O/0749/26

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION
NO. 4279504
BY SYSTEM 3 SOFTWARE LTD
TO REGISTER THE TRADE MARK:**

TUSKER

IN CLASSES 9, 25 AND 41

AND

**THE LATE FILING OF FORM TM8 AND
COUNTERSTATEMENT
FILED IN DEFENCE OF THAT APPLICATION
IN OPPOSITION THERETO
UNDER NO. 459723
BY BUNZL UK LIMITED**

Background

1. On 17 October 2025, System 3 Software Ltd ("the applicant") applied to register the trade mark number shown on the cover page of this decision in the UK. The application was published for opposition purposes on 24 October 2025. The applicant seeks registration for goods and services set out in Annex 1 of this decision.

2. On 26 January 2026, Bunzl UK Limited ("the opponent") filed a partial opposition based on Section 5(2)(b) of the Trade Marks Act 1994 ("the Act")[1]. The opposition is directed only against the Class 25 goods: "*Clothing; T-shirts; hoodies; sweatshirts; trousers; jackets; caps; hats; footwear; headgear; children's clothing; sportswear; neckwear*". The opponent relies upon the following marks:

Trade Mark No.	UK00003173568
Trade Mark	TUSKERS
Goods for which the mark is registered	8, 9, 10 & 25
Filing date	08 July 2016
Date of entry in register	18 November 2016
Priority details	**Priority date:** 26 February 2016 **Priority country** European Union Intellectual Property Office (EUIPO) **TM from which priority claimed** 015155211

Trade Mark No.	UK00915155261[2]

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

[2] On 1 January 2021, the UK left the EU. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right

Trade Mark	TUSKERS
Goods for which the mark is registered	8, 9, 10 & 25
Filing date	26 February 2016
Date of entry in register	21 July 2016

3. On 3 February 2026, the Registry served the TM7 on the applicant. The deadline for the applicant to file a completed Form TM8 or Form TM9C was set at 7 April 2026 which was communicated by the Registry in the serving letter. The pertinent paragraphs of the letter are as follows:

> **"It is important to understand that if the deadline date is missed then, in almost all circumstances, the application will be treated as abandoned** in accordance with Rule 18(2) of the trade mark Rules 2008: "*where the applicant fails to file a Form TM8 and counter-statement within the relevant period, the application for registration, insofar as it relates to the goods and services in respect of which the opposition is directed, shall, unless the registrar otherwise directs, be treated as abandoned*."
>
> […]
>
> Failure to choose either option 1 or option 2 will, in almost all circumstances, result in your application being deemed abandoned." (original emphasis)

4. The applicant's Form TM8 was not received within the deadline of 7 April 2026.

5. On 15 April 2026, the Registry wrote to the applicant stating:

holders with an existing registered EUTM. As a result, the registered EUTM was automatically converted into a comparable UK trade mark. Comparable UK marks, created under Schedule 2A of the 1994 Act, are now recorded on the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

"As no Form TM8 and counter-statement has been filed within the time period set, Rule 18(2) applies. Rule 18(2) states:

"Where the applicant fails to file a Form TM8 or counter-statement within the relevant period, the application for registration, insofar as it relates to the goods and services in respect of which the opposition is directed, shall, unless the registrar otherwise directs, be treated as abandoned."

It is our preliminary view that the application should be treated as abandoned because no defence was filed by the deadline referred to above.

If you disagree with the preliminary view, you **must** file the Form TM8 and counter-statement **and** a witness statement setting out the reasons for the failure to meet the deadline on, or before, **29 April 2026**.

If no response is received by this date, the application will be treated as abandoned (i.e. it will be withdrawn) in respect of:

Class 25: Clothing; T-shirts; hoodies; sweatshirts; trousers; jackets; caps; hats; footwear; headgear; children's clothing; sportswear; neckwear.

The application will proceed to registration for the remaining goods and/or services."

6. On 28 April 2026, the applicant requested a hearing enclosing the Form TM8 and counterstatement and a witness statement dated 28 April 2026. The witness statement was signed by Mr Mark Cale, the Founder and CEO of the applicant in these proceedings, outlining the reasons for the delayed filing of Form TM8 by its original deadline as follows:

"[…] 7. Following the opposition, I sought to deal with the matter constructively and commercially. I did not ignore the opposition. On the contrary, I engaged with the opponent's representatives in an effort to resolve the dispute without the need for contested proceedings.

8. The parties entered into without prejudice discussions with a view to resolving the matter amicably. Those discussions included consideration of possible limitations to the specification of goods in Class 25.

[…]

10. The settlement discussions remained ongoing into April 2026. The most recent substantive correspondence of which I was aware took place on 7 April 2026, and I was awaiting a further response from the opponent's representatives.

11. During this period, my focus was on attempting to resolve the matter by agreement, including by trying to reach acceptable wording with the opponent's representatives. I now appreciate that the TM8 should nevertheless have been filed within the required procedural deadline.

12. The failure to file the TM8 sooner was an oversight. It was not intentional, and it did not arise from any disregard for the Tribunal's procedure.

13. I sincerely apologise to the Tribunal for the delay and for any inconvenience caused. […]"

7. On 22 May 2026, the Registry issued its preliminary view stating the following:

"[…] After careful consideration of the contents of the papers you have provided, it is the preliminary view of the Registrar that the reasons given are not sufficient to exercise his limited discretion and admit a late filed Form TM8 into these proceedings. Therefore, the Registrar's preliminary view is that this application is to be treated as abandoned.

If you disagree with the preliminary view you must provide full written reasons and request a hearing on, or before, **5 June 2026**. If no response is received within the time allowed, the preliminary view will automatically become final immediately after that date and the application will be confirmed as deemed abandoned. […]"

8. On 5 June 2026, the applicant requested a hearing, which was scheduled for 17 July 2026, and the details were sent to the parties in an official letter from the Tribunal on 2 July 2026. The parties filed their skeleton arguments on 15 July 2026. Both parties attended the hearing.

Skeleton Arguments

9. The applicant's skeleton argument expanded upon the narrative evidence in Mr Cale's witness statement. Regarding the exercise of the Registrar's discretion under rule 18(2) of the Trade Marks Rules 2008 and the test in *Music Choice Ltd's Trade Mark* [2006] R.P.C. 13, the applicant submitted that:

- the failure was an oversight which occurred while the applicant's attention was focused on ongoing settlement negotiations;
- the delay was limited;
- the defence and explanation were filed promptly after the preliminary view;
- the opponent had suffered no material prejudice; and
- the refusal would require a fresh application and might duplicate proceedings.

10. As to the *Music Choice* test, the opponent submitted in its skeleton argument the following:

- the deadline for filing Form TM8 was clearly communicated but was missed;
- ongoing settlement negotiations did not provide a sufficient reason for missing the deadline;
- the applicant's own evidence described the failure as an oversight;
- there was nothing to suggest that the section 5(2)(b) opposition was without merit;
- loss of the Class 25 application and filing date was the ordinary consequence of failing to comply with a strict, non-extendable deadline and did not justify exercising the discretion; and
- the late Form TM8 should therefore be refused, the application treated as abandoned in respect of Class 25 and costs awarded to the opponent.

The Hearing

11. The hearing took place before me, via telephone conference, on Friday, 17 July 2026. Mr Cale attended on behalf of the applicant and Mr Kemp represented the opponent.

12. At the hearing, I explained that the purpose of the hearing was to consider whether the late filed defence should be admitted into the proceedings. I also highlighted that the TM8 deadline is a non-extendable time limit, pursuant to the relevant case law and Trade Mark Rules 2008 ("the Rules"). However, my discretion to allow the Form TM8 to proceed to be examined is a narrow one which can only be exercised where there are

compelling reasons or extenuating circumstances. I further confirmed that I had received the skeleton arguments from the parties, and that I had read all the documents relevant to the case before me.

13. Since both parties attended the hearing, I will briefly summarise the arguments and submissions.

14. Mr Cale accepted that the deadline of 7 April 2026 had been missed and apologised for the failure to file the Form TM8 on time, which he described as an oversight. He explained that he was a litigant in person, being unfamiliar with the relevant timelines and rules, and had not understood the significance of the deadline. Mr Cale submitted that, at the material time, the parties were engaged in settlement negotiations, and, on the day of the deadline, he expected further communication from the opponent. He maintained that he had attempted to contact the opponent's representative after 7 April 2026. During the hearing, Mr Cale also stated that: "*I now believe that firmly that [sic] I was being played because they ignored everything*. *They didn't come back on the 7th."* In support of that position, he referred to the timing of the opponent's proposed wording, its failure to provide the undertaking document and the absence of a response to his subsequent communications. Further, Mr Cale relied upon *Victoria Plumbing* and *NEOM* as examples of cases where the late filing of Form TM8 had been admitted.

15. Moreover, Mr Cale submitted that the opponent would suffer no prejudice if the late Form TM8 were admitted, since its client had already indicated that it was prepared to accept wording which protected its interests in protective clothing. While acknowledging the opponent's long-standing use of the TUSKER brand, he stated that the applicant wished to protect its own intellectual property and reach a peaceful coexistence agreement between the parties. Mr Cale therefore asked for the Registrar to exercise its discretion in view of what he described as a unique set of circumstances, although he accepted that responsibility for filing the Form TM8 remained with the applicant.

16. Mr Kemp submitted that the statutory deadline had been clearly communicated to the applicant, who failed to comply, and the Form TM8 was filed 21 days late. He argued that the applicant had accepted that the failure to file on time was simply an oversight and that no exceptional or compelling circumstances had been established to justify the Registrar exercising discretion to admit the late filing. Mr Kemp contended that the current situation arose solely from the applicant's failure to meet the deadline and noted that the applicant had not pursued the filing of a Form TM9C (i.e. request for a cooling off period), despite being advised to seek independent legal advice. Mr Kemp accepted that settlement negotiations had been ongoing but submitted that those negotiations did not displace the applicant's responsibility to comply with the statutory deadline. He maintained that the email of 7 April 2026 formed part of the overall without prejudice settlement discussions, notwithstanding that it had not been marked "without prejudice". Mr Kemp further submitted that the authorities cited by the applicant were distinguishable on their facts and were not binding. He further rejected the suggestion that the opponent had been playing the applicant. Accordingly, the opponent maintained that the Registrar should refuse to accept the late-filed Form TM8 and that the application should be treated as abandoned in respect of Class 25.

17. At the hearing, I reserved my decision to give me an opportunity to reflect properly on the oral and written submissions made by both parties. In making my decision I have taken into account all of the papers on file, the parties' skeleton arguments and the arguments made before me at the hearing.

Preliminary Points

18. At the hearing, Mr Cale sought to rely upon correspondence which he maintained was "on the record". However, I indicated that the correspondence appeared to relate to negotiations between the parties for the purpose of resolving the dispute and that such material may be without prejudice even where it is not expressly marked as such. Mr Cale disputed

that position and insisted that he was entitled to rely upon the material, submitting that correspondence could be treated as "without prejudice" only where it had been expressly identified as such and that the relevant communications had appeared in a separate, open correspondence thread. I nevertheless asked Mr Cale to focus his submissions on the reasons for the failure to file the Form TM8 by the prescribed deadline.

19. On this point, I remind myself of paragraph 4.20 of the Tribunal Section of the Trade Mark Manual which states that:

> "In general, the principles of without prejudice correspondence applicable in the court will likewise be applied before the Tribunal. The public interest justification for without prejudice communications not being used as evidence is that parties should be at liberty to pursue negotiations and settlement without running a risk that documents relating to such discussions will be put forward in relation to the strengths or weaknesses of their substantive cases.
>
> […]
>
> In Tribunal proceedings, for example, evidence of the fact that negotiations have taken place (and their state of play, insofar as this may be relevant to an application for an extension of time) would be admissible.
>
> Where inadmissible documents are filed with the Tribunal, the Tribunal will return the documents and/or state that they cannot be taken into account in determining the substantive matters."

20. In *Unilever PLC v The Procter & Gamble Company* ('*Unilever*') [2000] 1 W.L.R 2436, Walker LJ quoted Lord Griffiths as stating in *Rush & Tompkins v Greater London Council* ((1989) AC 1280 at 1299):

> "'The 'without prejudice' rule is a rule governing the admissibility of evidence and is founded upon the public policy of encouraging litigants to settle their differences rather than litigate them to a finish. It is nowhere more clearly expressed than in the judgment of *Oliver LJ in Cutts v Head* (1984) Ch. 290 at 306:
>
> > 'That the rule rests, at least in part, upon public policy is clear from many authorities, and the convenient starting point of the inquiry is the nature of the underlying policy. It is that parties should be encouraged as far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything that is said in the course of such negotiations (and that includes of course, as much the failure to reply to an offer as an actual reply) may be used to their prejudice in the course of the proceedings.'"

21. Further, documents do not have to be marked "without prejudice" to be such (*Prudential Assurance Co Ltd v Prudential Insurance Co. of America* (2004) ETMR 29). It was held in *Chocoladefabriken Lindt & Sprungli AG v Nestle Co. Ltd* (1978) RPC 287 that:

> <u>"Any discussions between the parties for the purpose of resolving the dispute between them are not admissible, even if the words "without prejudice" or their equivalent are not expressly used</u>." (emphasis added)

22. The without prejudice rule can be excluded in very limited circumstances which are set out in *Unilever* and the Civil Procedure Rules. They are as follows:

    a. where the issue is whether a concluded compromise agreement was reached;

b. where the issue is whether an agreement between the parties should be set aside on grounds of misrepresentation, fraud or undue influence;

c. where a statement made might give rise to an estoppel;

d. where the exclusion of evidence would act as a cloak for perjury, blackmail or other “unambiguous impropriety”; and

e. where the statement made would explain delay or apparent acquiescence.

23. Keeping in mind the above, I consider that the applicant relied upon the ongoing negotiations as part of its explanation for failing to file Form TM8 by the prescribed deadline. The opponent does not dispute the fact that negotiations were ongoing. Further, the applicant’s witness statement provides that substantive correspondence occurred on 7 April 2026, that a further response was awaited, and that the applicant’s attention was focused on attempting to resolve the dispute. However, at the hearing, Mr Kemp highlighted that the said correspondence formed part of the overall without prejudice settlement discussions. In those circumstances, it is my view that it is not necessary for me to examine the detailed content of the parties’ settlement communications in order to understand the applicant’s position for missing the deadline. Thus, while I consider that negotiations were ongoing at the deadline and that the applicant expected further communication from the opponent, I have not taken into account the content of the parties’ offers, counteroffers or proposed terms for the purposes of my assessment.

24. In addition, I have considered the applicant’s reliance upon *Victorian Plumbing Ltd* (BL O/510/18) and *NEOM* (BL O/584/20). However, I note that decisions of other Hearing Officers are not binding upon me, and the exercise of discretion depends upon the merits and particular facts of each case. Both decisions involved additional circumstances that are not present in the case at hand. For example, in *Victorian Plumbing*, those

included two closely related proceedings between the same parties; and, in *NEOM*, they included a jointly signed suspension request and a number of related global proceedings. I therefore do not consider that either decision is materially comparable to this case, and I will say no more about them.

25. Lastly, for completeness, in his email dated 5 June 2026 requesting a hearing, Mr Cale referred to a recent family loss as a reason for the late filing of Form TM8. However, that position had not been raised in his witness statement dated 28 April 2026, nor was it relied upon in the applicant's skeleton argument or in Mr Cale's oral submissions at the hearing. Consequently, I do not regard it as forming part of the applicant's case for consideration.

Decision

26. The filing of a Form TM8 and counterstatement in opposition proceedings is governed by Rule 18 of the Rules, which provides as follows:

> "(1) The applicant shall, within the relevant period, file a Form TM8, which shall include a counter-statement.
>
> (2) Where the applicant fails to file a Form TM8 or counter-statement within the relevant period, the application for registration, insofar as it relates to the goods and services in respect of which the opposition is directed, shall, <u>**unless the registrar otherwise directs**</u>, be treated as abandoned.
>
> (3) Unless either paragraph (4), (5) or (6) applies, the relevant period shall begin on the notification date and end two months after that date". (Emphasis added)

27. The combined effect of Rules 77(1), 77(5) and Schedule 1 of the Rules means that the time limit in Rule 18, which sets the period in which the defence must be filed, is non-extensible other than in the circumstances identified in rules 77(5)(a) and (b) which provide that:

> "A time limit listed in Schedule 1 (whether it has already expired or not) may be extended under paragraph (1) if, and only if—
>
> > (a) the irregularity or prospective irregularity is attributable, wholly or in part, to a default, omission or other error by the registrar, the Office or the International Bureau; and
> >
> > (b) it appears to the registrar that the irregularity should be rectified."

28. It was not disputed that the late filing of the applicant's Form TM8 in this instance was not attributable to any irregularity, default, omission or other error on the part of, *inter alia*, the Registrar. Therefore, my consideration is restricted to the limb of the discretion contained in the words "*unless the Registrar otherwise directs*" under Rule 18(2).

29. In approaching the exercise of discretion in these circumstances, I take into account the decisions of the Appointed Person in *Kickz AG v Wicked Vision Limited* (BL O-035-11) and *Mark James Holland v Mercury Wealth Management Limited* (BL O-050-12), i.e. I have to be satisfied that there are extenuating circumstances which justify the exercise of the discretion in the applicant's favour.

30. In *Music Choice*, the Court indicated that a consideration of the following factors (underlined below) is likely to be of assistance in reaching a conclusion as to whether or not discretion should be exercised in favour of a party in default. That is the approach I intend to adopt, referring to the applicant's submissions and skeleton argument to the extent that I consider it necessary to do so.

The circumstances relating to the missing of the deadline including reasons why it was missed and the extent to which it was missed

31. The circumstances as to why the deadline was missed are summarised above. The stipulated deadline for the filing of the applicant’s Form TM8 and counterstatement was 7 April 2026. The Registry’s serving letter clearly stated the deadline and explained the consequences of non-compliance. However, the Form TM8 and counterstatement were filed by the applicant on 28 April 2026. Therefore, the deadline was missed by 21 days.

The nature of the opponent’s allegations in its statement of grounds

32. The opposition is brought under Section 5(2)(b) of the Act. There is nothing to suggest that the opposition is without merit.

The consequences of treating the applicant as defending or not defending the opposition

33. If the applicant is permitted to defend the opposition, the proceedings will continue with the parties given an opportunity to file evidence, and the matters will be determined on their merits. However, if the applicant is not allowed to defend its application, the application will be treated as abandoned in respect of the opposed Class 25 goods, and the applicant will lose its filing date of 17 October 2025 for those goods. Nevertheless, it will remain open to the applicant to re-file its application, which may, in turn, be open to opposition.

Any prejudice caused to the opponent by the delay

34. The applicant has submitted that the opponent would not be prejudiced as there was a relatively short delay in the filing of the defence.

<u>Any other relevant considerations, such as the existence of related proceedings between the parties</u>

35. There are no other relevant considerations.

Conclusions

36. In reaching my decision, I bear in mind that the deadline for filing a Form TM8 is a statutory one, with the applicant having been made fully aware of the consequences of failing to comply by way of correspondence from the Registry. I recognise that if the discretion is not exercised in the applicant's favour, the application will be treated as abandoned and the applicant will lose its filing date for its mark. I also recognise that it may well be that the applicant's refiled application may again be opposed by the opponent resulting in further opposition proceedings arising at some point in the future.

37. In *Praesidiad NV v Tescon Sicherheitssysteme Schweiz GMBH* ("*Tescon*"), BL O/240/20, Mr Geoffrey Hobbs QC (as he then was) as the Appointed Person stated at paragraph 32 that:

> "I readily accept that human error is not necessarily inconsistent with the existence of extenuating circumstances or compelling reasons for permitting invalidity proceedings to be defended in the exercise of the discretion conferred by rule 41(6) […] It is nonetheless clear that the test to be applied cannot be taken to permit or require all human errors to be treated as excusable for the purposes of rule 41(6). There must, in other words, be a fact specific evaluation for the purpose of determining whether the particular error in question should or should not be treated as excusable in the circumstances of the case at hand."

38. Although *Tescon* concerned an application for invalidity, the same assessment is relevant to the late filing of a Form TM8 and counterstatement in opposition proceedings. Moreover, while, ultimately,

the decision not to admit the Form TM8 into proceedings was upheld in *Tescon*, Mr Hobbs acknowledged that human errors can constitute extenuating circumstances or compelling reasons sufficient for the exercise of discretion, where the specific facts of the case merit it.

39. On the applicant's own evidence, the failure to file the Form TM8 by the prescribed deadline was an oversight. In my view, that explanation amounts to human error. I accept, in line with *Tescon*, that human error is not necessarily incapable of amounting to extenuating circumstances or compelling reasons. However, on the facts of this case, the oversight does not provide a compelling reason for exercising the discretion in the applicant's favour. The parties' settlement discussions were ongoing, but they did not prevent the applicant from filing either a Form TM8 or a Form TM9C within the prescribed period. The responsibility for doing so remained with the applicant.

40. Even when I bear in mind that the applicant was a litigant in person, it is considered that the filing of a Form TM8 is a relatively simple task, capable of being successfully carried out, irrespective of whether an applicant is represented. In addition, I acknowledge that the delay has not been shown to have caused the opponent significant prejudice and that the need to file a new application may have adverse consequences for the applicant, such as ongoing costs and continuing legal uncertainty. However, these are relevant factors, which are not sufficient per se to establish compelling reasons or extenuating circumstances.

41. Taking all of the above into account and having regard to the factors set out in the case law in *Kickz*, *Mercury* and *Music Choice*, I am not satisfied that the reasons why the Form TM8 and counterstatement were filed 21 days late are particularly compelling, nor do they constitute extenuating circumstances sufficient to permit the Registrar to exercise its discretion

under rule 18(2). I therefore find that the applicant was clearly "*the author of its own misfortune*".[3]

Outcome

42. The Registry's preliminary view is upheld. The late Form TM8 is not to be admitted into the proceedings. Consequently, as the opposition against the application at hand is deemed as undefended, the application will, subject to any successful appeal, **be treated as abandoned in relation to the following goods**:

> **Class 25:** Clothing; T-shirts; hoodies; sweatshirts; trousers; jackets; caps; hats; footwear; headgear; children's clothing; sportswear; neckwear

43. However, **the application will proceed to registration for the following unopposed goods and services**:

> **Class 9:** Computer, video, mobile, and handheld electronic game programs and software; video game computer programs; video game cartridges and discs; downloadable computer, video, mobile, and handheld electronic game programs and software, including programs downloadable via the internet and other communication networks; computer programs for playing games; computer and video game entertainment software; downloadable computer software for use with mobile telephones, smartphones, and mobile devices; computer and video game programs for interactive television, interactive games, and quizzes; computer and video game programs for use in connection with multiplayer interactive games played over a global communication network; interactive multimedia computer game programs; interactive video game programs; computer software for coin-operated and pay-to-play gaming and amusement apparatus; memory cards for video game machines; games cartridges for use

[3] See *Kickz*, paragraph 15.

with electronic games apparatus; programmed video games contained on cartridges; computer application software for streaming audio-visual media content via the internet; publications in electronic form or other data recorded electronically provided by means of multimedia electronic broadcast or network transmission; downloadable digital music; downloadable music files; pre-recorded discs; downloadable video recordings featuring music; computer discs, CD-ROMs, DVDs, tapes, cassettes, and any other format bearing computer and video game software; virtual reality (VR), augmented reality (AR), mixed reality (MR), and extended reality (XR) game hardware and software; downloadable computer software and mobile applications; downloadable media content, including video, computer games, music, and images provided via the internet and other communication networks; downloadable virtual goods for use in online virtual worlds, namely, computer programs featuring drinks, hydration drinks, powder drink mixes, energy drinks, cans, bottles, drinking vessels, clothing, footwear, headwear, bags, art, toys, and games; digital collectibles being digital materials, namely, digital drinks, digital hydration drinks, digital powder drink mixes, digital energy drinks, digital cans, digital bottles, digital drinking vessels, digital clothing, digital footwear, digital headwear, digital bags, digital art, digital toys, and digital games; digital tokens being digital materials, namely, digital drinks, digital hydration drinks, digital powder drink mixes, digital energy drinks, digital cans, digital bottles, digital drinking vessels, digital clothing, digital footwear, digital headwear, digital bags, digital art, digital toys, and digital games; downloadable virtual goods, namely, virtual drinks, virtual hydration drinks, virtual powder drink mixes, virtual energy drinks, virtual cans, virtual bottles, virtual drinking vessels, virtual clothing, virtual footwear, virtual headwear, virtual bags, virtual art, virtual toys, and virtual games authenticated by non-fungible tokens (NFTs); downloadable electronic publications in the fields of computer and video games, computer software, the metaverse, augmented reality, virtual reality, mixed reality, non-fungible tokens (NFTs), self-sovereign identities, and online gaming; parts and fittings for all the aforesaid goods.

Class 41: Provision of computer, video, mobile, and handheld game entertainment services; provision of video game arcade services; electronic game services and competitions provided via the internet and electronic communication networks; providing interactive single-player and multi-player computer and video games via the internet and other communication networks; organisation, arranging, and conducting of e-sports and video game competitions, tournaments, exhibitions, fan events, fan conventions, and expositions, and live entertainment events relating to video games; entertainment services, namely, live streaming and broadcasting of computer and video game play and e-sports events; providing subscription-based access to online computer and video game entertainment content; production and distribution of podcasts in the fields of computer and video games; entertainment services in the nature of commentary, reviews, and analysis in the fields of computer and video games; providing online electronic publications and newsletters in the fields of computer and video games, virtual goods, digital tokens, digital collectibles, blockchain-based digital assets, and non-fungible tokens (NFTs); entertainment services relating to virtual goods, digital tokens, digital collectibles, blockchain-based digital assets, non-fungible tokens (NFTs), virtual reality (VR) games, augmented reality (AR) games, mixed reality (MR) games, extended reality (XR) games, and interactive experiences; information, advisory and consultancy services relating to all the aforesaid services.

Costs

44. As my decision terminates the proceedings, I must consider the matter of costs. Awards of costs are set out in Tribunal Practice Notice ("TPN") 1/2023. Using the guidance set out in the TPN, I award the opponent costs on the following basis:

Official opposition fee	**£100**
Preparing a notice of opposition	**£250**
Preparing for and attending the hearing, including filing skeleton arguments	**£300**
Total	**£650**

45. I order System 3 Software Ltd to pay to Bunzl UK Limited the sum of £650. This sum is to be paid within two months of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 18th day of August 2026

Dr Stylianos Alexandridis
For the Registrar,
The Comptroller General

Annex 1 - Applicant's specification

Class 9: Computer, video, mobile, and handheld electronic game programs and software; video game computer programs; video game cartridges and discs; downloadable computer, video, mobile, and handheld electronic game programs and software, including programs downloadable via the internet and other communication networks; computer programs for playing games; computer and video game entertainment software; downloadable computer software for use with mobile telephones, smartphones, and mobile devices; computer and video game programs for interactive television, interactive games, and quizzes; computer and video game programs for use in connection with multiplayer interactive games played over a global communication network; interactive multimedia computer game programs; interactive video game programs; computer software for coin-operated and pay-to-play gaming and amusement apparatus; memory cards for video game machines; games cartridges for use with electronic games apparatus; programmed video games contained on cartridges; computer application software for streaming audio-visual media content via the internet; publications in electronic form or other data recorded electronically provided by means of multimedia electronic broadcast or network transmission; downloadable digital music; downloadable music files; pre-recorded discs; downloadable video recordings featuring music; computer discs, CD-ROMs, DVDs, tapes, cassettes, and any other format bearing computer and video game software; virtual reality (VR), augmented reality (AR), mixed reality (MR), and extended reality (XR) game hardware and software; downloadable computer software and mobile applications; downloadable media content, including video, computer games, music, and images provided via the internet and other communication networks; downloadable virtual goods for use in online virtual worlds, namely, computer programs featuring drinks, hydration drinks, powder drink mixes, energy drinks, cans, bottles, drinking vessels, clothing, footwear, headwear, bags, art, toys, and games; digital collectibles being digital materials, namely, digital drinks, digital hydration drinks, digital powder drink mixes, digital energy drinks, digital cans, digital bottles, digital drinking vessels, digital clothing, digital footwear, digital headwear, digital bags, digital art, digital toys, and digital games; digital tokens being digital materials, namely, digital drinks, digital hydration drinks, digital powder drink mixes, digital energy drinks, digital cans, digital bottles, digital drinking vessels, digital clothing, digital footwear, digital headwear, digital bags, digital art, digital toys, and digital games; downloadable virtual goods, namely, virtual drinks, virtual hydration drinks, virtual powder drink mixes, virtual energy drinks, virtual cans, virtual bottles, virtual drinking vessels, virtual clothing, virtual footwear, virtual headwear, virtual bags, virtual art, virtual toys, and virtual games authenticated by non-fungible tokens (NFTs); downloadable electronic publications in the fields of computer and video games, computer software, the metaverse, augmented reality, virtual reality, mixed reality, non-fungible tokens (NFTs), self-sovereign identities, and online gaming; parts and fittings for all the aforesaid goods.

Class 25: Clothing; T-shirts; hoodies; sweatshirts; trousers; jackets; caps; hats; footwear; headgear; children's clothing; sportswear; neckwear.

Class 41: Provision of computer, video, mobile, and handheld game entertainment services; provision of video game arcade services; electronic game services and competitions provided via the internet and electronic communication networks; providing interactive single-player and multi-player computer and video games via the internet and other communication networks; organisation, arranging, and conducting of e-sports and video game competitions, tournaments, exhibitions, fan events, fan conventions, and expositions, and live entertainment events relating to video games; entertainment services, namely, live streaming and broadcasting of computer and video game play and e-sports events; providing subscription-based access to online computer and video game entertainment content; production and distribution of podcasts in the fields of computer and video games; entertainment services in the nature of commentary, reviews, and analysis in the fields of computer and video games; providing online electronic publications and newsletters in the fields of computer and video games, virtual goods, digital tokens, digital collectibles, blockchain-based digital assets, and non-fungible tokens (NFTs); entertainment services relating to virtual goods, digital tokens, digital collectibles, blockchain-based digital assets, non-fungible tokens (NFTs), virtual reality (VR) games, augmented reality (AR) games, mixed reality (MR) games, extended reality (XR) games, and interactive experiences; information, advisory and consultancy services relating to all the aforesaid services.