



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: S140/2025
File Title: Zip Co Limited & Anor v. Firstmac Limited
Registry: Sydney
Document filed: Respondent's submissions
Filing party: Respondent
Date filed: 20 Nov 2025

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**IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY**

No. S140 of 2025

BETWEEN:

ZIP CO LIMITED

First appellant

ZIPMONEY PAYMENTS PTY LTD

Second appellant

AND:

FIRSTMAC LIMITED

Respondent

10

RESPONDENT'S SUBMISSIONS

I CERTIFICATION

1. This submission is in a form suitable for publication on the internet.

II ISSUES

2. **Trade mark defences:** The first issue, logically, is posed by ground 2 of the notice of appeal. What is the date at which the defence in s 122(1)(f) and (fa), read with s 44(3)(a) of the *Trade Marks Act 1995* (Cth), applies?

3. The second issue, raised by ground 1 of the appeal, is the proper approach to be applied to the assessment of honest concurrent user, particularly honesty, in considering, under
20 s 122(1)(f)/(fa) read with s 44(3)(a), whether a person would obtain registration of trade marks. In particular, this appeal asks whether honesty is wholly subjective *or* whether all the circumstances surrounding the person's adoption *and* use of the mark should be taken into account with their conduct assessed according to commercial standards of decency and fairness in the context of the purposes of the Act?

4. **Cancellation:** The third issue, raised by ground 3 of the appeal and ground 2 of the notice of contention, only arises if the appellants succeed on grounds 1 and 2: whether, in the exercise of the discretion under s 89, cancellation of the respondent's registration should not be granted? A fourth issue, in ground 1 of the notice of contention, concerns whether the ground in s 88(2)(c) requires consideration of notional or actual use, on which the Court is reserved.

30 **III SECTION 78B NOTICE**

5. No s 78B notice is considered necessary.

Date of document: 20 November 2025

Filed on behalf of: Respondent

IV MATERIAL FACTS

6. The facts set out in AS are incorrect in several respects. Important facts are omitted.

7. AS [11(h)-(i)] is given to suggest that the appellants, through Mr Diamond and Mr Gray, were merely the passive recipients of adverse reports to which they gave no more than cursory attention. That suggestion is incorrect. The 2013 adverse reports placed the appellants “*squarely on notice*” of Firstmac’s prior registrations and made them “*aware that IP Australia considered that their marks so nearly resembled the earlier registered marks such that using their marks was likely to cause confusion*”: FCJ [71] CAB 183-184. The appellants knew that their applications for registration for ZIPMONEY and ZIP had been refused and why: FCJ [68] CAB 183. Nonetheless, the appellants “*chose not to engage with the adverse reports or their findings, including by not seeking legal advice which might have assisted in proving honesty*”: FCJ [71] CAB 183-4. They were thus “*fixed with knowledge of the Firstmac Mark as a barrier to registration*” (FCJ [72] CAB 184) and were aware of “*the likelihood that there was a material impediment to the legitimate use of the[ir]... marks*” (FCJ [70] CAB 183). And although so fixed, the appellants “*decided to launch their services and start using the trade mark ZipMoney anyway in November 2013*”: FCJ [10] CAB 160. In so doing, the appellants “*in effect took a risk*” (FCJ [16] CAB 161-162; FCJ [88]-[89] CAB 188-189).

8. Firstmac clearly signalled its intention to preserve and to defend its rights: PJ [295] CAB 105; FCJ [80] CAB 186. The appellants failed to remove Firstmac’s registration for non-use (PJ [172]-[175] CAB 71; FCJ [147] CAB 213) and only applied for cancellation when sued. Despite making over 20 applications for registration, the appellants never sought to vindicate their position before the Registrar: FCJ [32] CAB 166-172, Respondent’s Book of Further Materials (**RBFM**) pp 24-27. Firstmac was not at fault (PJ [382] CAB 126-127; FCJ [166] CAB 220-221) and there was no laches, acquiescence or delay (PJ [294]-[299] CAB 105-106).

9. AS[11(g)] and [12] assert that the appellants first used ZIP as a trade mark in August 2013 because “*by this date, Zipmoney Payments had used ‘ZIP’ and ‘ZIPMONEY’ in presentations to merchants*”: see also appellants’ chronology, item 13. It was not possible to offer credit services before the credit licence was obtained which occurred on 3 September 2013 (PJ [77] CAB 42-43; FCJ [32] CAB 167). The judge’s unchallenged finding of fact (at PJ [78] CAB 43) is that in late November 2013 Zip Money partnered with its first merchant, Chappelli Cycles, and sometime after that began offering credit and payment services to customers of Chappelli Cycles in Australia. It did so under the mark ZIPMONEY. The Full Court found that this was the “*very first time*” ZipMoney used the mark as a trade mark: FCJ [2],

[8] CAB 158-159; FCJ [32], [82] CAB 167, 187. The “*undisputed time of first infringement is November 2013, being the date of first use by the respondents*”: FCJ [82] CAB 187. No appeal is brought from that finding of fact. It was accepted by the appellants at trial and was not challenged before the Full Court: RBFM pp 4-6; CAB, tab 10, p 243. The appellants concede that “*the issue is not ultimately material to the Appellants’ argument*” (AS [12]). In any event, the evidence in ABFM does not prove the fact now belatedly advanced: RBFM pp 7-23. The appellants are bound by the way the case was run and cannot disturb the concurrent findings of fact: *Coulton v Holcombe* (1986) 162 CLR 1 at 8; *Commonwealth v Sanofi* (2024) 99 ALJR 213 at [30]-[31].

- 10 **10.** The appellants’ chronology is incomplete and reflects the appellants’ problematic approach to the facts. The chronology at FCJ [32] CAB 166-172 is to be preferred.

V **ARGUMENT**

A **The date for assessing the defence**

11. *Construction:* Section 122(1)(f) and (fa) with s 44(3)(a) apply to a person’s use of a trade mark, and are considered, at the time of the person’s use in issue.

12. When a person uses a trade mark that is substantially identical with, or deceptively similar to, a registered trade mark in relation to the services in respect of which the trade mark is registered without the trade mark owner’s consent, that use is an infringement under s 120(1). The registered owner has a right to obtain relief as to that person’s infringement: s 20(2), s 126;

20 *Self Care IP Holdings Pty Ltd v Allergan Australia Pty Ltd* (2023) 277 CLR 186 at [4], [37]. Each occasion of trade in Australia is a use: *E & J Gallo Winery v Lion Nathan Australia Pty Ltd* (2010) 240 CLR 144 at [51]. Subject to the operation of a defence, the trade mark owner may claim relief in respect of each use in the six years preceding initiation of the action: *Judiciary Act 1903* (Cth), s 79 and, e.g., *Limitation Act 1969* (NSW), s 14(1).

13. If the defendant says that their use of the trade mark is not an infringement because they “*would obtain registration*” of the mark they used “*if [they] were to apply for it*” (s 122(1)(f)/(fa)), that claim focusses attention on, *first, when* they were using the mark and, *secondly, how* they would obtain registration by a notional (or hypothetical) application for registration in the face of the prior registration (i.e., the registered trade mark) so as to secure

30 the protective effect of obtaining registration.

14. Registration is ordinarily obtained by an application process (under Pt 4), with or without an opposition (under Pt 5) followed by registration (under Pt 7): *Self Care* at [9]-[14].

There is no statutory limit on how many times a person may apply. The notional application in the infringement context (under Pt 12) does not have to satisfy all the formalities of a real application (see, e.g., s 27(1), (2) and *Trade Marks Regulations 1995* (Cth), reg 4.1 and reg 4.2) but the essential elements comprise the use of the trade mark (covering the trade mark, the services in respect of which it was used and the person who used the trade mark impugned in the infringement action) and a “priority date”.

15. The “priority date” is the “filing date in respect of the application for registration”: s 6 and s 12 (“priority date”), s 72(1) (date and term of registration), s 6 (“filing date”, para (a)); see also s 30 with reg 4.7(c) (the date of filing the application is a prescribed particular the Registrar must publish).

16. The priority date is significant for two reasons. *First*, in considering an application for registration under s 44(2), (3)(a), the “rights of the parties are to be determined as at the date of the application”: *Southern Cross Refrigerating Co v Toowoomba Foundry Pty Ltd* (1954) 91 CLR 592 at 595; *Registrar of Trade Marks v Woolworths Ltd* (1999) 93 FCR 365 at [50].¹

17. *Secondly*, the priority date fixes the date from which the registration is taken to have effect: s 72(1). It is from that date that the person secures the protective effect of registration corresponding to s 20(1)(a), s 23 and s 122(1)(e). Those provisions give the registered owner of a trade mark the exclusive right to use the trade mark in relation to the services of which the trade mark is registered (s 20(1)(a)) but not so as to prevent another registered owner of a substantially identical or deceptively similar trade mark from using their trade mark (s 23), which use is not an infringement (s 122(1)(e)).

18. Section 44(2) relevantly compels the rejection of an application for the registration of a trade mark in respect of services where three conditions are met. Those conditions concern, *first*, the requisite degree of similarity of the trade mark applied for with that of an existing registration; *secondly*, the similarity of, relevantly, the services; and, *thirdly*, where the priority date of the mark for which registration is sought is “not earlier than” the existing registration. Where s 120(1) applies with identity of the respective services, those conditions will often be met; *cf.* s 44(4) and s 124 (prior continuous user).

¹ *Contrast*, s 44(3)(b) where current authority holds the discretion is exercised with regard to the circumstances as they exist at the time the discretion is exercised: *Trident Seafoods Corp v Trident Foods Pty Ltd* (2019) 369 ALR 367 at [83]; *Bendigo and Adelaide Bank Ltd v Community First Credit Union Ltd* (2021) 389 ALR 196 at [228].

19. In such a case, acceptance of the application for registration depends upon either limb of s 44(3), of which only para (a) is relevant. The state of satisfaction that enlivens the discretion to accept the application for registration is “*that there has been honest concurrent use of the 2 trade marks*”. The words “*there has been*” directs the factual inquiry to what has happened in the period before and up to the priority date of the application for registration. Honest concurrent use of the 2 trade marks must have occurred by the priority date to establish the necessary state of satisfaction. If accepted and then registered, the owner secures the protective effect of registration from the priority date but this does not of itself absolve the owner of potential liability in an infringement action in respect of the period of use before the priority date (i.e., the period of use relied upon to establish honest concurrent use), although it may sound in relief.

20. In the notional application posited by s 122(1)(f)/(fa), the date of the person’s use under s 120(1), being the date from which the defendant says they “*would obtain registration*”, provides the notional priority date. The statutory text compels focus on the person’s use of a trade mark at (and from) a particular time. A harmonious reading of s 120(1) with s 122(1)(f)/(fa) takes a person’s use of a sign (under s 120(1)) and asks, in respect of that use, whether the person would obtain registration of that sign in the face of the earlier registered trade mark (under s 120(1)(f)/(fa)(ii) with s 44(3)(a)). The text thus aligns the time for consideration of the notional registrability of the person’s sign to the time of the person’s use under s 120(1) at which the person says they “*would obtain registration*”. This is the notional priority date of the notional application for registration. If the Court is of the opinion that the person would obtain registration at that date, there is no infringement. If the Court is not of that opinion, the defence fails and there is infringement.

21. **Text and context:** This construction gives effect to the statutory text. Sections 120(1) and 122(1) speak of the person’s use of a trade mark in the present indicative. Each of paras (a) to (e) and (g) of s 122(1) describe the nature of the person’s use which provide a defence in those circumstances. Paragraph (f) assumes, and para (f)(a)(i) repeats, the use in s 120(1) and poses the inquiry in the present subjunctive. They are directed to the same time. The defences in paras (a) to (e) and (g) apply at the time of the person’s impugned use. There is nothing in the text that applies those in paras (f) and (fa) anomalously at a different or later time. There is no basis in the text to divorce the time at which registrability is considered from the time of the person’s impugned use. In particular, there is no textual reason why the question of registrability should be considered at the time of filing a defence to the action or some later time.

22. This construction best achieves the purpose of the Act. The Act provides for the registration of trade marks and sets out and protects the rights deriving from registration: Reader's Guide, "*Purpose of this Act*"; *Self Care* at [6]. The Register is central: *Self Care* at [6], [37]-[40]. "*It is inspection of the Register that enables a person to identify what marks are registered, the extent of the monopoly of each mark and what actions the person might take under the Act – whether to seek registration of another mark, challenge the registration of an existing mark or modify their behaviour so as to avoid action under s 120 for infringement of a mark*": *Self Care* at [39]. The policy rationale evinced by the Act is for users of trade marks in the face of existing registrations to apply for their own registration and vindicate their position before the Registrar under Pt 4. Where the owner of an existing registration does not oppose the application or fails in an opposition, registration follows (s 67), providing protection against infringement (s 23, s 122(1)(e)). When a person uses a sign in a way that traverses the exclusive rights given to the owner of a registered trade mark, they do so at risk that the registration will remain and not be cancelled (Pt 8) or removed (Pt 9), that they will not obtain their own registration (Pt 4) and that other defences (Pt 12 or equitable) will not rescue them. There is no policy reason to be discerned from the statute, or otherwise, why s 122(1)(f) and (fa) should be construed more broadly than s 122(1)(e) to alleviate a defendant from the consequences of their own conduct.

23. The legislative history supports this construction. Under the *Trade Marks Act 1955* (Cth) (and the *Trade Marks Act 1938* (UK)), registration of identical or similar marks for the same services by different owners in case of honest concurrent user was a separate basis for registration in the Registrar's discretion (s 34(1); s 12(2)). While a concurrent registration provided a defence to infringement (s 58(3) and s 64(e); s 4(4)), there was no distinct statutory defence of honest concurrent user. Rather, a defendant in an action for infringement could apply for registration of the defendant's mark. It was necessary in Australia and usually appropriate in the UK for the ordinary procedure before the Registrar to be followed: *Hansman v Regal Shoe Company* (1912) 15 CLR 529 (under the *Trade Marks Act 1905* (Cth)); *Electrolux Ltd v Electrix Ltd* [1953] RPC 127 at 133-134; cf. *Chung Fai Trading Co's Trade Mark Application* [1979] FSR 169 (Hong Kong). Until registration was obtained, it was said to be irrelevant or speculative to take the application for registration into account: *Smith & Nephew Plastics (Australia) Pty Ltd v Sweetheart Holding Corp* (1987) 8 IPR 285 at 291. The Court could, in an appropriate case, stay the infringement action (*Berlei (UK) Ltd v Bali Brassiere Co Inc* [1970] RPC 469 at 477) or the injunction (*Electrolux Ltd v Electrix Ltd* [1953] RPC 127) to give the defendant the opportunity to obtain registration. If infringement were found and

registration also obtained, no injunction restraining the defendant's future use would lie (as the registration took effect from the filing date, s 53(2) 1955 Act, s 19 1938 Act) but liability for damages or an account of profits (likely) remained: *Electrolux Ltd v Electrix Ltd* [1953] RPC 127 at 134.50, 135.40-136.12, 137.45-138.20; see T A Blanco White and R Jacob, *Kerly's Law of Trade Marks and Trade Names* (Sweet & Maxwell, 12th ed, 1986) at [15-24]-[15-26]; *Match Group LLC v Muzmatch Ltd* [2023] 4 All ER 190 at [66]. A successful defensive reliance based on honest concurrent user therefore operated prospectively (from the date of registration), not retroactively (to deny infringement before registration).

10 24. In the current Act, the place of honest concurrent user is differently located with narrower scope. It is situated within s 44 as an exception to the prohibition on the acceptance of an application for registration in the case of identical or similar marks for similar services. Section 44 itself is within Div 2 of Pt 4 which deals with the grounds for rejecting an application, while Div 3 of Pt 4 sets out the grounds on which an application may then be opposed. Further, there is no separate statutory defence of honest concurrent user to infringement under Pt 12. It arises in a particular case only through the potential combination of s 122(1)(f)/(fa) with s 44(3)(a). While Parliament did not restate the position under the 1955 Act and may be seen to have broadened the categories of uses that do not constitute infringement, it nonetheless chose to tie the defence closely to the capacity to obtain registration at the time of the person's use. This is so, even accepting that the conferral of jurisdiction on
20 the court to decide the registrability question may be seen to address the procedural complexity of different venues (*cf. Hansman, Electrolux*), albeit without eliminating the former practice of applying for registration in the ordinary way, prosecuting that application before the Registrar and meanwhile seeking a stay of the action.

25. As to the extrinsic materials, the following points can be made. *First*, the Working Party's report, *Recommended Changes to The Australian Trade Marks Legislation* (July 1992) recommended, without identification of any particular mischief or elaboration, that a registered trade mark "*is not infringed by*", among other things, "*the use of the trade mark, in the exercise of the right to the use of that trade mark given by registration as provided by the Act, or where the court is of the opinion that the mark is entitled to such a registration*": pp 77-78. The
30 recommendation focussed on the person's "*use of the trade mark*" and whether that use is "*in the exercise of a right ... given by registration*" or, in the court's opinion, "*is entitled to such a registration*". The two aspects (use of an existing right given by registration and an entitlement to registration) sit conformably with the time of the person's use; see also the earlier

recommendation (p 46) that honest concurrent use “*may succeed to the extent only that it is shown there has been ... honest concurrent use in one or more territorial areas in Australia*”.

26. Secondly, the explanatory memoranda and second reading speeches to the bills for the *Trade Marks Act 1994* (Cth) (enacted but never in force), the 1995 Act or the *Trade Marks and Other Legislation Amendment Act 2001* (Cth) (which introduced para (fa)) do not suggest there was any intention to give the defence an expansive scope.

27. **Authority:** The consistent trend of authorities in the Federal Court and the Full Court is that the date for the assessment of the defence is the date of the alleged infringing conduct (i.e., at the time of the person’s use in issue). There is no authority which has held, after argument,
10 that it should apply at a later date, e.g., at the time of the defence or the hearing.

28. In *Anchorage Capital Partners Pty Ltd v ACPA Pty Ltd* (2018) 259 FCR 514, the Full Court (Yates, Nicholas and Beach JJ) decided, in *obiter*, that the defence in s 122(1)(f)/(fa) is to be assessed as at the date of the alleged infringing conduct (at [217]). Their Honours rejected (at [217]) submissions that the defence be considered as at the date of the hearing or at the date of the (second) respondent’s first use. In reasoning to that view, the Full Court recognised (at [211]) that the date for assessing the hypothetical application had been adverted to but not decided by Yates J in *Optical 88 Ltd v Optical 88 Pty Ltd (No 2)* (2010) 275 ALR 526 (*cf.* AS [66], [67]) and properly had regard to the context of s 122(1)(e) which “*is directed to the state of affairs in existence as at the date the allegedly infringing conduct occurs*” (at [214]).
20 Their Honours’ exposition (at [215]-[216]) of the problematic consequences of an alternative construction (by reference to first use) is attuned to the interaction of the statutory provisions concerning both registrability and other defences. This involves no error of principle or analysis. While the problems identified emerge starkly from the particular facts,² they reinforce the correctness of the construction (discussed above) that the defence is to be assessed as at the date of the alleged infringing conduct. In *Anchorage*, the defence (which there did not turn on its interaction with s 44(3)(a)) would have failed because registration would not have been obtained owing to the likely success of an opposition based on s 60 (at [219]).

² The respondent had first used in January 2007 (at [24]; [72], [82], [111]), a finding that established ownership as the basis for cancelling the appellant’s registration (at [10], [11]; [165]). The appellant’s registered trade mark had been registered with effect from 26 May 2011, when the appellant had been operating for around 3 years (at [1], [4]; [218]). Apart from the respondent’s acts of infringement in May 2013 and March 2014 (at [199]-[203]), the evidence did not show use after 2007 in later years, a finding that precluded the prior-continuous user defence in s 124 (at [36], [221]).

29. The question of the date of the application of the defence was decided, after argument, in *Sensis Pty Ltd v Senses Direct Mail and Fulfilment Pty Ltd* (2019) 141 IPR 463.³ Consistently with *Anchorage*, Davies J held that the correct date for assessing the defence is the date of the alleged infringing use (at [58], [62]). Alternative dates put forward by the respondent in its efforts to avoid infringement, including the date of an actual application for registration or the hearing, were rejected (at [59]-[61]).

30. Her Honour considered *Anchorage* as “*amply supported by the text and context of s 122(1)(fa) and its correctness not doubted by the legislative history*” (at [58]). As to the text, Davies J noted that the provision posited a hypothetical application so the time at which an actual application is made has no bearing upon the time at which the defence is determined (at [59]). As to context, and like the Full Court in *Anchorage*, Davies J considered that the defences in s 122(1)(f)/(fa) should have an operation that is conformable with that under s 122(1)(e), namely “*to provide a defence to infringement where a mark, albeit unregistered, qualifies for registration*” (at [63]). Further, a harmonious reading of s 122(1) with s 120(1) “*imports the temporal requirement for determination of the defence*”, being “*the state of affairs in existence as at the date the alleged infringing conduct occurs*” (at [64]). Still further, while the legislative history showed an intention to broaden the categories of uses that do not constitute infringement, there was “*nothing ... which signifies that the relevant time at which to assess those defences is other than at the time of the alleged infringing use*” (at [64]). The fact that the defence failed at the date of the alleged infringing conduct did not bear on the question of construction (at [65]).⁴ Her Honour’s careful analysis to the text and context of the provisions is compelling. The appellants do not confront it, preferring to ignore it (*cf.* AS [67]).

31. The Federal Court has since consistently assessed the defence at the date of the alleged infringing conduct.⁵ More recently in *Killer Queen LLC v Taylor* (2024) 306 FCR 199, a

³ Her Honour correctly identified (at [45]-[49]) that the question had not been determined (i.e., decided) in earlier cases, including *Insight Radiology Pty Ltd v Insight Clinical Imaging Pty Ltd* (2016) 122 IPR 232 at [88] per Davies J (on appeal, *Pham Global Pty Ltd v Insight Clinical Imaging Pty Ltd* (2017) 251 FCR 379 at [107] per Greenwood, Jagot and Beach JJ); *Optical 88* at [175]-[176] per Yates J and *Frito-Lay Trading Co GmbH v Aldi Stores Ltd Partnership* (2001) 52 IPR 410 at [26] per Gyles J. The appellants’ reliance on *Insight* (and *Optical 88*) in AS [67] is misplaced.

⁴ The defence would also have failed at the later date of the filing of the application (at [66]-[78]).

⁵ *Swancom Pty Ltd v The Jazz Corner Hotel Pty Ltd (No 2)* (2021) 157 IPR 498 at [267] per O’Byrne J (citing *Anchorage*, and not the subject of the appeal); *Henley Arch Pty Ltd v Henley Constructions Pty Ltd* (2021) 163 IPR 1 at [671]-[672] per Anderson J (citing *Sensis*, and not the subject of the appeal); *Cantarella Bros Pty Ltd v Lavazza Australia Pty Ltd* (2023) 181 IPR 313 at [631] per Yates J (citing

differently constituted Full Court (Yates, Burley and Rofe JJ) applied *Anchorage* (and *Sensis*) and, while coming to a different view as to honesty, upheld the judge’s finding that the s 122(1)(fa) defence was not available on the basis that there was no concurrent use of the mark at the relevant time that would support an application for registration (at [193], [204], [215]-[216]). On the way the case was run at trial, the “*relevant time*” was a date before the limitation period and leave to amend to rely on a later date as the alleged date of first infringement was refused (at [189]-[192]). Despite refusing leave, the Full Court observed that the “*circumstances of the present case may, by reason of the period of allegedly infringing use beyond the limitation period, be one of the small number of cases in which the honest concurrent user defence may apply*” but expressed no view as to the correctness of that date (at [190], [217]). In saying this, no doubt was expressed as to the correctness of the view in *Anchorage* that s 122(1)(f)/(fa) is concerned with the state of affairs in existence as at the date the alleged infringing conduct occurs. As submitted, that is correct.

32. *The Full Court did not err:* The Full Court, applying *Anchorage* and *Killer Queen*, correctly assessed the defence under s 122(1)(f)/(fa) read with s 44(3)(a)—i.e., whether the appellants would obtain registration of, relevantly, ZIP and ZIPMONEY—at the date of the (alleged) infringing conduct: FCJ [3] CAB 158; FCJ [61] CAB 181.

33. The unchallenged finding is that the date the alleged infringing conduct started is November 2013: FCJ [8], [10] CAB 159-160; FCJ [32], [61] CAB 167, 181. As at that date, the Full Court found that the use was not honest and so the defence failed: FCJ [16] CAB [162]; FCJ [75]-[76] CAB 185. As discussed below, the Full Court were correct to do so. But honesty aside, there was no concurrency of use at that date to the extent necessary to get registered, as the Full Court observed at FCJ [76] CAB 185, referring to *Killer Queen* at [215]-[216] where the defence also failed on that basis. The appellants do not contend otherwise.

34. The appellants’ attempt in AS [12], [60]-[62] to slink away from the date of alleged infringing conduct in November 2013 in an effort to cast doubt on the Full Court’s reasons is not open to them (see para 7 above). It would not help them (as their nod that it is “*not ultimately material*” necessarily accepts). Even if it were an earlier date of first use, there is even less use to substantiate a claim for honest concurrent user.

Anchorage and *Sensis*, and this aspect not the subject of the appeal); *The Practice Pty Ltd v The Practice Business Advisers & Tax Practitioners Pty Ltd* (2024) 185 IPR 348 at [80] per O’Callaghan J (citing *Sensis*).

35. The appellants submit in AS [65] that the date should be the date of the filing of the defence or, alternatively, the date of the hearing. None of the arguments in AS [67]-[70] supports such a construction. Contrary to AS [67], the text of s 122(1)(f)/(fa) read with s 44(3)(a) aligns with the use in s 120(1) which, in combination, provides the notional priority date for the notional application registration. *Anchorage* and *Sensis* give effect to the text and context of the provisions: *cf.* AS [69], [70].

36. As emerges from AS [68], the appellants' real complaint is that, assessed at the date of the alleged infringing conduct, the defence is practically not available to them because they cannot establish the requisite degree of concurrent use. This, however, does not drive the construction. As Davies J said of the same argument in *Sensis* at [65], it is a "*bootstraps argument*". It is a fallacy, as AS [68] assumes, that the defence should be available to a putative infringer in all scenarios so it covers the period of infringing (*a fortiori*, concurrent) use. The defences under s 122 "*are closely confined to particular persons in particular circumstances*": *Cantarella v Lavazza* at [631]. It is not an exercise of wholly backward-looking forgiveness, as the appellants would have it. Rather, it is an assessment of whether, having regard to the state of affairs at a particular date (i.e., of the alleged infringing conduct), the defendant would be able to get their otherwise infringing marks registered and, if so, their conduct from that date is excused. This does not unduly confine, let alone eviscerate, the defence. After all, a person acting in their own interests, and recognising those of the trade mark owner, can and should seek to vindicate their position before the Registrar without waiting to be sued. Ground 2 should be dismissed.

B Honest concurrent user

37. Honest concurrent user, as a composite expression, derives from the common law doctrine which emerged from the accommodation made in the law between the rights of the public not to be confused or deceived about the origin of a product and the vested rights of traders who had legitimately built up goodwill in similar signs in public use: see, e.g., *New South Wales Dairy Corp v Murray-Goulburn Co-operative Ltd* (1990) 171 CLR 363 at 405-406, referring to *General Electric Co v General Electric* [1972] 1 WLR 729 at 742-743; see also *Campomar Sociedad, Limitada v Nike International Ltd* (2000) 202 CLR 45 at [52]. As the cases show, this requires concurrent use of sufficient duration, volume, scope and commercial value such as to found valuable goodwill, honestly acquired.

38. The appellants would have honesty in the law of trade marks, at least for honest concurrent user, as purely subjective with the inquiry exhausted by a person's honest adoption of their mark and its subsequent use in the absence of an intention to deceive or to make use of another's reputation or goodwill, irrespective of the person's knowledge before their use commenced of a directly conflicting registration: AS [52]. The appellants disavow an objective evaluation of a person's conduct according to ordinary commercial standards of decency and fairness as bearing upon the characterisation of the person's conduct as honest or on the exercise of the discretion under s 44(3)(a) to accept an application for registration, preferring instead to confine objective considerations to specific factual criteria. This should not be accepted.

10 **39.** The proper approach is as follows. The assessment of honest concurrent user is an exercise in characterisation. It calls for an assessment, at the relevant date, of the person's conduct in all the circumstances, including the person's motives and knowledge and having regard to the conduct's potential and actual effects, measured against the standard of commercial honesty such as may justify the moderation of the existing trade mark owner's exclusive rights by affording to the person their own registration and accompanying rights. The person claiming to be an honest concurrent user bears the burden of establishing that their conduct was honest according to commercial standards of decency and fairness. As will be shown, this accords with the purpose of the statute and the authorities, and provides coherence.

20 **40.** The trade mark statutes historically included concepts of good faith (e.g., in the use of a person's own name or to describe the quality or character of services) and honesty (such as in honest concurrent user). The concepts overlap but may not be identical or co-extensive;⁶ there is no clear line of demarcation. A core aspect of honesty is a person's motives and, in particular, the existence or lack of a fraudulent intention, i.e., not to deceive or to divert another's trade: see, e.g., *Australian Woollen Mills Ltd v F S Walton Ltd* (1937) 58 CLR 641 at 657. This does not, however, exhaust the content of honesty. Relevant factors also include knowledge of an existing mark or registration and the interests of the trade mark owner.

41. In *Re Alex Pirie and Sons Ltd's Application* (1933) 50 RPC 147, an application by a Scottish company to register "Abermill Bond made in Great Britain" in respect of writing-paper was opposed by the American owners of "Hammermill" registered in respect of writing-paper.
 30 The facts showed: (i) a period of around five years concurrent use prior to the application for registration (at 154.40-155.26, 156.5-7); (ii) the adoption of "Abermill" as a contraction of

⁶ See, e.g., in the non-use context in Pt 9, where use in good faith is ordinary and genuine use judged by commercial standards: *E & J Gallo Winery* at [64]-[65].

“Aberdeen Mill” (their mill being located near Aberdeen) without reference to, but with some awareness of, “Hammermill Bond” products (at 155.9-17, 160.18-19); (iii) a “*somewhat remote*” or “*slender*” possibility of confusion (at 159.47-160.2); and further (iv) the trade mark owner knew of the use of “Abermill” (first through their United Kingdom agent and then directly) but took no action after receiving a full explanation of the origin of “Abermill” and the nature of its use (at 155.27-156.2). Thus, the “*user and its honesty [was] not in question*” (at 158.45-46) and the conduct of the owners of “Abermill” had not “*in the slightest respect been open to criticism*” (at 159.21-22).

10 42. Lord Tomlin declined to adopt “*a construction which would brand as statutory dishonesty conduct justified in the eyes of honourable men*” (at 159.23-24). In an oft-quoted passage, his Lordship said that knowledge of the opponent’s registration “*may be an important factor where the honesty of the user of the mark sought to be registered is impugned*” but, once honesty is established, “*the fact of knowledge loses much of its significance*” although “*it may be a matter not to be wholly overlooked in balancing the considerations for and against registration*” (at 159.26-30). In consideration of the factors, the order permitting registration was affirmed (at 159.43-160.19).

20 43. The following points should be made. *First*, it demonstrates the necessity to show a sufficient period of honest concurrent use before the date of application to justify registration. *Secondly*, his Lordship recognised within the statute the standard against which conduct is measured (“*conduct justified in the eyes of honourable men*”). *Thirdly*, knowledge of an earlier mark or registration is relevant, both where honesty of the user is in issue and, in any event, in the exercise of the discretion. *Fourthly*, *Alex Pirie* is not authority for the proposition that initial honesty in adoption makes later use unimpeachable.

30 44. In *Re J R Parkington and Coy Ltd’s Application* (1946) 53 RPC 171, an application by Parkington for registration of “Del Carmyn” for sherry was opposed by the owner (and maker) of “Carmen” sherry, Robinson. An infringement action had been stayed pending the appeal from the Registrar’s decision to grant the application (at 172.1-3; *cf.* AS [49]). The facts were: (i) the parties had settled, or were in the process of settling, a dispute over Parkington’s use of “Carmen” (at 182.3-31, 182.47-49); (ii) “Del Carmyn” was adopted without an intention to filch the trade of “Carmen” but of developing their own, the companies operating “*mainly in different fields*” (at 182.28-37, 182.47-49); but (iii) the adoption of “Del Carmyn” was

accompanied by a “*deliberate concealment*” from the owner of “Carmen” “*who could and would have interfered*”.

45. The use was not honest. In reasoning to that view, Romer J observed that the “*circumstances which attend the adoption of the trade mark in the first instance are of considerable importance*” in considering whether the use has or has not been honest (at 181.52-182.2). Tainted inception is difficult to purify subsequently (at 182.2-3; 183.21-22). The criterion is “*commercial honesty, which differs not from common honesty*” (at 182.52-53). In applying that standard, Romer J took into account Parkington’s knowledge of the existence of the earlier mark and the registered owner’s interests in protecting the registration (at 183.5-13).
 10 As to those interests, Parkington “*were not to be deterred by any undue tenderness for [them]*” or “*by any scrupulous regard to whether those interests suffered as a result or not*” (at 182.38-41). The conduct was “*not honest within any ordinary acceptance of that word*” (183.43-44).

46. The significance of the reasoning is as follows. *First*, honesty is not equated merely with the absence of fraudulent intention at the time of adoption but extends to an examination of the use to which the mark is put. *Secondly*, a person’s knowledge of the earlier mark and of the registered owner’s attitude, is relevant to the inquiry as to that person’s honesty of use; that is to say, the inquiry is not confined to whether at the time of adoption there was an intention to divert trade. *Thirdly*, the interests of the trade mark owner are relevant. *Fourthly*, the criterion of commercial honesty is objective.

20 47. In *Baume & Co Ltd v A H Moore Ltd* [1958] Ch 137, watches marked “Baume & Mercier, Genève” from an established Genevan company were imported from Switzerland and sold in England where Baume & Co had a long-standing trade mark registration for “Baume” for watches. Baume & Co sued the English seller, A H Moore Ltd, in passing off and for trade mark infringement. The defence of bona fide use of own name in s 8(a) of the *Trade Marks Act 1938* (UK) was accepted to be available to the seller (at 141.3). Justice Danckwerts said that bona fide “*normally means ... the honest use by a person of [their] own name without any intention to deceive anybody or without any intention to make use of the goodwill which has been acquired by another trader*”. He found that the way in which Baume & Mercier used their name was in good faith and upheld the defence as applying to both actions (at 145-146).

30 48. The Court of Appeal overturned the decision with respect to passing off (as the defence did not apply) but upheld the defence in the trade mark action on the basis of the judge’s finding of good faith: *Baume & Co Ltd v A H Moore Ltd* [1958] Ch 907 at 919, 921. In so doing, Romer LJ, for the Court, approved the judge’s definition of bona fide. The “*mere fact in itself*”

that a trader uses their own name which “*too closely resembles a registered trade mark*” of which the trader is aware does not prevent the use being in good faith, provided there was no fraudulent intention (at 921). His Lordship remarked: “...*The truth is that a man is either honest or dishonest in his motives; there is no such thing as constructive dishonesty*”.

49. A weight should not be placed on these remarks which they do not bear. Strictly *obiter*, they were made against the express finding of use in good faith. Moreover, the Court of Appeal was not considering, and should not be understood as exhaustively stating, the content of the test for honesty, especially in the context of honest concurrent user. In any event, such expressions should not be lifted from the reasons and applied in substitution for the statutory
10 test. If, however, these remarks are to be understood as supporting the proposition that the test for honesty is purely subjective, they should to that extent now be disapproved as inconsistent with the statute and the clear trend of the authorities.

50. A few months after *Baume*, in *Adrema Ltd v Adrema-Werke GmbH* [1958] RPC 323 at 334, Danckwerts J set out the Court of Appeal’s passage from *Baume* and held that something less than a fraudulent intention will suffice to prevent an infringing user being in good faith.

51. The assessment of good faith (honesty) in the sense described by Danckwerts J in *Baume* is not confined to a person’s subjective motives but is to be considered in relation to the state of the market and the state of the Register: *George Ballantine & Son Ltd v Ballantyne Stewart & Co Ltd* [1959] RPC 47 at 49, approved in *Parker-Knoll Ltd v Knoll International Ltd*
20 [1962] RPC 243 at 248. Persistence in a course of conduct after knowledge (e.g., of the trade mark owner’s rights or of the risk of confusion), even if innocently commenced, may give rise to liability (see, e.g., *Cochrane v Manish* [1896] AC 225 at 230-231; *Ronson Products Ltd v James Ronson Pty Ltd (No 2)* [1957] VR 731 at 737, 738), although it is not necessarily the case that notice will mean that the use thereafter is not in good faith (*Parker-Knoll International Ltd* [1961] RPC 346 at 363; *Parker-Knoll Ltd v Knoll International Ltd (No 2)* [1962] RPC 265; see also *Hy-Line Chicks Pty Ltd v Swifte* (1966) 115 CLR 159 at 163-164).

52. *Johnson & Johnson Australia Pty Ltd v Sterling Pharmaceuticals Pty Ltd* (1991) 30 FCR 326 relevantly concerned the defence in s 64(1)(b) of the 1955 Act of use in good faith to describe the character or quality of goods where the decision to use the word “*caplets*” ignored
30 the Australian registered mark was prompted by a strategy to make the word into a generic word to undermine the registered trade mark. Gummow J referred to *Baume* and applied *Adrema*, holding that the finding of ulterior purpose, although not involving fraudulent intention, was

sufficient to support a finding of absence of good faith (at 356). Such a use was not in good faith because, as explained in an earlier passage, the substance of the registration would be undermined by the “*assiduous efforts of an infringer*” (despite the efforts of the owner to protect the mark) and the court should be slow to adopt a construction which could put a premium on such conduct: at 355, citing *Re Bali Brassiere Co Inc’s Registered Trade Mark and Berlei Ltd’s Application* (1968) 118 CLR 128 at 133 per Windeyer J and *Riv-Oland Marble Co (Vic) Pty Ltd v Settef Sp A* (1988) 19 FCR 569 at 573 per Bowen CJ. The passage is instructive as it situates the assessment of the person’s commercial conduct as being or not being in good faith within the statutory context which recognises the legitimate interests of the trade mark owner and considers the potential effect of the person’s conduct on those interests.

53. *Anheuser-Busch Inc v Budejovický Budvar, Národní Podnik* (2002) 56 IPR 182 concerned the defence of use in good faith of the person’s name or place of business (s 122(1)(a)) where the applicant, an American company, owned registrations for, among others, “Budweiser” (at [3]) and the respondent, a Czech company, sold beer which had on its labels the phrase “Budweiser Budvar” (at [124]-[126], [195]-[196]). There were findings as to the respondent’s conduct that: (i) there was no intention to trade off the applicant’s reputation (at [199], [205]); (ii) there was an honest belief in, first, a moral and historical entitlement to use “Budweiser” and, secondly, that such use as had been made was or would be lawful (at [207]); (iii) there was an awareness that the applicant had or would have a reputation in Australia and there was a real possibility, but not likelihood, of confusion (at [207], [216], [218]). While there was no conscious dishonesty, Allsop J found the use was not in good faith (at [216]).

54. After setting out the passage from *Baume* as to the “*clear distinction between honesty and dishonesty*”, Allsop J said that “*notions of objective dishonesty are not foreign to the law of equity and related areas*”, giving the example of the law governing third party accessory liability in equity (at [215]). On the facts, the respondent did not discharge its burden to show an honest belief that no confusion would arise (at [216]). Further, his Honour reasoned that the requirements of good faith were not concluded by a lack of fraud or lack of conscious dishonesty, referring to *Adrema* and *Johnson & Johnson* (at [217]), and taking into account the interests of the trade mark owner and “*an element of risk taking*” (at [218]). This reasoning reflects the broader conception of the assessment of good faith (honesty) beyond the absence of fraudulent intention as measured against an objective criterion.

55. In *Flexopack SA Plastics Industry v Flexopack Australia Pty Ltd* (2016) 118 IPR 239, defences under s 122(1)(a) (use in good faith of own name) and s 122(1)(fa) with s 44(3)(a) were rejected. Relevantly, Beach J found the director of the corporate respondent: (i) to be unreliable resulting in the rejection of his contention that, at the time of adoption, he did not know of the trade mark owner and of the potential for confusion (at [131]-[140]); (ii) failed to make all reasonable inquiries that an honest and reasonable person would have made (at [141], [150], [154]), such as Google searches (at [142]), following warnings on ASIC and company registration sites to consider potential trade mark conflicts (at [143]-[144], [148]) or trade mark searches where he “*knew about such a complex intellectual property right*” (at [146]); (iii) engaged in knowingly risky behaviour (at [143], [154]). This was not use in good faith (at [154]) and not honest adoption (at [177]).

56. In reasoning to that view, Beach J recognised honesty involving a lack of fraudulent intention as “*a necessary but not sufficient condition*” (at [108]). His Honour considered that the test “*is in one sense objective*” and includes taking “*steps that an honest and reasonable person would take to ascertain the ability to use a trade mark*”, i.e., “*reasonable diligence*” to avoid a conflict (at [111], [116]). His Honour grounded that view in: *first*, the standard and expectations of honest commercial practices in the trade mark context, referring to UK authority and *Anheuser* (at [113]-[115]); *secondly*, the balancing of interests within the statute, consistently with TRIPS (at [117]); *thirdly*, the rejection of a purely subjective test for its potential to undermine the utility of a registered trade mark (at [118]); and, *fourthly*, the assessment of a person’s conduct (at least in adoption of a mark) in light of the effect on the trade mark owner (at [118]). In so doing, Beach J followed the consistent thread through the cases. *Flexopack* was subsequently applied and followed in *Insight Radiology* (at [125]), affirmed on appeal in *Pham Global* at [103].

57. More recently, in *Killer Queen*, the Full Court again considered the defences in s 122(1)(a) (own name) and s 122(1)(fa) with s 44(3)(a). The judge had upheld the former but not the latter, primarily for lack of honesty. In the context of good faith, the Full Court restated principles drawn from *Anheuser*, *Jonhson & Johnson* and *Flexopack*, noting that an absence of fraudulent intention (i.e., of confusion or to divert trade) is necessary but not determinative (at [162], [165], [167]) and a finding of use in good faith can only be reached after a consideration of all the relevant circumstances (at [167]). The judge’s finding of use in good faith based on the surrounding circumstances was upheld (at [168]-[175]). As to honest concurrent user, the Full Court referred to *Parkington* and *McCormick & Co Inc v McCormick* (2000) 51 IPR 102

(mentioned below) (at [196]-[199], [205]) and found that there was no taint to the singer's honest adoption of her own stage name and that it had been "*honesty adopted and used*" with an honest belief that there would be no confusion (at [206]-[214]). While their Honours overturned the finding on lack of honesty, the defence failed because of a lack of concurrent use at the relevant date (at [204], [215]).

58. Four brief points should be made. *First*, while the positive finding of honest adoption and use (i.e., the lack of fraudulent intention) was sufficient in that case to discharge the burden of honesty, it does not hold that the inquiry in principle is so confined. *Secondly*, as the Full Court observed (at [214]), their conclusion as to honesty "*sits comfortably*" with the finding of good faith, thereby resolving apparent tensions in the judge's findings (e.g., at [211]). *Thirdly*, any broader analysis of the honesty of use from later conduct was precluded by the refusal of leave to amend the date at which the defence was to be considered (at [217]). *Fourthly*, honesty in adoption is not to be equated with honest concurrent use. The two concepts—the use of the mark and the choice of the mark— should not be conflated: *Fanatics, LLC v Fanfirm Pty Ltd* (2025) 185 IPR 383 at [176].

59. The remaining cases on which the appellants rely do not advance the analysis as to principle and are understood as applications of *Alex Pirie* in their particular facts. In *McCormick & Co Inc v McCormick* (2000) 51 IPR 102, Mrs McCormick's initial adoption and use of "McCormick's" for instant batter was honest (and conceded to be so), notwithstanding her knowledge of "McCormicks" used for herbs and spices, as it was her name, was associated with her roadside caravan selling fish and chips and, to her mind, would not result in any confusion (at [32]-[33]) where, by the relevant date, she had more than 12 years' use (at [34]-[39]). In *Dunlop Aircraft Tyres Ltd v Goodyear Tire & Rubber Co* (2018) 262 FCR 76, a long history of importing and selling in Australia Dunlop-branded aircraft tyres made in the United Kingdom and marked so as to identify the manufacturer meant that consumers understood the tyres were not made by the Goodyear parties in Australia and there was no misappropriation of the goodwill in the registrations, such that the use was honest (at [273]-[278]).

60. The appellants' submission that the test for honesty in honest concurrent user is purely subjective should be rejected. The authorities show that all the circumstances surrounding the adoption and use of the mark should be taken into account. This includes the person's motivations and the surrounding circumstances, including their knowledge of any existing registrations, both when choosing and using the mark. It is also relevant to consider the interests of the trade mark owner, including their attitude towards protecting the registration. The inquiry

be fact-dependent and context-specific. A person's conduct is then to be assessed as honest or not according to commercial standards of decency and fairness in the context of the purposes for which the Act exists. This approach provides coherence: see, e.g., *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2008) 230 CLR 89 at [173]; see also, in different contexts, *Marcolongo v Chen* (2011) 242 CLR 546 at [32]-[33] and *Allianz Australia Insurance Ltd v Delor Vue Apartments Pty Ltd* (2022) 277 CLR 445 at [95]-[96].

10 **61. The Full Court did not err:** The Full Court correctly applied the statutory test, recognising the distinction between *adoption* and *use*: FCJ [72]-[73], [75]-[75], [82], [83] CAB 184, 185, 187; see also FCJ [10], [14], [16] CAB 160, 161-162. The Full Court's statement of principle at FCJ [63] that "*the honesty required to be established ... for the defences to apply was not merely an absence of dishonesty, but the presence, objectively ascertained, of honesty*" discloses no error; see also FCJ [12] CAB 160. It accords with the authorities (including those cited) and the standard embodied in the Act.

20 **62.** The Full Court recognised at FCJ [67] that, in the circumstances of a particular case, knowledge of a prior mark may not *per se* disentitle a party. Their Honours properly took into account both the circumstances surrounding the adoption of the mark (FCJ [11], [14] CAB 160 -161; [74] CAB 184)⁷ and the appellants' actual knowledge of Firstmac's registration and the direct conflict with their proposed use before that use commenced (FCJ [68]-[72] CAB 183; FCJ [9]-[10] CAB 159). Fixed with that knowledge, they decided to take a risk: FCJ [10], [16] CAB 160, 161; FCJ [72]-[73], [88]-[89] CAB 184, 188. This was not commercial honesty (even if not dishonest) (FCJ [73], [76] CAB 184; FCJ [3], [16] CAB 158, 161) within the standard of the Act (as to which, see *Self Care* at [39]).

63. Even if the defence were to be assessed at a later date, it would not relieve the appellants (FCJ [76] CAB 185). The appellants do not explain how, in the light of the surrounding facts, they would make out a case of honest concurrent user or obtain registration in the exercise of the discretion: *BALI Trade Mark (No 2)* [1978] FSR 193 at 220-221; *Re Electrix Ltd's Application* [1957] RPC 369 at 375. The traditional five factors from *Alex Pirie* are not exhaustive. While the initial adoption was not tainted with fraudulent intention, the appellants' conduct (including in light of the facts in paras 7 and 8 above) was not, in all the circumstances,

⁷ To which the judge had given primacy, see PJ [255] CAB 93; FCJ [62], [72] CAB 181, 184; see also *Firstmac Ltd v Zip Co Pty Ltd* [2025 FCA 1074 at [30] (RBFM p 39).

commercially honest such that an application for registration under s 44(3)(a) would be rejected. Ground 1 should be dismissed.

C Discretion not to cancel

64. If the appellants do not succeed on grounds 1 and 2, ground 3 must fail. There is no error (*House v The King* (1936) 55 CLR 499) in the Full Court’s re-exercise of the discretion in favour of retaining Firstmac’s registration: FCJ [171]-[182] CAB 221.

65. Even if the appellants succeed as to the defence to infringement, this does not lead to the restoration of the judge’s decision on cancellation (ground 2 of the notice of contention). There is nothing incongruous in the application of trade mark law or unjust in a result in which Firstmac retains its long-standing registration, irrespective of the outcome of the defence to infringement, in light of the facts at paras 7 and 8 and the rationale underlying the discretion (set out at FCJ [153]-[157], [174]-[175] CAB 214-217, 222-223. The mandatory factors otherwise favour Firstmac or are neutral (FCJ 176]-[180] CAB 223). Ground 3 should be dismissed.

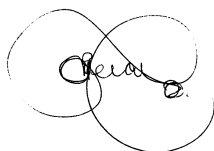
VI NOTICE OF CONTENTION

66. Ground 1 of the notice of contention challenges the judge’s finding that the ground in s 88(2)(c) was made out “*if Firstmac commenced providing*” buy-now-pay-later services which “*would be*” (not is) likely to deceive or cause confusion, which the Full Court declined to consider as it was a new issue: PJ [377]-[378] CAB 126; FCJ [165] CAB 219. This ground will turn on the outcome of the appeal in *Taylor v Killer Queen LLC* (S49 of 2025). Ground 2 has been addressed in para 65 above.

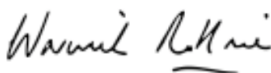
VII ESTIMATE

67. The respondent estimates that it requires 2 hours to present its oral argument.

Dated: 20 November 2025



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ANNEXURE TO RESPONDENT'S SUBMISSIONS

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
1	<i>Trade Marks Act 1995</i> (Cth)	Compilation No. 38 (24 February 2019 to 17 December 2020)	Sections 6, 12, 20, 23, 27, 30, 44, 72, 120, 122, 124, 126, 88, 89	Version in force at the time proceedings commenced and at the time cross-claim filed.	2013 to 2021 (all events)
2	<i>Trade Marks Regulations 1995</i> (Cth)	Compilation No. 43 (17 October 2018 to	Regulations 4.1 and 4.2	The relevant provisions remain unchanged. Version in force at the time proceedings commenced and at the time cross-claim filed.	2013 to 2021 (all events)
3	<i>Trade Marks Act 1955</i> (Cth)	Last compilation (29 June 1994 to 31 December 1995)	Sections 34, 53, 58, 64	The relevant provisions remain unchanged. Comparison of similar provisions in previous Act to the <i>Trade Marks Act 1995</i> (Cth)	1955 to 1995
4	<i>Trade Marks Act 1938</i> (UK)	As enacted and version prior to repeal	Sections 4, 8, 12, 19	Comparison of similar provisions in this Act to the <i>Trade Marks Act 1995</i> (Cth)	1938 to 1994