

TRADE MARKS ACT 1994

**IN THE MATTER OF Application No. 2360358 by Philip Maitland-Kraft
to register a Trade Mark in Class 21**

and

**IN THE MATTER OF Opposition No. 92917
by Maytag International, Inc.**

BACKGROUND

1. On 06 April 2004, Philip Maitland-Kraft (hereafter referred to as ‘the applicant’) applied to register the mark “MAGIC HOME CHEF” in respect of the following specification of goods in Class 21:

“Kitchen utensils for pressing and moulding food into rectangular blocks”

The application, numbered 2360358, was accepted and published on 30 July 2004.

2. On 01 November 2004, Maytag International, Inc. (hereafter referred to as ‘the opponent’) filed notice of opposition against this application under Sections 5(2)(b). In its original form the statement of grounds raised objections based on three sections of the Act and two earlier trade marks. During the course of the proceedings the opponent restricted its attack to a single ground based section 5(2)(b) and a single earlier trade mark (No 2286942). The mark is



3. It is registered for a specification that reads:

Domestic, kitchen and household electrical apparatus, instruments and machines included in Class 7; apparatus, instruments and machines for washing, drying or laundry purposes; vacuum cleaners and cleaning apparatus, instruments and machines included in Class 7; waxing and polishing machines, apparatus and instruments; irons and ironing apparatus, instruments and machines; dishwashers; compactors and waste disposal apparatus, instruments and machines; dust exhausting and removing installations; cleaning appliances utilising steam; carpet shampooing machines and apparatus; electric kitchen machines; food processors and preparation machines; electric mixers; electric tin and can openers; knife or blade sharpening machines; electric carving knives; electric peeling and paring machines; blenders and electric whisks; electric crushers, grinders and cutting

machines; juicers and electric fruit presses for household purposes services; coffee grinders; beverage preparation machines; mills for household purposes; floor buffers and polishers; vacuum cleaner hoses and attachments; parts and fittings for all the aforesaid goods.

Domestic, kitchen and household electrical apparatus, instruments and machines included in Class 9; cleaning apparatus, instruments and machines included in Class 9; polishing apparatus, instruments and machines; electric irons; refrigerated vending apparatus, instruments and machines; refrigerated vending beverage dispensing apparatus, instruments and machines; apparatus and instruments for dispensing ice and chilled beverages; sound or video recording or reproducing apparatus and instruments; radio, televisions, speakers; cameras; remote control apparatus and instruments; communication, transmitting and receiving apparatus and instruments; antennas, amplifiers; magnetic tapes and cassettes for use therewith; dry cells and batteries; transmission lines and electric cables and connectors for use therewith; vending machines, apparatus and instruments; computer apparatus in Class 9; computer software and computer programmes; parts and fittings for all the aforesaid goods.

Domestic, kitchen and household electrical apparatus, instruments and machines included in Class 11; fans; apparatus, instruments, machines and installations for cooking, refrigerating, drying, heating, cooling, freezing; refrigerated cabinets; apparatus and instruments for dispensing ice and chilled beverages; ventilating and air conditioning apparatus, instruments and installations; extractor hoods for kitchens; gas and electric ranges, stoves, grills and ovens; hobs, cook tops, cooking surfaces and griddles; water coolers and heaters; microwave ovens; electric steamers and food dehydrators; electric skillets; waffle irons/griddles; slow cookers and crock pots; pasta cookers; electrically driven barbecue units for electric stoves; outdoor cooking grills; cooking rings and cooking apparatus; electric cooking utensils; electric deep fryers; bread makers; pressure cookers; electric waffle irons and griddles; steam broilers; rotisseries and roasting apparatus; toasters; coffee machines, filters, percolators and roasters; ice-cream makers; plate warmers; humidifiers, dehumidifiers; water purifying apparatus and machines and installations; water filtering apparatus; water softening apparatus and installations; water sterilizers; parts and fittings for all the aforesaid goods.

The restricted nature of the attack was confirmed in a letter from the Registry dated 28 June 2005.

4. In response to the notice of opposition, the applicant filed a counterstatement including submissions on 07 December 2004. In those submissions, the applicant emphasised that the goods covered by his trade mark are non-electrical, that there are 965,000 Internet references to the terms “chef” and “magic chef” (inferring that both of the terms are lacking in distinctive character), and that the opponent’s mark includes additional stylisation. The applicant also contested that the opponent’s mark is not well known within the United Kingdom.

5. The opponent indicated that it did not wish to file evidence under Rule 13C(1)(a) but did wish to file written submissions.

6. The applicant was invited to file evidence and submitted a Form TM54 dated 30 June 2005 accordingly. Although this form made reference to ten exhibits, no such attachments were ever received. The absence of material intended for consideration as evidence was subsequently questioned by both the Office and the opponent.

7. On 16 December 2005, the Office received formal evidence including two exhibits from the applicant (this evidence is documented and assessed in a subsequent section of this decision).

8. On 24 April 2006, the opponent requested an extension of three months (until 23 July 2006) in order to collate and submit its evidence in reply. In response to this request (and the Office's initial decision to grant the extra three months), the applicant requested an Interlocutory Hearing.

9. In the subsequent Hearing (0-359-06), the Hearing Officer decided that the opponent had not put forward facts that merited the extension of time. As a result, the Registry's preliminary view to allow the extension was reversed - an action resulting in the closure of the evidential part of the proceedings (as a consequence of this decision, the opponent's evidence dated 24 July 2006 was not admitted, and will not be considered as part of this decision).

10. On 10 April 2007, the Office received a letter from the opponent, setting out its arguments in support of grounds under Section 5(2)(b). Although the opponent's letter is dated 24 November 2004, a review of the proceedings has shown that it was never received by the Office at that time. The document does, however, show a dated fax record of 10 April 2007. The arguments it presents are discussed in the next section.

11. Following a further extension of time until 08 May 2007 (not contested by either party), the applicant submitted its final submissions in a letter dated 01 May 2007.

12. Neither side has asked to be heard. Acting on behalf of the Registrar, I therefore now give this decision.

Opponent's arguments

13. In its written submissions received at the Office on 10 April 2007 (but bearing a much earlier date) the opponent argues that both marks share the same dominant components i.e. the words "magic" and "chef". In respect of those elements *not* common to both of the marks, it is argued that the earlier mark's device element only serves to reinforce the conceptual similarity already established via the presence of the word "chef", whilst the word "home" found in the applicant's mark is inherently weak and does little to affect the overall visual, phonetic and conceptual similarity.

14. The opponent also claims that the applicant's specification covers goods which are, in effect, machines for food preparation, thereby rendering them very similar to those covered by its earlier registration.

15. Finally, the opponent asks that the Registry ignore the applicant's submissions regarding an alleged lack of use of the earlier mark within the United Kingdom, and questions the relevancy of the applicant's comments in reference to the patentability of the applicant's invention.

Applicant's arguments and evidence

16. As already stated at paragraph (4) above, the applicant's counterstatement contained submissions in which it was stressed that the goods covered by his trade mark are non-electrical, and that the words Magic or Magic Chef are in the public domain. The applicant had also denied that the opponent's mark is well known within the United Kingdom.

17. On 16 December 2005, the applicant filed a witness statement together with two accompanying exhibits. In the statement itself, the applicant emphasised the absence of citations at the time of examination, and alleged that the opponent's earlier mark has not been used within the United Kingdom. To complement the statement, Exhibit 001 is a copy of the letter issued by this Office on 18 October 2005 and sent to the applicant, granting a patent in respect of an invention. The invention is itself represented by a series of technical drawings submitted as Exhibit 002. The Witness Statement confirms that the product intended for coverage is "a (non-electrical) kitchen aid for making perfect sushi and other party snacks".

18. Having reviewed the applicant's evidence, I am not persuaded that the two exhibits hold any relevance to the issue at hand. It is clear that, with effect from 18 October 2005, the applicant has been granted a patent in respect of a device consisting of three parts, namely a "box frame", a "top unit", and a "silicone insert". The technical drawings which present this device are entitled "Magic Home Chef".

19. The applicant argues that the Grant of Patent demonstrates that the device shown in the technical drawings does not infringe any design or device marketed by the opponent. This may be the case but the issue here is not infringement of any patent owned by the opponent. Under Section 5(2)(b), the Registrar is obliged to assess whether registration of the later mark would give rise to a likelihood of confusion by considering (i) the extent of similarity between the *signs* and (ii) the extent of similarity between the relevant goods and/or services. In this case, an absence of similarity between the relevant goods cannot be found solely due to the existence of a Grant of Patent. The assessment of similarity between the relevant goods can only be undertaken by considering the specifications of both the applicant and the opponent, as they have been filed.

20. In respect of the signs themselves, the submission of patent information showing technical details for the product intended for coverage under the later mark has little relevance. The assessment which follows is intended to gauge the extent to which the relevant consumer would consider "Magic Chef (and device)" and "Magic Home Chef" to be similar. The fact that goods intended for coverage under one of those marks have been granted patent protection is of no consequence to that assessment.

Proof of use

21. In relation to the applicant's submissions regarding alleged non-use of the opponent's earlier trade mark within the United Kingdom, reference is made to The Trade Marks (Proof of Use, etc) Regulations 2004, the relevant part of which reads:

“6A Raising of relative grounds in opposition proceedings in case of non-use

(1) This section applies where –

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark in relation to which the conditions set out in section 5(1),(2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.”

22. The registration period for the earlier mark was completed on 12 July 2002, whilst the applicant's mark was published on 30 July 2004. Therefore, as the earlier mark's registration procedure was completed on a date *less* than five years prior to the publication of the later mark, the opponent is not obliged to demonstrate use in support of this opposition. For those reasons, I do not need to consider or comment upon the applicant's allegations of non-use.

DECISION

Section 5(2)(b)

23. The relevant part of the statute reads as follows:

“(2) A trade mark shall not be registered if because -

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

24. In the absence of any requirement on the opponent to produce proof of use, I must approach the matter on the basis of notional use of the earlier mark “Magic Chef (and device)” across the full range of goods claimed in classes 07, 09 and 11 (as per the claim in the statement of grounds).

Comparison of Goods

25. In assessing the similarity of the goods concerned, all the relevant factors relating to these goods should be taken into account. Such factors include *inter alia* their nature, intended purpose, and also whether or not they are in competition with each other or are complementary (see the judgment of the European Court of Justice, Case C-36/97, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*). Further factors include their pertinent distribution channels and sales outlets.

26. The opposition is directed against the applicant's Class 21 specification in its entirety, namely:

Class 21 Kitchen utensils for pressing and moulding food into rectangular blocks.

27. The opposition has been based upon all of the goods covered by the earlier mark, across classes 07, 09 and 11.

28. Whilst Maytag International, Inc. has based its opposition on *all* of the goods covered by the earlier registration, when taken at face value, it is immediately apparent that *some* of those goods appear closer in nature and use to the applicant's kitchen utensils than others. Therefore, for practical reasons, I have set out below those goods where I consider the opponent to have its strongest case in terms of establishing similarity with the goods of the applicant:

Class 07 Domestic, kitchen and household electrical apparatus, instruments and machines; electric kitchen machines; food processors and preparation machines; electric mixers; electric crushers, grinders and cutting machines; juicers and electric fruit presses for household purposes.

Class 09 Domestic, kitchen and household electrical apparatus, instruments and machines.

Class 11 Domestic, kitchen and household electrical apparatus, instruments and machines; electric cooking utensils; bread makers.

29. In its submissions the applicant has identified differences between the goods at issue almost solely on the basis that the kitchen utensils covered by his own mark are non-electrical. It is the case that, by falling in Class 21 (as opposed to, for example, Class 07), the applicant's kitchen utensils must be non-electrical by nature. It follows that the opponent's kitchen machines, food processors and food preparation machines etc. (which are proper to Classes 07, 09 and 11) cannot be considered *identical* to the applicant's goods. However, the fact that some of the goods may or may not be electrically powered is not, by itself, a sufficient basis for determining the degree (or absence) of similarity between the contested goods.

30. From submissions made by the applicant, it appears that the specification of "kitchen utensils for pressing and moulding food into rectangular blocks" refers to a hand-operated device used for the preparation of specific foodstuffs, wherein the device's function is to mould or shape food into a desired form. Although the

applicant has chosen to use the term “utensils” within its specification, I see no reason to doubt that any hand-operated utensil for pressing and moulding food into rectangular blocks is as equally likely to be described as a “device”, an “instrument”, a “piece of apparatus” or, in fact, a “machine”.

31. By strictly applying the aforementioned *Canon* criteria, it is clear that the applicant’s products are mechanical or semi-mechanical devices, used in a kitchen environment for the preparation of food. Being designed for such a purpose, these devices are likely to be sold in a specialist cookware/kitchenware retail outlet or, when provided through a larger department-type store, in the relevant “cookware/kitchen” department or section of that store.

32. Applying the same criteria to the opponent’s goods, I reach very similar conclusions. Terms such as “kitchen electrical apparatus, instruments and machines”, “electric kitchen machines” and “electric mixers” all describe mechanical devices also used for the purposes of food preparation. These are products which are likely to be used in a professional or home kitchen, and are likely to be provided through specialist cookware retailers and/or cookware sections of department stores.

33. In my opinion (and in relation to the opponent’s goods identified at paragraph 28 above), the non-electrical nature of the applicant’s products constitutes the main (and possibly only) dissimilar characteristic to the goods of the opponent. The extent to which this dissimilar characteristic is likely to affect an overall assessment of similarity then has to be considered in the context of the goods concerned. In respect of kitchen apparatus, it is commonplace to find both electrical and non-electrical versions of the same product. One can purchase an electrical food grating machine *or* a hand-operated grating machine; an electrical food handling machine *or* a non-electrical food handling machine; and so on. Furthermore, both electrical and non-electrical versions of the same food preparation product may be displayed and sold in close proximity to each other, within the same retail outlet. They represent alternative choices for the average consumer.

34. The references to “food grating machines” and “food handling machines” in the previous paragraph are given as examples only, intended to demonstrate the extent to which one can purchase both electrical and hand-powered versions of kitchen apparatus with identical applications. Although the opponent lists similar types of products in its specification (e.g. electric mixers, cutters and grinders etc.), I am also aware that much of the earlier mark’s specification covers products with broader purposes and applications i.e. “kitchen apparatus”, “kitchen machines” and “food processors” applied across Classes 07, 09 and 11. Knowing that the applicant’s mark covers a piece of apparatus with a very limited and specific function, I find no reason to believe that the opponent’s more general kitchen apparatus such as “food processors” and “kitchen machines” are any less similar to the applicant’s products. It is wholly feasible that electric-powered versions of the applicant’s products could be within the scope of coverage offered by broad terms such as “kitchen apparatus” and “kitchen machines”. It is also possible that electrically-powered multi-purpose products such as “food processors” and “food preparation machines” may incorporate some form of food shaping and/or moulding feature.

35. The World Intellectual Property Organisation's own interpretation of the Class 21 class heading confirms that this class covers hand-operated household utensils that have their electrically-powered counterparts in Class 07. The explanatory notes indicate, for instance, that Class 21 includes small hand-operated apparatus for mincing, grinding, pressing etc whilst their electrical counterparts are in Class 7. Taking all these considerations into account I find that the applicant's goods are highly similar to those goods of the opponent identified at paragraph 28 above.

36. Having identified similarity between *some* of the opponent's goods and *all* of the applicant's Class 21 specification, I see no value in assessing the likely lesser degrees of similarity between the applicant's goods and those of the opponent which are either (i) not obviously for use in a kitchen; and/or (ii) not for use in the preparation of food.

Distinctive character and comparison of the marks

37. According to case law of the European Court of Justice, in determining the existence of likelihood of confusion, trade marks have to be compared by making an overall assessment of the visual, phonetic and conceptual similarities between the marks. The comparison "must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components" (see ECJ judgment in Case C-251/95 *Sabel BV v Puma AG*).

38. In this comparison, the earlier mark consists of the words "Magic Chef" presented in bold typeface in combination with the stylised device of a human figure. Although dressed in what appears to be evening wear, the figure is also clearly wearing a toque and, as such, is likely to be perceived as a chef.

39. The applicant's mark consists of the words "MAGIC HOME CHEF".

40. By analysing the marks strictly in terms of their constituent parts, it is clear that there are some differences - the applicant's word-only mark contains the word "home", whilst the opponent's mark contains a prominent figurative device. However, such an objective comparison based solely upon the existence of similar or dissimilar elements is unlikely to reflect or indicate the actual potential for confusion in the marketplace. It is necessary to consider the signs' dominant and distinctive components.

41. Having considered the opponent's earlier mark in this way, I do not consider either of the word elements "magic" or "chef" to be especially distinctive in their own right. The New Oxford Dictionary of English (2001 Edition) defines "magic" as an adjective meaning "*very effective in producing results, especially desired ones*", and "chef" as "*a professional cook, typically the chief cook in a restaurant or hotel*". Such definitions reflect the words' inherently low levels of distinctive character when used in respect of kitchen apparatus and food processing machines. The term "magic" could be seen as a reference to a product's quality and/or effectiveness at performing a specific function, whilst the word "chef" could merely be seen as a reference to the product's intended user and/or as an endorsement that the product is 'good enough' to be used by a professional cook.

42. On that basis, it becomes apparent that the distinctiveness of the earlier mark lies in the *combination* of the words. Presented in the mark as it is, the word “magic” clearly serves to qualify the word “chef”, resulting in the overall concept of a “*magic chef*” which is both fantastical and distinctive. This overriding distinctive concept conveyed by the earlier mark’s textual elements is reinforced by the heavily stylised device of a chef which appears in combination with them.

43. Similar logic can be applied to the applicant’s later mark on the basis that it contains two word elements identical to those found in the opponents mark, along with the additional word “home”. In the previous paragraph, I concluded that neither “magic” nor “chef” are particularly distinctive when used (on their own) in respect of kitchen and cooking apparatus. Whilst the same is true of the applicant’s mark, it is important to emphasise that I consider the additional word “home” to be even weaker in terms of its ability to distinguish the origin of kitchen machines. The Court has already confirmed that identification and prioritisation of distinctive and dominant components within a compound mark can take place even where, as is the case here, none of its elements may be immediately perceived as highly distinctive. At paragraph 86 of its Judgement dated 25 May 2005 on Case T-288/03 (*TeleTech Holdings, Inc. v OHIM*), the Court of First instance stated that:

“As regards their conceptual similarity, the Court recalls that, as a general rule, the public will not generally consider a descriptive element of a complex mark as being the distinctive and dominant element in the overall impression conveyed by that mark (Case T-129/01 *Alejandro v OHIM*, paragraph 53). However, where there are several elements which are more or less evocative or descriptive of the goods or services designated by a complex mark, it is not impossible for one of those elements, despite being evocative or even descriptive, nevertheless to be perceived as the dominant element if the other elements of the sign are even less characteristic.”

44. On the basis that I have already found the mark “Magic Chef” to be distinctive in its totality rather than on account of the individual words contained within it, I find myself reaching the same conclusion in respect of the mark “Magic Home Chef”. In particular the word “home” is used in respect of domestic kitchen apparatus and appliances - often in order to distinguish between products for domestic use and those for use in a professional context. It is likely, therefore, that the relevant consumer encountering the mark “Magic Home Chef” used in respect of food preparation devices will attach more significance to the totality of the marks than the individual word elements.

45. Having considered the character of the elements that make up the marks I go on to make visual, phonetic and conceptual comparisons between them.

46. Purely in visual terms, it is clear that some difference can be found between the two signs. The applicant’s mark consists of the three words “magic”, “home” and “chef”, whilst the earlier mark consists of only two words (“magic” and “chef”) in combination with the chef device. In respect of the opponent’s earlier composite mark, it is reasonable to assume that the word elements will have visual dominance over the figurative elements. Notwithstanding the fact that the words “Magic Chef” are presented in a bold typeface and occupy a much greater proportion of the mark’s

overall appearance than that taken up by the figurative device, the relevant consumer is, in this case, more likely to identify and understand the composite mark by reference to its familiar (and distinctive) word combination than by reference to its figurative element.

47. Moreover, the device of a chef only serves to reinforce the message conveyed by the prominent word elements. Therefore, the absence of any figurative element in the applicant's word-only mark is not a significant point of differentiation.

48. Where, as is likely to be the case, the consumer's visual perception is focused upon the earlier mark's word elements, the visual comparison to be assessed has to be between the words "Magic Chef" and "Magic Home Chef". It is self-evident that both begin and end with identical words. There is significant visual similarity as well as points of difference.

49. In relation to an aural comparison, the comments already made in respect of the figurative 'chef' device are of even more relevance. Having recognised the words "Magic Chef" when encountering the earlier mark, the relevant consumer is unlikely to then also attempt verbalisation of the fanciful figurative device. For the purposes of oral reference to the mark, such action is simply unnecessary.

50. Therefore, the comparison is likely to be between the signs "Magic Chef" and "Magic Home Chef" based on the normal pronunciation of those words. There may be some scope for debate as to whether magic qualifies home or whether both words qualify the word chef depending on how the words are grouped as it were in speech. Either way the respective marks are similar to a material extent from an oral/aural standpoint.

51. The words "Magic Chef" convey the clear but somewhat unusual idea of a fantastical or magical chef (and in doing so allude to the desirable properties or performance characteristics of the underlying goods). A similar concept would be conveyed by the later mark "Magic Home Chef" - the only difference being that the aforementioned "magical chef" now has some relevance and/or association to the home, perhaps to indicate the domestic and/or non-professional nature of the goods. In both cases, the idea of a "magical" or "magic" chef is clearly conveyed. Used in respect of similar items for use in the preparation of food, this degree of conceptual similarity is likely to be noted by the relevant consumer. Therefore, I find the marks to be conceptually similar.

52. Weighing each of the above factors in the balance I find that there is a high level of similarity in the respective marks.

Likelihood of confusion

53. According to the case law of the Court of Justice of the European Communities, the likelihood of confusion must be appreciated globally, taking into account all factors relevant to the circumstances of the case. These include the degree of similarity of the sign, the degree of similarity of the goods and/or services, and the

degree of distinctiveness of the earlier trade mark (*Sabel BV v Puma AG*, Case C-251/95).

54. Moreover, when assessing likelihood of confusion one must take into account the interdependence between the similarity of the goods and the similarity of the signs. This means that a lesser degree of similarity between the goods and services may be offset by a greater degree of similarity between the marks, and vice versa (*Canon Kabushiki Kaisha v Metro Goldwyn Mayer*, Case C39/97).

55. I began the comparison of the goods by noting the highly specialised nature of the applicant's "kitchen utensils for pressing and moulding food into rectangular blocks", and, in the light of such specialisation, then went on to identify a number of the opponent's terms which also describe goods used for food preparation. By applying the relevant jurisprudence, I concluded that *some* of the opponent's goods are highly similar to *all* of the goods claimed by the applicant.

56. I have also held that the earlier mark displays at least a normal level of distinctiveness both in its totality (i.e. inclusive of the chef device), and in the word elements which combine to form the unusual and distinctive term "Magic Chef". Having noted the inherently weak level of distinctiveness displayed by the word "home" found in the applicant's mark but not in the opponent's mark, I concluded that the two signs are visually, phonetically and conceptually similar.

57. Having considered the nature of the goods in conflict, I am aware that kitchen apparatus and instruments are not commonly purchased by the same consumer at a high frequency or on a regular periodical basis. Whether automated or hand-operated, the goods of the both the applicant and the opponent are devices with highly specific applications and are likely to be replaced only when broken, or when succeeded by a more technically-advanced version. Therefore, the level of consumer attention is likely to be moderately high when considering such a purchase. In this respect I consider that the average consumer will be either members of the public purchasing for home or domestic use as well as professional users for restaurants and other catering establishments (with some purchasers being in both camps). Clearly the latter group may have greater awareness of brands and exercise greater care and discrimination in the purchasing process than the non-professional customer. I must also consider the fact that the opponent's mark enjoys a reasonably high degree of distinctiveness in totality, and that imperfect recollection may well play a part in any comparison being made by the prospective consumer (because such goods are likely to be purchased on an occasional basis only).

58. Applying a global consideration to such findings, I find that the average consumer above will be prey to either direct confusion or indirect confusion (through association) as a result of falsely attributing a common or economically linked trade source to goods sold under the marks. This applies to both consumer groups identified above though it is the non-professional consumer who is more likely to be caught out. Therefore, the opposition succeeds under Section 5(2)(b).

COSTS

59. The opponent is entitled to a contribution towards its costs. I order the applicant to pay the opponent the sum of £1000. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 20th day of August 2007

**M Reynolds
For the Registrar
The Comptroller-General**