

O-0400-23

TRADE MARKS ACT 1994

**IN THE MATTER OF
THE UK DESIGNATION OF
INTERNATIONAL REGISTRATION NOS 1573320 (IN CLASS 25)
& 1573461 (IN CLASS 28)**

**IN THE NAME OF FREEWILL SPORTS PVT LTD.,
BOTH FOR THE FOLLOWING MARK:**

NIVIA

AND

OPPOSITION THERETO (UNDER NOS 426781 & 426782)

BY

BEIERSDORF AG

BACKGROUND

1) Freewill Sports PVT Ltd. ('the holder') is the holder of two International Registrations for the word NIVIA. The first is under International Registration ('IR') no. 1573320 in class 25 and the second is under IR no.1573461 in class 28. The IRs are based upon Indian registrations (nos. 2818649 and 2818650) which were both registered on 29 September 2014. On 19 November 2020, the holder designated the UK for protection of those IRs (amongst other countries). The relevant goods covered by the IRs are as follows:

IR 1573320:

Class 25: Sportswear and sports shoes.

IR 1573461:

Class 28: Balls for games; body building apparatus; body training apparatus; exercisers (expanders); dumb-bells; elbow guards (sporting articles); games; apparatus for games; gloves for games; knee guards (sports articles); protective padding; stationery exercise bicycles; machines for physical exercises; apparatus for gymnastics.

2) The applications were published in the Trade Marks Journal in the UK on 18 June 2021 (IR 1573320) and 2 July 2021 (IR 1573461) and notice of opposition was later filed by Beiersdorf AG ('the opponent'). The opponent claims that both trade mark applications offend under sections 5(3) and 5(4)(a) of the Trade Marks Act 1994 ('the Act').

3) Under Section 5(3) of the Act, the opponent relies upon the following UK trade mark registration, in respect of some of the goods covered by that registration, as shown below:

UKTM No: 900012609

NIVEA

Class 3: soaps; perfumery; essential oils and essences, cosmetics, including non-medical hygienic and cosmetic preparations, oral hygiene, skin-care and hair-care preparations and dentifrices.

Filing date: 01 April 1996

Date of entry in the register: 01 October 1998

4) It is claimed that the respective marks are phonetically identical and visually closely similar and that the earlier mark enjoys a reputation in the UK in respect of all the goods relied upon in class 3. The opponent submits that its mark is one of the best-selling brands of cosmetics and skincare preparations in the UK, having been used in the UK for over 100 years. It states that, although the contested marks cover goods in classes 25 and 28 rather than class 3, the earlier mark is so well-known in the UK that its use in respect of any goods and services would lead consumers to believe that there is a connection between those goods and services and those of the opponent. I note that this is the extent of the pleading under Section 5(3). There is no other pleaded basis for finding that use of the contested mark is likely, without due cause, to take unfair advantage of, or be detrimental to, the reputation and/or distinctive character of the earlier mark.

5) The trade mark relied upon by the opponent is an earlier mark, in accordance with section 6 of the Act. As the earlier mark had been registered for more than five years at the date the applications were filed, it is, in principle, subject to the proof of use conditions as per Section 6A of the Act. The opponent made a statement of use in relation to all the goods relied upon in class 3.

6) Under section 5(4)(a) of the Act, the opponent relies upon use of NIVEA throughout the UK since 1914 'or earlier' in relation to the same goods as relied upon for the purposes of Section 5(3) of the Act. It is claimed that use of the applicant's mark, in respect of the goods applied for, 'would lead to confusion amongst consumers'.

7) The holder filed a counterstatement in defence of each application, denying the grounds of opposition. In particular, the holder points out that the respective goods are ‘completely different’ such that it is not likely that consumers would believe there to be a connection between the holder and the opponent. It also put the opponent to proof of use. However, further to the filing of the opponent’s evidence, the holder conceded that the opponent’s earlier mark has been put to genuine use in relation to ‘skincare, cosmetic and toiletry products’¹. In the light of this concession, I see no reason to assess whether the opponent has proved genuine use for those kinds of goods or any of the other goods relied upon such as ‘perfumery’. It is clear from the evidence before me that reliance upon the latter, for example, would not offer the opponent any greater prospect of success in these proceedings than those for which use has been conceded by the holder.

8) The opponent is represented by Lysaght. The holder is represented by Clarke Willmott LLP. The opponent filed evidence-in-chief consisting of a witness statement in the name of Anuschka Roudi, dated 3 February 2022, with 12 exhibits² thereto. The holder filed written submissions³ only during the evidence rounds and the opponent filed written submissions⁴ in reply. Neither party requested to be heard. Only the holder filed written submissions in lieu⁵. I have read all the parties’ submissions and all the evidence submitted by the opponent. I now make this decision after careful consideration of all the papers before me.

DECISION

Section 5(3)

9) Section 5(3) of the Act provides:

“(3) A trade mark which-

¹ See holder’s written submissions dated 20 July 2022, [3]

² AR1 – AR12

³ Dated 20 July 2022

⁴ Dated 7 October 2022

⁵ Dated 15 November 2022

(a) is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

10) The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L’Oreal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark’s reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the

future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV, paragraph 40*.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora, paragraph 74* and *the court's answer to question 1 in L'Oreal v Bellure*).

Reputation

11) The holder has accepted that the earlier mark has a reputation in relation to 'skincare, cosmetics and toiletry products'⁶ in the UK. I note that it states the following: 'The extent of this use and the reputation claimed in the NIVEA mark in relation to these goods in the UK is not denied' (my emphasis).⁷ I take this to mean that the holder accepts not only that the opponent has a reputation for those kinds of goods but also accepts the extent of that reputation as pleaded in the notice of opposition, where the opponent said that its earlier mark 'is one of the best-selling brands of cosmetics and skincare preparations in the UK'. This appears to me to be a sensible concession and one which, in my view, does not require me to provide a summary of the content of the opponent's evidence. Suffice it to say that the evidence before me clearly shows longstanding and very substantial use and promotion of the opponent's mark for such goods in the UK and recognition by third parties of the renown of the opponent's mark in relation to the same.⁸ It is abundantly clear that the opponent's NIVEA mark has a very substantial reputation at the relevant date for the goods covered by its registration which fall within the categories of skincare, cosmetics and toiletry products.

Link

12) Whether the public will make the required mental 'link' between the opponent's mark and the contested must take account of all relevant factors. The relevant factors identified in Case C-252/07, *Intel* [2009] ETMR 13 are:

The degree of similarity between the conflicting marks

13) The respective marks are:

NIVEA v NIVIA

⁶ See holder's written submissions in lieu dated 15th November 2022, [27]

⁷ Holder's written submissions dated 20 July 2022, [3]

⁸ Witness statement of Anuschka Roudi and 12 exhibits thereto.

There is patently a very high degree of visual similarity between the marks. They are also likely to be pronounced identically. Neither mark is likely to evoke any meaning in the average consumer's mind given that they both appear to be invented words. The conceptual position is therefore neutral.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

14) The opponent's goods are clearly dissimilar to all the holder's goods in classes 25 and 28, given their very different nature, methods of use and intended purpose, and that they are neither in competition nor complementary. The opponent does not appear to claim otherwise. That said, the relevant public for the respective goods is the same, consisting of the general public.

The strength of the earlier mark's reputation

15) The earlier mark had a very substantial reputation in relation to the skincare, cosmetics and toiletry products covered by the earlier mark at the relevant date.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

16) NIVEA is unlikely to convey any meaning to the average consumer. As such, it is inherently distinctive to a high degree. That degree of distinctiveness had been elevated to a very high degree at the relevant date consequent upon the use made of it.

Whether there is a likelihood of confusion

17) The relevant factors are as follows:

- The respective marks are visually very highly similar, aurally identical and the conceptual position is neutral.

- The earlier mark had a very high degree of enhanced distinctiveness and a very substantial reputation in relation to the skincare, cosmetics and toiletry products covered by the earlier mark at the relevant date.
- The average consumer of both parties' goods is the general public. I would expect at least a medium degree of attention to be paid during the purchase of the holder's contested goods given that factors such as suitability for purpose, functionality and/or aesthetic appeal is likely to be taken in to account during the purchase. The degree of attention paid to the purchase of the opponent's goods is likely to be low-medium given that, although factors such as suitability for certain skin-type, fragrance and ingredients/SPF (Sun Protection Factor) may be factors which are taken into account when purchasing those goods, they are, for the most part, unlikely to be particularly costly and are likely to be purchased frequently. All of the respective goods are likely to be sought out primarily by eye at retail stores or on-line equivalents but I do not discount the potential for aural use.
- The respective goods are entirely dissimilar.

Although the reputation of the earlier mark is very substantial and its level of distinctiveness is very high, the marks are very highly similar and the level of attention paid during the mainly visual purchase is only likely to be low-medium/medium (thus increasing the effects of imperfect recollection), I do not consider these factors to be sufficient to outweigh the fact that the respective goods are entirely dissimilar. I find that there is no likelihood of confusion on the part of the general public.

Conclusion on link

18) I bear in mind that my finding of no likelihood of confusion does not mean that there can be no link made between the marks. A link merely requires a 'bringing to mind', not confusion as to the origin of the goods. Weighing all the above factors, I find that the general public, when faced with the contested mark in use in relation to the goods in class 25 and 28 would call the earlier mark to mind, despite the

respective goods being entirely dissimilar, owing to the very high degree of enhanced distinctiveness of the earlier mark and its very substantial reputation, coupled with the very high degree of similarity between the marks. The necessary link is established.

Damage

19) The opponent's pleaded case is as follows:

"The trade mark consists of the word NIVIA, which is phonetically identical and visually closely similar to the Opponent's well-known trade mark NIVEA. The Opponent's trade mark NIVEA is highly distinctive, as it is an invented word, and it has been used by the Opponent in the United Kingdom for over 100 years. It is one of the best-selling brands of cosmetics and skincare preparations in the UK.

Although the opposed mark is in class[es] 25 [and 28] rather than class 3, the Opponent's trade mark NIVEA is so well-known in the UK that its use in relation to any goods or services would lead consumers to believe there is a connection between these goods and services and the Opponent."⁹ (my emphasis)

Claiming that use of the contested mark in relation to the goods applied for would cause consumers to believe that there is a connection between those goods and the opponent is effectively an argument that there is a likelihood of confusion. I have already found above (when I considered whether there would be the necessary link) that there is no likelihood of confusion. That being so, I am bound to reject the opponent's pleaded case that a perceived trade connection with its earlier mark will give the contested mark an unfair advantage or be detrimental to the reputation and/or distinctive character of the earlier mark. The opponent has pleaded no other basis for its claim under this ground. There is, for example, no other claim to the effect that, even if there is no perceived trade connection (i.e. no likelihood of

⁹ Form TM7, Section B, Q3.

confusion), there would nevertheless be a transfer of the image of the earlier mark to the contested mark which is likely to give the applicant an unfair advantage. The claim under Section 5(3) of the Act fails.

20) I should also add, to the extent that the opponent's submissions claim that the holder *intended* to take unfair advantage of the earlier mark's reputation, there is nothing before me to suggest that the holder had any such intention when it chose the contested mark. The obvious distance between the parties' goods also suggests that this is unlikely. In any event, it does not seem to me that the holder's subjective intention is relevant to the opponent's pleaded case which, as noted above, is merely predicated upon there being a likelihood of a perceived trade connection between the parties and I have found that there is no such likelihood.

21) My finding that the 5(3) ground has failed is also not disturbed by the opponent's reference to a previous decision of this tribunal¹⁰ in which it successfully opposed an application for a trade mark (for NIVEA 'stylised') which had been filed in relation to goods in class 34 (for various tobacco products and electronic cigarettes). The finding of the Hearing Officer in that case was, unsurprisingly, that use of the contested highly similar mark for those particular goods (which are likely to be perceived as being harmful to health and linked to the development of cancer) would be detrimental to the reputation of the opponent's NIVEA mark (that reputation having been shown, in that case, to be one of caring for the body and skin and helping to prevent cancer (through provision of sunscreen etc.)). There are two points to make about the relevance of that earlier decision. Firstly, the opponent's pleading in the instant case is merely that the average consumer is likely to believe that the respective goods come from the same or linked undertaking(s). (A claim which I have dismissed). There is no other pleaded case of detriment in the case before me, based upon some form of negative perception of the contested goods which is likely to transfer to, and tarnish, the opponent's reputation (as there appears to have been in the earlier case). Secondly, and in any event, there is nothing (inherently) about the holder's goods in the instant case which is likely to lead to any

¹⁰ BL O/564/18, at exhibit AR12

such tarnishment of the opponent's reputation in the instant case. The earlier case does not therefore assist the opponent.

22) Finally, I also have not overlooked the opponent's submissions where it draws an analogy between the circumstances of this case and a hypothetical opposition between the mark Coca Cola for 'soft drinks' and a hypothetical application for Koca Cola in classes 25 and 28 (for the same goods as in the instant case). It submits that, it believes, such an opposition would be successful under Section 5(3), despite the dis-similarity between the respective goods because of the huge reputation of Coca Cola which would, in its submission mean that use of the latter for any kinds of goods/services would lead consumers to believe that those goods come from Coca Cola. It submits that it considers its own mark, NIVEA, to have an equivalent reputation for cosmetics and skincare products as Coca Cola does for soft drinks and therefore the instant opposition should succeed for the same reason as a hypothetical opposition by Coca Cola to Koca Cola. I do not find this analogy helpful and I do not consider that it assists the opponent. My decision must be based upon the actual marks, goods and evidence before me and not upon an analogy with some other hypothetical opposition between a different reputed mark for different goods and some hypothetical application. I have made my assessment under Section 5(3) on the basis that NIVEA had a very significant reputation for certain goods at the relevant date (as set out above). Notwithstanding this, when weighed against all other relevant factors of the instant case, I have found that the 5(3) case fails.

Section 5(4)(a)

23) Section 5(4)(a) states:

"A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

24) In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether “*a substantial number*” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

Goodwill

25) In *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 (HOL) the Court stated:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

As the holder has filed no evidence of use of its marks, the relevant date for the assessment of the opponent's claimed goodwill is the UK designation dates of the contested marks, 19 November 2020. The holder accepts that the opponent has the necessary goodwill. Indeed, given its earlier concession that it does not deny the 'extent' of the claimed use of the earlier mark for skincare, cosmetics and toiletry products, I proceed on the basis that the holder accepts the opponent's claim that its mark 'has been used in the UK for over 100 years and that it is one of the best-selling brands' in the UK in relation to those kinds of goods and that the opponent had an extremely strong goodwill at the relevant date in its business providing such goods.

Misrepresentation

26) In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

"There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

"is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents'[product]"

27) It is trite law that there is no requirement for a common "field of activity" for an action in passing off to succeed: *Harrods Limited v Harrodian School Limited* [1996] RPC 697 (CA), Millett L.J. at p. 714. It is clear from the same case, however, that whilst the absence of a common field of activity is not fatal, it remains a relevant factor, though it may be less important where the claimant's sign is a household name. Millett L.J. went on to say:

"Where there is no or only a tenuous degree of overlap between the parties' respective fields of activity the burden of proving the likelihood of confusion

and resulting damage is a heavy one. In *Stringfellow v. McCain Foods (G.B.) Ltd.* [1984] R.P.C. 501 Slade L.J. said (at page 535) that the further removed from one another the respective fields of activities, the less likely was it that any member of the public could reasonably be confused into thinking that the one business was connected with the other; and he added (at page 545) that

‘even if it considers that there is a limited risk of confusion of this nature, the court should not, in my opinion, readily infer the likelihood of resulting damage to the plaintiffs as against an innocent defendant in a completely different line of business. In such a case the onus falling on plaintiffs to show that damage to their business reputation is in truth likely to ensue and to cause them more than minimal loss is in my opinion a heavy one.’

In the same case Stephenson L.J. said at page 547:

‘...in a case such as the present the burden of satisfying Lord Diplock's requirements in the *Advocaat* case, in particular the fourth and fifth requirements, is a heavy burden; how heavy I am not sure the judge fully appreciated. If he had, he might not have granted the respondents relief. When the alleged “passer off” seeks and gets no benefit from using another trader's name and trades in a field far removed from competing with him, there must, in my judgment, be clear and cogent proof of actual or possible confusion or connection, and of actual damage or real likelihood of damage to the respondents' property in their goodwill, which must, as Lord Fraser said in the *Advocaat* case, be substantial.’

28) The relevant factors are:

- The goods covered by the respective marks are not in the same or similar fields of activity. The relevant public is, however, the same, being the general public.

- I would expect at least a medium degree of attention to be paid during the purchase of the holder's contested goods given that factors such as suitability for purpose, functionality and/or aesthetic appeal is likely to be taken into account during the purchase.
- The degree of attention paid to the purchase of the opponent's goods is likely to be low-medium given that, although factors such as suitability for certain skin-type, fragrance and ingredients/SPF (Sun Protection Factor) may be factors which are taken into account when purchasing those goods, they are, for the most part, unlikely to be particularly costly and are likely to be purchased frequently.
- The respective marks are visually highly similar, aurally identical and conceptually neutral.
- The opponent had an extremely strong goodwill at the relevant date in its business.
- NIVEA is very highly distinctive of the opponent's goodwill.

I remind myself that it is not enough for the contested mark to merely bring the earlier sign to mind or for consumers to merely wonder if there is a connection. There must be an assumption that there is a connection. Taking all the above factors together, I do not consider that there would be such an assumption in this case. Although the opponent had an extremely strong goodwill at the relevant date, NIVEA was very highly distinctive of that goodwill and the marks are very highly similar, the distance between the respective fields of activity is so great that I do not consider that a substantial number of the opponent's customers, or potential customers, would be deceived into purchasing the holder's goods in the belief that they are the responsibility of the opponent. Accordingly, misrepresentation is not made out and there can, therefore, be no damage.

29) I have not overlooked the opponent's contention that misrepresentation is likely due to the opponent having been a prolific sponsor of sporting events. In this connection, I note that the holder states:

‘10. In the Witness Statement of Anuschka Roudi, the Opponent claims that their sponsorship of sporting events and close association with English sports teams, means that use of NIVIA for sportswear and sports goods constitutes a misrepresentation of NIVEA. This is strongly denied. Sponsorship of sporting events is still promotion of the class 3 goods and there is no trade use of the NIVEA mark in relation to any sports related goods or services. Therefore the consumers of the NIVEA class 3 goods would not be deceived into thinking that the Applicant’s NIVIA sportswear and sports goods are actually being offered by the Opponent or associated with the Opponent in any way.’¹¹

In *Harrods Limited v Harrodian School Limited* Millet L.J. stated:

“It is not in my opinion sufficient to demonstrate that there must be a connection of some kind between the defendant and the plaintiff, if it is not a connection which would lead the public to suppose that the plaintiff has made himself responsible for the quality of the defendant's goods or services. A belief that the plaintiff has sponsored or given financial support to the defendant will not ordinarily give the public that impression. Many sporting and artistic events are sponsored by commercial organisations which require their name to be associated with the event, but members of the public are well aware that the sponsors have no control over and are not responsible for the organisation of the event. Local teams are often sponsored in similar fashion by local firms, but their supporters are well aware that the sponsors have no control over and are not responsible for the selection or performance of the players.”

Bearing this in mind, I am not persuaded that the opponent’s sponsorship activities shown in the evidence before me are likely to mean that the relevant public would be misled into believing that the opponent is somehow responsible for the quality of the holder’s goods. The opposition under section 5(4)(a) of the Act fails.

OUTCOME

¹¹ Holder’s written submissions dated 20 July 2022

30) **The opposition fails.**

COSTS

31) The holder has been successful and is therefore entitled to a contribution towards the costs it has incurred in these proceedings. Using the guidance in Tribunal Practice Notice 2/2016, and keeping in mind that the two cases were consolidated and the content of the two counterstatements was largely identical, I award the holder costs on the following basis:

Preparing statements and considering the other side's statements x 2	£300
Filing written submissions	£400
Total:	£700

32) I order Beiersdorf AG to pay Freewill Sports PVT Ltd. the sum of **£700**. 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 27th day of April 2023

**Beverley Hedley
For the Registrar,
the Comptroller-General**