

O/0763/26

REGISTERED DESIGNS ACT 1949

IN THE MATTER OF:

REGISTERED DESIGN UNDER NO 6365805

IN THE NAME OF BRONXIC LTD

IN RESPECT OF THE FOLLOWING DESIGN:



AND

**AN APPLICATION FOR INVALIDATION (NO 0074/25) BY
KANG ZOU**

BACKGROUND AND PLEADINGS

1. Registered Design under number 6365805 (“the contested design”) stands registered in the name of Bronxic Ltd (“the proprietor”). It has an application date of 14 May 2024 (“the relevant date”), has a grant date of 21 May 2024 and was published on 22 May 2024.
2. The design is registered as applying to a ‘shower head’ and is depicted by the following representations:



3. On 1 April 2025, Kang ZOU (“the applicant”) applied for the contested design to be invalidated under section 1B of the Registered Designs Act 1949 (“the Act”), on the grounds that it lacked novelty and did not have individual character. Section 1B has effect in invalidation proceedings through section 11ZA(1)(b) of the Act. In particular, the applicant claims that the contested design is not new and lacks

individual character as it is identical in shape and highly similar in configuration with two of the applicant's earlier EU design registrations. The applicant claims that the overall impression of the contested design does not differ to the overall impressions produced by the earlier designs.

4. The application for invalidation was accompanied by a statement of grounds, enclosing two annexes (showing the EU registrations for the designs relied upon), that was provided under a signed statement of truth. However, the statement of truth was signed in the name of the applicant's representative firm. As the statement was not given by an individual, it is invalid. This is something that would ordinarily be picked up on by the Tribunal upon the filing of the document, with an opportunity provided to rectify the issue. However, the issue was not initially noticed and the Tribunal did not become aware of it until 23 July 2025. At that point, the Tribunal provided the applicant with an opportunity to refile the statement of grounds with a valid statement of truth. This was received on 7 August 2025.
5. The proprietor filed a counterstatement to the application for invalidation on 14 May 2025. The proprietor denies the applicant's allegation that the designs are similar and, instead, argues that the contested design is original and possesses its own individual character within the meaning of Section 1B of the Act. It is claimed that it was created independently and is the result of the proprietor's own design process. As such, the proprietor maintains that the contested design is valid and requests that the application be dismissed in its entirety.
6. In these proceedings, the applicant is represented by IPEY whereas the proprietor is unrepresented. Aside from the witness statement affirming the identity of the person who signed the statement of truth accompanying the application for invalidation, neither party filed evidence. During the evidence rounds, the applicant filed written submissions. No hearing was requested and neither party filed written submissions in lieu of the same. I have taken this decision after a careful consideration of the papers before me.

7. 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.

EVIDENCE

8. As explained above, the evidence filed alongside the application for invalidation was invalid. However, the issues were rectified on 7 August 2025. This was done via the witness statement of Huw David Duncan Evans dated 6 August 2025. Mr Evans is a Trade Mark and Registered Patent Attorney at the applicant's representative firm and his statement was filed to confirm that it was he who signed the statement of grounds accompanying the application for invalidation. As such, his statement was simply a vehicle for reintroducing the statement of grounds as they appeared with the application for invalidation.
9. I will discuss the applicant's evidence in further detail if necessary below.

DECISION

10. 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”.

11. 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

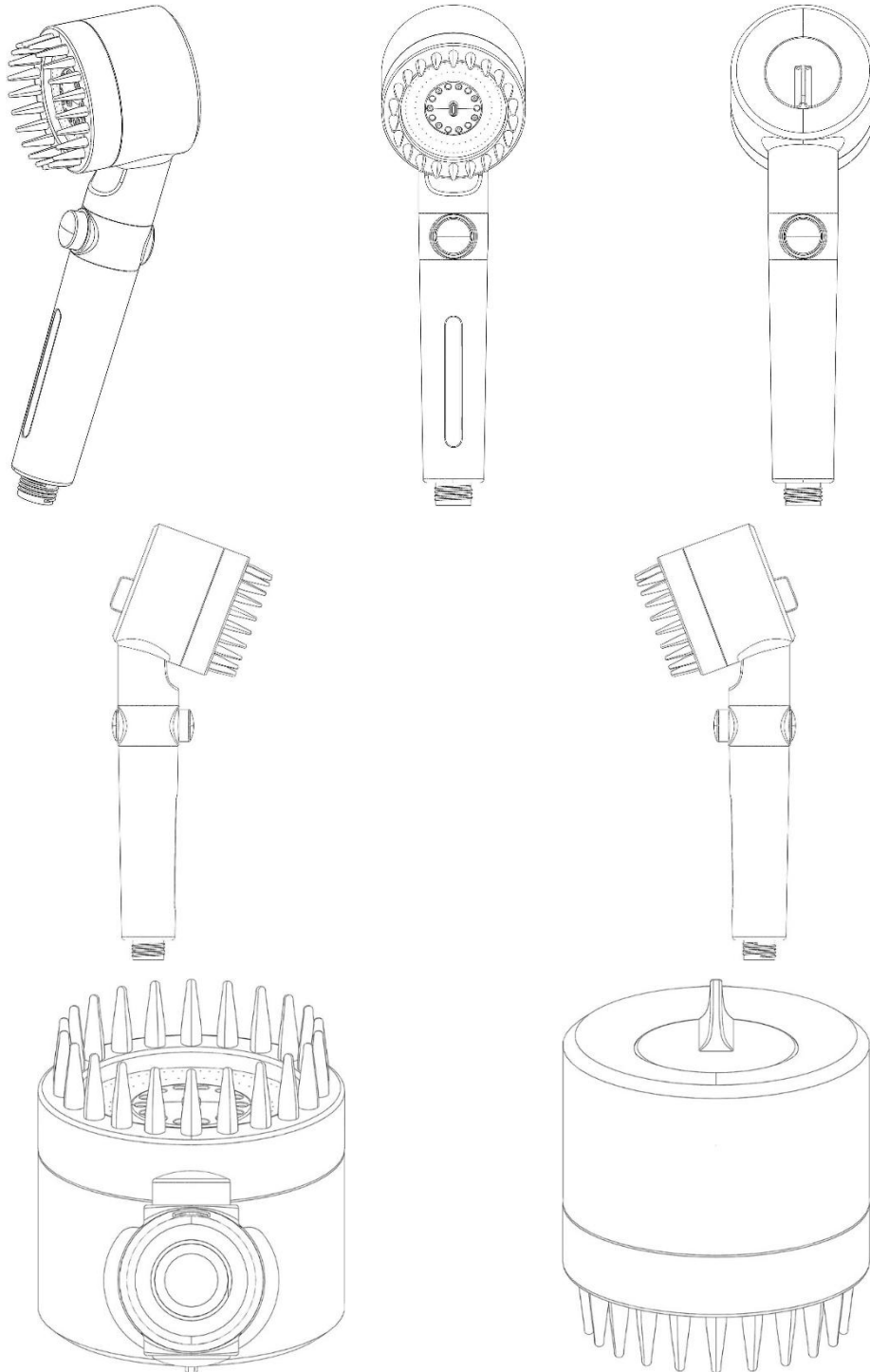
12. As set out above, the applicant relies on two earlier EU designs as its prior art. The details of those are as follows:

EU Design no.	015048743-0001
Filing date:	26 January 2024
Registration date:	26 January 2024

Publication date: 30 January 2024

Indication of product: Shower heads

Illustrations:



("the first prior art"); and

EU Design no. 015048743-0002
Filing date: 26 January 2024
Registration date: 26 January 2024
Publication date: 30 January 2024
Indication of product: Shower heads

Illustrations:





("the second prior art").

13. In its counterstatement, the proprietor set out that it was unable to admit or deny the applicant's claims regarding the exact date, scope and public disclosure of the applicant's earlier designs and that it required the applicant to prove these matters. The applicant sought to respond to this point in its submissions. However, given that the applicant relies on earlier designs registered in the EU, there is no requirement on the applicant to prove these matters. In accordance with section 1B(5)(a) of the Act (reproduced above), a design is considered as being made available to the public if it has been published (whether following registration or otherwise) before the relevant date. The applicant's designs were published, as registered designs, in the EU on 30 January 2024, which is before the relevant date of these proceedings, being 14 May 2024. Further, the relevant territory for the purposes of disclosure is the geographical area comprising the UK and the European Economic Area meaning that the fact that the disclosure was in the EU is not an issue for the applicant. Lastly, none of the exceptions set out under section 1B(6) of the Act apply to the present case. As a result, I am satisfied that the prior art shown above is capable of being relied upon as the basis for the present invalidation application.

Individual Character

14. I will begin with the question of whether the contested design has individual character. Section 1B(3) states that a design has individual character when it produces a different overall impression on the informed user than that produced by

any design made available to the public before the relevant date. A design may create the same overall impression on the informed user as another design, while being different from it in some respects. In order to consider this point, I need to assess the similarities and differences and decide upon their impact on the overall impression of the designs.

15. The approach to carrying out an assessment of individual character was helpfully summarised by HHJ Hacon, sitting as a Judge of the Patents Court, in *Cantel Medical (UK) Limited v ARC Medical Design Limited* [2018] EWHC 345 (Pat). He said:

“181. I here adapt the four stages prescribed by the General Court in H&M Hennes for assessing the individual character of a Community design to the comparison of an RCD with an accused design, adding other matters relevant to the present case. The court must:

(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 section in question,

(b) the designer's degree of freedom, and

(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.

182. To this I would add:

(5) Features of the designs which are solely dictated by technical function are to be ignored in the comparison.

(6) 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.”

16. 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):

“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.”¹

The sector concerned

17. The sector concerned is that of shower heads.

The informed user

18. 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);

¹ Paragraph 58

- 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)."

19. The informed user is a member of the public who buys and uses shower heads. The informed user exhibits all the traits set out in the case law cited above. I see no circumstances or particular characteristics of the products that would make it impractical or unusual for the informed user to conduct a direct comparison of the designs in issue.

Design freedom

20. In *Dyson Ltd v Vax Ltd*, [2010] FSR 39, Arnold J (as he was then) stated, at paragraph 34, 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).”

21. The applicant has put forward that in creating shower heads, the designer has a very high degree of freedom since the technical requirements that could limit them are “restricted to the need of shower heads”.²

22. To fulfil the product’s function, it must be able to be connected to a hose to allow for water to pass into it. It must also include an open section of nozzles or holes to allow for the water to be dispensed from the shower head. While I do not consider that the product is constrained by any specific shape or size, the product is one that needs to be placed on the end of a shower hose to allow for a user to wash themselves either from a fixed point in the shower or by removing the head from its fixed point to allow for more control over the direction of the water flow. Therefore, I do consider that there are some general limitations as to the size and shape of the product. As such, while there may be some limits on account of manufacturing capability or costs, there remains a significant scope for design freedom for these goods. Most significantly, the designer may choose any of the following:

- a. the colour of the shower head;
- b. the shape of the shower head;
- c. the size of the shower head;
- d. the manner in which the shower head connects to the hose; and
- e. the arrangement of the nozzles from which the water is dispensed (which determines of the pattern of water flow).

Comparison of the designs

23. The representations of the contested design are images of the product. There are four images in total, each one showing the product from various angles. As for the

² See paragraph 8 of the applicant’s statement of grounds.

prior art, this is made up two registered designs, one of which being seven line drawings and the other being seven photographs. Both designs show the product from various angles.

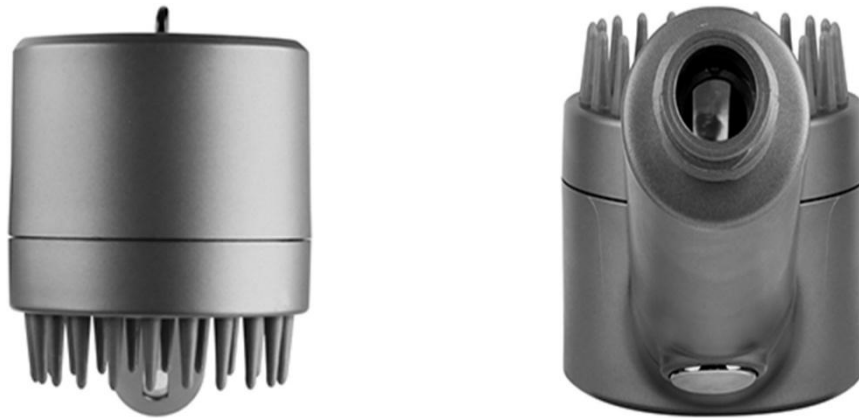
24. For the purposes of this assessment, I will consider the comparison of the contested design against the second prior art as, in my view, it represents the applicant's best case. I will return to discuss this approach and the first prior art further below, if necessary.

25. In the table below, I show the images of the contested design alongside the second prior art relied upon. Where possible, I will show the contested design alongside the corresponding angle of the second prior art.

The contested design	The second prior art
	



26. In addition, the second prior art includes two additional images which have no corresponding angle in the contested design. These are as follows:



27. The contested design has the following features:

- a. The shower head includes a thin cylindrical grey shaft with a silver button about two-thirds of the way up. Surrounding the button is a silver band going around the shaft.
- b. The silver button says the word 'stop'.
- c. The base of the shaft has a thinner threaded neck.
- d. The bottom two thirds of the shaft has a panel shaped like a long, thin ellipse.
- e. When viewed from the front, the head of the shower is a large circular shape, with an indented centre.
- f. Around the outer section of the head are a number of small black spikes with small holes on their ends.
- g. The indented centre section of the head includes two sections. The outer section is grey and includes a number of small holes spaced around it. There appear to be some words within this section but I am unable to make them out. The second section sits in the centre and is black, with a range of smaller indented circles around its outside, with a raised vertical, rounded rectangular shape in the centre with a vertical slit in it.
- h. From the side angle images, it can be seen that the top of the shaft, where it connects to the head, is thinner than the rest of the shaft.
- i. From the side angle images, the shaft and the head are offset at an angle.

- j. The back of the shower head has a smaller black indented circle, seemingly being an adjustable section of the head, with a thin vertical notch on its bottom half.
- k. The silver band that goes around the shaft has another silver button on the back of the product. On this button appears a triangle.

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

- a. The overall colour scheme of the designs is grey and black. On this point, I note that some photographs appear to have different lighting so it is not readily apparent in each image.
- b. The overall shapes are the same in that both are vertical thin shafts topped with a larger circular shower head. Both designs appear to thin slightly at the top of their shafts before connecting to the heads.
- c. Both designs include a thinner threaded neck at their bottoms.
- d. Both shafts include a thin ellipse panel towards their bottoms. On this point, the prior art, from one angle, appears to show this panel is indented. However, I do not have an image of a corresponding angle of the contested design to determine whether it shares this feature.
- e. Both shafts include a button on their front and around two-thirds of the way up. Both also include a band, at the same point, going around the shaft. Both buttons include the word 'stop', although I appreciate that the word is shown backwards on the prior art.
- f. The rear of the shafts both show an additional button.
- g. Both designs have a smaller indented black section on their head (both seemingly adjustable) with a thin vertical notch.
- h. The details on the actual shower head are exactly the same, including the use of wording that I am unable to make out.

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

- a. Despite the shared colour scheme, the 'spikes' around the outer edge of the shower head are black in the contested design but a dark grey in the prior art.
- b. The steepness of the angle at which the shaft extends from the head differs in each design.
- c. The band around the shaft the contested design is taller than it is on the prior art and, further, it is silver as opposed to the grey used in the prior art.
- d. The thin black notch on the rear of the shower head in the prior art appears to protrude away from the shower head further than the corresponding element on the contested design.
- e. The button on the rear of the shaft on the contested design includes a triangle whereas the button on the rear of the prior art does not.

30. I am of the view that the overall impressions of the designs are such that the contested design does not possess an individual character when compared with the earlier design. I appreciate that the designs differ in the angle at which the head sits on the shaft, the size/colour of the band around the shaft, the size of the notch on the rear of the design and the use of a triangle on the rear button. However, I remind myself of point 6 of *Cantel* (cited above) wherein HHJ Hacon set out that the informed user may, in some cases, discriminate between elements of the respective designs, attaching different degrees of importance to similarities or differences. On this point, I do not consider that the present case is one where users will discriminate between the minor differences in the designs. For example, both designs feature an offsetting angle between their heads and shafts. I consider that the informed user will give less scrutiny to the difference of these angles as opposed to, say, if the head and shaft sat perpendicular to each other on one design but angled steeply in the other. Further, I consider the difference in size of the notches on the rear of the designs is immaterial because the informed user will simply notice its shared presence across the designs and pay very little attention to how much the notches protrude from the head.

31. When considering the designs, I am of the view that the informed user will regard the heads of the designs as their primary features and given their identical layouts (both on their fronts and their rears), I consider that it is this point that will be

attributed the greatest degree of importance. This, together with (1) what I have said in the preceding paragraphs and (2) the designs' highly similar overall shapes, are sufficient for me to conclude that the contested design does not possess its own individual character when compared to the applicant's second prior art.

Novelty

32. 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 prior art in some material respect, even if some or all of the design features, if considered individually, would not be.”

33. The designs at issue are not identical. That being said, I am of the view that when considering the designs in their entirety, they are very highly similar with any points of difference between them coming only in minor and trivial points. In accordance with the case law cited above, such differences are immaterial. As such, it follows that the contested design will not be considered new when compared with the prior art relied upon by the applicant.

Final Remarks

34. As I have found in the applicant's favour in relation to the second prior art, I do not need to consider the first prior art in any detail. However, for the sake of completeness, even if I were to conduct a comparison between the contested design and the first prior art, I see no reason why the outcome would be any different. I say this because, essentially, the first prior art is identical to the second prior art, differing only in the fact that it is made up of line drawings as opposed to

photographs. Therefore, for the avoidance of doubt, I find the contested design, when compared to that prior art, does not possess its own individual character and neither is it novel for the same reasons set out above.

CONCLUSION

35. The application to invalidate the contested design is successful. Therefore, Registered Design (UK) under no. 6365805 is hereby invalidated with effect from its application date, being 14 May 2024.

COSTS

36. The applicant has been successful and they are, therefore, entitled to a contribution towards their costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of £748 as a contribution towards their costs. The sum is calculated as follows:

Preparing an application of invalidity and considering the counterstatement in response:	£350
Written submissions:	£350
Official fee:	£48
Total:	£748

37. I therefore order Bronxix Ltd to pay Kang ZOU the sum of £748. 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 20th day of August 2026

A COOPER

For the Registrar