

O-582-21

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3509540

BY AMY ELIZABETH SMITH

TO REGISTER:



AS A TRADE MARK IN CLASSES 3 & 4

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO. 422008 BY

SJOVIK LIMITED

BACKGROUND & PLEADINGS

1. On 8 July 2020, Amy Elizabeth Smith (“the applicant”) applied to register the trade mark shown on the cover page of this decision for the following goods:

Class 3 – “Scented wax melts”;

Class 4 - “Candles.”

2. The application was published for opposition purposes on 7 August 2020 and on 6 October 2020, CSY London filed a Form TM7A (Notice of threatened opposition) on behalf of Sjovik Limited. On 6 November 2020, the applicant filed a Form TM21B indicating that the class 3 specification should be amended to read: “Scented wax melts only, not to be confused with beauty cosmetics”. The official record shows that following discussion with the Trade Mark Examiner, on 9 November 2020, the applicant confirmed that the specification in class 3 should be amended to read: “Scented wax melts; none of the aforesaid relating to cosmetics.” The class 4 specification remained as published.

3. On 9 November 2020, the application was opposed in class 3 by Sjovik Limited (“the opponent”). Although the opposition was originally based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”), in a letter to the Tribunal dated 4 March 2021, the opponent stated:

“Please note that this Opposition now relies solely on the Section 5(2)(b) grounds for opposition based on the most relevant of the Opponent’s earlier rights, namely, the word PIXI under UK registration no 3264572 and EUTM registration no 17364134. The aforesaid earlier marks are now the **only** earlier rights being relied on, under Section 5(2)(b) **only**.”

4. The trade marks/goods now being relied upon are as follows:

(1) UK no. 3264572 for the series of two trade marks shown below which was filed on 19 October 2017 (claiming an International Convention priority date of

19 April 2017 from an earlier filing in the USA) and which was entered in the register on 19 January 2018:



Class 3 - Beauty kits comprised primarily of cosmetics; fragrances; non-medicated bath preparations; soaps.

(I note that the opponent is only relying upon the first trade mark in the series i.e. the word "**PIXI**").

(2) EUTM no. 17364134 for the trade mark **PIXI** which was filed on 19 October 2017 (claiming an International Convention priority date of 19 April 2017 from an earlier filing in the USA) and which was entered in the register on 5 March 2018:

Class 3 - Beauty kits comprised primarily of cosmetics; fragrances; non-medicated bath preparations; soaps.

5. The applicant filed a counterstatement in which she states:

"Pixie Dust Wax Melts & Candles have been established since June 2019, I hand pour scented candles and wax melts. Firstly, I'd like to mention that my logo is completely different to my opposition's logo. Mine has a cameo style badge, with grey white and black colours.

Secondly, the word "Pixie" in my logo is spelled "Pixie" (with an 'e'), my oppositions choice of wording is "PIXI", both "Pixie" and "PIXI" sound the same when spoken verbally, but my actual full registered with HMRC business name isn't just "Pixie", It's "Pixie Dust Wax Melts & Candles".

Thirdly, the classes I've used in my trade mark application are 3 and 4, as in my business name title, i make scented wax melts (Cat 3) and Scented Candles (Cat 4). I, in no way shape or form make beauty, cosmetics or skin care products like my opposition does. I simply have stated category 3 in my application to cover the scented wax melt products. I have also added a "limitation" to my application, stating that on category 3, it's scented wax melts only. I did this to show that i'm in no way trying to "copy" the opposition, and I think the public would easily tell the difference purely with our logos anyway, but i have included the limitation to prove that as a small business, I'm trying to distinguish myself from the "PIXI" cosmetics brand.

I deny the oppositions claims under section 5(2)b and 5(3) as I wasn't aware of the brand "PIXI" itself, I'd never seen their logo or brand advertised previously. I've also looked on the oppositions website and in no way found any products relating to wax melts, from this i deny that the relevant public would be confused with the 2 brands.”

6. In these proceedings, the opponent is represented by CSY London; the applicant represents herself. Both parties filed evidence. At the conclusion of the evidence rounds the parties were asked if they wished to be heard, failing which, a decision from the papers would be issued. While neither party requested a hearing, the opponent elected to file written submissions in lieu. I will bear these submissions in mind referring to them to the extent that I consider it appropriate to do so.

7. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case law of EU courts.

Evidence

8. The opponent's evidence is contained in a witness statement, dated 4 March 2021, from Joanna Larkey; it is accompanied by four exhibits. Ms Larkey is a trade mark attorney in the employ of CSY London. The applicant, Ms Smith, also filed a witness statement, dated 4 May 2021; it is accompanied by seven exhibits. I will return to this evidence at the appropriate point in my decision.

DECISION

9. The opposition is now only based upon section 5(2)(b) of the Act. This reads as follows:

“5 (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 of association with the earlier trade mark.

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.”

10. In these proceedings the opponent is now relying solely upon the trade marks shown in paragraph 4; the trade marks and goods relied upon are identical. Both qualify as earlier trade marks under the provisions of section 6 of the Act. Given the interplay between the dates on which the opponent's trade marks were entered in the register and the application date of the trade mark being opposed, the earlier trade marks now being relied upon are not subject to the proof of use provisions

contained in section 6A of the Act. As a consequence, the opponent can rely upon the goods claimed without having to demonstrate that the trade marks have been used in relation to such goods.

Case law

11. The following principles are gleaned from the decisions of the courts of the European Union 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 impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a 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 the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods

12. The comparison is as follows:

Opponent's goods	Applicant's goods being opposed
Class 3 - Beauty kits comprised primarily of cosmetics; fragrances; non-medicated bath preparations; soaps.	Class 3 - Scented wax melts; none of the aforesaid relating to cosmetics.

13. The applicant's goods in class 3 are wax-melts. Such goods are, broadly speaking, scented pieces of wax which when melted in a warmer fill the air with a scent. The purpose of Ms Larkey's statement is, inter alia, to establish by reference to Internet searches conducted in March 2021, that Tesco, Morrisons and Sainsbury's classify wax melts under the "Fragrances" or "Home Fragrances" sections of their websites. Although from after the material date in these proceedings, as the position is, in my view, unlikely to have changed to any material extent in the intervening period, I will bear this evidence in mind in reaching a conclusion.

14. In her evidence, the applicant explains that her company "has been using its trade mark since 26 June 2019", adding that "it is an online business only." She has, however, filed no evidence of any use she may have made of her trade mark. The applicant characterises the opponent's searches as being too wide and comments:

"4...I fail to understand how such a wide and generic word as "Fragrance" which covers so many different products can be used against me as a way to oppose my trade mark application."

I shall return to this point below.

15. The applicant further states:

"5. I have searched on <https://pixibeauty.co.uk/> for the following:

Candles...Fragrance Oil..., Fragrance..., Home Fragrance..., Wax Melts...

All of which came back indicating that my search "did not yield any results" (copies of searches attached), another reason why I am at a loss as to understand the nature of this opposition as if a "potential customer" searched on the internet there would not be any conflict between Pixie Wax Melts & Candles and PIXI, in summary, I do not make or sell any kind of make-up or skincare products to the public whatsoever.

I have taken the time to visit the website of PIXI and the Welcome Video which introduces clients to the business and products, from the outset there is no mention of any products that I offer, during the video I even looked to the surrounding areas to see if there were any Wax Melts/Candles in place for the video, but I failed to see any.

Our two businesses are very different PIXI is clearly a beauty products business offering “Personal Make-up” with “Fast, Flaw Fixing Products” to make you “Look Good and Feel Good” all designed to give a natural look for the “Busy Working Mothers”, however, as can be seen from Pixie Dust Wax Melts & Candles, my business is designed for relaxation, creating a calming environment, indeed in complete contrast to the products offered by PIXI...”

16. Although I am sure it will appear very odd to the applicant, the fact that her searches on the opponent’s website “did not yield any results” is not a point that assists her. That is because the earlier trade marks now being relied upon by the opponent in these proceedings are not subject to the proof of use provisions mentioned earlier. As a consequence, the opponent can rely upon all the goods claimed without having to demonstrate that it has actually used its trade mark in relation to such goods. In those circumstances, what I am required to do is compare the words as they appear in the competing specifications on a notional and fair basis.

17. I also note the applicant’s comment in relation to the word “fragrances” in the opponent’s specification. In interpreting this word I am guided by the comments of Floyd J. (as he then was) in *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), when he stated that:

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert

sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question." (my emphasis).

18. Collinsdictionary.com defines "fragrance" as, inter alia, "a pleasant or sweet smell". In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, the General Court stated:

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut fur Lernsysteme v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark".

19. Applying the guidance in *YouView TV Ltd v Total Ltd* and as the opponent's evidence shows, I see no reason why the word "fragrances" in the opponent's specification ought not to be considered to include "room fragrances" which would, of course, include the applicant's wax melts. As the inclusion of the words "none of the aforesaid relating to cosmetics" in the applicant's specification does nothing to change that conclusion, the applicant's goods are to be regarded as identical to "fragrances" in the opponent's specification on the inclusion principle outlined in *Meric*.

The average consumer and the nature of the purchasing act

20. As the case law above indicates, it is necessary for me to determine who the average consumer is for the goods. I must then determine the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The*

Partnership (Trading) Limited, U Wear Limited, J Fox Limited, [2014] EWHC 439 (Ch), Birss J. 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.”

21. In its written submissions, the opponent states:

“20. The Opposed Goods are low value, simple, self-selected consumer products. The average consumer will be a member of the general public and could be buying this type of product in a hurry, on impulse, at short notice or for someone else.

21...the degree of attention paid by the purchaser would be average-to-low.”


22. I agree the average consumer of the goods at issue is a member of the general public and that, for the most part, such goods will be self-selected from the shelves of a bricks-and-mortar retail outlet or from the equivalent pages of a website or catalogue. As such, visual considerations are likely to dominate the selection process, but not to the extent that aural considerations in the form of, for example, word-of-mouth recommendations or oral requests to sales assistants (both in person and by telephone) can be ignored. Although the goods will be low cost, as the average consumer will wish to ensure they select, at the very least, the correct fragrance, I agree with the opponent that they can be expected to pay between a low and medium degree of attention to the selection of such goods.

Comparison of trade marks

23. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“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.”

24. It would be wrong, therefore, artificially to dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions they create. The trade marks to be compared are as follows:

Opponent’s trade mark	Applicant’s trade mark
PIXI	

Overall impression

The opponent's trade mark

25. The opponent's trade mark consists of the word "PIXI" presented in block capital letters. As no part of the trade mark is highlighted or emphasised in any way, the overall impression it conveys and its distinctiveness lies in the single word of which it is composed.

The applicant's trade mark

26. The applicant's trade mark consists of a number of components. Even though the words and symbol "WAX MELTS & CANDLES" will contribute to the overall impression the trade mark conveys, as these words are, self-evidently, wholly descriptive, any contribution they make will not be a distinctive one. I note the applicant describes the device component as a "a cameo style badge, with grey white and black colours." Given its size in the context of the trade mark as a whole it will make a not-insignificant contribution to the overall impression conveyed. However, although I accept it is slightly unusual, as it is in the nature of a background upon which the other components appear, any contribution it may make to the trade mark's distinctiveness is likely to be modest. Given the size of the devices presented in white which appear on this grey background and as they are likely to be regarded by the average consumer as decorative in nature, even if they are noticed, they will have a very low relative weight in the overall impression conveyed.

27. That leaves the words "PIXIE DUST" presented in black upper case letters. I am satisfied that both words and their meanings will be very well-known to the average consumer. The word "PIXIE" qualifies the word "DUST" and creates a unit, the meaning of which I am further satisfied will be very well-known to the average consumer. Given the size and positioning of this unit in the context of the trade mark as a whole, it is this unit which will make by far the greatest contribution to the overall impression the trade mark conveys and its distinctiveness. I will bear these conclusions in mind when conducting the comparison which follows.

Visual similarity

28. I have already concluded that it is the unit created by the words “PIXIE DUST” in the applicant’s trade mark which will make by far the greatest contribution to the overall impression it conveys. The four letters of which the opponent’s trade mark is comprised form the first four letters of the first five letter word in the applicant’s trade mark. The word “DUST” in the applicant’s trade mark is, of course, alien to the opponent’s trade mark. However, whilst bearing that in mind, given my comments earlier about, in particular, the role the device component plays in the applicant’s trade mark and the descriptive nature of the words and symbol “WAX MELTS & CANDLES”, weighing the relative importance of the various similarities and differences, results in what I regard as a between low and medium degree of visual similarity between the competing trade marks.

Aural similarity

29. In her counterstatement, the applicant accepts that “both "Pixie" and "PIXI" sound the same when spoken verbally”; I agree. The opponent’s trade mark will be pronounced as a two syllable combination i.e. “PIX-SEE.” As for the applicant’s trade mark, it is well-established that when a trade mark consists of a combination of words and figurative components it is by the word components the trade mark is most likely to be referred to. Proceeding on that basis and as I am satisfied that the descriptive words are most unlikely to be articulated by the average consumer when referring to the applicant’s trade mark, it is most likely to be articulated as the three syllable combination “PIX-SEE-DUST”. Notwithstanding the differing third syllable, as the first two syllables of each trade mark will be verbalised in an identical fashion, it results in a medium degree of aural similarity between the trade marks at issue.

Conceptual similarity

30. In its submissions, the opponent states:

“53. The Opponent submits that the average consumer would perceive the word PIXIE to be an alternate spelling of “PIXI” and as such it would be

understood by the common meaning of that word i.e. a (supernatural) fairy or elf, as reflected by the dictionary definition: "(in folklore) a fairy or elf"...

55. The average consumer would understand the mark of the Application to be a reference to "pixie dust" – i.e. a magical dust associated with and emanating from pixies.

56. On that basis the Opponent submits that the marks are conceptually similar to a very high degree as they both relate very closely to the concept of pixies. Furthermore, in the Applicant's mark, the meaning of the word "dust" within the mark is very much bound up with and predicated upon the presence in the mark of the word "pixie", which also catches the eye and ear most at the beginning of the mark. Without "pixie", the word "dust" would not have the same meaning to the consumer that it has when it is prefixed by "pixie". Hence, it is the word "pixie" which dominates conceptually, since it gives the word "dust" its particular meaning within the Applicant's mark.

57. On the basis of the above analysis, the Opponent submits that overall the Earlier Marks are highly similar to the mark of the Application, since the overriding concept of a "pixie" is consistent in both marks."

31. Although some average consumers may construe "PIXI" as an invented word, it is, in my view, far more likely that many will assume it is a variant spelling of the word "PIXIE". As neither the devices present in the applicant's trade mark or the descriptive wording do anything to change the position, for the reasons the opponent submits, I agree the competing trade marks are conceptually similar to a high degree.

Distinctive character of the earlier trade mark

32. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade

mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

33. As the opponent has filed no evidence of any use it may have made of its earlier trade mark, I have only its inherent characteristics to consider. Although the word "PIXI" may be construed by some average consumers as an invented word, as I concluded earlier, it is far more likely to be seen by many average consumers as an alternative spelling of the word "PIXIE". However, even when construed on that latter basis, as it is neither descriptive of nor non-distinctive for the goods upon which the opponent relies, absent use, it enjoys an above average degree of inherent distinctive character.

Likelihood of confusion

34. In determining whether there is a likelihood of confusion, 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 vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent's trade mark as the more distinctive it is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods, the nature of the purchasing process and 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 he has retained in his mind.

35. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and goods down to the responsible undertakings being the same or related.

36. Earlier in this decision I concluded that:

- the competing goods are to be regarded as identical on the *Meric* principle;
- the average consumer is a member of the general public who, whilst not ignoring aural considerations, will select the goods by predominantly visual means whilst paying between a low and medium degree of attention during that process;
- the competing trade marks are visually similar to a between low and medium degree, aurally similar to a medium degree and conceptually, highly similar;
- the earlier trade mark relied upon possesses an above average degree of inherent distinctive character.

37. The identity in the goods, the above average degree of inherent distinctive character the earlier trade mark enjoys and the between low and medium degree of attention paid to the selection of such goods (which makes the average consumer more prone to the effects of imperfect recollection) are all points in the opponent's favour. However, having concluded that the goods at issue will be selected by primarily visual means, the differences in the competing trade marks in that regard, in particular, the presence in the applicant's trade mark of the word "DUST", is, in my view, unlikely to go unnoticed by the average consumer. In short, there is no likelihood of direct confusion.

38. That leaves indirect confusion to be considered. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

"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 he 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."

39. The concept that will be conveyed to the average consumer by the opponent's trade mark and the word "PIXIE" in the applicant's trade mark is identical and, in my view, unusual. When added to the word "PIXIE", the word "DUST" creates a unit which evokes the concept referred to by the opponent in paragraph 30 above. In those circumstances, when considered in relation to the identical low cost goods at issue, an average consumer paying a between low and medium degree of attention faced with the applicant's trade mark is, in my view, likely to conclude that it is a variant brand (based on the magical world of pixies) being used by the opponent or a related undertaking i.e. there is a likelihood of indirect confusion.

Overall conclusion

40. The opposition to the goods in class 3 has succeeded on the basis of indirect confusion and, subject to any successful appeal, the application will be refused in that class. As the goods in class 4 were not opposed they may, in due course, proceed to registration.

Costs

41. As the opponent has been successful, it is entitled to a contribution towards its costs. Awards of costs in proceedings are governed by Annex A of Tribunal Practice Notice 2 of 2016. I remind myself that the original opposition was also based upon section 5(3) of the Act (which attracted a filing fee of £200). However, as the opponent elected to abandon its ground of opposition based upon section 5(3) and as an opposition based upon section 5(2)(b) of the Act only attracts an official fee of £100, I award costs to the opponent on the following basis:

Filing the Notice of opposition and reviewing the counterstatement: £200

Official fee: £100

Preparing evidence and reviewing the applicant's evidence: £500

Written submissions: £300

Total: £1100

42. I order Amy Elizabeth Smith to pay to Sjovik Limited the sum of **£1100**. This sum is to be paid within 21 days 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 4th day of August 2021

C J BOWEN
For the Registrar