

**O/0012/25**

**REGISTERED DESIGNS ACT 1949**

**IN THE MATTER OF:**

**REGISTERED DESIGN NO 90077713730001**

**IN THE NAMES OF MEG GLOBAL MOBILYA SANAYI VE TICARET  
LIMITED SIRKETI**

**AND**

**TOKER TRADING GMBH**

**AND**

**AN APPLICATION FOR INVALIDATION (NO 164/23) BY  
UNIDECO MOBILYA SANAYI VE TICARET ANONIM SIRKETI**

## BACKGROUND AND PLEADINGS

1. Registered Design No. 90077713730001 stands in the names of Meg Global Mobilya Sanayi ve Ticaret Limited and Toker Trading GmbH (“the registered proprietors”). The design is a reregistered design, created pursuant to Article 54 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. It has an application date of 25 March 2020 (“the relevant date”) and was published on 27 March 2020.

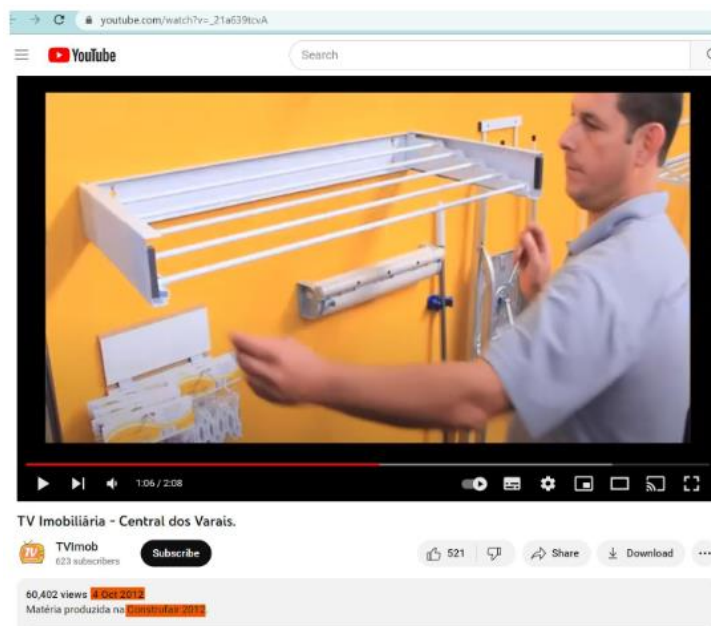
2. The design is registered as applying to driers for clothes [clothes horses], Towel driers, Drying racks for laundry, Drying racks.

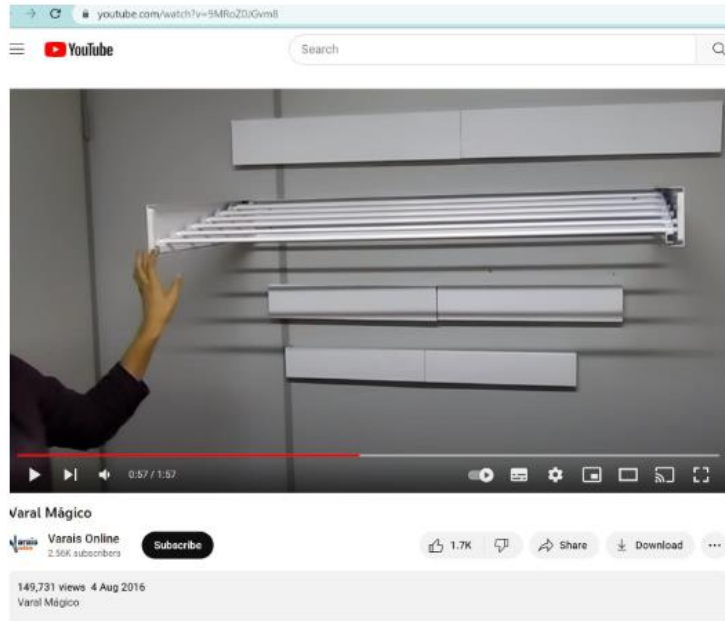
3. The design is depicted in the following representations:





4. On 4 August 2023, Unideco Mobilya Sanayi ve Ticaret Anonim Sirketi (“the applicant”) applied for the registered design to be invalidated under section 11ZA(1)(b) of the Registered Designs Act 1949 (“the Act”), on the grounds that the design was not new and did not have individual character, as required by section 1B of the Act. The applicant claims that the contested design was first made available to the public at a construction fair in 2012 and in a video published on YouTube on 4 October 2012. It was later featured in another video dated 4 August 2016. A screenshot from each of these videos is reproduced below:





5. Furthermore, the applicant claims that the first registered proprietor (Meg Global) is the owner of an identical design, Turkish Design Number 2018 06477, which was published in Turkish Design Bulletin No. 305 on 26 November 2018. The representations of this design are shown below:





6. The first registered proprietor filed a counterstatement to the application for invalidation on 28 August 2023. It admitted that it was the owner of Turkish Design Number 2018 06477 (“the Turkish design”) but did not deny the applicant’s claim that the contested design was identical to the Turkish design. It argued that the products shown in the videos relied upon by the applicant were *“concept products that have not been registered, marketed or sold in any country”*. For this reason, the applicant continued, its applications to the Turkish Trademark and Patent Institute and European Union Intellectual Property Office (“EUIPO”) were accepted with no objection. Finally, it claims that the general manager of the applicant is one of its former partners and the two are in dispute on other matters. These particular claims are not relevant to these proceedings, nor are they within the remit of this Tribunal, and so I shall say no more about them.

7. The applicant filed evidence in the form of a witness statement from Emrah Ülkü, the shareholder and Chairman of the Executive Board of Unideco Mobilya Sanayi ve Ticaret Anonim Sirketi. His witness statement is dated 4 October 2023 and repeats statements made in the application for invalidation. It also contains links to the full videos. In a letter of 27 October 2023, the applicant was informed by the Registry that the Hearing Officer would not follow links and that, if it wished to rely on the material in the videos, they should be supplied on a USB stick. This was not provided and so I shall only consider the video screenshots that have been provided in the application for a declaration of invalidity. As this document is covered by a statement of truth signed by an individual, I will accept them as evidence.

8. The registered proprietors did not file evidence or submissions.

9. Neither side requested a hearing. I have taken this decision after a careful consideration of the papers before me. In these proceedings, the applicant is

represented by Doyuk & Co Legal Consultancy Limited and the registered proprietors represent themselves.

## **RELEVANCE OF EU LAW**

10. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

## **PRELIMINARY ISSUE**

11. The applicant states that the Turkish registered design was invalidated by Izmir IP Court on 14 June 2023. Mr Ülkü adds that the court found that the design lacked novelty and individual character when compared with the videos on which the applicant relies in these proceedings. I have noted these comments, but I am required to make my own assessment of the evidence and arguments put to me.

## **DECISION**

12. Section 11ZA(1)(b) of the Act states that:

“The registration of a design may be declared invalid–

...

(b) On the ground that it does not fulfil the requirements of sections 1B to 1D of this Act”.

13. Section 1B of the Act is as follows:

“(1) A design shall be protected by a right in a registered design to the extent that the design is new and has individual character.

(2) For the purposes of subsection (1) above, a design is new if no identical design or no design whose features differ only in immaterial details has been made available to the public before the relevant date.

(3) For the purposes of subsection (1) above, a design has individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the relevant date.

(4) In determining the extent to which a design has individual character, the degree of freedom of the author in creating the design shall be taken into account.

(5) For the purposes of this section, a design has been made available to the public before the relevant date if–

(a) it has been published (whether following registration or otherwise), exhibited, used in trade or otherwise disclosed before that date; and

(b) the disclosure does not fall within subsection (6) below.

(6) A disclosure falls within this subsection if–

(a) it could not reasonably have become known before the relevant date in the normal course of business to persons carrying on business in the geographical area comprising the United Kingdom and the European Economic Area and specialising in the sector concerned;

(b) it was made to a person other than the designer, or any successor in title of his, under conditions of confidentiality (whether express or implied);

(c) it was made by the designer, or any successor in title of his, during the period of 12 months immediately preceding the relevant date;

(d) it was made by a person other than the designer, or any successor in title of his, during the period of 12 months immediately preceding the relevant date in consequence of

information provided or other action taken by the designer or any successor in title of his; or

(e) it was made during the period of 12 months immediately preceding the relevant date as a consequence of an abuse in relation to the designer or any successor in title of his.

(7) In subsections (2), (3), (5) and (6) above ‘the relevant date’ means the date on which the application for the registration of the design was made or is treated by virtue of section 3B(2), (3) or (5) or 14(2) of this Act as having been made.

...”

### **Prior Art**

14. As I have already noted, the registered proprietors do not deny the applicant’s claim that the contested design is identical to the Turkish design. The publication of the Turkish design is an event that is capable of constituting a disclosure. It was made outside the geographical area of the United Kingdom and the European Economic Area, but in *H. Gautzsch Großhandel GmbH & Co KG v Münchener Boulevard Möbel Joseph Duna GmbH*, Case C-479/12, the Court of Justice of the European Union said:

“33. In that regard, it should be pointed out that it can be seen from the wording of the first sentence of art.7(1) of Regulation No 6/2002 that it is not absolutely necessary for the purpose of applying art.5 and 6 of that regulation, for the events constituting disclosure to have taken place within the European Union in order for a design to be deemed to have been made available to the public.

34. However, according to art.7, a design cannot be deemed to have been made available to the public if the events constituting its disclosure could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating with the European Union. The question whether events taking place outside the European



Union could reasonably have become known to persons forming part of those circles is a question of fact...”

15. The same principles apply to the provisions relied on in these proceedings.

16. In *Crocs, Inc. v European Union Intellectual Property Office (EUIPO)*, Case T-651/16, the General Court held at [48] that it would be appropriate to undertake a two-step analysis to determine whether the disclosure had been made available to the public. First, I should ask whether the evidence provided by the applicant shows that the alleged earlier design had been disclosed before the relevant date. In this instance, it has filed extracts from the Turkish register of designs and the record of the design in the DesignView database. These confirm that the publication date was 26 November 2018, 16 months before the relevant date. The design was made available to the public. The burden then shifts to the registered proprietors to show that the disclosure event claimed by the applicant could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned in the geographical area of the UK and the European Economic Area. The registered proprietors have not made any such claim. As none of the other exemptions in section 1B(6) apply, I find that the Turkish design registration is prior art on which the applicant may rely.

17. Having made this finding, I need to return to the question of the registered proprietors’ defence. There is no specific rule or practice notice applying to this tribunal that governs the contents of a counterstatement. The issue was considered in the context of trade marks by Professor Phillip Johnson, sitting as the Appointed Person, in *SKYCLUB*, BL O/044/21. He said:

“24. The position in the Civil Procedure Rules (CPR) is clear; namely, a defendant must state which allegations are denied, which allegations a defendant is unable to admit or deny, and which allegations the defendant admits (CPR, 16.5(1)). Where a defendant fails to deal with an allegation it is taken to be admitted (CPR 16.5(5)). This is subject to the rule that where an allegation is not dealt with, but the defence sets out the nature of his case in relation to the issue to which that allegation is relevant, then the allegation must be proved by the Claimant (CPR 16.5(3)). Thus, the filing of

a 'blank' defence would lead to the whole of the Claimant's case being admitted.

25. The procedure before neither the registrar nor the Appointed Person is governed by the CPR, but there is a Tribunal Practice Notice (TPN 4/2000) which deals with pleadings and provides a similar rule to the CPR:

'19. A defence should comment on the fact set out in the statement of case and should state which of the grounds are admitted and those which the applicant is unable to admit or deny but which he requires the opponent to prove.

20. The counter-statement should set out the reasons for denying a particular allegation and if necessary the facts on which they will rely in their defence. For example, if the party filing the counter-statement wishes to refer to prior registrations in support of their application then, as above, full details of those registrations should be provided.'

26. In the context of the CPR, the Court of Appeal has emphasised that there is a positive duty on a defendant to admit or deny matters unless the party is unable to do so: *SPI North Ltd v Swiss Port International (UK) Ltd* [2019] EWCA Civ 7 at [48]. As Lord Hoffmann opined in *Barclays Bank Plc v Boulter* [1999] 1 WLR 1919 at 1923:

'The purpose of the pleadings is to define the issues and give the other party fair notice of the case which he has to meet.'

18. These are general principle that, in my view, apply equally to cases in this tribunal, which adheres to the same overriding objective as the court for dealing with cases justly. This includes ensuring that proceedings are dealt with fairly. It is fair that a party should be given notice of the case that is being argued against them. Consequently, I deem that the registered proprietors have admitted that the contested design is identical to the Turkish design. The contested design was therefore not new at the relevant date, as the 12-month "grace period" provided for by section 1B(6)(c) had expired.

19. The application for a declaration of invalidity against the contested design therefore succeeds. However, in case of an appeal on this point, I shall proceed to make a comparison of the designs.

20. Before doing so, I will, for completeness, address the registered proprietors' comments about the videos. They claim that they show concept products that have not been put on the market. The fact that products have not been marketed is not, in itself, evidence that the disclosure could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned in the relevant geographical area. These circles do not comprise the purchasers of the products concerned. In *Green Lane Products Limited v PMS International Group plc & Ors* [2007] EWHC 1712 (Pat) (and upheld on appeal), Lewison J said:

“34. Article 7 refers to ‘the normal course of business to the circles specialised in the sector concerned’. This raises the question: who is in the circle? Mr Hacon submits that in principle it comprises all individuals who conduct trade in relation to products in that sector. This would include those who design, make, advertise, market, distribute and sell such products in the course of trade in the Community. Dr Lawrence advanced no argument to the contrary.

35. In these circumstances I accept Mr Hacon’s submission, which seems to me to be right. However, although I accept Mr Hacon’s submission in principle, there may be circles which, on particular facts, are more restricted than the general principle suggests. Whether this is so will depend on identifying and delineating the sector in question.”

21. Therefore, exhibition of a prototype or concept product could, in principle, be an earlier disclosure. As I have already explained, it would be for the registered proprietors to persuade me that such an event could not reasonably have become known to the circles specialised in the sector concerned. They have not done so.

22. The registered proprietors then seek to rely on the fact that the applications to the Turkish Trademark and Patent Institute and the EUIPO were accepted. I do not know whether the Turkish office conducts novelty searches, but even if it did, the fact that

the law provides for a mechanism to invalidate registrations means that it is conceivable that a registered design should not have been accepted.

23. I consider that the publication of videos on YouTube constitute a disclosure and none of the exemptions in section 1B(6) apply. I shall come back to the designs shown in the videos, if necessary, later in my decision.

### ***Novelty and Individual Character***

24. Section 1B(2) of the Act states that a design has novelty if no identical design or no design differing only in immaterial details has been made available to the public before the relevant date. In *Shnuggle Limited v Munchkin, Inc & Anor* [2019] EWHC 3149 (IPEC), HHJ Melissa Clarke, sitting as a Judge of the High Court, said:

“26. ‘Immaterial details’ means ‘only minor and trivial in nature, not affecting overall appearance’. This is an objective test. The design must be considered as a whole. It will be new if some part of it differs from any earlier design in some material respect, even if some or all of the design features, if considered individually, would not be.”

25. At this point, I note that the photographs used in the representations of the respective designs have been taken from different angles. In such cases, the angles chosen can have an impact on the proportions seen in the images. For this reason, I shall focus on the question of whether the contested design has individual character compared to the prior art. This depends on whether the overall impression it produces on the informed user differs from the overall impression produced on such a user by the prior art.

26. The approach to carrying out an assessment of individual character was helpfully summarised by HHJ Hacon, sitting as a Judge of the High Court, in *Safestand Ltd v Weston Homes PLC & Ors* [2023] EWHC 3250 (Pat) at [237]:

“(1) Decide the sector to which the products in which the designs are intended to be incorporated or to which they are intended to be applied belong;

(2) Identify the informed user and having done so decide

- (a) the degree of the informed user's awareness of the prior art and
  - (b) the level of attention paid by the informed user in the comparison, direct if possible, of the designs;
- (3) Decide the designer's degree of freedom in developing his design;
- (4) Assess the outcome of the comparison between the RCD and the contested design, taking into account
- (a) the sector in question,
  - (b) the designer's degree of freedom,
  - (c) the overall impressions produced by the designs on the informed user, who will have in mind any earlier design which has been made available to the public,
  - (d) that features of the design which are solely dictated by technical function are to be ignored in the comparison, and
  - (e) that the informed user may in some cases discriminate between elements of the respective designs, attaching different degrees of importance to similarities or differences; this can depend on the practical significance of the relevant part of the product, the extent to which it would be seen in use, or on other matters."

27. I also bear in mind the comments of HHJ Birss (as he then was), sitting as a Deputy Judge of the Patents Court, in *Samsung Electronics (UK) Ltd v Apple Inc* [2012] EWHC 1882 (Pat):

"58. How similar does the alleged infringement have to be to infringe? Community design rights are not simply concerned with anti-counterfeiting. One could imagine a design registration system which was intended only to allow for protection against counterfeits. In that system only identical or nearly identical products would infringe. The test of 'different overall impression' is clearly wider than that. The scope of protection of a Community registered design clearly can include products which can be

distinguished to some degree from the registration. On the other hand the fact that the informed user is particularly observant and the fact that designs will often be considered side by side are both clearly intended to narrow the scope of design protection. Although no doubt minute scrutiny by the informed user is not the right approach, attention to detail matters.”

*The relevant sector*

28. The sector concerned is drying racks for clothing, towels and laundry.

*The informed user*

29. In *Samsung*, HHJ Birss (as he then was) gave the following description of the informed user:

“33. ... The identity and attributes of the informed user have been discussed by the Court of Justice of the European Union in *PepsiCo v Grupo Promer* (C-281/10 P) [2012] FSR 5 at paragraphs 53 to 59 and also in *Grupo Promer v OHIM* [2010] EDCR 7, (in the General Court from which *PepsiCo* was an appeal) and in *Shenzhen Taiden v OHIM*, case T-153/08, 22 June 2010.

34. Samsung submitted that the following summary characterises the informed user. I accept it and have added cross-references to the cases mentioned:

i) he (or she) is a user of the product in which the design is intended to be incorporated, not a designer, technical expert, manufacturer or seller (*PepsiCo* paragraph 54 referring to *Grupo Promer* paragraph 62, *Shenzhen* paragraph 46);

ii) however, unlike the average consumer of trade mark law, he is particularly observant (*PepsiCo* paragraph 53);

iii) he has knowledge of the design corpus and of the design features normally included in the designs existing in the sector concerned (*PepsiCo* paragraph 59 and also paragraph 54 referring to *Grupo Promer* paragraph 62);

iv) he is interested in the products concerned and shows a relatively high degree of attention when he uses them (*PepsiCo* paragraph 59);

v) he conducts a direct comparison of the designs in issue unless there are specific circumstances or the devices have certain characteristics which make it impractical or uncommon to do so (*PepsiCo* paragraph 55).

35. I would add that the informed user neither (a) merely perceives the designs as a whole and does not analyse details, nor (b) observes in detail minimal differences which may exist (*PepsiCo* paragraph 59)."

30. The informed user is a member of the public who buys and uses drying racks. They may also be a business that needs to dry towels or other textiles. They display a relatively high degree of attention when using the products and I see no reason why they should not be able to conduct a direct comparison of the designs in issue.

#### *Design freedom*

31. In *Dyson Ltd v Vax Ltd*, [2010] FSR 39, Arnold J (as he was then) stated that:

"... design freedom may be constrained by (i) the technical function of the product or an element thereof; (ii) the need to incorporate features common to such products; and/or (iii) economic considerations (e.g. the need for the item to be inexpensive)."<sup>1</sup>

32. I have been provided with no examples of other designs that would have been available to the informed user at the relevant date (the "design corpus" referred to in the extract from *Samsung* at [34] quoted above). However, I consider that I can make the following observations on the degree of freedom enjoyed by the designer. To fulfil the product's function, there must be a means of supporting the items that are to be dried that permits the heat to circulate around the items and enables the evaporation of any liquid. The designer has some freedom to choose the number and configuration











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<sup>1</sup> Paragraph 34.

of these supports. They can also choose the colour and how the racks are mounted, i.e. whether they are wall-mounted, ceiling-mounted or free-standing.

*Comparison of the designs*

33. In the table below I show the registered design alongside the earlier Turkish registered design:

The Contested Design	The Earlier Design
	
	
	
	
	

34. The representations that have been filed for the earlier design are photographs, while those in the contested design appear to be monochrome computer-generated three-dimensional images, showing the design from different angles. I consider that they show the effect of light upon the surfaces of the design, and that this explains the slight difference in shading that can be observed between the first and the fifth



representations on the one hand, and the second, third and fourth representations on the other.

35. The features that the informed user would note as being in common between the two designs are as follows:

- (i) An outer casing consisting of three rectangular pieces, two of which are joined at right angles to either end of the third, which is twice as long as the other two.
- (ii) The shorter pieces fold flat against the longer piece.
- (iii) The plain white colour of the outside of these two shorter pieces.
- (iv) The smooth texture of the outside of those pieces.
- (v) The inner sides of the two shorter pieces have lips at the top and bottom.
- (vi) Six bars that, when the rack is fully opened, are arranged in a stepped pattern, supported by two triangular side pieces, which are pulled out. These configurations are the same when the rack is fully extended:

*Contested design:*



*Earlier design:*



They are also the same when it has been folded before closing.

*Contested design:*



*Earlier design:*



When folded, the combination of the bars and the side pieces creates an upside-down triangle, with its base extending across the top of the back piece and its point at the centre of the back piece.

(vii) The steps of the side piece in both designs contain a rectangular hole into which the bars are slotted:

*Contested design:*



*Earlier design:*



(viii) Small protruding rounded knobs on the top and bottom corners of the rack when closed.

36. The features that the informed user would note as being different are as follows:

(i) The colour of the earlier design is the same throughout. The outside of the contested design is white but the inside is shown in a grey colour in some, but not all, of the representations. However, I consider that this reflects the use of the CAD images showing the effect of light on the surfaces.

(ii) The two folding parts of the contested design meet snugly, while there is a slight gap between them in the earlier design.

(iii) The side pieces appear thicker in the earlier design than in the contested design.

*Contested design:*



*Earlier design:*



(iv) The bars in the earlier design appear to be rounded, while at least in the image shown above those of the contested design appear to be flatter-faced.

37. I also note that the first representations of each of the designs might suggest some difference in the proportions. The earlier design appears to be longer *vis-à-vis* its height than the contested design. However, it is possible that the different perspectives of the images contribute towards this difference.

*Contested design:*



*Earlier design*



38. The overall impression of both designs is of a six-barred drying rack that folds into a sleek white rectangular cabinet. The differences I have identified above are, in my view, minor when set against the features that the designs have in common and do not affect the lack of difference in the overall impressions produced by the two designs. Even if I were to find that the proportions of the respective designs are different, they are not, in my view, sufficiently dissimilar for that to outweigh the shared features. The contested design does not have individual character when compared with the Turkish design.

39. Given my findings on the comparison with the Turkish design, there is no need for me to go back to the video screenshots.

### **Conclusion**

40. The application to invalidate Registered Design No. 90077713730001 is successful.

### **Costs**

41. The applicant has been successful and is entitled to a contribution towards the costs of these proceedings in line with the scale of costs set out in Tribunal Practice

Notice No. 1/2023. In the circumstances, I award the applicant the sum of £348 as a contribution towards its costs. The sum is calculated as follows:

*£300 for preparing a statement and considering the other side's statement.*

*£48 for official fees.*

**£348 in total**

42. I have not made an award to contribute to the costs of filing evidence, as this added nothing to what had already been filed with the application for a declaration of invalidity.

43. I therefore order Meg Global Mobilya Sanayi ve Ticaret Limited and Toker Trading GmbH to pay Unideco Mobilya Sanayi ve Ticaret Anonim Sirketi the sum of £348. Global Mobilya Sanayi ve Ticaret Limited and Toker Trading GmbH shall be jointly and severally liable for these costs. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings if the appeal is unsuccessful.

**Dated this 8<sup>th</sup> day of January 2025**

**Clare Boucher**

**For the Registrar,**

**The Comptroller-General**