O/0288/25

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 3685348 BY HAROON SHAIKH TO REGISTER THE TRADE MARK:

kerb-e

IN CLASS 9

AND

OPPOSITION THERETO UNDER NO. 429590 BY GRID SMARTER CITIES LIMITED

Background & Pleadings

1. Haroon Shaikh ("**the applicant**") applied to register the trade mark shown on the front page of this decision in the United Kingdom on 24 August 2021. It was accepted and published in the Trade Marks Journal on 1 October 2021 for the following goods:

> **Class 9:** Chargers; Car charger; Battery chargers; Electric battery chargers; Electric-car charger; Charging stations for electric vehicles; Contacts, electric; Electric circuits; Electrical outlets; Connections, electric; Couplings, electric.

2. On 23 December 2021, Grid Smarter Cities Limited ("**the opponent**") partially opposed the application on the basis of Section 5(2)(b) of the Trade Marks Act 1994 ("the Act")[1]. The opposition is directed solely against the following goods in the application: *Car charger; Electric-car charger; Charging stations for electric vehicles*.

3. The opponent is relying on the UK registration number 3270228 for the following word mark:

KERB

4. The opponent's mark was filed on 13 November 2017 and registered on 30 September 2018 for services in Classes 35 and 39. For the purposes of this opposition, the opponent relies on the following services:

> **Class 39:** Vehicle parking and storage; parking services; parking space rental.

[1] The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

5. Under Section 6(1) of the Act, the opponent's trade mark clearly qualifies as an earlier trade mark. Further, as protection of the opponent's earlier mark was completed less than five years before the application date of the contested mark, proof of use is not relevant in these proceedings as per Section 6A of the Act.

6. In its notice of opposition, the opponent claims that the contested mark is highly similar to the opponent's mark, while the competing goods and services are highly similar. Therefore, there is a likelihood of confusion on the part of the public.

7. The applicant filed a counterstatement denying the claims.

8. The Registry issued a preliminary indication under Rule 19 of the Trade Marks Rules 2008 and Tribunal Practice Notice 3/2007 finding that there would be a likelihood of confusion between the marks. However, I confirm that the finding of the preliminary indication is not binding upon me.

9. Both parties filed submissions and evidence in these proceedings. The opponent's evidence consists of a witness statement, dated 6 February 2023, from Neil Andrew Herron, founder and director of Grid Smarter Cities Limited, accompanied by 5 exhibits (NH1-NH5). The applicant's evidence consists of a witness statement, dated 5 April 2023, from the applicant himself accompanied by 2 exhibits (HS1-HS2).

10. The matter was decided from papers by a different Hearing Officer on 4 September 2023 ("the original Hearing Officer"). In her decision, BL O/0835/23, the original Hearing Officer found that there is no similarity between the competing goods and services. The original Hearing Officer concluded that:

> "[…] 20. The opponent submits that, to the owners and drivers of electric vehicles, electric vehicle chargers are essential for vehicle parking services. When undertaking a long journey, such a driver

would need to plan ahead to make sure that they could stop at various points to use charging stations in car parks, for instance at motorway service stations. I accept that the goods and the services would be used together. That, in itself, is not enough for me to find complementarity, as the case law quoted above makes clear. It does not seem to me likely that the average consumer would believe that the goods and services come from the same undertaking, given their difference in nature and the differences in distribution channels.

21. The overlap in user is not, in my view, sufficient for me to find that the goods and services are similar. […]"

The original Hearing Officer instructed herself by reference to the *eSure Insurance limited v Direct Line Insurance Plc* [2008] EWCA Civ 842 that where there is no similarity between the goods and services, there can be no likelihood of confusion under Section 5(2)(b) of the Act, thereby rejecting the opposition.

11. The opponent appealed to the Appointed Person. The appeal came before Mr Geoffrey Hobbs KC. Mr Hobbs issued his decision, BL O/0377/24, on 23 April 2024. The key part of the Appointed Person's decision is reproduced as follows:

"12. The factors conventionally taken to have a particular bearing on the question of 'similarity' between goods and services are referred to indicatively and not exhaustively in Case C-39/97 *Canon KK* at paragraph [23] and paragraphs [44] to [47] of the Opinion of the Advocate General in that case.

13. More than just the physical attributes of the goods and services in issue must be taken into account when forming a view on whether there is a degree of relatedness between the consumer needs and requirements, fulfilled by the goods and services on one side of the issue, and those fulfilled by the goods and services on the other.

14. The relatedness or otherwise of the trading activities involved in the comparison is ultimately a matter of consumer perception. That is recognised in the case law relating to 'complementarity' as an element to be considered in the context of the overall assessment of 'similarity'.

15. There is 'complementarity' when the goods or services in issue are closely connected in the sense that one is indispensable or important for the use of the other in such a way that consumers may think that the same undertaking is responsible for manufacturing those goods or providing those services.

16. A finding of 'no similarity' may legitimately be made despite the existence of a degree of 'complementarity' if that 'complementarity' is not sufficiently pronounced for it to be accepted that from the consumer's point of view the goods or services concerned are 'similar' within the terms of section 5(2)(b).

17. It has been affirmed and reaffirmed in a number of cases, one being Case C-398/07P *Waterford Wedgwood PLC* at paragraph 34, that section 5(2)(b) is inapplicable to situations in which the goods or services in issue are neither identical nor similar. However, an objection to registration under section 5(2)(b) can only be dismissed simply and solely on that ground when it is apparent that the nature and characteristics of the goods or services concerned and the nature and characteristics of commerce in such goods or services are not conducive to a single economic undertaking being reasonably and realistically regarded as responsible for providing them. That is brought out in the analysis of the pre-Brexit case law contained in the post-Brexit Judgment of the General Court in Case T-177/20 *Himmel v EUIPO (Hispano Suiza)*.

18. As contended on behalf of the Opponent on this appeal, it was necessary for the purposes of the comparison required by section 5(2)(b) to be clear as to what the wording of the Opponent's Class 39 specification of services covered relative to the Applicant's Class 9

specification of goods. By virtue of the width of the wording in which it was written, the Class 39 specification encompassed within it the following services: ‘electric and plug-in hybrid electric vehicle parking and storage’, ‘parking services for electric and plug-in hybrid electric vehicles’ and ‘parking space rental for electric and plug-in hybrid electric vehicles’.

19. I do not see any real recognition of that in the Hearing Officer’s decision and I do not accept that it was open to her on the evidence and materials before her to determine that there was ‘no similarity’ in the sense I have described between such services and the “car charger; electric-car charger; charging stations for electric vehicles” of the opposed application for registration in Class 9.

20. I consider that the decision under appeal wrongly short-circuited the required assessment on the basis of a legally and factually deficient determination of ‘no similarity’ between the services and goods in issue.

21. For the reasons I have given, the appeal is allowed and the Hearing Officer’s decision and order for costs are set aside. The Opposition is remitted to the Registrar for further processing, in accordance with the provisions of the 1994 Act and the Trade Marks Rules 2008 with a view to determination by a different Hearing Officer in due course.”

12. The opponent exercised its right to be heard before a decision was taken on the merits of the opposition. Thus the matter came before me on 5 March 2025. The opponent was represented by Ms Eleanor Coates of Murgitroyd & Company. The applicant did not attend the hearing but filed written submissions in lieu of attendance (“final submissions”).

The Correct Starting Point for this Decision

13. The Appointed Person highlighted in paragraph 18 of his decision that the opponent’s Class 39 specification “*encompassed within it the following*

services: 'electric and plug-in hybrid electric vehicle parking and storage', 'parking services for electric and plug-in hybrid electric vehicles' and 'parking space rental for electric and plug-in hybrid electric vehicles.'" He continued by stating that: "*I do not see any real recognition of that in the Hearing Officer's decision and I do not accept that it was open to her on the evidence and materials before her to determine that there was 'no similarity' in the sense I have described between such services and the "car charger; electric-car charger; charging stations for electric vehicles" of the opposed application for registration in Class 9*."

14. In light of the above, it follows that I will start my assessment from the position that the Appointed Person has held that there is a subset of services that it is for me to consider in the comparison of the competing goods and services bearing in mind what he said about "…*the realistic appraisal of the net effect of the similarities and differences between the marks and the goods or services in issue…*". Therefore, it is for me to decide that matter as part of my re-assessment of the opposition.

Decision

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

> "5(2) 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".

16. Section 5A states:

"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."

Comparison of Goods and Services

17. 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 […], 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."

18. 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."

19. In *YouView TV Ltd v Total Ltd,* [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

> "[…] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words of phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

20. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) stated that:

> "In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

21. The competing goods and services to be compared are shown in the following table:

Opponent's Services	Applicant's Goods
Class 39: Vehicle parking and storage; parking services; parking space rental.	**Class 9:** Car charger; Electric-car charger; Charging stations for electric vehicles.

22. At the hearing, Ms Coates submitted that a subset of the average consumer in question consists of electric vehicle car owners who need access to charging facilities. She highlighted that this is a crucial challenge for electric vehicle owners in the UK, particularly for those without the option to charge at home. Ms Coates pointed out that electric vehicle owners often depend on public charging stations, which can be located in designated bookable spaces or larger car parks. Ms Coates mentioned that electric vehicle owners must consistently monitor their vehicle's charge, regardless of whether they have a home charger or rely on public points. She further stated that homeowners with wall-mounted chargers might also look for public charging options. Ms Coates posited that electric vehicle owners would likely assume these services originate from the same undertaking by recognising the same brand name on parking apps or charging stations at a parking facility and their home chargers. In this context, she contended that the competing goods and services are complementary. Despite the divergence in the nature of the competing goods/services, she emphasised that there is an overlap in purpose of the competing terms, which is to charge a car. In this regard, the competing terms share the same users. However, Ms Coates agreed with the applicant's submissions that the channels of trade will be different.

23. The applicant made lengthy submissions, which I have taken into consideration, and I do not propose to reproduce here but refer to them where I consider necessary.

24. As mentioned earlier in this decision, it is the subset of the earlier services, namely "*electric and plug-in hybrid electric vehicle parking and storage; parking services for electric and plug-in hybrid electric vehicles; parking space rental for electric and plug-in hybrid electric vehicles*", that I should

undertake my assessment. That said, I note that there is a divergence between the subset articulated in the decision of the Appointed Person and that proposed by Ms Coates during her oral submissions at the hearing. In more detail, Ms Coates's proposed subset is phrased as "*vehicle parking and storage for electric cars; parking services for electric cars with charging facilities; parking space rental for electric vehicles with charging facilities*". Whilst there is some overlap between the two subsets, I will adhere to the subset identified by the Appointed Person's decision to carry out my comparative assessment of the competing goods and services.

25. In respect of the intended purpose of the contested goods, I consider that they enable users to charge their electric vehicles. The opponent argues that the competing goods and services share the same purpose (charging a car). At the hearing, I asked Ms Coates to clarify whether the primary purpose of the relevant sub-set of the earlier services is to facilitate electric vehicle charging or whether this is ancillary to the provision of parking facilities. She responded that electric vehicle owners will be looking to book a parking space with charging facilities in order to charge their cars. Ms Coates's oral submissions suggest that the earlier services provide a designated parking space for a specific period for vehicles to be recharged. However, in the absence of evidence, I am not ready to accept that the relevant sub-set of consumers will normally seek a parking space to charge their cars. While electric vehicle owners may sometimes prefer a parking space where charging is available, this preference does not establish that charging will be perceived by such consumers as the purpose of parking services for electric vehicles. Instead, based on the core and literal meaning of the services at hand, it is my view that the purpose of the given services is to provide a managed and accessible parking space for vehicles, including electric and plug-in hybrid electric vehicles. According to the case law, the words used to describe the services "*should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase*."[2] On this

[2] See *Avent* above.

basis, it appears inappropriate to expand the meaning of the registered terms – e.g. parking services – to cover parking services for electric cars with charging facilities, not least because these appear to be services with a different core purpose to parking services (for any kind of vehicle) per se. Despite the warning in *Avnet*, I recognise that it may be appropriate in certain instances to treat a description of goods/services as covering more than the literal meaning of the words used. For example, mobile phones nearly always include a camera function. Consumers, therefore, perceive mobile phones as normally including cameras. Mobile phones are, thus, highly similar to cameras notwithstanding the fact that a phone and a camera have different purposes. However, this comes down to questions of fact and consumer perception. It would clearly be inappropriate, in my view, to treat parking services as encompassing other, different, services simply because they may, optionally, be offered in conjunction with parking services, e.g. car washing services. Electric vehicle charging services are, in my view, closer to the car washing example than the mobile phone example. Therefore, I find that the purpose of the competing goods and the registered services is different. Nevertheless, it is necessary for me to bear in mind that the relevant average consumer would have been aware at the relevant date in August 2021 that parking services were sometimes offered in association with electric vehicle charging services, even though the latter service is not within the normal meaning of parking services.

26. The parties agree that the competing goods and services do not overlap in their nature and trade channels. I agree that these are key distinctions between the competing specifications. I also note that there is no evidence that consumers are aware of undertakings offering parking services, even when accompanied by electric vehicle charging services, and marketing car chargers of any kind as goods.

27. With regard to the method of use, the opponent claims that the competing terms overlap in their method of use, namely to charge an electric vehicle. However, the applicant submitted that:

"2.4.1. Parking services involve a temporary rental of space, whereas electric vehicle chargers are hardware products that are installed and used over time.

2.4.2. Parking services are used by driving a vehicle into a parking space and leaving it there. Electric vehicle chargers can be used in different ways according to their type but generally involve plugging a conductive or inductive charging plug into a socket on a vehicle to be charged.

2.4.3. Although a car may simultaneously be parked and plugged into a charging station does not mean the services of the Opponent and the goods of the Applicant share a method of use.

It only means that they can sometimes, even often, be used at the same time and place, and both in relation to the user's vehicle.

2.4.4. The fact that an electric vehicle owner may park while charging does not make the two activities part of the same transaction in a way that suggests common origin, particularly in light of market practices which will be discussed below, and further in light of the fact that electric vehicle owners must often park while consuming most goods and services outside the home, since parking is a prerequisite for access to goods and services for those who drive."

I agree with the applicant. The method of use is different as the way in which the contested goods are used to achieve their intended purpose (charging of cars) is different from that of the earlier services (rental of a designated space for a specific period).

28. Insofar as complementarity is concerned, the opponent contends that there exists a complementary relationship between the competing specifications. At the hearing, Ms Coates submitted that:

"You do not have an electric vehicle and not have to charge it, whether it is at a parking space that you are having to rent and to connect to a

charger, or whether you have a home charger. […] It is not merely whether the goods and services can be used together as to whether this would make them complementary, but more the fact that they can have the same user and the same purpose to charge electric cars."

Further, in her skeleton argument, Ms Coates also refers me to Exhibit NH3 from Mr Neil Herron's witness statement. This exhibit is a printout of a news story titled "*Government powers up electric vehicle revolution with £20 million chargepoints boost*" dated 2 February 2021, where it is stated that the UK local authorities are focusing on providing charging points for electric vehicle owners without off-street parking, as the availability of these points is key to increasing electric car adoption among those without personal charging options. In this regard, Ms Coates concludes that:

"[…] the provision of "*vehicle parking and storage for electric cars; parking services for electric cars with charging facilities; parking space rental for electric vehicles with charging facilities*" is a necessity to such electric vehicle owners. […] the goods of the Application are both similar and complimentary to the services being provided by the Opponent."

During the hearing, I asked Ms Coates to clarify whether there is a correlation between on-street charging points and those in car parks, or if they are treated as equivalents. Ms Coates explained that they are equivalents, as all these are bookable through mobile apps based on availability.

29. However, in his final submissions, the applicant submits the following:

"2.6.2. These requirements are not met in the present case. Parking services (much narrower in scope than 'having somewhere to place the car') are neither indispensable not important for the installation, or even the use, of electric vehicle chargers. Nor are electric vehicle chargers indispensable for parking services, which operated for

decades before the advent of the modem electric vehicle. We have addressed this point in more detail with our earlier submissions.

2.6.3. The Opponent has argued that a subset of its services -“car parking services with car charging facilities”- is complementary to the Applicant's goods. This argument is flawed:

- The Application covers electric vehicle chargers (hardware), not charging services. A car park may offer charging as a service, but this does not make the physical charger complementary to the act of parking.

- Among the subsets of 'car parking services' are 'the provision of lorry parking spaces' and 'short-term parking services', just as 'books about penguins' are a subset of 'books'. 'Car parking services provided alongside additional hardware in service to goals other than the accommodation of the vehicle' is not a subset of 'car parking services', just as 'books displayed on green shelves' are not a subset of 'books'.

2.6.4. The Opponent has also argued that a user seeing chargers in a car park may assume they are connected with the car park provider's services. This is not the case, because market practices, as discussed in more detail below, would lead consumers to expect car parking services and co-located charging stations to be provided by different undertakings.”

30. 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 General Court (“GC”) clarified the meaning of “complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06, at paragraph 82:

> "It is true that goods are complementary if 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."

Further, 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 QC (as he then was) noted as the Appointed Person in *Sandra Amalia Mary Elliot v LRC Holdings Limited* BL O/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."

Whilst on the other hand:

> "[…] It is undoubtedly right to stress the importance of the fact that customers may think that responsibility for the goods lies with the same undertaking. However, 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."

31. I reiterate here that Ms Coates's submissions were based on a subset of services that diverges from the subset delineated by the Appointed Person. I recognise that there may be instances where members of the general public may select the subset of the earlier services not only for

parking their electric vehicles but also for charging them using associated charging services, and from that perspective, the user would be the same. This is because a user of electric vehicle charging services provided in a car park is also liable to be a user of charging equipment for use at home. Although electric vehicle chargers are important for use of vehicle charging services, as delineated above, I reiterate here again that the registered services do not cover charging services as such. Thus, the services covered by the earlier mark (parking services) are two steps removed from electric vehicle chargers sold as goods. Mr Hobbs KC, sitting as the Appointed Person, in *Energy Beverages LLC v Gogu Marin*, BL O/074/19 ruled that:

> "A finding of no similarity may legitimately be made, despite the existence of a degree of complementarity, if that complementarity is not sufficiently pronounced for it to be accepted that from the consumer's point of view the goods are similar within the terms of section 5(2)(b)."

In light of the rationale above, I do not consider that the degree of complementarity is sufficiently pronounced in this case as the consumer would not reasonably conclude that the same undertaking that provides, for example, parking space rental for vehicles, including electric and plug-in hybrid electric vehicles, is also responsible for the sale of goods, such as car chargers or charging stations for electric vehicles, or vice versa. Notably, the earlier services are not offered through the same distribution channels as the contested goods. And as I have already noted, there is no evidence that the public are accustomed to providers of parking services for electric vehicles also offering car charging apparatus as goods. Thus, I do not consider that any complementarity there might be would give rise to a pronounced degree of similarity between the goods and services, and

there is no rule that 'complementarity' always and necessarily equals 'similarity'.[3]

32. Both parties have raised various points in relation to market practices. Although Ms Coates recognised the insufficiency of evidence presented by both sides on this matter, she pointed out that the marketplace in question is intertwined and continually evolving, referring to the use of mobile apps and energy company cards, as well as Tesla's exclusive charging parking at various service stations for Tesla owners as an example. I note that it would be inappropriate to base my assessment solely on the practices of a single trader (Tesla), especially in the absence of corroborative evidence to show whether this reflects a common practice in the market. Thus, I cannot infer from the evidence before me that there is a likelihood of the competing goods and services being situated within adjacent markets, nor can I ascertain that a market expansion from car parking services for electric vehicles to the sale of car charging apparatus is to be expected within this sector. I concur with Ms Coates's submission that this market is indeed evolving, and I am not prepared to take judicial notice of the proposition that the markets for the competing goods and services will converge to such an extent that consumers would consider the same entity would be responsible for both.

33. Nonetheless, I consider that there is an overlap in the end-users as purchasers of the contested goods could also be users of the earlier services. I note that the applicant, in his submissions, raised that "*[n]ot all purchasers of electric vehicle charging equipment are electric vehicle owners. Some purchase the equipment to provide a charging service to others.*" This assertion appears to distinguish between business customers and general consumers. However, the mere fact that both types of consumers can purchase these goods does not, in itself, evidence a

[3] See *Tony Van Gulck v Wasabi Frog Ltd*, Case BL O/391/14, paragraph 22, in which the Appointed Person quoted: *Assembled Investments (Proprietary) Ltd v. OHIM*, T105/05, paragraphs 30 to 35 (which was upheld on appeal in *Waterford Wedgewood Plc v. Assembled Investments (Proprietary) Ltd*, C-398/07P, paragraphs 34, 35).

divergence between them. Rather, this simply indicates that the goods might target the public at large, and thus, I find that there is an overlap in users. That said, this factor is not sufficient on its own for a finding of similarity between the competing goods and services.

34. Taking into consideration the multifactorial assessment above, the application's goods are dissimilar to the earlier mark's services, and, thus, a likelihood of confusion does not arise in such a case.[4] The opposition cannot succeed against dissimilar goods and services and, therefore, is dismissed.

Outcome

35. The opposition is unsuccessful. There is no likelihood of confusion. The partial opposition on the basis of the claim under Section 5(2)(b) fails.

Costs

36. The original Hearing Officer ordered the opponent to pay to the applicant the sum of £1,000 in costs. The Appointed Person decided that:

> "Since I consider that the usefulness of the proceedings before me is, from a practical point of view, liable to depend on the outcome of the proceedings as a whole, I direct that the costs of the appeal be treated as costs incurred in the Registry proceedings and dealt with by the Registrar in the usual way at the conclusion of the opposition."

37. The applicant provided final submissions in lieu of attending the hearing. The applicant will also have spent time considering the opponent's skeleton. So far as I can see, these are the only costs incurred by the applicant since the opposition was remitted.

[4] See *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA.

38. Therefore, in addition to the costs ordered by the original Hearing Officer, I order Grid Smarter Cities Limited to pay to Haroon Shaikh the sum of £200 as a contribution towards the additional costs incurred in dealing with the remitted opposition. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 27th day of March 2025

Dr Stylianos Alexandridis
For the Registrar,
The Comptroller General