

O/0449/23

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 3721817
BY RORY MCKELLAR**

TO REGISTER THE TRADE MARK:

OCEAN  REPUBLIC

IN CLASS 25

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 431741
BY OTTO (GMBH & CO KG)**

Background and pleadings

1. On 16 November 2021, **Rory Mckellar** (“the applicant”) applied to register the trade mark displayed on the front cover of this decision in the UK, under number 3721817 (“the contested mark”). The contested mark was published in the Trade Marks Journal for opposition purposes on 10 December 2021. Registration is sought for the following goods:

Class 18: Bags, Wallets (pocket), Wallets, Beach bags, Card wallets, luggage, back packs.

Class 25: Surf Wear, t-shirts, jumpers, trousers, trucker caps, shoes, sandals, tops, hoodies, jackets, board shorts, changing robes.

Class 28: Surfboard Bags, Bags made out of sail cloth and spinnaker material for sports equipment.

2. On 10 March 2022, **Otto (GmbH & Co KG)** (“the opponent”) filed a notice of opposition. The partial opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is directed against the class 25 goods of the application only.

3. The opponent relies upon its International Registration Designating the UK number



¹ Protection in the UK was granted on 4 November 2014 in respect of goods and services in classes 18, 25 and 35. For the purposes of the opposition, the opponent relies upon the following goods:

Class 25: Clothing, footwear, headgear.

¹ Priority is claimed from German Trademark No. 30 2013 055 088

4. Given the respective filing dates, the opponent's mark is an earlier mark, in accordance with section 6 of the Act. As it had been registered for more than five years at the filing date of the application, it is subject to the proof of use requirements specified within section 6A of the Act. However, the applicant did not request that the opponent prove genuine use. Consequently, the opponent may rely upon all of the goods identified without having to demonstrate genuine use.

5. In its notice of opposition, the opponent contends that the competing trade marks are highly similar and that the respective goods are identical, giving rise to a likelihood of confusion.

6. The applicant filed a counterstatement denying the ground of opposition. It claims that the competing marks are dissimilar, and on this basis, the applicant denies that there is a likelihood of confusion.

7. The opponent is professionally represented by AA Thornton IP LLP, whereas the applicant represents itself. Neither party chose to file evidence. Both parties were given the option of an oral hearing, though neither asked to be heard. Neither did the parties file written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers before me.

8. 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 upon in these proceedings are derived from an EU Directive and, therefore, this decision continues to refer to the trade mark case law of the EU courts.

Decision

Section 5(2)(b)

9. Sections 5(2)(b) and 5A of the Act read 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”.

“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.”

Case law

10. I am guided by the following principles which 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

11. In *Gérard Meric v Office for Harmonisation in the Internal Market ('Merici')*,² the General Court stated that:

“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”.

12. The goods to be compared are those goods in class 25 outlined in paragraphs 1 and 3 of this decision.

13. In my view the applicant's goods are types of clothing, headwear or footwear. As such, they are all encompassed within the opponent's class 25 terms “clothing, footwear, headgear”. Consequently, I find the goods are *Merici* identical.

The average consumer and the nature of the purchasing act

14. 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: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

² Case T-133/05

15. 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.”

16. I find that the average consumer of the goods at issue is likely to be a member of the general public. The cost of the purchase is likely to vary, depending on the item of clothing/footwear/headgear, but, overall, they will be relatively inexpensive. On average, consumers are likely to purchase these goods rather frequently. I find that the purchasing process is likely to be fairly casual, however, consideration will be given to the materials used, the fit, the aesthetic appearance and the durability of the goods. Taking the above factors into account, I find that the average consumer will demonstrate an average level of attention in respect of these goods. The goods are likely to be obtained by self-selection from the shelves of a retail outlet, online or through a catalogue equivalent. Overall, I am of the view that visual considerations would dominate the purchasing process.³ However, I do not discount aural considerations entirely as it is possible that the purchasing of these kinds of goods would involve discussions with sales assistants.

Distinctive character of the earlier mark

17. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by

³ *New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03, paragraph 50

reference to the way it is perceived by the relevant public. 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).

23. 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).”

20. Registered trade marks possess varying degrees of inherent distinctive character, ranging from very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. Dictionary words which do not allude to the goods will be somewhere in between. The degree of distinctiveness is an important factor as it directly relates to whether there is a likelihood of confusion; the more distinctive the earlier mark, the greater the likelihood of confusion.

21. Further, although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent has not filed any evidence of use. Consequently, I have only the inherent position to consider.

22. The earlier mark is a figurative mark and comprises the word, “OCEAN” with what appears to be the silhouette of an ocean wave underneath. The mark is framed by a square and is presented in black and white. The word “OCEAN” will be readily understood as meaning a large expanse of sea. In my view, the average consumer may perceive the earlier mark as mildly allusive of the type of clothing products offered under the earlier mark, e.g. beachwear. Overall, I consider that the earlier mark possesses a roughly medium degree of inherent distinctive character.

Comparison of the marks



23. It is clear from *Sabel BV v. Puma AG*⁴ 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 CJEU stated in *Bimbo SA v OHIM*, Case C-591/12P, that:

“34. [...] 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 therefore be wrong to artificially 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.

25. The respective trade marks are shown below:

⁴ Case C-251/95, paragraph 23

Earlier mark	Contested mark
	

Overall impressions

26. The earlier mark is a figurative mark that comprises the word “OCEAN” in standardised font, with the silhouette of a wave below. Both elements are framed by a black square. Due to the size of the figurative element, the overall impression lies in the word “OCEAN” and the silhouette of the wave in roughly equal measure.

27. As for the contested mark, which is also a figurative mark, it contains the words “OCEAN REPUBLIC” in slightly stylised font. In the middle of these words is a circular device element, at the centre of the circular device is a wave with an arrow at its end. The device element is also depicted in black and white. In my view, the overall impression lies predominantly in the word elements, with the device element in the middle playing a lesser contribution.

Visual comparison

28. The competing marks are similar as they are both figurative marks that contain the word “OCEAN” at the beginning, a position which is generally considered to have more of an impact on UK consumers.⁵ However, the respective marks differ in length as the contested mark includes the additional word “REPUBLIC”, which is not replicated in the earlier mark. Moreover, the marks both encompass a figurative element of a wave, which both appear in black and white. However, the wave devices

⁵ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

appear in different locations within the respective marks; in the earlier mark the wave is found at the bottom of the square frame, whilst in the contested mark the wave is found enclosed in a circle in the center of the mark between the word elements. The depiction of the wave devices in the contested marks differ, they face different directions and the wave in the contested mark includes an arrow which is not replicated in the earlier mark. The font also differs; in the earlier mark it is in standard typeface, whereas in the contested mark it appears in a more stylised font. Furthermore, the marks are presented in different overall shapes. The earlier mark is encompassed within a square, unlike the contested mark. Taking into account the overall impressions, I find that the competing marks are visually similar to between a low and medium degree.

Aural comparison

29. In my view, consumers will not attempt to articulate the device elements in each of the marks. As such, the earlier mark comprises two syllables, i.e. “O-SHEN”, whilst the contested mark consists of five syllables, i.e. “O-SHEN-RE-PUB-LIC”. Therefore, the competing marks share the first two identical syllables, but clearly differ due to the additional word “REPUBLIC” in the contested mark. Consequently, I find that there is a medium degree of aural similarity between the marks.

Conceptual comparison

30. The opponent claims “The Earlier Mark and Contested Sign are conceptually identical as they both invoke images of a large body of water, namely, an ocean, in the minds of the consumer.”⁶ Conversely, the applicant states, “OCEAN will invoke images of the sea/ocean/waves but in contrast OCEAN REPUBLIC will invoke images of a democratic state and the people that organize it”.⁷

31. In my view, the word, “OCEAN”, which appears in both marks, will be understood as having the same meaning, i.e. referring to a large area of sea water, whilst the additional word, “REPUBLIC”, found in the contested mark will be recognised in

⁶ Opponent’s Statement of Grounds, paragraph 8.

⁷ Applicant’s Form TM8, sheet 1, point 8.

accordance with its dictionary definition, “a country where power is held by the people or the representatives that they elect”.⁸ I have considered if the contested mark holds any additional meaning when the word elements are viewed in combination and I have concluded that it does not. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer.⁹ A republic relates to countries or land on which people live, not to the ocean. A republic of the ocean is not logical and, as such, this message will not be immediately apparent to the average consumer. When considering the mark and the goods at issue, the word “OCEAN” in the competing marks may be understood as mildly alluding to the type and intended purpose of the clothing goods available under the mark, e.g. clothing for the beach, whilst the word “REPUBLIC” in the contested mark has no connection to the goods at issue. The respective wave elements within the marks simply reinforce the concept of the ocean. I accept there is a conceptual overlap in the meaning of the word “OCEAN”, however, the additional meaning associated with the word “REPUBLIC” in the contested mark is not present in the earlier mark. Consequently, I find that the marks are conceptually similar to a medium degree.

Likelihood of confusion

32. Whether there is a likelihood of confusion must be assessed globally, taking into account a number of factors. One such factor 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. It is also necessary for me to keep in mind the distinctive character of the opponent’s trade mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be aware of 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.

33. 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

⁸ <https://www.collinsdictionary.com/dictionary/english/republic>

⁹ *Ruiz Picasso v OHIM* [2006] E.T.M.R 29.

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.

34. I have found that the respective goods are identical, and that the average consumer of the goods will be the general public, who will pay an average level of attention. I have found that the purchasing process will be largely visual, however, I have not discounted aural considerations. The word “OCEAN” and the wave silhouette device co-dominate the overall impression of the earlier mark in roughly equal measure, whereas the overall impression of the contested mark lies predominately in the words “OCEAN REPUBLIC” with the figurative element playing a lesser role. I have found that the earlier mark and the contested mark are visually similar to between a low and medium degree, and aurally and conceptually similar to a medium degree. I have also found that the earlier mark possesses a roughly medium level of inherent distinctive character overall.

35. I acknowledge that both marks contain the identical word “OCEAN” at their beginnings, a position where the attention of consumers is usually directed. However, the marks differ in length as the contested mark contains the additional word “REPUBLIC”. Both marks are figurative and contain the image of waves, although depicted in different styles and in different positions within the respective marks. Furthermore, the font differs, with standard typeface used within the earlier mark, and stylised striped font in the contested mark. The marks are both presented in black and white, but the overall shape of the marks differ, the earlier mark is framed in a square unlike the contested mark. In my view, there are numerous visual differences between the marks that, in combination, will not be overlooked by consumers paying an average degree of attention. These are of heightened importance given that I have found the purchasing process to be predominantly visual in nature.¹⁰ Aurally, the number of syllables differ in the earlier mark compared to the contested mark and, although the first two syllables are identical, the difference generated by the additional syllables within the contested mark creates enough variance for the consumer to aurally distinguish between the marks. Although the marks share a level of conceptual

¹⁰ *Quelle AG v OHIM*, Case T-88/05

overlap in the word “OCEAN” and the respective figurative wave elements, the additional word in the contested mark, i.e. “REPUBLIC”, creates a conceptual difference. It is my view that, despite the similarity created by the commonality of the word “OCEAN”, and figurative wave elements, it is unlikely that the competing marks will be mistaken or misremembered for one another. Rather, the aforementioned differences are likely to be sufficient to enable consumers to differentiate between them. Therefore, in my judgement, taking all the above factors into account, the differences between the competing trade marks are likely to enable consumers, paying an average level of attention, to avoid mistaking the marks for one another, even when factoring in the principles of imperfect recollection and interdependency. As a result, I find that there is no likelihood of direct confusion, even in relation to goods that are identical.

36. 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 K.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.

17. 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).”

37. These examples are not exhaustive but provide helpful focus.

38. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J (as he then was) considered the impact of the CJEU’s judgment in *Bimbo*, 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.”

39. I bear in mind that a finding of indirect confusion should not be made merely because the two marks share a common element. In this connection, it is not sufficient that a mark merely calls to mind another mark: this is mere association not indirect confusion.¹¹ Furthermore, in *Liverpool Gin*¹², Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (Case BL O/219/16), where he said at [16] that “a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion”. Arnold LJ agreed, pointing out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

¹¹ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

¹² *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207

40. As discussed above, consumers will recognise the common word, “OCEAN” and the similarity in the figurative wave element. I am conscious not to artificially dissect the competing marks and I acknowledge that consumers usually perceive trade marks as wholes. However, the word “OCEAN” co-dominates the overall impressions of the competing marks. Further, it plays an independent distinctive role within the contested mark, i.e. it has a distinctive significance which is independent from the other elements within the mark, when viewed as a whole. In my view, it does not combine with the word “REPUBLIC” in any way and the contested mark is likely to be perceived by the average consumer as consisting of two separate and seemingly unconnected elements. These elements are visually highly similar, with the only difference being in the stylisation present in the contested mark, and aurally and conceptually identical. It is important to note, that although I have found the common word to be mildly allusive of the goods, it is sufficiently distinctive for confusion to occur. Furthermore, the differences between the competing marks, such as the figurative and decorative elements and their positioning, appear consistent with a co-branding or collaborative exercise between the parties, i.e. “OCEAN” as one brand and “REPUBLIC” as another. This perception is aided by the position of the figurative element in the contested mark, which appears to divide the word elements. Taking all of the above into account, I am satisfied that the average consumer, paying a medium level of attention during the purchasing process, would assume a commercial association between the parties, or sponsorship on the part of the applicant, due to the identical word “OCEAN”, especially as the goods are identical. Consequently, I consider there to be a likelihood of indirect confusion.

Conclusion

41. The opposition has succeeded under section 5(2)(b) of the Act. Subject to any appeal, the application will be refused.

Costs

42. The opposition has been successful, and the opponent is, therefore, entitled to a contribution towards its costs based upon the scale published in Annex A of Tribunal

Practice Notice 2 of 2016. Applying this guidance, I award the opponent the sum of **£300**, which is calculated as follows:

Official fee:	£100
Preparing the notice of opposition and considering the applicant's counterstatement:	£200
Total:	£300

48. Accordingly, I hereby order **Rory Mckellar** to pay **Otto (GmbH & Co KG)** the sum of **£300**. This sum is to be paid within twenty-one days of the expiry of the appeal period, or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 12th day of May 2023

Sarah Wallace
For the Registrar