The present opposition proceedings are at decision stage. The fact remains that the cancellation action could have been brought when the opposition was filed, 9 months earlier; or when the holder filed its defence, 7 months earlier. I agree with the holder’s submissions that there is no presumption that cancellation actions should necessarily be filed as soon as an opposition is filed. For example, if parties have been earnestly negotiating in a multi-jurisdictional dispute, and that has broken down, there may be an argument for allowing consolidation at a late stage in the proceedings. However, that is

patently not the case in the present proceedings. In the extension of time request, the holder referred to the fact that the parties had been negotiating. The opponent said at both the first and second CMCs that there had been no negotiations, which was not disputed by the holder. The holder said that the present proceedings are part of a 'global dispute'. The opponent said that they are not: the only proceedings are those before this Tribunal, a fact confirmed by the holder at the second CMC. The opponent said all they had received was a threatening letter from the holder's French lawyers. None of this shows negotiations; none of this reveals a global dispute; and the reference made in the skeleton argument to the holder's IR having been opposed by a third party is irrelevant. The holder's explanation that 'global dispute' meant that the holder is looking at matters from a 'global perspective' is vague and an insufficient reason for the delay in filing the cancellation action.

The holder is concerned that the preliminary view referred to the basis for the cancellation action as a reason why the cases should not be consolidated; the holder said that, in effect, the passing off claim had been prejudged. I do not accept this submission in the context of what is necessary for case management or as expressed in the preliminary view, which was, in substance:

"The cases have been reviewed and it is the Registry's preliminary to refuse the request to consolidate. The delay in bringing the cancellation action is a factor, as well as the grounds for invalidation, which are based on goodwill which predates the application date by at most nine months in an area of trade which does not appear similar to the goods of the registration being attacked. Whilst not determinative, these are considerations in weighing the prejudice to the opponent in the delay in receiving a decision, which is the stage opposition 434629 has reached, when the cancellation action could have been brought much earlier. Finally, as well as noting that the representatives are not the same for BeReal in the two sets of proceedings, consolidation would effectively circumvent the Case Management Conference decision not to suspend the opposition pending the outcome of the cancellation action."

It is clear that a balancing exercise was undertaken in formulating the preliminary view. The reference to the area of trade versus the goods being attacked, whilst not as rigid as a section 5(2) assessment, is still an important factor in a passing off claim. So too, is the length of antecedent use. The Tribunal expressly said that this was not a determinative factor. It is part of the factual matrix. When balanced with the delay in bringing the action, and the timing of the cancellation action in the context of a CMC about its weak extension of time request to file evidence in an opposition which includes section 5(1) as a ground, the basis of the cancellation action is a consideration as to whether a delay to the issuing of the opposition decision is warranted. I note the change of tack once the belated suspension request was made and refused (belated because the cancellation action was belated) and the silence about consolidation until after the first CMC did not go in the holder's favour.

My decision is that the preliminary view to refuse consolidation is upheld. The opposition proceedings are ready for a decision. However, if the decision results in refusal of protection of the IR because the opposition is successful, I will issue a provisional decision, pending the outcome of the cancellation action. I will then issue a supplementary, final decision once the cancellation action has been determined. If the opposition is unsuccessful, the decision will be final.

This is conditional upon the holder providing an undertaking to pursue the invalidation action diligently and without unnecessary delays. This undertaking shall be given in writing, copied to the opponent, on or before 18 August 2023, under rule 62(1)(a) of the Trade Marks Rules 2008 (as amended). If the undertaking is not received by the given deadline, the decision will be final. Further, if the said undertaking is not complied with (having been given by the deadline), it will be open to the opponent to apply for a provisional decision to be made final before the conclusion of the cancellation action.

Finally, if the opponent does not file a defence in the cancellation action against its earlier mark by the deadline given in those proceedings (23 August 2023), the basis of these opposition proceedings will fall away. In those circumstances, a short, final decision in the opposition proceedings will be issued.

The Tribunal will write separately with revised dates either for requesting a hearing on the substantive grounds in the opposition proceedings or to file written submissions in lieu of a hearing.”

29. The cancellation action against the earlier mark (number 506174), brought under section 5(4)(a) of the Act, has now been withdrawn. However, there is now another cancellation action by the holder, brought against the earlier mark, on the basis of section 5(2)(b) of the Act (number 506416). This is based on an earlier mark which the holder acquired on 28 July 2023: number 3490021, Be The Real, for ‘clothing’. The holder requested suspension or consolidation of the present proceedings on 23 August 2023 pending the outcome of this later cancellation action. The Tribunal gave a preliminary view to refuse the request, but directed the same undertakings be given as in my second CMC letter, following which, if the present proceedings were successful, the decision would be provisional.¹¹ These undertakings were received on 7 September 2023.

Provisional outcome

30. The opposition is provisionally successful.

Status of this decision and costs

31. This is a provisional decision. A final decision will be made once the outcome of cancellation number 506416 is known. These proceedings are suspended until such time.

¹¹ Tribunal’s letter of 4 September 2023.

32. The period for appeal will run from the date of my final decision.

33. Costs will be covered in the final decision when the full outcome of this opposition becomes clear.

Dated this 5th day of December 2023

Judi Pike

For the Registrar