O/0524/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO UK00003614654
BY LG ELECTRONICS INC.
TO REGISTER

FOSSLight

AS A TRADE MARK IN CLASSES 9 & 42
AND

AND IN THE MATTER OF OPPOSITION THERETO
UNDER NO 428346
BY FOSS A/S

BACKGROUND AND PLEADINGS

1. LG Electronics Inc. ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK on 23 March 2021. The mark claims a priority date of 12 March 2021 on the basis of the applicant's earlier registration from the European Union, being that numbered 18425526. The application was accepted and published in the Trade Marks Journal on 20 August 2021 in respect of the following goods and services:

> **Class 9*:*** *Computer software; Computer software for data processing; Computer software for communication and collaboration; Data synchronization programs; Computer software for document management; Computer databases; Education and training materials in electronic form; Computer documentation in electronic form; Computer software to assist software developers to manage the software development process and for auditing of computer software and computer programs; Computer operating software; Computers; Computer peripheral devices; electronic chips.*
>
> **Class 42:** *Software engineering; Software authoring; Software creation; Database design; Computer management services; Computer programming; Computer programming consultancy; Computer software consulting services in the fields of development of computer software, management and auditing of intellectual property and licenses, and management of intellectual property risks of the software development process; Provision of non-downloadable computer programs in data networks, in particular in the internet and the worldwide web.*

2. On 22 November 2021, Foss A/S ("the opponent") filed a notice of opposition on the basis of section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed at the applicant's mark in its entirety. The opponent relies on the following trade marks:

FOSS
UK Registration no. UK0000901960343[1]

Filing date 17 November 2000; date of entry in register 3 April 2003

Priority date 25 August 2000

Priority claimed from Danish mark VA 2000 03594

Relying on the following goods and services:

("the opponent's first earlier mark")

> **Class 9:** *Scientific, nautical, electric, photographic, cinematographic and optical apparatus and instruments as well as and instruments as well as apparatus and instruments for weighing, measuring, signalling, checking (supervision) and analyzing; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers; apparatus for use in laboratories and analyzing apparatus for use in the food industry, including in slaughterhouses, meatfactories and dairyings, apparatus for bacteriological analysis; calculating machines and data processing equipment, recorded computer software, also for use in connection with the mentioned apparatus and instruments; parts and accessories for all the aforementioned goods.*
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> **Class 42:** *Scientific and industrial research, bacteriological research, bacteriology, laboratory research, chemical analysis, chemical research, professional consultancy (non-business), including technician and chemistry services; veterinary and agricultural services, quality control*.

FOSS

UK Registration no. UK00900571745

Filing date 8 July 1997; date of entry in register 16 December 1998

[1] The opponent's mark is a comparable mark based upon an earlier EUTM. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs. These comparable marks enjoy the same filing and registration dates as their European counterparts.

Relying on the following goods and services:
("the opponent's second earlier mark")

> **Class 9:***Scientific apparatus and instruments and apparatus and instruments for weighing, measuring, checking (supervision) and analyzing; apparatus for use in laboratories and analyzing apparatus for use in the food industry, including in slaughterhouse, meatfactories and dairyings, apparatus for bacteriological analysis; data processing equipment, recorded computer software, also for use in connection with the mentioned apparatus and instruments; parts and accessories for all the aforementioned goods.*
>
> **Class 42:** *Scientific and industrial research, bacteriological research, bacteriology, laboratory research, chemical analysis, chemical research, professional consultancy (non-business), including technician and chemistry services.*

3. The opponent submits that there is a likelihood of confusion because the applicant's mark is highly similar aurally and visually to its own marks, and that both marks are conceptually neutral. The opponent also submits that the respective goods and services are identical or similar. The applicant filed a defence and counterstatement denying the claims made.

4. Both parties filed evidence in chief. The opponent filed evidence in reply. A hearing took place before me on 8 October 2024, by video conference. The opponent was represented by Mr Dan Byrne of AA Thornton IP LLP, who have represented the opponent throughout these proceedings. The applicant was represented by Mr Jamie Muir Wood of Hogarth Chambers who was instructed by Page White & Farrer Limited, who have represented the applicant throughout these proceedings.

5. The provisions of the act relied upon in these proceedings are assimilated law as they are derived from an 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.

EVIDENCE

6. The opponent filed evidence in the form of the witness statements of Kim Vejiby Hansen, Alexander Milward, Lynn Everson and Susan Cowland. The witness statement of Kim Vejiby Hansen is dated 10 August 2023 and is accompanied by 11 exhibits, labelled KVH1-11. Kim Hansen is the CEO of the opponent, a position they have held since March 2016. Kim Hansens evidence goes to the background of the opponent and the use of the opponent's marks in the UK and EU.

7. The opponent also filed evidence in the form of the witness statement of Mr Alexander Milward dated 5 September 2023. Mr Milward is a Translator/Project Manager at Lifeline Language Services Ltd, a position he has held since 2019. His witness statement is accompanied by one exhibit, labelled AFRM1. Mr Milward's evidence is a translation of Exhibit KVH2, from Italian into English.

8. The opponent also filed evidence in the form of the witness statement of Lynn Everson dated 6 September 2023. Ms Everson is the Founder and Managing Director of Lifeline Language Services Ltd, a position she has held since 1990. Her witness statement is accompanied by three exhibits, labelled LVE1-3. Ms Everson's evidence comprises translations of Exhibits KVH2 and KVH9, from Spanish and French (respectively) into English.

9. The final witness statement of the opponent's evidence in chief comes from Mrs Susan Cowland and is dated 6 September 2023. Ms Cowland is a professional translator and has worked in this capacity since 1982. Her witness statement is accompanied by two exhibits, labelled SC1-2. Ms Cowland's evidence consists of translations of Exhibit KVH2, from German and Dutch (respectively) to English.

10. The applicant filed evidence in the form of the witness statement of Ms Taryn Jennifer Byrne dated 19 December 2023. Ms Bryne is a Trade Mark Attorney at the applicant's representative. Her witness statement is accompanied by six exhibits,

labelled TJB1-6. This evidence responds to the opponent's evidence and goes to the definition and use of FOSS.

11. As stated above, the opponent filed evidence in reply in the form of the witness statement of Ms Sarah Marie Neil and the second witness statement of Kim Vejiby Hansen. The second witness statement of Kim Hansen is dated 29 February 2024 and accompanied by four exhibits, labelled KVH12-16.

12. The witness statement of Ms Neil is dated 5 March 2024 and is accompanied by two exhibits, labelled SMN1-2. Ms Neil is a Chartered Trade Mark Attorney at the opponent's representative. Ms Neil's evidence goes to the definition of 'light' and 'lite' and provides examples of 'light' being used by third parties in relation to software.

13. I do not intend to summarise the parties' evidence in full at this stage. However, I have taken it all into consideration in reaching my decision and will refer to it below, where necessary.

DECISION

Proof of use

14. Section 6A of the Act is as follows:

> "(1) This section applies where-
>
> (a) an application for registration of a trade mark has been published,
>
> (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in sections 5(1), (2) or (3) obtain, and
>
> (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section ‘the relevant period’ means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if-

(a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non-use.

(4) For these purposes-

(a) use of a trade mark includes use in a form (the ‘variant form’) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

[(5) Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the

purposes of this section as if it were registered only in respect of those goods or services.
…"

15. Paragraph 7 of Part 1 Schedule 2A of the Act reads as follows:

"(1)Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2)Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a)the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b)the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3)Where IP completion day falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day—

(a)the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b)the references in section 6A to the United Kingdom include the European Union."

16. Section 100 of the Act is as follows:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

17. In *EasyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

> "105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 W.F. *Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].
>
> 106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a subcategory of goods or services, the principles may be summarised as follows:
>
> (1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].
>
> (2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].
>
> (3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which

have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such

use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

18. Proven use of a mark which fails to establish that "the commercial exploitation of the mark is real" because the use would not be "viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark" is not, therefore, genuine use.

19. I am also guided by *Awareness Limited v Plymouth City Council,* BL O/236/13, in which Mr Daniel Alexander Q.C. as the Appointed Person stated that:

"22. The burden lies on the registered proprietor to prove use. […] However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public."

20. I also note Mr Alexander Q.C.'s comments in *Guccio Gucci SpA v Gerry Weber International AG*, BL O/424/14. He stated:

"The Registrar says that it is important that a party puts its best case up front – with the emphasis both on "best case" (properly backed up with credible exhibits,

invoices, advertisements and so on) and "up front" (that is to say in the first round of evidence). Again, he is right. If a party does not do so, it runs a serious risk of having a potentially valuable trade mark right revoked, even where that mark may well have been widely used, simply as a result of a procedural error. […] The rule is not just "use it or lose it" but (the less catchy, if more reliable) "use it – and file the best evidence first time round – or lose it""

21. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd,* BL O/404/13, Mr Geoffrey Hobbs Q.C. as the Appointed Person stated that:

"21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not 'show' (per Section 100 of the Act)

with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

22. Given their filing and priority dates, the opponent's marks qualify as earlier trade marks under section 6 of the Act. The opponent's marks completed their registration processes more than five years before the priority date of the application and, therefore, they are subject to the use conditions. The applicant has requested that the opponent provide proof of use of its marks. The relevant period for the purposes of the proof of use assessment is the five-year period ending with the date of application for the applicant's mark. It is therefore 13 March 2016 to 12 March 2021.

The opponent's evidence

23. Kim Vijiby states that the FOSS group, of which the opponent is one of the subsidiaries, was founded in 1956 by Nils FOSS. Further, it is submitted that the FOSS group is still the leading global provider of analytics for food and agricultural industries. Particularly, the opponent states that the FOSS group is well known in the sectors of: dairy, feed and forage, grain, flour milling and oilseed processing, laboratories, meat, raw milk testing, wine and beer. In addition, the opponent states that the FOSS group is supported by subsidiaries in 32 countries and more than 75 distributors.

24. The opponent has provided evidence consisting of invoices, annual reports, locations of customers, trade fair attendance information, historic screenshots from the opponent's website, social media, brochures and articles from the opponent's website. I note the following in regard to the evidence:

a) Exhibit KVH2 includes invoices for UK and EU consumers during the relevant period. On all of the invoices the mark appears at the top. The invoices are dated throughout 2016, 2017, 2018, 2019, 2020 and 2021. The invoices are for the sales of the opponent's Milko scan services, Infratech grain analyser, Foss Assure, Foss Manager, Foss smartcare advance, Foss Assure Pro, Foss Smartcare Advance Foodscan/winescan, Foss Assure Pro, Foss Nirs, Foss

Analyser Model Kjeltec, Onefoss Wine Core, FOSSomatic, Foss Wholegrain Analysis System, Foss Wholegrain analyser, and Fosscare Basic Kjeltec Contract. Some of the invoices indicate that the data processing equipment are sold with accompanying relevant user interface software such as the ISI Scan Nova Software, FOSS Integrator software, Infratech basic. The customers are based in the UK, Germany, Netherlands, Italy, Denmark, Ireland, Jersey and France.[2] In relation to the UK, the customers are based throughout, including in the North-East, North-West of England, Wales and Northern Ireland.

b) Exhibit KV3 is an undated presentation, of which the audience and distribution is unknown. However, it does explain the services and software provided by the opponent, including those which feature in the above invoices. The goods and services that appear throughout the evidence are described (in this presentation as well as in the brochures at Exhibit KVH6) as follows:

FossAssure – software as a service which allows customers to monitor and optimise instrument performance and unplanned downtime.
FossManager - software as a service which allows customers to remotely manage analytical instruments across various locations.
FossCalibrator - software which is a calibration development tool to allow customers create, validate and update models.
FossConnect - software as a service which provides instrument diagnostic backup.
FossIntegrator - an operating software routinely sold with the hardware products (e.g. analysis apparatus) that the opponent sells.
FossAPI - a software development kit framework enabling non- Foss instruments and hardware to connect and exchange data with Foss Connect in a controlled and standardised way.
FossSmartcare – ensures 'indisputable results' from FOSS analytical solution. Service maintenance is performed by engineers, clients are provided with diagnostic retrieval and the services can be monitored remotely by engineers.[3]

[2] I have relied on the witness statements and supporting exhibits from Alexander Milward, Lynn Everson and Susan Cowland to interpret the invoices in German, Dutch, French and Italian.
[3] Exhibit KVH6, pg 188

FossNirs – is a practical NIRS analyser used for routine production control and monitoring of final product quality.[4]

FOSSMilkoscan -There are a variety of products within this range; they are various milk analysers that assess final products based on parameters such as fat and protein.[5]

FOSSInfratec - payment analysis of whole grain.

FOSSWinescan – the de facto global standard in wine production.

FOSSKjeltec systems – market leading automated protein solutions.

c) Exhibit KVH4 is a selection of maps of the locations of the opponent's customers which has been divided into sectors. The document is undated, consequently, it is unclear when the customers purchased/used the opponent's goods and services. In addition, it is unclear what was purchased by each sector. However, the evidence clearly indicates sales in the various industries mentioned in paragraph 23 to customers throughout the UK, Europe and worldwide.

d) I note that Kim Hansen's witness statement also provides a table with the overview of revenue from subsidiaries and branches of the wider FOSS group, as seen below:

Year	Revenue MDKK (Million Danish Krone)
2016	2,122
2017	2,226
2018	2,243
2019	2,155
2020	2,149
2021	2,297

[4] Exhibit KVH6
[5] Exhibit KVH6

Even reviewing the more detailed annual report in Exhibit KVH5, no clear breakdown has been provided to indicate what goods or services the sales figures relate to. Further, there is no clear indication as to whether they are global figures (i.e. revenue connected with all of the opponent's offerings) or what proportion of them relates to each offering. Nor is there any indication of what proportion relates to sales in the UK, the EU or any other geographical location. In addition, I have not been provided with any exchange rate for this currency to contextualise the value in sterling or euros.

e) Exhibit KVH6 are a series of brochures that the opponent states are used for advertising. They appear to be dated within the relevant period. There is no indication of the distribution of these brochures or any associated costs in generating them.

f) In Kim Hansen's witness statement, they have provided a list of some of the trade fairs attended by the opponent, which I have replicated below:

Date	**Location**	**Exhibition overview and Attendance**
15-18 November 2016	Hanover, Germany	EuroTier – World's Leading Trade Fair for Animal production. EuroTier 2016 attracted 163,000 visitors, including 36,000 from outside Germany. The total number of exhibitors was 2,629 from 58 countries. (https://technipharm.co.ns/data/newsdata/news_642.pdf
11-15 September 2017	Munich, Germany	DrinkTec – the world's leading trade fair for the beverage and liquid food industry. DrinkTec 2017 had over 76,000 visitors from more than 170 countries. 1,749 exhibitors attended the fair.
2-6 October 2017	Barcelona, Spain	Expoquimia International Chemistry Fair – exhibits the latest news from the leading companies in the engineering, pharmaceuticals, food, energy and biotech industries.

		Expoquimia 2017 had 395 exhibitors with more than 2,221 brands represented.
10-13 April 2018	Munich, Germany	Analytica – World's Leading Trade Fair for laboratory technology, analysis, biotechnology and Analytica conference. Analytica 2018 had 35,626 visitors from 111 countries and 1,163 exhibitors.
18-20 September 2018	Madrid, Spain	Meat Attraction – leading fair in the meat sector. Meat Attraction in 2018 attracted 10,069 professionals from 43 countries.
17-21 June 2019	Prague, Czech Republic	ICAR Conference and IDF/ISO Analytical Week. In 2019, this event had more than 430 delegates from 58 countries.

All of these exhibitions are during the relevant period throughout Europe. The opponent has provided screenshots, images and illustrations taken at the trade fairs and receipts of admission into the trade fairs in Exhibit KVH7. The opponent states that these fairs were used as an opportunity to market the goods and services offered by the opponent and spread awareness of the opponent to the visitors at the trade fairs. There are images of the opponent's

2016 – EUROTIER, Hannover Germany 15-18 November 2016

stalls at all of the aforementioned trade fairs, all of which are similar to the example below. The opponent's mark is clearly present.

g) Exhibit KVH9 comprises of snapshots from the social media platforms LinkedIn and YouTube. Some of the LinkedIn pages are distinguished by geographical location, e.g. "FOSS", "FOSS Britain and Ireland", "FOSS Iberia", "FOSS Italia" and "FOSS France". The "FOSS" page has 24,754 followers. The YouTube page has 281K subscribers. The snapshots are undated, and the witness statement provides no indication as to when the snapshots were taken. As no year is given, I consider that they are likely to be from around the date of the witness statement and are outside of the relevant period. However, the YouTube page has various videos concerning the goods and services provided by the opponent and even includes informative videos about their products, such as the video entitled "Milkoscan Mars Dairy Analyser". All of the individual snapshots of videos are dated within the relevant period and demonstrate the mark on the opponent's goods.

25. Before considering whether the opponent has made sufficient use of the mark and, if so, for what goods and services, I shall deal with the question of the form of the mark. In all instances throughout the evidence where the opponent has used the mark as registered – this is clearly use upon which the opponent can rely. The opponent's marks can be seen below.

FOSS

FOSS

26. Throughout its evidence, the opponent has also used its marks in a number of other ways. These are below:

FossAssure	FossAPI
FossManager	FossNirs

FossCalibrator

FossConnect

FossIntegrator

27. As per the case of *Colloseum*, use of a mark generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.[6] As seen above, some of the evidence shows the use of the mark with the additional words 'Assure', 'Manager', 'Calibrator', 'Connect' and 'Integrator'. The registered mark and the additional words appear alongside each other as conjoined terms. FOSS appears alongside dictionary defined terms, I consider that where these additional words appear, it is likely to be seen as a sub-brand under the mark FOSS. In these examples, despite the additional words being conjoined, I consider that the word 'FOSS' maintains its role as an independent indication of origin. Even taking into account the additional words, I do not consider that these alter the distinctive character of the mark as registered.[7] As a result, and in accordance with *Colloseum*, I consider the marks shown above are all examples of use of the opponent's mark as registered.

Genuine use of the mark

28. For use to be genuine, it must have been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the relevant territory during the relevant five-year period. In making my assessment, I am required to consider all relevant factors, including:

- the scale and frequency of the use shown;
- the nature of the use shown;
- the goods or services for which use has been shown;
- the nature of those goods or services and the market(s) for them; and
- the geographical extent of the use shown.

[6] *Colloseum Holdings AG v Levi Strauss & Co.,* Case C-12/12
[7] *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22

An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.[8] I note that as the opponent's mark is a comparable mark it is possible for the proprietor to rely on evidence of use in the EU up until the end of the transition period as set out in Tribunal Practice Notice 2/2020.[9] The onus is on the opponent to provide sufficiently solid evidence to show that the mark has been used within the five-year period.

29. The opponent has provided figures totaling 13,192 million Danish Krone between 2016 to 2021. The sales figures have not been broken down in relation to the geographic location in which they were sold nor the goods and services the sales figures can be attributed to. However, from the invoices provided, I can conclude that at least some of those sales will be associated with the goods and services listed above at paragraph ##. I do not have evidence or submissions from the parties to assist me on the matter of the size of the EU/UK market for the goods concerned, so it is hard to contextualise the figures. However, in my view, the figures appear to be substantial. The opponent has not indicated what the figures equate to in pounds sterling or euros, however, based on today's exchange rate (which is merely being used to roughly contextualise the value of the figures) it equates to roughly £1,480,142,400.00. In addition, the opponent has demonstrated a consistent and repeated pattern of sales throughout the relevant period. I have no information to indicate whether the market for the goods and services in the UK and EU is competitive or not, however, in my view, the goods and services appear to be rather niche.

30. As set out above, the evidence contains a number of invoices. The invoices are for sales to customers throughout the UK, Germany, Ireland, France, the Netherlands and Italy. The invoices show sales of software as a service to allow customers to monitor and optimise instrument performance and unplanned downtime and for customers remotely manage analytical instruments across various locations. In addition, it shows the sales of service maintenance services performed by engineers,

[8] *New York SHK Jeans GmbH & Co KG v OHIM*, T-415/09

[9]https://www.gov.uk/government/publications/tribunal-practice-notice-22020-end-of-transition-period-impact-on-tribunal-proceedings/tribunal-practice-notice-22020-end-of-transition-period-impact-on-tribunal-proceedings accessed 1/2/2022.

clients are provided with diagnostic retrieval and the services can be monitored remotely by engineers.[10] It also shows sales of products used to analyse various food sources being milk, grain, wine and protein (it is my understanding that the kjeldahl measures protein content). When cross referencing the invoices to the brochures[11] and screenshots from YouTube it is clear that the products referenced are either products or services bearing the opponent's mark.

31. The opponent provided evidence of brochures, trade fair attendance and YouTube videos to demonstrate the advertising and marketing they undertook in relation to the mark during the relevant period. I note that there are invoices for the fees paid by the opponent to attend the trade fairs, however, there are no other figures to demonstrate expenditure on advertising and marketing. Despite this, it is my view that the brochures, trade fair attendance and YouTube videos show use of the opponent's registrations and are evidence of advertising.

32. Taking all of this into account, the evidence has demonstrated sale of the opponent's goods and services to customers throughout the UK and Europe. The sales figures provided do not appear to be economically insignificant. The sales are not merely attributable to one off sales and the opponent has demonstrated a consistent and repeated pattern of sales throughout the relevant period. The opponent has clearly invested in advertising and marketing in relation to its registration and has consistently attended trade fairs in support of its business, making use of the registrations. Consequently, although the evidence is not without its limitations, I consider that the opponent has shown commercial exploitation of its mark in the economic sector concerned. The opponent has demonstrated genuine use of its mark.

Fair specification

33. I must now consider whether, or the extent to which, the evidence shows use of the opponent's registrations in relation to the goods and services relied upon. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited,* BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

[10] Exhibit KVH6, pg 188
[11] Exhibit KVH6

"In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned."

34. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows:

"iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("*Thomas Pink*") at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd (Extreme Trade Mark)* [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53]. vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("*Asos*") at [56] and [60]. vii) In some cases, it may be possible to identify

subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46."

35. At the hearing, and in its skeleton argument, the opponent narrowed down its case to focus on the term, *"data processing equipment*, *recorded computer software"* and directed me to the supporting evidence accordingly. Therefore, for the purposes of proof of use, I will focus on the evidence provided by the opponent in relation to this term. At the hearing, the applicant "*accepts that there is use of data processing equipment, but only insofar as it goes, namely in that analysis equipment"* the applicant went onto say that:

> *"when it comes to your determination of what a fair specification is, or what use has been made, we do not accept that you can find that there has been use for data processing equipment at large, but only that very narrow subset which is reflected in the specification and is reflected in the evidence that has been filed. There is no data processing equipment being sold that we can see in the evidence, other than data processing equipment included in analysis machines sold by the opponent".*

In relation to the second term at issue, the applicant submitted that the evidence does not prove use of the term. However, as a fallback, if I was to determine that there was use of the term, the applicant submits that this use is limited to use in connection with the mention of apparatus and instruments, which I have interpreted to be in reference to the analysis hardware provided by the opponent.

36. On that basis I will start at the position that the opponent has at least demonstrated use in relation to "data processing equipment", the issue to be

determined being whether the opponent may rely upon this broad term or whether it ought to be construed more narrowly. I must also determine whether, or the extent to which, the opponent has demonstrated use in relation to "recorded computer software". Whilst the opponent's skeleton argument refers to the terms *"data processing equipment, recorded computer software*" and the opponent referred to them as such at the hearing, the term in completeness is "recorded computer software, also for use in connection with the mentioned apparatus and instruments",[12] as stated at the hearing by the applicant's representative. Accordingly, in deciding upon fair specifications of the marks, I will be assessing the evidence in relation to the term as it appears in full. However, contrary to the applicant's submission, I do not interpret the wording 'also for use' to be limiting the opponent's goods to merely for use in connection with the aforementioned goods in the class. Rather, I view the wording to indicate non-exhaustive examples of how the opponent's goods may be used.

37. I have set out above that the turnover figures are not specifically broken down into the opponent's goods. Therefore, I am required to consider the evidence as a whole and compare what is shown within it to the opponent's specification; cross referencing the turnover figures with the evidence that has been provided. It would be unfair for me to simply accept the turnover figures provided are for any or all of the goods and services for which the opponent's registration is registered. However, I note that the evidence is predominately for the analysis equipment provided by the opponent and related software. I note that the evidence shows the provision of data processing equipment in the form of its FossNirs, Milkoscan, Infratec, Winescan and Kjeltec systems which are used to analyse nirs, milk, whole grains, wine and protein respectively. The opponent stated that the turnover table referenced above provides an *"overview of the revenue from subsidiaries and branches of my firm"* ('my firm' being reference to the FOSS parent company) *"[…] located in Europe between the years 2016 to 2021".* From this the turnover figures pertained to subsidiaries within the UK/EU but there is no indication as to whether it relates to the opponent's subsidiary and, if it does, what proportion relates to the opponent's subsidiary.

[12] The apparatus and instruments being those which precede this term in the opponent's specifications.

38. I will now deal with the *"recorded computer software"* aspect of the term. The opponent's invoices demonstrate sales of software as a service, in sales of FossAssure and Foss Manager. However, the focus of the term is recorded computer software. The invoices demonstrate that the package included in some of the sales of data processing equipment includes the provision of accompanying recorded computer software, e.g. ISI Scan Nova Software, FOSS Integrator software, Infratech basic etc, to be used with the data processing equipment. Therefore, I consider that the opponent has demonstrated the use of the mark in relation to *recorded computer software.* The software provided to customer is to accompany the data processing equipment and therefore the scope of the software provided will be limited as well. Taking all the above into account, I consider that, of the narrowed terms focussed on by the opponent, a fair specification of the term is *"recorded computer software for the analysis of foodstuffs"* and "*data processing equipment for the analysis of foodstuffs".*

Section 5(2)(b): legislation and case law

39. Section 5(2)(b) of the Act reads as follows:

> "(2) A trade mark shall not be registered if because-
>
> (a) …
>
> (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 or association with the earlier trade mark."

40. 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."

41. 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 impression 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 greater 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 to mind the earlier mark, 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 will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

THE COMPARISON OF THE GOODS AND SERVICES

42. The goods and services to be compared are as follows:

The opponent's goods	**The applicant's goods**
Class 9: *Recorded computer software for the analysis of foodstuffs; data processing equipment for the analysis of foodstuffs*	**Class 9:** *Computer software; Computer software for data processing; Computer software for communication and collaboration; Data synchronization programs; Computer software for document management; Computer databases; Education and training materials in electronic form; Computer documentation in electronic*

	form; Computer software to assist software developers to manage the software development process and for auditing of computer software and computer programs; Computer operating software; Computers; Computer peripheral devices; electronic chips. **Class 42:** *Software engineering; Software authoring; Software creation; Database design; Computer management services; Computer programming; Computer programming consultancy; Computer software consulting services in the fields of development of computer software, management and auditing of intellectual property and licenses, and management of intellectual property risks of the software development process; Provision of non-downloadable computer programs in data networks, in particular in the internet and the worldwide web.*

43. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account. In the judgment of the Court of Justice of the European Union ("CJEU") in *Canon,* Case C-39/97, the court stated at paragraph 23 that:

> "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."

44. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

> (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.

45. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (GC) stated that "complementary" means:

> "… 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 the responsibility for those goods lies with the same undertaking."

Class 9

46. I consider that there is similarity between *"computer software", "computer operating software"* and *"computer software for data processing"* in the applicant's specification and *"data processing equipment for the analysis of foodstuffs".* It is my understanding that the opponent's term refers to processing of data by a device/machine. In order for the data processing apparatus to process data and instructions, use of the applicant's goods is required. In other words, a computer program/software instructs the apparatus to execute the task of data processing. The software at issue is either wide and can incorporate data processing software or is data processing software itself, so it is not as though the software itself is limited away from being used for data processing. Even if the goods differ in nature (being tangible and intangible) both have, or can have, the same general purpose of processing data and both are complementary to each other. In addition, I consider that there is an overlap in users. There may also be an overlap in trade channels. In light of the above, it is considered that there is a medium to high degree of similarity between the respective goods.

Computer software for communication and collaboration; Computer software for document management; Computer software to assist software developers to manage the software development process and for auditing of computer software and computer programs;

47. I compared these terms to "*recorded computer software for the analysis of foodstuffs"* in the opponent's specification. I consider that the goods at issue are all software and, therefore, share the same nature. However, I note that the applicant's goods provide software for communication, collaboration, document management, software development and software auditing and the opponent's goods provide software for the analysis of foodstuffs. Subsequently, I consider that the specific purpose of the goods will differ. I consider that the user will overlap in general. I consider that the method of use of the goods will also overlap. I am of the view that there will be no competition between the goods, as an average consumer would not select the opponent's goods for the analysis of foodstuffs to manage documents, for

example. I do not consider that the trade channels will be shared. This is because I consider that the technology industry is very specialised and whilst software/applications, for example, may run alongside one another and be important/ indispensable for one another that does not mean that the same companies will provide the goods in practice, despite the perception by the average consumer. Taking all of the above into account, I consider that the applicant's goods are similar to the opponent's goods to a low degree.

48. In the absence of any submissions or evidence to the contrary, it is my understanding that *"data synchronization programs"* in the applicant's specification refers to software programs which are used to ensure that data records are accurate and the same across various different network systems and devices. Comparing these services with *"data processing equipment for the analysis of foodstuffs"* in the opponent's specification, I consider that there is a degree of similarity between the goods. Whilst the goods will differ in nature (with one being tangible and the other intangible), there is some general overlap in purpose, i.e. processing data; although I recognise one is to synchronise the data and the other is to process data for analysis. The method of use employed will differ. However, there is a possibility that the goods will be provided through the same trade channels; in my view, it is possible that a company who produces the opponent's data processing equipment would also make data synchronisation software programs. The goods will not be in competition, nor do I consider that they are complementary to one another. On that basis, I consider the goods are similar to a low degree.

49. It is my understanding that *"computer databases"* in the applicant's specification is a collection of data that is stored on a computer. I consider that there is a degree of similarity between these goods and *"data processing equipment for the analysis of foodstuffs"* in the opponent's specification. Although these goods differ in nature, I consider that there will be an overlap in users and trade channels. In addition, I am of the view that the respective goods are likely to have a complementary relationship to the extent that it would not be unreasonable for the average consumer to expect both to be provided by the same undertaking. In addition, I consider that databases may be important to the functioning of data

processing equipment. Consequently, I consider the goods to be similar to a medium degree.

50. In relation to *"computer documentation in electronic form*" in the applicant's specification, I consider that these goods are merely, for all intents and purposes, electronic documents. Other than a very general overlap in user with the opponent's goods *"data processing equipment for the analysis of foodstuffs"* and "*recorded computer software for the analysis of foodstuffs"* , which, is insufficient in my view to substantiate any overall similarity, I am unable to identify any other aspects of similarity between the goods. Therefore, I consider that they are dissimilar.

51. Similarly, I do not consider that there is any similarity between *"education and training materials in electronic form"* in the applicant's specification and either of the goods in the opponent's specification. Therefore, I find the goods to be dissimilar.

52. In comparing *"computers"* in the applicant's specification with *"data processing equipment for the analysis of foodstuffs"* in the opponent's specification, I consider there to be a degree of similarity between the goods. In my view, data processing equipment can cover a type of computer hardware such as an external peripheral device to a computer and the computer itself. In my view, the opponent's goods are similar to *"computers"* in the opponent's second earlier mark's specification. These goods may overlap in purpose, as they are all used to receive data and process it into a particular format. They may also overlap in users to the extent that those purchasing computers may also purchase the opponent's goods. I consider that the goods will overlap in nature. However, the goods differ in the method of use. The goods are not in competition, nor are they complementary. Taking all this into account, I find the goods to be similar to a medium degree.

53. In relation to *"computer peripherals*" in the applicant's specification *and "data processing equipment for the analysis of foodstuffs"* in the opponent's specification, I consider that there is a level of similarity between the goods. Computer peripheral devices are items that are used in conjunction with computers and as such have that in common with the opponent's goods, which, even being limited for the analysis of specific goods, can be used in conjunction with computers. However, I note that

computer peripherals are typically everyday items that are used in conjunction with personal computers, such as keyboards and mice, whereas the opponent's goods have a highly specialised purpose. As such, the extent of overlap in trade channels could be modest. I do not consider that the respective goods are complementary and are only in competition where the applicant's devices could perform the function of the opponent's specialised goods. Therefore, I find the respective goods to have a low degree of similarity.

Class 42

54. It is my understanding that *"Software authoring"* in the applicant's specification is the process of writing a software program. I consider that the services are the same as *"software creation"* in the applicant's specification. I consider that these services differ in nature, method of use and intended purposes from "*data processing equipment for the analysis of foodstuffs"* in the opponent's specification. However, I consider that data processing equipment will require software being created in order for them to function. In addition, consumers are likely to believe that the undertaking responsible for the goods of this nature may also be responsible for the software creation/authoring for the goods. On this basis I consider that the respective goods and services are complementary. They are also likely to reach the market through shared trade channels. Overall, I find that there is a medium degree of similarity between them. Whilst I note that *"software engineering"* differs from *"software authoring"* in that software authoring creates software that runs on various computers and software engineering principles are used in the design, development, maintenance, testing, and evaluation of computer software, I consider that the findings made above will also apply to *"software engineering".* I find a medium degree of similarity between the parties' services.

55. I compared *"Database design"* in the applicant's specification and *"data processing equipment for the analysis of foodstuffs"*. I do not consider that the goods and services share the same nature, as one of the terms refers to a good and the other a service. It follows that the method of use of the goods and services will not overlap either. The users of such goods and services and the intended purpose are

likely to overlap and such goods and services may move through the same trade channels. They are also likely to be complementary, as I consider that the average consumer is likely to believe that the undertaking responsible for the goods will also be responsible for the database design required for it to operate. In my view, there is at least a medium degree of similarity between the goods and services.

56. It is my view that there is an overlap between *"computer management services"* in the applicant's specification and the *"data processing equipment for the analysis of foodstuffs"*. I consider that there will be an overlap in trade channels and users. In my view, a company that offers data processing equipment may also offer management-type services for the upkeep of the data processing equipment. However, I do not see that there is any similarity in the nature or method of use. I do not consider that the goods and services are in competition; nor are they complementary, as whilst I consider that the average consumer may believe that the undertaking responsible for the goods and services will be the same, I do not consider that they are indispensable or important to one another. Therefore, I consider that the goods and services are similar to a low degree.

57. "*Computer programming"* and *"provision of non-downloadable computer programs in data networks, in particular in the internet and the worldwide web"* in the applicant's specification and *"data processing equipment for the analysis of foodstuffs"* in the opponent's specification differ in nature, intended purpose and method of use. However, I consider that data processing equipment will require programming in order for them to function and the consumer could also make use of the applicant's software if it was for data analysis. In addition, consumers are likely to believe that the undertaking responsible for the goods of this nature may also be responsible for the programming of the integrated software. On this basis I consider that the respective goods and services are complementary. They are also likely to reach the market through shared trade channels. Overall, I find that there is a medium degree of similarity between them.

58. I compared *"computer programming consultancy"* and *"computer software consulting services in the fields of development of computer software, management and auditing of intellectual property and licenses, and management of intellectual*

property risks of the software development process" in the applicant's specification *to "data processing equipment for the analysis of foodstuffs"* and "*recorded computer software for the analysis of foodstuffs"* in the opponent's specification. I consider that the consultancy services for the computer programming and computer software are a step removed from the computer programming or the software itself, therefore, I consider the goods and services to be dissimilar. This is on the basis that I do not consider the respective goods and services are complementary, nor do I consider that they are likely to reach the market from the same trade channels. In addition, similarly to the paragraph above, I consider that the nature, method of use and intended purpose of the goods and services will differ. Therefore, I consider the goods and services to be dissimilar.

59. As some degree of similarity between the goods is necessary to engage the test for a likelihood of confusion, my findings above mean that the opposition aimed against those goods and services I have found to be dissimilar will fail.[13] For ease of reference, the opposition under section 5(2)(b) fails against the following goods and services in the applicant's specification:

> **Class 9:** *Education and training materials in electronic form; computer documentation in electronic form*.
>
> **Class 42:** *Computer programming consultancy*; *computer software consulting services in the fields of development of computer software, management and auditing of intellectual property and licenses, and management of intellectual property risks of the software development process.*

THE AVERAGE CONSUMER AND THE PURCHASING PROCESS

60. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc,*

[13] *eSure Insurance v Direct Line Insurance,* [2008] ETMR 77 CA

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."

61. At the hearing, the applicant's representative drew to my attention that the parties have different submissions in relation to the average consumer. The opponent submitted that the average consumer of the goods and services will be the public at large as well as business consumers. Whereas the applicant submitted that the consumer will be a professional purchaser of technical equipment and/or services. In my view, both parties are partially correct, the goods and services at issue are apt to be purchased by both the general public at large and business or professional consumers, although some of the services are more likely to be used by one group than the other (computer programming consultancy services, for example, are unlikely to be used by the general public).

62. The opponent submitted that the degree of attention will vary depending on the particular goods and services; they consider that it will lie between average to above average. Whereas the applicant submitted that the average consumer is likely to pay a very high degree of attention. In response to the applicant's submissions, at the hearing, the opponent stated that they would not have a very high level of attention but would accept that they might have a higher-than-average level of attention. I agree with the opponent that the degree of attention paid by the average consumer would vary. I consider that the average consumer, whether a member of the public or a business person, will pay at least a medium degree of attention when selecting/purchasing the goods and services and potentially higher depending on the goods or services being purchased. In my view, the professional purchaser's level of

attention is likely to be reasonably high. Considerations such as capability with existing systems may play a part, as may factors like ease of use or reliability, which are likely to be more important for professional users operating complex systems or those who are relying on the goods and services for either business-critical decisions or because they are for use in food and drink industries for analysis and quality control.

63. In regard to the selection process, the opponent submitted that the purchasing process may be visual but may also involve aural considerations. The applicant did not comment on the visual/aural considerations. I agree with the opponent that the purchasing process is, for all of the consumers, likely to be mainly visual. The consumers are likely to consult websites or catalogues and will have access to advertising material in print and online. However, I do consider that aural considerations may also play a part, for example through word of mouth or consultations with the service provider.

COMPARISON OF THE MARKS

64. 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."

65. 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.

66. The respective marks are shown below:

Applicant's mark	**Opponent's marks**
FOSSLight	FOSS First earlier mark FOSS Second earlier mark

67. The opponent submits that the marks are visually and aurally highly similar due to the 'FOSS' element that appears in both marks. In relation to the conceptual similarity of the marks, the opponent submits that 'FOSS' has no apparent meaning in the opponent's marks and that the applicant's mark has no meaning either; consequently, the marks are conceptually neutral. The applicant submitted that the marks are visually and aurally similar to a low degree. I will address the applicant's submissions on the concepts of the marks in more detail below in the conceptual comparison.

68. In relation to the overall impression of the application, I note that the opponent submits that the word 'Light' is subordinate in 'FOSSLight' but will not go unnoticed. The word 'FOSS' appears at the beginning of the mark in a capitalised text and is more distinctive (which I will go onto discuss in more detail below). 'Light' on the other hand is a common word. In my view, both words contribute to the overall impression of the marks but the word 'FOSS' is the most dominant of the two. In relation to the overall impression of the earlier marks, 'FOSS' is the only element and the overall impression lies in that. In relation to the second earlier mark, it is noted that the mark appears in a bold font. The word itself plays the greater role in the overall impression and the font plays a minimal role, if any.

69. As the opponent's marks are the same, other than the slight stylisation in the second earlier mark, I intend to compare them with the applicant's mark together, unless it becomes necessary to distinguish between them.

70. I note the submissions made by both parties, as outlined above in paragraph 67. Visually, the marks coincide in the initial element of 'FOSS' and differ in the additional word 'Light' that appears at the end of the application. Taking the above into consideration, I consider the marks to be visually similar to a medium degree. I acknowledge that the opponent's second earlier mark is presented in bold font, but the protection of a word mark (such as the applicant's mark) provides protection for the word itself and is not limited to any font, form or colour they are used. [14] Applying this case, it means that use of the bold font does not constitute a significant point of difference between the marks. Therefore, I make the same finding in respect of both of the opponent's earlier marks.

71. Aurally, the marks coincide in the pronunciation of the initial element of 'FOSS' which is the totality of the opponent's marks. However, they will differ in the pronunciation of the additional element of 'Light' that follows the word 'FOSS'. Taking this into account, I consider the marks to be aurally similar to a medium degree.

72. As mentioned above, conceptually, the opponent submitted at the hearing that the marks are somewhat similar because they do not mean anything. Specifically, the opponent's representative submitted that *"at worst, it is a neutral comparison but, of course, for an inherently distinctive, if you like, made up word, they both share that concept".* Both parties submitted that either there is no concept or to the extent that there is a concept, it is shared to some extent because of the presence of the word 'FOSS'. However, how 'light' would be perceived in the application remained a topic of contention between the parties at the hearing. The applicant's representative submitted that it is not accepted that the term 'light' is a common suffix as set out by the opponent's representative.

[14] *La Superquimica v EUIPO,* Case T-24/17, paragraph 39.

73. I note that the applicant provided evidence on the meaning of 'FOSS' in Exhibits TJB1 and 3. The applicant submitted that 'FOSS' is a generic term that is used to refer to groups of software consisting of free and open-source software. The opponent's representative highlighted tensions held by the opponent in the definition provided by the evidence stating that for it to be a 'generic term' it would mean that it is customary in the current language or in the practices of trade. The opponent's representative went onto say that the evidence provided is very limited. I do recognise that Exhibit TJB1 is a Wikipedia article and, therefore, I must treat it with caution; this is on the basis that Wikipedia is a community-based encyclopaedia that can be amended at any time, by any person and can be done so anonymously and so lacks certainty. This means that the content may be unverified. I note that the GC has previously refused to admit such evidence.[15] Having said that, I do note that it does offer the same explanation for the meaning of the word 'FOSS' as the snapshots in Exhibit TJB3, being that the word 'FOSS' means free and open source software. In contrast, the opponent submits that 'FOSS' is the founder of the opponent's surname. Whilst I note the applicant's evidence in relation to the meaning of 'FOSS', my assessment is based on the average consumer and how the mark is perceived by them. Whilst a number of average consumers in each group would understand 'FOSS' to mean 'Free and open source software', I consider that there is a significant proportion in each consumer group that would not understand 'FOSS' to have the aforementioned meaning and will view 'FOSS' as invented with no meaning.

74. The word 'FOSSLight' is not a dictionary defined term, however, whilst I recognise that I must assess the mark as a whole, I consider that at least a significant proportion of average consumers may identify the word 'Light' at the end of the mark. If identified, I consider that the word 'Light' will be given its ordinary dictionary meaning. The meaning (or lack thereof) discussed above in relation to the 'FOSS' element will also apply in relation to 'FOSS' in the application. Although there may be consumers who do understand the meaning of FOSS, I will focus on those who do not, only returning to consider the position for other consumers if it becomes necessary to do so. With that in mind, I consider that the marks will be conceptually neutral. This is on the basis that the opponent's marks have no meaning, and the application will have

[15] Case T-338/12 *Rocket Dog Brands v OHIM* EU: T:2013:327, [32]

conceptual meaning as far as the word ‘Light’ is identified by the average consumer and nothing further.

DISTINCTIVE CHARACTER OF EARLIER MARKS

75. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, the CJEU stated that:

> “22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR 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).”

76. 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. The opponent makes no claim to enhanced distinctiveness through the use made of the earlier marks, however, I note

that this does not need to be expressly pleaded to be assessed. I will consider the evidence that has been filed in the context of enhanced distinctive character. However, I will start by assessing the level of inherent distinctiveness of the earlier marks.

77. At the hearing, the applicant's representative accepted that 'FOSS' has at least a medium degree of inherent distinctive character for everything except software. They went onto submit that for the consumers that are of the view that FOSS means 'Free and Open-Source Software', the marks will have a lower degree of inherent distinctive character. However, for those who know the meaning of 'FOSS', the representative went onto submit that the marks have a "*very, very low degree of distinctive character in respect of software".* The opponent's representative went further than that and submitted that the inherent distinctive character is high, as it is a meaningless word and that the marks are also inherently distinctive in relation to computer software. This is on the basis that *"there is no or insufficient, evidence that a significant or substantial proportion of the relevant public would understand it to mean anything at all, let alone Free Open Source Software"*. The opponent proceeded to criticise the applicant's evidence in relation to FOSS and its use and stated that it is at least inherently distinctive to a medium degree in relation to computer software.

78. As mentioned above in the conceptual comparison, I consider that there is a proportion of average consumers that will interpret 'FOSS' as Free and Open Source Software as outlined in some of the examples provided by the applicant's evidence. However, I consider that there is a significant proportion in each consumer group that would not understand 'FOSS' to have the aforementioned meaning and will view 'FOSS' as invented word, with no meaning.

79. For those consumers that see FOSS as an invented word, I consider that the degree of inherent distinctive character will be high, for all of the goods and services at issue. However, for those that identify FOSS as meaning 'Free and Open Source Software' I consider that the inherent distinctive character of the mark in relation to the goods and services will be at least medium. However, the exception is in relation to 'Computer Software'. For those goods, I consider that FOSS may potentially be descriptive. In that instance, I agree with the applicant, and I consider that FOSS will possess a low degree of inherent distinctive character.

80. I will now consider the evidence filed in relation to enhanced distinctive character. Enhanced distinctiveness must be established in relation to the UK market because the test for confusion will be in reference to the average consumer who is a member of the UK consumers. I note that there are invoices for the fees paid by the opponent to attend trade fairs; there are no other figures to demonstrate expenditure on advertising and marketing. Further, I note that I do not have evidence or submissions from the parties to assist me on the matter of the size of the UK market for the goods concerned, to identify the market share held by the mark. The sales, as well as being throughout Europe (which is not relevant in relation to enhanced distinctive character), has been demonstrated on invoices to customers throughout the UK. I consider that the sales figures are significant, totaling 13,192 million Danish Krone between 2016 to 2021. However, the sales figures have not been broken down in relation to the geographic location; it is difficult to identify how intensive the sales were in the UK. However, I do recognise that there is evidence of use between 2016 and 2021. Taking all of the above in account, I do not consider that the evidence is sufficient to demonstrate enhanced distinctive character in relation to the earlier marks.

LIKELIHOOD OF CONFUSION

81. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services or vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's trade marks, the average consumer of the goods and services and the nature of the purchasing process. In doing so, I must be mindful of the fact that the average consumer rarely has the opportunity to make direct

comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

82. I have found the marks to be visually and aurally similar to a medium degree. I have found the marks to be conceptually neutral. I consider that the degree of the inherent distinctive character will differ, for those consumers that see FOSS as an invented word, I consider that the degree of inherent distinctive character will be high, for all of the goods and services at issue. However, for those that identify FOSS as meaning 'Free and Open Source Software' I consider that the inherent distinctive character of the mark in relation to the goods and services will be at least medium. Nevertheless, the exception is in relation to 'Computer Software', for those goods, I consider that FOSS will possess a low degree of inherent distinctive character.

83. I have found that the average consumer will include members of the general public at large, business consumers and professionals. I consider that the average consumer, whether a member of the public or a business person, will pay at least a medium degree of attention when selecting/purchasing the goods and services, potentially higher depending on the goods and services selected. In my view, the professional purchaser's level of attention is likely to be reasonably high. I have found that the purchasing process will be visual, although I do not discount aural considerations. I have found the goods and services to vary in similarity to those that are similar to a low degree to those that are similar to a medium to high degree. In relation to the low degree of inherent distinctive character that I identified in relation to computer software for consumers where the FOSS is attributed a meaning; I remind myself that a weak distinctive character of an earlier mark does not preclude a likelihood of confusion.[16]

84. Taking all the above into account, I consider that the differences between the marks will be noticed, even taking the principle of imperfect recollection into account. I am of the view that the average consumer will not misremember or mistakenly recall the marks for each other. Whilst I note that the marks share the same beginning, and this is where the average consumer tends to focus,[17] I consider that the presence of

[16] *L'Oréal SA v OHIM,* Case C-235/05 P
[17] *El Corte Ingles, SA v OHIM,* Cases T-183/02 and T-184/02

‘Light’ at the end of the application (conjoining the word FOSS) is sufficient to avoid the marks being misremembered or mistakenly recalled. This difference will not be overlooked. Consequently, I do not consider that there is a likelihood of direct confusion.

85. Indirect confusion was described in the following terms by Iain Purvis K.C., sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10:

> “16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when 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).”

86. I note that the applicant submits that there is no risk of indirect confusion and the current marks do not fall into any of the examples from *L.A. Sugar* (referenced above); as an aside, the categories presented by Mr Purvis are not exhaustive. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors,*[18] wherein Arnold LJ referred to the comments of James Mellor QC sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he stated that a finding of a likelihood of indirect confusion is not a consolidation prize and that there needs to be a reasonably special set of circumstances in order to get indirect confusion where there is no likelihood of direct confusion. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

87. I note that the opponent has provided limited explanation as to why the application is a sub-brand of the opponent, and no further reasoning outside of the examples has been provided by the opponent. At the hearing, the applicant submitted that the situation described above in Mr Purvis’ example as 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 does not apply. This is on the basis that the difference between the marks does not lie in the sub-brand of ‘Lite’ which is provided above as an example. Nevertheless, as previously mentioned, these examples are not exhaustive and as demonstrated by the opponent in Exhibit SN2, there is evidence of ‘light’ being used by third parties in relation to sub-brands for computer software. This aligns with my understanding of the market as well.

[18] [2021] EWCA Civ 1207

88. For the average consumer who views FOSS as an invented word, when confronted with the parties' marks, it is my view that they will notice the differences between the marks. I am of the view that when the average consumer sees the identical 'FOSS' element accompanied by the additional word 'Light', they will consider that the marks come from the same and related undertaking. As, in this instance, it would be seen as an invented word, I consider that the average consumer would find the 'FOSS' element to be strikingly distinctive and not consider that anyone other than the opponent would use the mark. The differences will then, consequently, be put down to a form of sub-branding; the word 'Light' will be put down to a more basic version of the service or good. In addition, I note that the goods and services, that I have found to be similar, operate in the same broad industry, being the technology industry, and it is not uncommon for an undertaking to look to expand within the same sector. Consequently, I consider that there is a likelihood of indirect confusion between the marks for the goods and services that I have found to be similar.

89. I also identified that there is a group of average consumers who will view FOSS as an acronym for Free and Open-Source Software. For those consumers the use of FOSS, in relation to the computer software industry, will not be uncommon. Rather, the word will be viewed as having a descriptive/allusive meaning in relation to some of the goods at issue. Therefore, where computer software goods are involved, namely computer software; *Computer software for data processing; Computer software for communication and collaboration; Computer software for document management; Computer software to assist software developers to manage the software development process and for auditing of computer software and computer programs; Computer operating software;* there are average consumers who will perceive the common element as being insufficiently distinctive for indirect confusion to occur. In my view, the consumers would just see shared use of the common element as coincidental use of the same allusive/descriptive term. Consequently, my conclusion is that there is a likelihood of indirect confusion for all the goods and services that I found to be similar, with the exception of those goods listed above.

CONCLUSION

90. The opposition succeeds in part for the following goods and services which will be refused:

> **Class 9*:*** *Data synchronization programs; Computer databases; Computers; Computer peripheral devices; electronic chips.*
>
> **Class 42:** *Software authoring; Software creation; Database design; Computer programming; Provision of non-downloadable computer programs in data networks, in particular in the internet and the worldwide web; software engineering; computer management services.*

91. The application will proceed to registration for the following goods and services, against which the opposition has been unsuccessful:

> **Class 9:** *Computer software to assist software developers to manage the software development process and for auditing of computer software and computer programs; Computer operating software; Computer software for document management; Computer software; Computer software for data processing; Computer software for communication and collaboration; Education and training materials in electronic form; computer documentation in electronic form*.
>
> **Class 42:** *Computer programming consultancy*; *computer software consulting services in the fields of development of computer software, management and auditing of intellectual property and licenses, and management of intellectual property risks of the software development process.*

92. Although the opposition has been partially successful, the applicant has enjoyed the greater degree of success. In light of this, the applicant is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023,[19] with an appropriate reduction to reflect the opponent's level of

[19] TPN 1/2023 applies to proceedings commenced on or after 1 February 2023.

success. I award the applicant the sum of £1000 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Preparing a notice of opposition and considering the counterstatement	£150
Preparing evidence and considering the applicant's evidence	£300
Preparing for and attending a hearing	£450
Official fees	£100
Total	**£1000**

93. I therefore order FOSS A/S to pay LG Electronics Inc. the sum of £1000. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 12th day of June 2025

A KLASS

For the Registrar

For the Comptroller-General