O/0630/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK0004069012

BY MEDIDATA EXCHANGE LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:

medi2cert
by medi2data

IN CLASSES 9, 36 AND 44

AND OPPOSITION THERETO UNDER NO. 450205

BY MEDCERT LIMITED

BACKGROUND AND PLEADINGS

1. On 27 June 2024, Medidata Exchange Limited ("the applicant") applied to register the trade mark shown on the cover page of this decision, in the UK. The application was published for opposition purposes on 12 July 2024 and protection is sought for the following goods and services:

Class 9	Health monitoring software.
Class 36	Health insurance; Insurance claim assessments; Claim assessments (Insurance -); Insurance claims assessment; Insurance underwriting and appraisals and assessment for insurance purposes; Health insurance underwriting; Health insurances services relating to coach drivers; Private health insurance; Health insurances services relating to coach couriers.
Class 44	Health assessment services; Health risk assessment; Health screening services; Provision of health information; Medical testing for fitness evaluation; Medical and health services relating to DNA, genetics and genetic testing; Information relating to health; Medical screening services relating to cardiovascular disease; Providing health information.

2. On 11 October 2024, the application was opposed by MedCert Limited ("the opponent") based upon sections 5(4)(a) and 3(6) of the Trade Marks Act 1994 ("the Act"). Under section 5(4)(a) of the Act, the opponent relies upon the sign MEDCERT which it claims to have used throughout the UK since 2019 in relation to "medical information services; medical records checking services; medical certification services". The opponent claims that use of the applicant's mark would be contrary to the law of passing off.

3. Under section 3(6) of the Act, the opponent claims that the applicant had prior knowledge of its business and its use of the sign MEDCERT. As a result, the opponent claims that the application was filed in bad faith.

4. The applicant filed a counterstatement denying the grounds of opposition.

5. Neither party requested a hearing and only the opponent filed written submissions in lieu. This decision is taken following a careful consideration of the papers on file.

REPRESENTATION

6. The applicant is represented by MBM Commercial LLP.

7. The opponent is represented by Humphreys & Co.

EVIDENCE AND SUBMISSIONS

8. The opponent filed evidence in chief in the form of the witness statement of Daryn Hufton-Rees dated 14 March 2025, which is accompanied by 1 exhibit (DHR1). Mr Hufton-Rees is a Director of the opponent, a position he has held since 1 August 2019.

9. The applicant did not file evidence.

10. The opponent filed written submission in lieu of a hearing dated 2 July 2026.

RELEVANCE OF EU LAW

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

DECISION

<u>Preliminary Issue</u>

12. The applicant's counterstatement contains extracts from the opponent's website and weblinks (with PDF copies attached). For the avoidance of doubt, as this evidence has not been filed in the correct evidential format (and bearing in mind that the counterstatement's statement of truth was signed in the name of the applicant's representative firm, rather than an individual), I am unable to take it into account. I have, therefore, disregarded it.

<u>Section 5(4)(a)</u>

13. Section 5(4)(a) of the Act states as follows:

> "5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -
>
> > a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,
> >
> > aa)…
> >
> > b) …
>
> A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of "an earlier right" in relation to the trade mark."

14. Subsection (4A) of section 5 of the Act states:

> "(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of

application for registration of the trade mark or date of the priority claimed for that application."

15. In *Discount Outlet v Feel Good UK,* [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a Deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

> "55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.
>
> 56. In relation to deception, the court must assess whether *"a substantial number"* of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

Relevant Date

16. In *Advanced Perimeter Systems Limited v Multisys Computers Limited,* BL O-410-11, Mr Daniel Alexander QC (now KC), as the Appointed Person, endorsed the registrar's assessment of the relevant date for the purposes of section 5(4)(a) of the Act, as follows:

> "43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:
>
> 'Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position

> would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.' "

17. The opponent's evidence confirms that the applicant has been trading prior to the filing date. However, there is no suggestion that they have been using the mark that is the subject of the application in issue prior to filing.[1] Consequently, I have only the prima facie relevant date to consider, which is 27 June 2024.

Goodwill

18. In *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL), goodwill was described in the following terms:

> "What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

19. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

> "27. There is one major problem in assessing a passing of claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent that the enquiry under s.11 of the 1938 Act (see Smith Hayden & Co. Ltd's Application

[1] At paragraph 31 of his witness statement, Mr Hufton-Rees states that the applicant started using the mark in issue in early 2025.

(OVAX) (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark [1969] R.P.C. 472*). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur."

20. Mr Hufton-Rees gives evidence that the opponent creates medical reports for the benefit of customers to be used as part of the process for obtaining a firearms licence. The opponent has been using the sign MedCert on its website since 2021 in relation to these services.[2] Mr Hufton-Rees has provided the following turnover figures:

Year	Turnover (£)
2019	c.110,000 [pandemic]
2020	
2021	73,300 [Aug-Dec only]
2022	231,720
2023	213,494
2024	216,306

21. Mr Hufton-Rees states that since 2019, the opponent has had an average of between 300 and 500 customers per month; he has also provided examples of the

[2] Exhibit DHR1, pages 2 to 26.

opponent's customers from its payment platform.[3] There are examples of customers discussing their use of the opponent's service on relevant forums and Trust Pilot.[4]

22. In terms of promotional activities, the opponent has placed adverts in shooting press publications and websites. Mr Hufton-Rees states that it also benefits from promotion through its working relationship with organisations such as Clay Pigeon Shooting Association and The National Rifle Association. The opponent has exhibited its services at the following UK events:

a. The Game Fair (attendance figures vary from 120,000 in 2021/2022 and 136,000 in 2024);

b. The Stalking Show (attendance figures are around 10,000).

c. The Scottish Game Fair (attendance was around 32,000 in 2021 and 2022).

23. Mr Hufton-Rees states that he does not have specific market share information. However, there are around 650,000 firearms licence holders in the UK at any given time and on average between 120,000 and 130,000 medical reports are needed each year to support new applications/renewals. Mr Hufton-Rees states that around 80% of these are obtained directly from the GP. From this Mr Hufton-Rees estimates that the market for private reports is around 2,000 per month, and the opponent provides between 300 and 500 of these. He, therefore, calculates a market share of around 15-25%. Mr Hufton-Rees estimates around 8 out of 10 gun owners are aware of the opponent, but no explanation as to how this estimate has been reached is provided.

24. I bear in mind that small businesses may still be protected by the law of passing off. However, the law of passing off does not protect a goodwill of trivial extent.[5] As Mr Thomas Mitcheson K.C., sitting as the Appointed Person, concluded in *Smart Planet Technologies, Inc. v Rajinda Sharma:*[6]

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[3] Exhibit DHR1, pages 28 to 40.
[4] Exhibit DHR1, pages 72 to 149.
[5] *Hart v Relentless Records* [2002] EWHC 1984 (Ch)
[6] BL O/304/20

> "…a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon."

25. This is all the more so in a case, such as this one, where the sign relied upon is of low distinctiveness. The sign relied upon by the opponent is MEDCERT which is clearly a combination of two abbreviations (for the words MEDICAL and CERTIFICATE/CERTIFICATION); in my view, this will be readily understood by the relevant public in the context of the relevant services and is, therefore, of weak distinctiveness.

26. That being said, the opponent's evidence is thin, but clearly shows that it has an ongoing business. This is likely to be a fairly niche market, given the size of the market as estimated by Mr Hufton-Rees, which may be why the turnover figures appear on their face to be relatively low. Taking the evidence as a whole into account, and accounting for the inherent distinctiveness of the sign relied upon, I find that the opponent benefitted from a modest (but protectable) degree of goodwill at the relevant date in relation to the provision of medical reports for firearms applications.

Misrepresentation and damage

27. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

> "There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc. [1990] R.P.C. 341* at page 407 the question on the issue of deception or confusion is
>
> > "is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents'[product]"

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148 . The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd*. (1941) 58 R.P.C. 147 at page 175 ; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101."

And later in the same judgment:

"…. for my part, I think that references, in this context, to "more than *de minimis* " and "above a trivial level" are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993) . It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion."

28. In *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590, Lord Justice Lloyd commented on the paragraph above as follows:

"64. One point which emerges clearly from what was said in that case, both by Jacob J and by the Court of Appeal, is that the "substantial number" of people who have been or would be misled by the Defendant's use of the mark, if the Claimant is to succeed, is not to be assessed in absolute numbers, nor is it applied to the public in general. It is a substantial number of the Claimant's actual or potential customers. If those customers, actual or potential, are small in number, because of the nature or extent of the Claimant's business, then the substantial number will also be proportionately small."

29. *Halsbury's Laws of England* Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

“Establishing a likelihood of deception generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

(a) the nature and extent of the reputation relied upon,

(b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;

(c) the similarity of the mark, name etc used by the defendant to that of the claimant;

(d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

> In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action."

30. I have found that the opponent benefits from a modest degree of goodwill in relation to the provision of medical reports for firearms applications. The high point of the opponent's case is in relation to the class 44 services of the application; some of these services (such as health assessment services) are identical to the services for which the opponent has goodwill. Even where the services are not identical, they are within the same field of activity. In relation to the class 9 goods and the class 36 services, the only real point of overlap with the services of the opponent are that they are health-related. There is, therefore, a very limited overlap in terms of fields of activity. In terms of how similar the mark/sign are, the opponent's sign and the first (and largest) element of the applicant's mark both start with the letters MED and end with the letters CERT. However, they differ in the presence of the additional letter 'I' at the end of MED and the large number 2 which separates the MEDI and CERT elements in the applicant's mark. They also differ in the presence of the wording BY MEDI2DATA which appears in smaller lettering at the bottom of the applicant's mark.

31. I am reminded of the words of Lord Simonds in *Office Cleaning Services Limited v Westminster Window & General Cleaners Limited* [1946] 63 RPC 39 where he stated that:

> "Where a trader adopts words in common use for his trade name, some risk of confusion is inevitable. But that risk must be run unless the first user is allowed unfairly to monopolise the words. The court will accept comparatively small differences as sufficient to avert confusion. A greater degree of discrimination may fairly be expected from the public where a trade name consists wholly or in part of words descriptive of the articles to be sold or the services to be rendered."

32. In my view, that is the case here. Whilst I bear in mind that both marks share the elements MED and CERT, the differences between them are, in my view, sufficient to

avoid misrepresentation arising. The word MEDCERT (being a combination of abbreviations of MEDICAL and CERTIFICATE/CERTIFICATION) is weakly distinctive, and the additional elements in the applicant's mark (making it MEDI rather than MED and the inclusion of the number 2 separating these elements), will highlight for the public that these are two different undertakings who both happen to be using abbreviations of those descriptive words as part of their trade names. Whilst those differences may seem relatively small, in the context of marks/signs that are not very distinctive, a greater degree of discrimination will be paid by the public, thus avoiding any misrepresentation. The potential for misrepresentation will be even less so where there is a greater distance between the parties' respective fields of activity. As there is no misrepresentation, there can be no damage.

33. In reaching this decision, I have borne in mind the opponent's evidence that they have experienced instances of customers being confused. Mr Hufton-Rees states that there have been more than one example of telephone calls from confused customers, but only one example is provided in evidence in the form of an email.[7] There is very little information to enable me to assess how the confused customers came into contact with the sign in issue. In the absence of this information, it is difficult to know what gave rise to the question being asked and whether it was purely on the basis of the mark/sign or other matters that are extraneous to the mark/sign in issue. In any event, in my view, as explained in the case law above, where a weakly distinctive mark is chosen as a trade name, some risk of confusion is inevitable and, as such, must be tolerated. Consequently, I do not find that this evidence assists the opponent.

34. The opposition based upon section 5(4)(a) of the Act is dismissed.

Section 3(6)

35. Section 3(6) of the Act states:

> "A trade mark shall not be registered if or to the extent that the application is made in bad faith."

[7] Exhibit DHR1, page 160.

36. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin summarised the general principles applicable to bad faith at [240] as follows:

> "(i) […]
>
> (ii) The date for assessing whether an application to register [a] trade mark was made in bad faith is the date the application for registration was made (*Lindt*, para 35).
>
> (iii) Bad faith in this context is an autonomous concept of EU law which must be given a uniform interpretation […], and must be interpreted in the context of Directive 89/104 in the same manner as in the context of Regulation 40/94 ([*Malaysia Dairy Industries Pte Ltd v Ankenaevnet for Patenter og Varemaerker* (C-320/12) EU:C:2013:435 ("*Malaysia Dairy*")], para 29; [*Sky plc v SkyKick UK Ltd* (C-371/18) EU:C:2020:45 ("*Sky CJEU*")], para 73).
>
> (iv) While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, the concept must also be understood in the context of trade mark law, which involves the use of marks in the course of trade. Further, it must have regard to the objectives of the […] law of trade marks, namely the establishment and functioning of […] a system of undistorted competition in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin (*Lindt*, para 45; [*Koton Mağazacilik Tekstil Sanayi ve Ticaret AS v European Union Intellectual Property Office (EUIPO)* (C-104/18) EU:C:2019:724 ("*Koton*")], para 45).
>
> (v) Consequently, the objection will be made out where the proprietor made the application for registration, not with the aim of engaging fairly in competition but either (a) with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or (b) with the intention of obtaining,

without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, and in particular the essential function of indicating origin (*Koton*, para 46; *Sky CJEU*, para 75).

(vi) The intention of the applicant is a subjective matter, but it must be capable of being established objectively by the competent administrative or judicial authorities having regard to the objective circumstances of the case (*[Hasbro Inc* v *EUIPO, Kreativni Dogaaji d.o.o. (intervening)* (Case T-663/19) EU:T:2021:211 ("*Hasbro*")], paras 39 and 40; *Koton*, para 47).

(vii) The burden of proving that an application for a registered mark was made in bad faith lies on the party making the allegation. But where the circumstances of the case may lead to a rebuttal of the presumption of good faith, it is for the proprietor of the mark to explain and provide a plausible explanation of the objectives and commercial logic pursued by the application for registration (*Hasbro*, paras 42 and 43).

(viii) Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all of the factors relevant to the particular case (*Lindt*, para 37).

(ix) The applicant for a trade mark is not required to indicate or to know precisely when the application is filed or examined, the use that will be made of it (*Sky CJEU*, para 76; [*AS v Deutsches Patent-und Markenamt* (C-541/18) EU:C:2019:725], para 22).

(x) Nevertheless, the registration by an applicant of a mark without any intention to use it in relation to the goods and services covered by the registration may constitute bad faith where there is no rationale for the application in the light of the aims referred to in Regulation 40/94 and Directive 89/104 (*Sky CJEU*, para 77).

(xi) Such bad faith may, however, be established only where there are objective, relevant and consistent indicia tending to show that, when the application was filed, the applicant for registration had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark (*Sky CJEU*, para 77).

(xii) It follows that the bad faith of the applicant cannot be presumed on the basis of a mere finding that, at the time of filing the application, the applicant had no economic activity corresponding to the goods and services referred to in the application (*Sky CJEU*, para 78).

(xiii) When the absence of an intention to use the mark in accordance with the essential functions of a trade mark concerns only certain goods or services referred to in the application for registration, that constitutes making the application in bad faith only in so far as it relates to those goods or services (*Sky CJEU*, para 81).

(xiv) If, at the end of the day, the court concludes that, despite formal observance of the relevant rules and conditions for obtaining registration, the purpose of the rules has not been achieved, and that there was an intention to take advantage of the rules by creating artificially the conditions laid down for obtaining the registration, this may amount to an abuse sufficient to find that the application was made in bad faith (see, for example, *Hasbro*, para 72).

(xv) Directive 89/104 does not preclude a provision of national law under which an applicant for registration must state that the mark is being used in relation to the goods or services in relation to which it is sought to register the mark, or that the applicant has a *bona fide* intention that it should be used, provided that infringement of such an obligation cannot constitute a ground for invalidity. It may, however, constitute evidence for the purposes of establishing possible bad faith on the part of the applicant when the application was filed (*Sky CJEU*, paras 86 and 87)."

37. According to *Alexander Trade Mark*, BL O/036/18, the key questions for determination in a claim of bad faith are:

> (a) What, in concrete terms, was the objective that the applicant has been accused of pursuing?
>
> (b) Was that an objective for the purposes of which the contested application could not be properly filed? and
>
> (c) Was it established that the contested application was filed in pursuit of that objective?

38. It is necessary to ascertain what the applicant knew at the relevant date: *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch). Evidence about subsequent events may be relevant, if it casts light backwards on the position at the relevant date: *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited* and others, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).

<u>What, in concrete terms, was the objective that the applicant has been accused of pursuing?</u>

39. In its Form TM7, the opponent states as follows:

> "26. At the date of filing of the application, the Opponent contends that the Applicant was plainly aware of the Opponent, its business, and its earlier rights in the MEDCERT mark, given that the Applicant has been a supplier of medical data to the Opponent for at least 2 years prior to the date of the application. Invoices sent by the Applicant to the Opponent were addressed to "MedCert Limited".
>
> 27. As such, the application was plainly filed in bad faith.

> 28. Objectively, such actions constitute a dealing which falls short of the standards of acceptable commercial behaviour observed by reasonable and experienced persons in the medical/medical information/medical certification sphere (Gromax Plasticulture Ltd v. Don & Low Nonwovens Ltd [1999] RPC 367 at 379)."

<u>Was that an objective for the purposes of which the contested application could not be properly filed?</u>

40. The only claim that appears to be put forward by the opponent is that the applicant had prior knowledge of the opponent's business prior to the relevant date. Whilst that may be the case, it is well established that mere knowledge of another party's business activities does not establish bad faith (see *Lindt, Koton*). The opponent has not made any effort to explain why this would amount to bad faith. Absent any such claim, I do not find that the bad faith pleading has any merit. This is particularly the case in light of my finding above that the parties' respective marks would not give rise to misrepresentation or damage. In those circumstances, there is no prima facie case of bad faith established.

41. Whilst I note that the opponent has pointed to the failure of the applicant to file evidence responding to the bad faith claim, the absence of rebuttal only becomes relevant once a prima facie case is established. As no such case has been established, I need consider the position no further.

42. The opposition based upon section 3(6) of the Act is dismissed.

CONCLUSION

43. The opposition is unsuccessful and, subject to appeal, the application may proceed to registration.

COSTS

44. The applicant has been successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of **£850**, calculated as follows:

Preparing a counterstatement and considering the Notice of opposition	£350
Considering the opponent's evidence[8]	£500
Total	**£850**

45. I therefore order MedCert Limited to pay Medidata Exchange Limited the sum of **£850**. 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 21st day of July 2026

S WILSON
For the Registrar

[8] Whilst I note that this is below the scale minimum, I have awarded this due to the fact that the applicant did not file any evidence of its own and only had to consider the evidence filed by the opponent and decide whether to respond (or not).