

O/928/22

TRADE MARKS ACT 1994

SUPPLEMENTARY DECISION

IN THE MATTER OF TRADE MARK APPLICATION
NO. 3345857 BY
YAN-HER LIN
TO REGISTER:

The logo for PILOTFLY features the word "PILOTFLY" in a bold, sans-serif font. The letter "O" is replaced by a play button symbol (a right-pointing triangle inside a circle).

AS A TRADE MARK IN CLASSES 9 & 35

AND

OPPOSITION THERETO
UNDER NO. 415234 BY
MARCUS OSWALD

Background

1. On 29 October 2021, a decision in the above opposition proceedings was published under reference number BL O/804/21. Whilst upholding the opposition, the decision was provisional due to the fact that the earlier mark, namely EUTM registration number 15378185, on which the opposition succeeded, was itself the subject of invalidity application at the EUIPO. The opponent in these proceedings, Marcus Oswald, was directed to notify the Tribunal when the invalidation application at the EUIPO was determined.
2. On 21 October 2022, the opponent informed the Tribunal that the invalidity proceedings at the EUIPO ended, and the EUIPO invalidation application against the EUTM earlier mark was unsuccessful (Decision No C 48 908, issued 3 August 2022). In this regard, this supplementary decision makes no changes to the contents of decision BL O/804/21 in so far as it concerns the assessment of the goods and services, the extent of the likelihood of confusion, or the reasoning of the decision.

Supplementary Decision

3. Paragraphs 61 to 62, as expressed in my decision of 29 October 2021, are to be replaced as follows:

“Outcome

61. The opposition under Section 5(2)(a) of the Act is **successful in its entirety**. Therefore, subject to appeal, the application will be refused.

Costs

62. The opponent has been successful and is entitled to a contribution towards his costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. I award costs to the

opponent as a contribution towards the cost of the proceedings on the following basis:

Official opposition fees	£100
Preparing a statement and considering the counterstatement	£300
Filing written submissions	£500
Total	£900

63. I, therefore, order Yan-Her Lin to pay Marcus Oswald the sum of £900. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.”

4. Taking account of the amendments above, my provisional decision in favour of the opponent dated 29 October 2021, together with the associated award of costs above, becomes final, subject to any appeal.
5. The appeal period for my decision to uphold the opposition will run from the date of this supplementary decision.

Dated this 25th day of October 2022

Dr Stylianos Alexandridis

For the Registrar,

The Comptroller General