

BLO/298/20

TRADE MARKS ACT 1994

**IN THE MATTER OF
INTERNATIONAL REGISTRATION NO. 1452943
DESIGNATING THE UNITED KINGDOM
IN THE NAME OF KELLY SLATER WAVE COMPANY LLC:**

THE SCIENCE OF STOKE

IN CLASSES 7, 9, 16, 21, 24, 25, 41 & 42

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 416616
BY DOSENBACH-OCHSNER AG SCHUHE UND SPORT**

BACKGROUND AND PLEADINGS

1. On 30 July 2018, Kelly Slater Wave Company LLC (“the holder”) registered the International Trade Mark **THE SCIENCE OF STOKE**, under number 1452943 (“the IR”). With effect from the same date, the holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol to the Madrid Agreement. The IR claims a priority date of 31 January 2018 from the United States Patent and Trademark Office.

2. The IR was accepted for protection in the UK and published in the Trade Marks Journal on 15 March 2019 in respect of the following goods and services:

Class 7: Wave generator, namely, machines for generating artificial waves in bodies of water; wave generating system comprised of machines for generating artificial waves in bodies of water.

Class 9: Sun glasses.

Class 16: Stickers and banners.

Class 21: Water bottles.

Class 24: Towels.


Class 25: Clothing, headwear and footwear.

Class 41: Amusement parks; entertainment services in the nature of a water park and amusement center; entertainment services in the nature of an amusement ride for surfing, body boarding, inter-tubing, kayaking, body surfing and wake boarding; entertainment in the nature of surfing, body surfing, body boarding, and swimming sporting competitions and exhibitions, organization of watersports and sport competitions; providing sports facilities; providing coaching and online coaching services in the field of surfing and other water sports; entertainment services, namely, providing information about surfing and

water sport activities, exhibitions and sporting competitions via a global computer network; providing information in the fields of surfing, water sports, fitness, exercise and nutrition via a website; educational services, namely, providing information in the field of surfing and other water sports; conducting classes, seminars and workshops in the field of surfing and other water sports.

Class 42: Platform as a service featuring computer software platforms enabling users to track the results of instruction in the field of surfing and other water sports.

3. On 14 June 2019, Dosenbach-Ochsner AG Schuhe Und Sport (“the opponent”) filed a notice of opposition. The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is directed against the goods in class 25 of the IR only.

4. The opponent relies upon its International Registration Designating the European Union number 1219298, **STOKE**  (“the earlier mark”). The earlier mark was registered on 6 August 2014 and protection was granted in the EU on 18 August 2015 in respect of the following goods:

Class 6: Metal padlocks for bicycles.

Class 9: Goggles for sports, particularly goggles for cyclists; cycling helmets.

Class 12: Bicycles; bicycle pumps.

Class 25: Clothing, footwear, headgear, particularly cycling gloves, cyclists' clothing, cycling shoes.

5. For the purposes of the opposition, the opponent relies upon the goods registered in class 25 of the earlier mark.

6. The opponent's mark is an earlier mark, in accordance with Section 6 of the Act. However, as it had not been protected for five years or more at the date of designation, it is not subject to the proof of use requirements specified within Section 6A of the Act.

7. The opponent argues that the competing trade marks are similar insofar as they share a common, dominant element in the word “STOKE”. This, the opponent submits, is what will be retained in the minds of consumers and what they will recall. The opponent also argues that the additional words in the IR, namely, “THE SCIENCE OF”, constitute a common phrase which may simply be perceived by consumers as a reference to a characteristic of its goods. Therefore, the opponent contends that the additional words are not capable of sufficiently distinguishing the competing marks. Furthermore, the opponent maintains that the contested goods in class 25 of the IR are identical to those in class 25 of the earlier mark. These factors, the opponent contends, will result in a likelihood of confusion, including a likelihood of association.

8. The holder filed a counterstatement denying the grounds of opposition. Although the holder concedes that the goods in class 25 of the IR are identical to those of the earlier mark, the holder disputes that the competing trade marks are similar to any meaningful degree. Contrary to the opponent’s argument, the holder denies that the word “STOKE” is the dominant element of the IR and, instead, argues that the distinctiveness and dominance of the IR resides in the whole. When perceived as a whole, the holder maintains that the mark is meaningless. The holder disputes that the additional words “THE SCIENCE OF” would be seen as a reference to the opponent’s goods. Moreover, the holder highlights that the earlier mark does not contain these additional words, which it argues is a “clear, obvious and crucial difference between the respective marks”. The holder also highlights that the earlier mark makes use of stylisation and contains a distinctive logo, both of which are lacking from the IR. Based on these factors, the holder denies that there is a likelihood of confusion.

9. Both parties have been professionally represented throughout these proceedings; the opponent by Reddie & Grose LLP and the holder by J A Kemp LLP. Both parties filed evidence in these proceedings. The opponent filed written submissions in lieu of an oral hearing; the holder did not, wishing only to rely upon its submissions from the evidential rounds. Both parties were offered the choice of a hearing but neither requested to be heard on this matter. Therefore, this decision is taken following a careful perusal of the papers, keeping all submissions in mind.

EVIDENCE

Opponent's evidence in chief

10. The opponent's evidence consists of a witness statement of Filippa Anne Evans, Associate at Reddie & Grose LLP and the representative for the opponent in this matter, together with a signed statement of truth and Exhibit FE1.

11. Exhibit FE1 consists of prints from various websites resulting from internet research conducted by the agent into use of the phrase "THE SCIENCE OF". It is the opponent's submission that the exhibit demonstrates that the phrase is commonly used and understood by anglophones to describe human understanding of the way things work or the way they behave.

12. The exhibit includes, inter alia:

- An overview of a BBC Radio 4 documentary entitled 'The Science of Resilience', broadcast on 31 May 2016 and 6 June 2016 [Page 1];
- An overview of a BBC Radio Sheffield programme in which Paul Hudson discusses "the science of the Ozone" with Dr Jonathan Shanklin, broadcast on 22 June 2014 [Page 29];
- An article from the New Scientist entitled 'Buddhist monk Gelong Thubten on the science of mindfulness' <https://www.newscientist.com/article/mg24332501-800-buddhist-monk-gelong-thubten-on-the-science-of-mindfulness/>, dated 2 October 2019 [Pages 33-36]; and
- An article from the General Teaching Council for Scotland entitled 'The science of reading', undated but accessed by the agent on 18 October 2019 [Pages 50-52].

Holder's evidence

13. The holder's evidence consists of a witness statement of Benjamin Richard Mooneapillay, Partner at J A Kemp LLP and the representative for the holder in these proceedings, together with a signed statement of truth and Exhibits BRM1 and BRM2.

14. Exhibit BRM1 comprises prints from various websites, compiled by a paralegal at the agent's firm, following internet research into the meaning of the word "stoke" in the English language. It is the holder's submission that the exhibit demonstrates that there are a number of meanings, both technically and colloquially, and that the word is not an invented term. None of the exhibit is dated, though all prints appear to have been taken by the agent on 2 December 2019.

15. The exhibit includes, amongst others:

- An online article by Peter Kreeft entitled 'Is Stoke a Genuine Mystical Experience?' <https://www.peterkreeft.com/topics-more/surfing-stoke.htm> [Pages 8 – 26];
- A definition from the Macmillan Dictionary for the word 'stoke' <https://www.macmillandictionary.com/dictionary/british/stoke> [Page 31];
- A definition from the Cambridge English Dictionary for the word 'stoke' <https://dictionary.cambridge.org/dictionary/english/stoke> [Pages 32-34]; and
- A definition from Dictionary.com for the word 'stoke' <https://www.dictionary.com/browse/stoke> [Pages 35-37].

16. Exhibit BRM2 consists of prints from a number of websites resulting from internet research conducted by a paralegal at the agent's firm. The holder contends that the exhibit is demonstrative of the word "Stoke" being used as a geographical indication in the United Kingdom. The holder argues that the exhibit shows that "Stoke" is one of the most common place names in the UK and, therefore, the word is most likely to be

seen by the average consumer in this regard. None of the exhibit is dated, though all prints appear to have been taken by the agent on 2 December 2019.

17. The exhibit includes, inter alia:

- A print from the Wikipedia entry for 'Stoke-on-Trent' <https://en.wikipedia.org/wiki/Stoke-on-Trent>, which states that the city name is often abbreviated to "Stoke" [Pages 40-64];
- A print from Wikipedia for the word "Stoke" <https://en.wikipedia.org/wiki/Stoke>, which states that "Stoke" is one of the most common place names in the UK and lists a number of these [Pages 65-68];
- A print of the fourth page of Google search results for the word "Stoke", which lists hits from various institutions such as Stoke City Football Club [Pages 79-80]; and
- Prints from the Stoke College website <https://www.stokecoll.ac.uk/about-us/> [Pages 91-94].

Opponent's evidence in reply

18. The opponent's evidence in reply consists of a further witness statement of Filippa Anne Evans, Associate at Reddie & Grose LLP, together with a signed statement of truth and Exhibits FE2 to FE5.

19. Exhibit FE2 is a print from a Pivotte article entitled 'What is technical Clothing? And do I need it?', dated 26 July 2018. The opponent contends that the exhibit demonstrates that the word "technical" has a precise meaning in respect of clothing. The exhibit suggests that the word "technical" in the context of clothing is used to indicate some form of functional benefit e.g. comfort and freedom of movement.

20. Exhibit FE3 is a collection of prints from the Always Riding website <https://www.alwaysriding.co.uk/cycling-clothing/mens/casual.html>; Sigma Sports website <https://www.sigmasports.com/clothing/casual-clothing>; the Trek Bikes website https://www.trekbikes.com/gb/en_GB/bike-clothing/casual-cycling-wear/c/A310/; the Evans Cycles website https://www.evanscycles.com/clothing/casual-clothing_c; and the Katusha website <https://blog.katusha-sports.com/homepage/casual-cycling-clothes>, all accessed by the agent on 17 February 2020. The opponent argues that the exhibit is demonstrative of casual clothing for cyclists being a category of goods.

21. Exhibit FE4 is a collection of prints from The Extreme Sports Company website <https://www.extremesportscompany.com/list-of-extreme-sports>; the Surf Sistas website <http://www.surfsistas.com/france-cycle-surfari/>; the Ticket To Ride website <https://www.tickettoridegroup.com/cycle>; the London Cyclist website <https://www.londoncyclist.co.uk/surf-cycling-holiday>; the Cycle & Surf website <http://cycleandsurf.co.uk/>; and the Much Better Adventures website <https://www.muchbetteradventures.com/products/8392-adventures-surf-cycle-and-tapas-in-andalucia/>, all accessed by the agent on 17 February 2020. The opponent contends that the exhibit shows that both surfing and cycling are sports or outdoor pursuits, which can be referred to as extreme sports. In addition, the opponent submits that the exhibit demonstrates that consumers who have an interest in surfing often also have an interest in cycling.

22. Exhibit FE5 is a collection of prints from various websites including, inter alia, the ION website <https://www.ion-products.com/> and the Decathlon website <https://www.decathlon.co.uk/C-10828-cycling>, all accessed by the agent on 17 February 2020. It is the opponent's argument that the exhibit shows there is an overlap between the average consumer of both cycling and surfing related clothing.

23. That concludes my summary of the evidence, to the extent that I consider necessary.

PRELIMINARY ISSUE

24. A great deal of evidence and submissions filed by the parties in relation to these proceedings concern the meaning of the word “technical” in the context of the goods at issue and whether or not the goods are of a technical nature. There is also some disagreement between the parties as to whether the specifications would comprise technical or non-technical goods. For the opponent, this appears to be an important facet of its argument as to how the phrase “THE SCIENCE OF” would be perceived by consumers. The opponent asserts that the goods of the earlier mark which are relied upon for the purposes of the opposition are technical goods which are designed to be worn by cyclists and to perform a particular function. It is the opponent’s contention that this adds weight to its argument that the IR would be understood as a non-distinctive reference to a technical feature of its goods. Furthermore, a proportion of the evidence and submissions seems dedicated to demonstrating the meaning of ‘casual’ goods in class 25. This appears to be important to the parties in respect of the merits of the proposed fall-back position presented by the holder.

25. Before proceeding any further into the merits of the opposition, I would like to point out that these arguments will not be significant in my assessment of whether there exists a likelihood of confusion. The wordings of the specifications of the competing trade marks do not suggest that the goods at issue are of a particularly technical nature. The goods listed in class 25 are general and suggest that they cover ordinary items of clothing, footwear and headwear/headgear. Although the specification of the earlier mark includes the wording ‘*particularly cycling gloves, cyclists’ clothing, cycling shoes*’, this is a list of non-exhaustive examples of goods that the mark is intended to be protected in relation to.

26. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J. (as he then was) 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."

27. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated that:

"I should add that I see no reason to give the word "cosmetics" and "toilet preparations"... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context."

28. Therefore, the specifications of the competing marks will be given their natural and ordinary meanings. In doing so, the terms will not be arbitrarily strained to include excessively technical goods which are not clear and obvious from the present wordings.

DECISION

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

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

"5(2) A trade mark shall not be registered if because -
[...]

(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.”

30. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall 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 great 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 might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods

31. The General Court ("GC") confirmed in *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T-133/05, that, even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

"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 für 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”.

32. The goods to be compared are:

Opponent's goods	Holder's goods
Class 25: Clothing, footwear, headgear, particularly cycling gloves, cyclists' clothing, cycling shoes.	Class 25: Clothing, headwear and footwear.

33. The parties are agreed that the goods in class 25 of the IR are identical to those contained within the corresponding class of the earlier mark. Therefore, I see no merit in discussing the issue any further, though, I agree that the respective goods are clearly identical, either self-evidently or under the principle outlined in *Meric*.

34. In its submissions, the holder proposes a fall back position to be relied upon in the event that a likelihood of confusion is found in respect of the class 25 specification, as designated. The holder has outlined that, in this eventuality, it would seek protection for a restricted specification of '*casual clothing, footwear and headgear, including surf wear*'. I must clarify that this would not detract from the identity of the goods. The proposed fall back specification would still be considered identical to the class 25 goods of the earlier mark under the principle outlined in *Meric*. This is because casual clothing, footwear and headgear, including those to be used in connection with surfing, would be encompassed by the broader list of class 25 goods protected by the earlier mark. Furthermore, the inclusion of '*including surf wear*' in the proposed fall back specification would not restrict the holder's goods away from those of the earlier mark, despite the opponent's specification using the wording '*particularly cycling gloves, cyclists' clothing, cycling shoes*'. Although the respective wordings give an indication of what the goods may be used in relation to, neither are limitations and merely provide non-exhaustive examples. The specification of the earlier mark covers all clothing, footwear and headgear, while the holder's fall back specification would include all casual clothing, footwear and headgear, the former incorporating the latter.

The average consumer and the nature of the purchasing act

35. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

36. 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.”

37. In its submissions and evidence, the opponent has attempted to demonstrate that consumers with an interest in surfing often also have an interest in cycling, and vice versa. Although the opponent's specification includes the wording '*particularly cycling gloves, cyclists' clothing, cycling shoes*' and the fallback specification of the holder would include the wording '*including surf wear*', I do not consider the opponent's argument relevant for the purposes of my assessment. As previously explained, the respective specifications provide non-exhaustive examples of suggested uses for the goods but, importantly, are not restricted. Both specifications, for all intents and purposes, cover general clothing, footwear and headwear. The contested goods in class 25 are available to the general public and are non-specialist, ordinary purchases consisting of items of attire. Therefore, the average consumer will be the general public at large. Although individuals who surf or cycle will form part of the general public, they will not be so significant in number to justify the existence of particular consumer

groups formed around these interests for goods which are not specifically aimed at them.

38. Due to their nature, these goods are likely to be frequent purchases for the purposes of functionally clothing one's self or as a form of self-expression. The cost of such goods may vary between cheaper items of limited quality at one end of the spectrum, to more expensive fashion pieces at the other. Nevertheless, on average they would not typically require a significant outlay. Given that the selection of these goods generally factors upon individual taste, particular style or superficial preference, the purchasing act is likely to be more casual than careful. Accordingly, it is not considered to be an exceptionally important choice for the consumer. In my view, the purchasing process for items of clothing, footwear and headwear would be overwhelmingly visual in nature; the goods are likely to be purchased after they are viewed in physical retail establishments or their online equivalents, brochures, window displays or visual advertising. However, I do not discount aural considerations such as word of mouth recommendations entirely. All in all, I find that the level of attention of the general public in respect of these goods would be average.


Comparison of trade marks

39. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The 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.”

40. Therefore, it would be wrong to artificially dissect the trade marks, though it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and hence contribute to the overall impressions created by the marks.

41. The competing trade marks are as follows:

Earlier trade mark	Holder's mark
<i>STOKE</i> 	THE SCIENCE OF STOKE

42. The opponent has submitted that the marks are similar as they coincide in the word "STOKE". The opponent has highlighted that the word element of the earlier mark is "replicated without alteration" in the IR, rendering the marks similar. Furthermore, the opponent has contended that this word is the distinctive and dominant element of the IR, while the additional words "THE SCIENCE OF" may simply be seen by consumers as a direct reference to the goods. The opponent has argued this on the basis of "THE SCIENCE OF" being a common phrase, used to describe human understanding of the way things work or the way they behave. The opponent has submitted that this reads into the goods protected by its earlier mark, being "technical goods which are designed to be worn by cyclists".

43. Conversely, the holder has denied that the word "STOKE" is the dominant element of the IR, instead arguing that the distinctiveness of the contested mark resides in the whole. When considered in its totality, the holder has submitted that the contested mark is "opaque and meaningless", with no individual dominant elements. Moreover, the holder has highlighted that the IR does not share the same stylisation, nor does it contain the figurative device which is present in the earlier mark. The holder has also emphasised that the earlier mark does not contain the words "THE SCIENCE OF", which it feels is a "clear, obvious and crucial difference between the respective marks". In contrast to the opponent's argument, the holder has denied that these words would

be seen as a reference to the goods. While the holder has accepted that the phrase may have a meaning, it has submitted that this is only possible where it is combined with a word which provides a subject matter. In respect of the word "STOKE" in both competing marks, the holder has contended that this would be most likely understood by consumers to be a reference to a geographical location. As such, the holder has argued that the distinctiveness of the earlier mark resides in the way in which it is presented, along with the device. The holder has asserted that the visual differences far outweigh the similarities, while the competing marks are only similar to a low degree. Conceptually, the holder has contended that the competing marks differ significantly.

44. The earlier mark is a composite, figurative mark comprising two elements. The mark contains the word "STOKE", presented in an italicised font. To the right of the word appears an indefinable device. The word "STOKE" is an easily understood word in the English language and is also a commonly used geographical abbreviation in the UK. Despite being a figurative mark, the word "STOKE" is not stylised to any material extent; it is considered that the word is effectively presented in a standard typeface and the minimal degree of stylisation would be overlooked by the average consumer. Therefore, the overall impression of the mark will be dominated by the word itself. Although the earlier mark also contains a device, it appears at the end of the mark. Moreover, while it may be aesthetically pleasing, I am unconvinced that consumers will regard it as anything conclusive. As such, the device will have less impact than the word and plays a lesser role in the overall impression created by the mark.

45. The contested mark is in word-only format and consists of the words "THE SCIENCE OF STOKE", with no other elements. The words "THE SCIENCE OF" constitute a known phrase in the English language. The word "STOKE" is an easily understood word in the English language, while also being a commonly used geographical abbreviation. For reasons which will become apparent, the phrase and the word "STOKE" do not combine to form a unitary phrase. While the phrase "THE SCIENCE OF" is not entirely non-distinctive, it will play a lesser role in the overall impression of the mark. This is because the phrase typically characterises the subject or noun which follows it, the former playing a somewhat subordinate role to the latter. In the context of the IR, the phrase characterises the word "STOKE". Accordingly, the

word “STOKE” has more impact, is more dominant and contributes more to the overall impression of the mark.

46. Visually, the competing marks are similar insofar as they have a common five-letter string “S-T-O-K-E” in the same order. As outlined above, this word is the dominant element of both marks, albeit with varying degrees of dominance. The earlier mark is a figurative mark, while the contested mark is in word-only format. Nevertheless, the earlier mark is presented in a standard typeface and the registration of a word-only mark covers notional use in any standard typeface. Therefore, the way in which the word in the earlier mark is presented does not create any material difference between the competing trade marks. The marks are visually different because the earlier mark contains the device element which has no counterpart in the IR. Although I have found the device to play a lesser role in the earlier mark, it would not simply be overlooked and is lacking from the visual identity of the IR. Likewise, another point of visual difference between the marks resides in the words “THE SCIENCE OF”, which are not replicated in the earlier mark. Furthermore, it is established that the consumer’s attention is usually directed towards the beginnings of marks and, as such, differences at the beginnings of marks tend to have more impact. Although the competing marks share the common element “STOKE”, this appears at the beginning of the earlier mark but at the end of the IR. In light of this, a point of significant difference between the competing marks is that their beginnings are entirely dissimilar. Bearing in mind my assessment of the overall impressions, I consider there to be a low to medium degree of visual similarity between the marks.

47. Aurally, the contested mark consists of a one-syllable word and a two-syllable word, followed by two further one-syllable words, i.e. (“THE-SCI-ENCE-OF-STOKE”). In respect of the earlier mark, the average consumer would not articulate the device element. Therefore, the earlier mark comprises a one-syllable word, i.e. (“STOKE”). Although the competing marks share the identical syllable (“STOKE”), this syllable appears in different parts of the respective marks and the IR contains four other syllables which are not present in the earlier mark. Moreover, the beginnings of the competing trade marks are phonetically very different. Taking into account the overall impressions, I consider that the marks are aurally similar to a low to medium degree.

48. Conceptually, the word “STOKE” in the earlier mark will be generally understood by some consumers as meaning the action of adding fuel to something (such as a fire or furnace) and, in a figurative sense, encouraging or inciting a strong emotion or tendency.¹ As evidenced by the holder, the word “STOKE” is also often used as a geographical abbreviation in the UK, most commonly to refer to the city of Stoke-on-Trent, Staffordshire. Given that it is a renowned geographical location in the UK, I am of the opinion that some consumers will understand the word in the mark as a reference to this city. The holder has contended that the word “STOKE” also has significance in relation to surfing and has provided supporting evidence. While I appreciate that the word may have significance in respect of surfing, the average consumer of clothing, headwear and footwear would be the general public at large. I accept that those who are familiar with surfing terminology and culture may perceive the word in this manner. Nevertheless, those individuals are likely to comprise only a small proportion of the general public and, for goods which are not exclusively aimed at those who surf, they would not be significant enough in number to establish that the average consumer would perceive the word in this manner. I consider it more reasonable to find that the word would be understood either as meaning the action of adding fuel to something (whether that be physically or figuratively) or as a reference to the city of Stoke-on-Trent. The device in the earlier mark does not unambiguously represent anything, certainly not anything easily recognisable by the average consumer. Accordingly, the device will not carry any conceptual message, meaning that the entire conceptual identity of the earlier mark is derived from the word “STOKE”. Regarding the IR, the word “STOKE” will be understood in keeping with the meaning outlined in respect of the earlier mark. The words “THE SCIENCE OF” will be widely recognised by consumers as a phrase meaning a systematically organised body of knowledge on a particular subject.² I do not agree with the opponent’s assertion that the phrase would be perceived by consumers as a reference to, or a description of, a characteristic of the goods. The goods at issue in these proceedings are not of a technical nature but are, instead, general items of clothing, headwear and footwear. Therefore, although the opponent has filed evidence to demonstrate the existence of technical clothing, I have seen no evidence to suggest that the general public would

¹ <https://www.lexico.com/definition/stoke>

² <https://www.lexico.com/definition/science>

understand the phrase to refer to a technical quality of the goods. Moreover, for the opponent's argument to have a rational basis, the mark itself would need to contextualise the goods (in the manner that 'the science of technical clothing', for example, would). Although the phrase "THE SCIENCE OF" is combined with the word "STOKE", the conceptual meaning of the mark as a whole is imprecise. In totality, the IR does not have any clear and obvious meaning. For example, consumers who understand the word "STOKE" to mean the action of adding fuel to something, the mark as a whole will be grammatically incorrect; the phrase appears to naturally require a noun or field of study, which the verb "STOKE" is not. Indeed, this is demonstrated by the opponent's own evidence; the opponent has provided examples of use of the phrase, all of which include a particular subject in conjunction with it. Theoretically the mark as a whole could be understood as referring to a body of knowledge relating to adding fuel to things such as fires and furnaces. This notwithstanding, "STOKE" is not a particular subject and, as such, I do not consider it reasonable to find that consumers would understand the totality of the mark in this manner. Alternatively, where consumers understand the word "STOKE" to be a reference to the city in the UK, the meaning of the totality of the mark, again, becomes imprecise. Hypothetically in this eventuality, the mark could be understood as a body of knowledge about the city of Stoke-on-Trent. This message is not clear and obvious as there cannot logically be a science of a particular place. Consequently, I do not consider it reasonable to conclude that consumers would understand the mark in this manner either. Although the contested mark as a whole does not have a clear conceptual message, the word "STOKE" (as a commonly known word, or geographical reference) does. As such, the word "STOKE" provides a conceptual hook which will be retained in the mind of the consumer. I accept that the earlier mark does not contain the phrase "THE SCIENCE OF", resulting in the IR possessing a conceptual aspect not replicated in the earlier mark. Nevertheless, in the particular formation of the mark the phrase does not have a clear and unambiguous meaning, which would lead consumers to be drawn to the word "STOKE". On this basis, and in consideration of my assessment of the overall impressions, I consider that the marks are conceptually similar to a low to medium degree.

Distinctive character of the earlier mark

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

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

50. In *Kurt Geiger v A-List Corporate Limited*, BL O/075/13, Mr Iain Purvis Q.C. as the Appointed Person pointed out that the level of ‘distinctive character’ is only likely to increase the likelihood of confusion to the extent that it resides in the element(s) of the marks that are identical or similar. He said:

“38. The Hearing Officer cited *Sabel v Puma* at paragraph 50 of her decision for the proposition that ‘the more distinctive it is, either by inherent nature or by use, the greater the likelihood of confusion’. This is indeed what was said in

Sabel. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.”

51. In other words, simply considering the level of distinctive character possessed by the earlier mark is not enough. It is important to ask ‘in what does the distinctive character of the earlier mark lie?’ Only after that has been done can a proper assessment of the likelihood of confusion be carried out.

52. I have no explicit submissions from the opponent regarding the overall distinctiveness of the earlier mark or the level of distinctive character it possesses. However, the opponent has repeatedly submitted that the word “STOKE” in the mark is distinctive and has denied that the word is low in distinctive character. To the contrary, the holder has contended that, given that the word “STOKE” is likely to be perceived by consumers as a reference to a geographical location, it is low in distinctive character. It follows, the holder has submitted, that the distinctiveness of the earlier mark resides in the way in which it is presented as well as the figurative device element.

53. The registration process for the earlier mark was not completed more than five years before the date of designation of the IR and, as such, the opponent has not been required to provide proof of use. The opponent has not filed any evidence in this matter which would demonstrate that the earlier mark enjoys an enhanced level of distinctive character. Consequently, I have only the inherent position to consider.

54. Registered trade marks possess varying degrees of inherent distinctive character. These range from the very low, such as those which are suggestive or allusive of the goods or services, to those with high inherent distinctive character, such as invented

words. Dictionary words which do not allude to the goods or services will be somewhere in the middle.

55. The earlier mark is figurative and consists of the word “STOKE”, presented in a standard – albeit italicised – typeface, along with an indefinable device. The word “STOKE” is an ordinary dictionary word which is easily understood in the English language. As explained previously, the word “STOKE” will be understood by some consumers to mean the action of adding fuel to something (such as a fire or furnace) and, in a figurative sense, encouraging or inciting a strong emotion or tendency. The word in this sense has no allusive or descriptive qualities. Furthermore, as previously outlined, the word “STOKE” is used as a geographical abbreviation in the UK, most commonly and notably in respect of the city of Stoke-on-Trent. Therefore, the word will be understood by some consumers as a geographical reference. However, I accept that the city has no current reputation or association with the clothing industry and there is nothing to suggest such an association may be established in the future (see *Windsurfing Chiemsee*, paragraphs 31 – 36). For this reason, I do not accept the holder’s argument that the word is low in distinctiveness and that the distinctive character of the mark resides in the presentation of the mark and device. The device, although aesthetically pleasing and rather unusual, is not particularly memorable. Therefore, to my mind, the device element serves to bestow the mark with a fraction more distinctive character, though not to any material degree. Moreover, given that the word “STOKE” is presented in an unremarkable font, the distinctiveness of the mark is not enhanced to any material degree by stylisation. The distinctive character of the mark largely rests with the word “STOKE”. In light of the above, I find that the earlier mark possesses a medium degree of inherent distinctive character.

Likelihood of confusion

56. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier trade mark,

the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

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

58. In *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02, the GC noted that the beginnings of word tend to have more visual and aural impact than the ends. The court stated:

“81. It is clear that visually the similarities between the word marks MUNDICOLOR and the mark applied for, MUNDICOR, are very pronounced. As was pointed out by the Board of Appeal, the only visual difference between the signs is in the additional letters ‘lo’ which characterise the earlier marks and which are, however, preceded in those marks by six letters placed in the same position as in the mark MUNDICOR and followed by the letter ‘r’, which is also the final letter of the mark applied for. Given that, as the Opposition Division and the Board of Appeal rightly held, the consumer normally attaches more importance to the first part of words, the presence of the same root ‘mundico’ in the opposing signs gives rise to a strong visual similarity, which is, moreover, reinforced by the presence of the letter ‘r’ at the end of the two signs. Given those similarities, the applicant’s argument based on the difference in length of the opposing signs is insufficient to dispel the existence of a strong visual similarity.

82. As regards aural characteristics, it should be noted first that all eight letters of the mark MUNDICOR are included in the MUNDICOLOR marks.

83. Second, the first two syllables of the opposing signs forming the prefix ‘mundi’ are the same. In that respect, it should again be emphasised that the attention of the consumer is usually directed to the beginning of the word. Those features make the sound very similar.”

59. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU’s judgment in *Bimbo*, Case C-591/12P, on the court’s earlier judgment in *Medion v Thomson*. The judge said:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

60. In *Quelle AG v OHIM*, Case T-88/05, the GC found that visual similarity (and difference) is most important in the case of case of goods that are self selected or where the consumer sees the mark when purchasing the goods. The Court stated that:

“68..... If the goods covered by the marks in question are usually sold in self-service stores where consumers choose the product themselves and must therefore rely primarily on the image of the trade mark applied to the product, the visual similarity between the signs will as a general rule be more important. If on the other hand the product covered is primarily sold orally, greater weight will usually be attributed to any phonetic similarity between the signs (*NLSPORT*, *NLJEANS*, *NLACTIVE* and *NLCollection*, paragraph 53 supra, paragraph 49).

69. Likewise, the degree of phonetic similarity between two marks is of less importance in the case of goods which are marketed in such a way that, when making a purchase, the relevant public usually perceives visually the mark designating those goods (*BASS*, paragraph 56 supra, paragraph 55, and Case T-301/03 *Canali Ireland v OHIM – Canal Jean (CANAL JEAN CO. NEW YORK)* [2005] ECR II-2479, paragraph 55). That is the case with respect to the goods at issue here. Although the applicant states that it is a mail order company, it does not submit that its goods are sold outside normal distribution channels for clothing and shoes (shops) or without a visual assessment of them by the relevant consumer. Moreover, while oral communication in respect of the product and the trade mark is not excluded, the choice of an item of clothing or a pair of shoes is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly, the visual aspect plays a greater role in the global assessment of the likelihood

of confusion (*NLSPORT, NLJEANS, NLACTIVE and NLCollection*, paragraph 53 supra, paragraph 50). The same is true of catalogue selling, which involves as much as does shop selling a visual assessment of the item purchased by the consumer, whether clothing or shoes, and does not generally allow him to obtain the help of a sales assistant. Where a sales discussion by telephone is possible, it takes place usually only after the consumer has consulted the catalogue and seen the goods. The fact that those products may, in some circumstances, be the subject of discussion between consumers is therefore irrelevant, since, at the time of purchase, the goods in question and, therefore, the marks which are affixed to them are visually perceived by consumers.”

61. 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.

Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite

distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

62. Earlier in this decision I concluded that:

- The contested goods in class 25 of the IR are identical to those in class 25 of the earlier mark;
- The average consumer of the goods at issue are likely to be members of the general public at large, whom would demonstrate an average level of attention during the purchasing act;
- The purchasing process for the contested goods would be predominantly visual in nature, though I have not discounted aural considerations entirely;
- The overall impression of the earlier mark would be dominated by the word “STOKE”, while the device element would play a lesser role and the minimal degree of stylisation would likely be overlooked;
- The overall impression of the IR would be dominated by the word “STOKE”, while the phrase “THE SCIENCE OF” would play a reduced role;
- The competing trade marks are visually, aurally and conceptually similar to a low to medium degree;

- The earlier mark possesses a medium level of inherent distinctive character.

63. Although the competing marks share the common word “STOKE”, there are differences between the marks which, to my mind, would not be overlooked by the average consumer during the purchasing process. I accept that the word “STOKE”, being the sole verbal element of the earlier mark, is replicated without alteration within the IR. Moreover, I appreciate that this word dominates the competing trade marks, albeit to different degrees. Nevertheless, the IR also contains the phrase “THE SCIENCE OF”. The phrase has no counterpart in the earlier mark and, although I have found it to play a lesser role, it does provide a contribution to the overall impression of the contested mark. The phrase, contrary to the opponent’s argument, would not be perceived by consumers as a reference to or description of the goods and, accordingly, cannot be discounted from the comparison entirely. In my view, consumers would still notice the words upon a visual inspection of the mark, which is of heightened importance given the visual purchasing process of clothing. Moreover, it is established that the attention of the consumer is usually directed towards the beginnings of trade marks and therefore, differences therein are likely to be more noticeable. With this in mind, I remind myself that the beginnings of the competing trade marks are very different. It is considered that the various differences between the competing trade marks previously identified will sufficiently enable the average consumer to avoid mistaking one trade mark for the other. Therefore, even when factoring in the imperfect recollection principle, it follows that there will be no direct confusion.

64. Nevertheless, I have found the respective goods of the competing trade marks to be identical and the attention level of the average consumer to be no more than average. As explained above, I feel that the average consumer will recognise that there is a difference between the marks in the words “THE SCIENCE OF”. However, consumers will also recognise the common element “STOKE”, which is moderately distinctive; the word dominates the overall impressions of both competing trade marks. Whether consciously or unconsciously, this will lead the average consumer through the mental process described in case law by Mr Purvis, namely, that there is a difference between the marks, but there is also something in common. Although the

phrase “THE SCIENCE OF” is not entirely non-distinctive, it does not have a clear meaning in the context of the contested mark as a whole. Accordingly, the meaning of the mark largely rests with the word “STOKE”. Consumers will be drawn to this word, which provides the conceptual hook of the mark. Taking account of the common element in the context of the contested mark, consumers will conclude that it is another brand of the opponent’s earlier mark. Consumers are frequently exposed to inventive brand extensions employed by clothing companies in order to market their goods, and are accustomed to them. It has been recognised by the GC in Case T-400/06, *Zero Industry Srl, v (OHIM)*, (paragraph 81) that “it is common in the clothing sector for the same mark to be configured in various ways according to the type of product which it designates, and second, it is also common for a single clothing manufacturer to use sub-brands (signs that derive from a principal mark and which share with it a common dominant element) in order to distinguish its various lines from one another”. Given that the competing trade marks have identical goods, and factoring in the interdependency principle, the potential for consumers to perceive the contested mark as an inventive brand extension of the earlier mark is greatly magnified. I do not accept the opponent’s assertion that consumers will perceive the phrase “THE SCIENCE OF” to be a reference to the scientific foundations of the its goods. However, to my mind, the differences between the marks are conducive to a brand extension and I am satisfied that the average consumer would assume a commercial association between the parties, or sponsorship on the part of the opponent, due to the shared dominant element “STOKE”. Consequently, I consider there to be a likelihood of indirect confusion.

CONCLUSION

65. The partial opposition under Section 5(2)(b) of the Act has succeeded. Subject to any successful appeal, the IR will be refused in respect of the designated goods in class 25.

66. The IR will become protected in the UK in relation to the following goods and services which were not opposed:

Class 7: Wave generator, namely, machines for generating artificial waves in bodies of water; wave generating system comprised of machines for generating artificial waves in bodies of water.

Class 9: Sun glasses.

Class 16: Stickers and banners.

Class 21: Water bottles.

Class 24: Towels.

Class 41: Amusement parks; entertainment services in the nature of a water park and amusement center; entertainment services in the nature of an amusement ride for surfing, body boarding, inter-tubing, kayaking, body surfing and wake boarding; entertainment in the nature of surfing, body surfing, body boarding, and swimming sporting competitions and exhibitions, organization of watersports and sport competitions; providing sports facilities; providing coaching and online coaching services in the field of surfing and other water sports; entertainment services, namely, providing information about surfing and water sport activities, exhibitions and sporting competitions via a global computer network; providing information in the fields of surfing, water sports, fitness, exercise and nutrition via a website; educational services, namely, providing information in the field of surfing and other water sports; conducting classes, seminars and workshops in the field of surfing and other water sports.

Class 42: Platform as a service featuring computer software platforms enabling users to track the results of instruction in the field of surfing and other water sports.

COSTS

67. The opponent has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. This decision has been taken from the papers without an oral hearing. The opponent filed evidence in these proceedings as well as written submissions in lieu of a hearing. In the circumstances I award the opponent the sum of **£1,000** as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a statement and considering the holder's statement	£200
Preparing evidence and commenting on the holder's evidence	£500
Preparing written submissions	£300
Total	£1,000

68. I therefore order Kelly Slater Wave Company LLC to pay Dosenbach-Ochsner AG Schuhe Und Sport the sum of **£1,000**. The above sum should be paid within two months of the expiry of the appeal period or, if there is an unsuccessful appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 29th day of May 2020

James Hopkins
For the Registrar,
The Comptroller General