

O-784-22

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK REGISTRATION NO. 3307327

IN THE NAME OF WIREX LIMITED

AND

APPLICATIONS FOR A DECLARATION OF INVALIDITY

NO. 504878 BY CRYPTOCARBON GLOBAL LIMITED

AND

NO. 504879 BY SUBASH GEORGE MANUEL

Background

1. This decision follows a case management conference (“CMC”) held before me, in the event by videoconference, on 1 September 2021. At the CMC, Andrew Norris QC appeared for Wirex Limited (“Wirex”). Subash Manuel represented himself and Cryptocarbon Global Limited (“Cryptocarbon”).

2. Although a number of matters were set to be discussed at the CMC, the main issue for determination was whether two applications for invalidation of UK trade mark number 3307327 should be struck out. I decided that they should be and gave very brief reasons at the CMC, indicating that I would give full reasons in writing. That I now do.

IPO proceedings

3. UK3307327 stands in the name of Wirex. It was filed on 28 April 2018 and registered on 27 July 2018. On 16 May 2022 and 18 May 2022, applications were made for declarations that the trade mark was invalid. The first, under number 504878, was filed by Cryptocarbon. The second, under number 504879, is in the name of Mr Manuel.

4. The applications for invalidity (forms TM26(I)) have not yet been admitted or served because both required amendment. In respect of invalidity number 504879, the tribunal wrote to Mr Manuel on 27 June 2022 to advise him that the grounds (ss. 3(1)(b)-(d), 3(6), 5(4)(a) and 5(4)(b)) were not adequately pleaded. No amended form TM26(I) was received. A further preliminary view was issued on 4 August 2022 that the application was inadequately particularised and should be struck out in full. No further correspondence was received in relation to this invalidity application.

5. In relation to invalidity number 504878, the tribunal wrote to Cryptocarbon, also on 27 June 2022, to advise it that amendments to the statement of case were required. An amended form was filed on 18 July 2022 and although some of the grounds were now deemed admissible, the form remained deficient in part. Accordingly, a further letter was issued on 4 August 2022 advising Cryptocarbon of the preliminary view that the grounds of invalidity based on ss. 3(1)(a) and 5(4)(b) should be struck out but that the ss. 3(1)(b)-

(d), 3(6) and 5(4)(a) grounds were considered clear enough to proceed. On 18 August 2022, an amended form TM26(l) was filed, in which the s. 3(1)(a) ground was dropped,¹ leaving only the acceptability of the s. 5(4)(b) ground to be determined.

6. In addition to the two invalidities, there is an opposition case, number 415073, which is brought by Wirex against Cryptocarbon's trade mark application number 3337858. That case is at an advanced stage of proceedings but there are s. 5 grounds which are dependent on Wirex's UK3307327. A preliminary view was issued on 4 August 2022 regarding the suspension of the opposition proceedings and the admission of some additional evidence filed by Mr Manuel.

7. I should also add that, in addition to the present invalidities, an application to invalidate UK3307327 was filed by Cryptocarbon on 6 June 2019 (invalidity number 502632). The grounds were ss. 3(6) and 5(4)(a). This application should have been launched in the courts (s. 47(3)) but that fact was not picked up and the application was suspended pending the outcome of the IPEC proceedings detailed below. Following the IPEC judgment, on 23 June 2021 the invalidity application was closed.

8. The parties were offered a hearing in consequence of the various preliminary views issued in the live cases above. Wirex asked to be heard.

IPEC proceedings

9. There have been previous proceedings at IPEC between the parties. The IPEC proceedings were initially brought by Wirex for infringement of UK3307327. Cryptocarbon and Mr Manuel were among the defendants. The defendants brought a counterclaim that UK3307327 was invalid on the grounds of passing off (s. 5(4)(a)) and bad faith (s. 3(6)). The matter went to trial and judgment was handed down in favour of Wirex (*Wirex Ltd v Cryptocarbon Global Ltd & Ors* [2021] EWHC 617 (IPEC)). The trade mark was held not to have been registered contrary to the provisions of s. 5(4)(a) in a full reasoned judgment.

¹ This was confirmed at the CMC.

The defendants had accepted that if the s. 5(4)(a) case failed, then so would the s. 3(6) case and it was also dismissed.

10. There does not appear to be any dispute that, after the trial judgment was handed down in favour of Wirex, Cryptocarbon/Mr Manuel sought permission to appeal first from the trial judge and then the Court of Appeal, or that further applications and/or representations have been made to the higher courts, including the Supreme Court.² At the CMC, Mr Manuel submitted that he intended to raise the matter again with the Supreme Court and with the European Court of Human Rights. At the time of the CMC, however, all applications for permission to appeal had been refused and the IPEC judgment stands.

The CMC

11. Mr Norris filed a skeleton argument prior to the hearing. At the CMC, Mr Manuel referred to having filed a skeleton argument but I had not seen it. It transpires that it had not been sent to the tribunal hearings email address but to a different address within the tribunal section. There was no requirement for Mr Manuel to file a skeleton argument. I made Mr Manuel aware at the CMC that I had not seen a skeleton argument from him and am satisfied that he was given ample opportunity to make any and all of the points he wished to at the CMC.

12. A further issue arose at the beginning of the CMC, namely that Mr Manuel said that he had not received the tribunal's letter of 4 August 2022 in respect of the invalidity brought in his name (504879). He made no claim that he had not received the tribunal's earlier letter dated 27 June 2022, which advised him of the need to amend the form TM26(l) and to which no response was filed. Mr Manuel accepted that the "key action" was the invalidity brought by Cryptocarbon but said that he would wish to pursue invalidity 504879 if Cryptocarbon's application was struck out. However, he did not identify any material difference between the applications. Mr Norris submitted that the only distinction between the invalidities was the name of the applicant and argued that if Mr Manuel could

² Bundle C, accompanying the forms TM26(l), contains a witness statement from Mr Manuel which references several actions and applications.

not identify why his personal application was different then it too should not be allowed to proceed.

13. Both Mr Manuel and Cryptocarbon were defendants in the IPEC proceedings. Mr Manuel was present at the CMC and plainly able to make submissions on his own behalf. He did not identify any reason why his personal application should be treated differently or why he was unable to deal with invalidity 504879 at the CMC. It seemed to me that the issues around striking out were the same or not materially different for both invalidities and that as there was no apparent prejudice to Mr Manuel it was appropriate to consider invalidity 504879 at the CMC.

14. I should also add that Mr Manuel complained that he had had very short notice that Wirex intended to apply for the invalidities to be struck out. Wirex wrote to him on 26 August 2022 to advise him of its intentions; Mr Norris filed a skeleton argument the morning before the hearing which set out the case fully. The amended form TM26(1) filed on 18 August 2022 included a section on estoppel and a reference to a previous UKIPO decision on the matter. That indicates that Mr Manuel is not unfamiliar with the principles. In the circumstances, although there was not a great deal of notice, I was satisfied that sufficient notice was given for the matter to be addressed without unfairness at the CMC.

The application to strike out

15. Wirex submits that striking out is appropriate because the validity of the trade mark had been raised and dismissed in the previous IPEC proceedings. It says that the matters raised in the invalidity applications are *res judicata*.

16. Mr Norris submitted that the IPEC proceedings were concerned with the validity of the trade mark, as are the present invalidity applications. The grounds chosen before IPEC were ss. 3(6) and 5(4)(a); Cryptocarbon/Mr Manuel could have sought to invalidate on the s. 3(1)(b)-(d) and s. 5(4)(b) grounds now raised but chose not to. During the IPEC proceedings, the defendants' argument was that "CRYPTOBACK" was distinctive; this was agreed between the parties. Mr Norris submitted that strict cause of action estoppel applies to the grounds under ss. 3(6) and 5(4)(a) because they have already been

determined in the courts. The same grounds are said to be caught by issue estoppel because they have already been decided. Mr Manuel's argument that he/Cryptocarbon are entitled to a fair trial is, Mr Norris argued, viewed only from Mr Manuel's/Cryptocarbon's perspective: Wirex also has a right to fairness, namely finality in litigation. Mr Norris submitted that the other grounds for invalidity could and should have been brought before IPEC and should be struck out on the principle in *Henderson v Henderson* (1843) 3 Hare 100 and/or abuse of process. Mr Manuel/Cryptocarbon were properly advised in IPEC and there is no reason why the grounds could not have been run. Mr Norris also pointed out the tension in Cryptocarbon's/Mr Manuel's position that the mark is caught by s. 3(1) but is distinctive of their business, characterising it as "diametrically opposite" to and "absurd" in light of their earlier position. A further argument was made that there is an abuse of process, concerning primarily the s. 5(4)(b) ground. Mr Norris submitted that it is inconceivable that software can be relevant to the copyright claim regarding the contested trade mark, and that the claim based on the single word "CRYPTOBACK" is destined to fail, following the judgment in *Exxon Corporation Esso Petroleum Company Limited & Ors v Exxon Insurance Consultants International Limited* [1982] R.P.C. 69 (in which a single invented word, "Exxon", was held not to qualify for copyright protection because it was not an 'original literary work').

17. In addition, Mr Norris pointed to the various applications for permission to appeal and representations to the higher courts, none of which has so far resulted in the IPEC judgment being reopened. He submitted that there was realistically no chance that it would be. In responding to Mr Manuel's submissions, Mr Norris accepted that Wirex had applied for a Civil Restraint Order ("CRO") against Mr Manuel. However, this was not granted, he says, because Mr Manuel voluntarily provided an undertaking not to make any further applications to the court. I here note that the attachments to Cryptocarbon's application include Mr Manuel's statement and undertakings, along with the resulting Order.

18. Turning to Mr Manuel's submissions, I must confess that I did not always find his logic easy to follow. He relied heavily on references in the IPEC judgment to the contested mark being a "descriptive neologism". Mr Manuel's submission appears to be that, until

HHJ Hacon characterised the trade mark in such a way, it had not been apparent to Cryptocarbon/Mr Manuel that the mark may not be registrable under s. 3(1). The unforeseeable characterisation of the mark as descriptive is what has prompted the s. 3(1) grounds and as these grounds were not considered at IPEC, there is no estoppel or abuse of process. Mr Manuel relied on the fact that the defendants' representatives at trial raised with the judge the characterisation in the draft judgment of the trade mark as a neologism and that they were given the opportunity to comment, as it had not previously been addressed. This gave rise, he said, to the cause of action being different, because it arose from the judge's description of the contested mark as a neologism.

19. It also appears to be Mr Manuel's case that evidence from after the filing date was not taken into account in the IPEC judgment and that it is material to the determination of the s. 3(1) grounds. This appears to be connected to his claim that a descriptive word should be free for all traders to use and that striking out the s. 3(1) grounds would be unfair. It also appears to be related to an allegation he made that Wirex fabricated evidence in the course of the IPEC trial.

20. In addition, Mr Manuel argued that Wirex is itself estopped from claiming that Cryptocarbon/Mr Manuel is estopped from bringing proceedings. This appears to be on the basis that Wirex's application for a CRO was refused and that Wirex may not "raise estoppel again".

Decision

21. The leading case on estoppel is *Virgin Atlantic Airways v Zodiac Seats UK Ltd* [2013] UKSC 46. Lord Sumption described the different species of estoppel saying, so far as relevant to these proceedings, as follows:

"17 The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is "cause of action estoppel". It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings. [...] Fourth, there is the principle that even where the

cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties: *Duchess of Kingston's Case* (1776) 20 St Tr 355. "Issue estoppel" was the expression devised to describe this principle by Higgins J in *Hoysted v Federal Commissioner of Taxation* (1921) 29 CLR 537, 561 and adopted by Diplock LJ in *Thoday v Thoday* [1964] P 181, 197-198. Fifth, there is the principle first formulated by Wigram V-C in *Henderson v Henderson* (1843) 3 Hare 100, 115, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones. Finally, there is the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger".

22. Lord Sumption also cited with approval (at [20]) Lord Keith of Kinkel's statement in *Arnold v National Westminster Bank plc* [1991] 2 AC 93 concerning the distinction between cause of action estoppel and issue estoppel:

"Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, permit the latter to be re-opened. (104D-E)

Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to re-open that issue. (105E)".

23. The Court also cited with approval Lord Keith's conclusion that issue estoppel is not absolute, in particular his view that:

"In my opinion your Lordships should affirm it to be the law that there may be an exception to issue estoppel in the special circumstance that there has become available to a party further material relevant to the correct determination of a point involved in the earlier proceedings, whether or not that point was specifically raised and decided, being material which could not by reasonable diligence have been adduced in those proceedings. One of the purposes of estoppel being to work justice between the parties, it is open to courts to recognise that in special circumstances inflexible application of it may have the opposite result".

24. Lord Sumption's conclusion (at [22]) was that *Arnold* is authority for the following propositions:

"(1) Cause of action estoppel is absolute in relation to all points which had to be and were decided in order to establish the existence or non-existence of a cause of action.

(2) Cause of action estoppel also bars the raising in subsequent proceedings of points essential to the existence or non-existence of a cause of action which were not decided because they were not raised in the earlier proceedings, if they could with reasonable diligence and should in all the circumstances have been raised.

(3) Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised".

25. Turning to the present case, it is clear that Cryptocarbon/Mr Manuel have already attacked the validity of the trade mark under both s. 3(6) and s. 5(4)(a). Both of those attacks failed. I acknowledge that the judge was not obliged to address the bad faith

ground in any detail. However, it does not seem to me that the dismissal of the ground cannot amount to a “decision”. The only reason that the ground was not considered in detail was the defendants’ acceptance that its success was tied to the passing off case. It is implicit in the judgment that the bad faith claim failed because there was no goodwill of which Wirex could be aware to sustain the allegation of bad faith. Cryptocarbon and Mr Manuel accepted this. There is not the slightest hint that they wished to preserve their position so that they could litigate the issue at a later date.

26. Mr Manuel floated the idea that there had been a fabrication of some evidence by Wirex. Plainly, this could be fraudulent conduct which might have a bearing on the application of cause of action estoppel. However, the allegation is made in the vaguest of terms. There has been no clear identification of the documents alleged to have been falsified. The burden is on Mr Manuel to substantiate his claim sufficiently to displace the prima facie case of cause of action estoppel established by Wirex. In my view, he has not done so. My conclusion is that Cryptocarbon and Mr Manuel are debarred from raising either s. 3(6) or s. 5(4)(a) due to strict cause of action estoppel.

27. Mr Manuel was not able to identify any materially different circumstances to explain why issue estoppel would not also apply to the ss. 3(6) and 5(4)(a) grounds. There appear to be none. The description of the contested mark as a “descriptive neologism” so heavily relied upon by Mr Manuel does not, in my view, represent a materially altered circumstance. The only possible relevance to the s. 5(4)(a) ground is that a descriptive word will require more extensive use in order for it to become distinctive, and that more or different evidence may have been filed if that had been recognised. The issue was addressed in the IPEC judgment, where it was pointed out that the defendants had the opportunity to file evidence showing that the word was distinctive of their business and it was said to be “self-evident” that the word is a contraction of “cryptocurrency cashback” (at [27] of the judgment). None of this is surprising in a passing off case. If Cryptocarbon/Mr Manuel had not before appreciated the deficiencies in their evidence or that their mark may not be seen as terribly distinctive, that is no reason to subject Wirex to a second round of litigation on the same ground. The allegation of fraud is, for the

reasons given above, too imprecise to warrant an exception on the grounds of injustice. Issue estoppel also applies to the s. 3(6) and s. 5(4)(a) grounds.

28. As for the principle in *Henderson v Henderson*, in *Virgin Atlantic* Lord Sumption cited with approval (at [24]) the classic statement of Lord Bingham in *Johnson v Gore-Wood* [2002] 2 AC 1, 31:

“*Henderson v Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before”.

29. For the reasons set out at [24]-[25], Lord Sumption considered that the *Henderson v Henderson* principle should be regarded as a species of *res judicata*. He drew a distinction (at [25]) between that and the procedural principle of abuse of process:

“Res judicata and abuse of process are juridically very different. Res judicata is a rule of substantive law, while abuse of process is a concept which informs the exercise of the court’s procedural powers. In my view, they are distinct although overlapping legal principles with the common underlying purpose of limiting abusive and duplicative litigation”.

30. Applying these authorities to the present applications for invalidation, the grounds now raised clearly could have been advanced. That does not necessarily mean that they should have been. However, the only real reason given to explain their exclusion is that Mr Manuel/Cryptocarbon were said to have been surprised at the notion that the distinctiveness of the sign they relied upon may be in issue. They were, however, professionally represented and it should have been no surprise to their advisors. A reasonable consideration of the potential grounds for invalidity would include an assessment of both relative and absolute grounds (as indeed were pleaded).

31. Cryptocarbon/Mr Manuel had proper legal representation in the IPEC proceedings: this is not a case where an unrepresented party has brought previous proceedings not being fully aware of the full range of grounds available to them and where to deprive them of the opportunity to raise other grounds now would represent a clear unfairness. Professional advisors should have been fully aware of the grounds of invalidity which could be claimed. The case law above clearly indicates that parties should bring their whole case and that if they do not do so, they cannot expect to raise other grounds later without risking an estoppel. Further, if a party considers that a trade mark falls foul of s. 3(1), that is potentially the better case, as it does not involve an assessment of relative rights which may, as Cryptocarbon/Mr Manuel have discovered, result in a very different objective assessment of their rights from their own subjective perception.

32. I acknowledge that s. 3(6) and s. 5(4)(a) grounds may require different evidence from those under consideration. However, I do not consider that alone a good reason for not

bringing the grounds at the same time. The IPO is a lower cost forum than the Court but there are savings to be had by running one rather than two sets of proceedings. I do not accept that the evidence dated after the filing date is of any relevance to the grounds now raised. All of the grounds under consideration fall to be assessed as at the filing date and events since then are only of relevance if they cast light on the position before the filing date. There is no detail about the evidence said to be of relevance and no persuasive submissions to justify why evidence from a later date would be relevant or why this evidence could not with reasonable diligence have been discovered in order to form part of the original claim.

33. The copyright claim does not appear to be affected by any arguments of non-distinctiveness and no separate basis is advanced to explain why this claim could not have been made at IPEC. Plainly the rights could have been invoked in the IPEC proceedings. The same point that Cryptocarbon/Mr Manuel were well represented at IPEC and would reasonably have been aware of the full range of grounds available also applies here.

34. I also bear in mind that this is not, in fact, only the second time that the validity of the mark has been challenged. It is the third time that Cryptocarbon has applied for invalidity of the trade mark, making it a question of Wirex being not twice but thrice vexed with the question of validity of its mark. I note in this regard that Mr Manuel admitted joint liability with Cryptocarbon in the IPEC proceedings and that he is described in the Order dated 9 June 2022 dismissing the CRO (filed with Cryptocarbon's form TM26(I)) as "the guiding force behind all of the corporate defendants" (p. 68): the relationship is such between the parties that, in the absence of any submissions why Mr Manuel's personal application should be treated differently, I do not consider that it should be.

35. Even discounting the previous IPO invalidity, however, there is prejudice to Wirex in being vexed for a second time with having to defend the validity of its trade mark. Mr Manuel has not identified any good reason why the grounds now advanced were not brought before IPEC. I consider that Cryptocarbon/Mr Manuel both could and should have included the present grounds of invalidity in the IPEC application and that it is a misuse

of the system for Cryptocarbon/Mr Manuel now to bring the grounds identified in the applications for invalidity.

36. My view is that the above considerations are sufficient for the conclusions I have reached. However, it also seems to me that the timing of the applications, coming more than a year after the IPEC judgment and following what appear to be multiple unsuccessful attempts to reopen the original proceedings, suggests not a genuine belief that they are well founded but an attempt to divest Wirex of its trade mark at any cost. That is also not a proper use of the system. The full case should have been brought at IPEC.

37. I have not so far addressed Mr Manuel's submission that Wirex is itself estopped from relying upon estoppel. I can see no reason why the refusal of a CRO, particularly in circumstances where the subject gave voluntary undertakings not to launch certain types of action, would mean that Wirex cannot claim that Cryptocarbon/Mr Manuel are estopped from relitigating points which have been decided, or which should have been raised in previous proceedings. The claim is dismissed.

38. For completeness, I should address Mr Norris's submission that the s. 5(4)(b) ground is hopeless and should be struck out for that reason. I agree. The claim based on the single word "CRYPTOBACK" has no prospect of success following the judgment in *Exxon*. The claim relating to "software program", "commercial article" and "website contents" remains insufficiently clear: the works relied upon are not adequately identified. In any event, this claim appears to boil down to the use in these programs, articles and websites of the word "CRYPTOBACK". For the reasons above, it has no prospect of success.

Conclusion

39. The applications based on ss. 3(6) and 5(4)(a) are barred by strict cause of action estoppel and issue estoppel. The remaining grounds both could and should have been raised in the IPEC proceedings and are barred on the basis of the principle in *Henderson*

v Henderson or abuse of process more generally. Additionally, the claims under s. 5(4)(b) have no prospect of success. The applications for invalidation are struck out.

Next steps: related opposition proceedings

40. Wirex does not object to the preliminary view to admit the second witness statement of Mr Manuel. That preliminary view is confirmed.

41. As the applications for invalidation against UK3307327 have been struck out, there is no obvious reason to suspend the opposition case (415073) insofar as it is based on that trade mark. Wirex wishes the relative grounds to be determined as soon as possible. Mr Manuel urged me to suspend the opposition until the outcome of his representations to the Supreme Court is known. However, it is now over a year since the IPEC decision was made, there has as yet been no successful attempt to reopen the case and the basis on which Mr Manuel's representations to the Supreme Court are being made is not clear. I recognise that he indicated there would be an application to the European Court of Human Rights but there is, so far as I can tell, no current application. It cannot be ruled out that one or all of these current or anticipated representations may succeed but in my experience the prospects of success are likely to diminish rather than increase with each application. In view of the fact that all usual avenues of appeal appear to have been exhausted and that the IPEC judgment stands, I did not consider it appropriate to suspend the opposition case based on the relative grounds.

42. The opposition is also based on a s. 3(6) ground which is reliant on an argument that there can have been no intention to use the mark across the full range of services applied for. I invited submissions from the parties regarding the suspension of this ground until the Supreme Court rules in *Sky v Skykick*. Wirex had no objection, nor did I detect any real resistance from Mr Manuel. There was certainly no cogent reason put forward for not suspending this part of the case. Accordingly I direct under rule 62 that the s. 3(6) case be separated from the s. 5 case and that the s. 3(6) ground be stayed pending the Supreme Court judgment.

43. I also directed under rule 62 that Cryptocarbon provide by 15 September 2022 a schedule indicating whether it agrees or disagrees with Wirex's assessment of identity or similarity for each of the terms identified in the attachment to Wirex's notice of opposition. Once that has been received, the case will be passed to the hearings team for a decision on the s. 5 claim and the parties will be given the chance to request a hearing or to file submissions in lieu.

Costs

44. The parties are allowed 21 days from the date of this decision to file any submissions they may have in relation to the costs of the applications for invalidation which have now been struck out. Upon receipt, I will issue a supplementary decision on costs.

Appeal

45. My decision to strike out the applications for invalidity terminates the proceedings. The appeal period for this decision runs from the date below. The appeal period for the decision on costs will run from the date of the supplementary decision.

46. My decisions regarding the opposition case do not terminate the proceedings and may only be appealed with the leave of the tribunal (rule 70(2)).

Dated this 12th day of September 2022

Heather Harrison

For the Registrar

The Comptroller-General