

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 82283
BY LIQUID PLASTICS LIMITED
FOR A DECLARATION OF INVALIDITY IN RESPECT OF
TRADE MARK REGISTRATION No. 2358804 IN THE NAME OF
IMPERIAL CHEMICAL INDUSTRIES PLC**

**AND IN THE MATTER OF AN APPEAL
TO THE APPOINTED PERSON BY THE APPLICANT
AGAINST A DECISION OF MR. M. FOLEY DATED 5 JANUARY 2007**

DECISION

Application for a declaration of invalidity

1. On 28 September 2005, Liquid Plastics Limited (“the Applicant”) applied for a declaration of invalidity against UK Trade Mark Registration number 2358804 under section 47 of the Trade Marks Act 1994 (“TMA”). The grounds for invalidity were:
 - (a) The mark in suit was registered in breach of section 3(1)(b), (c) and (d) (section 47(1)).
 - (b) There is an earlier trade mark STERISHEEN belonging to the Applicant to which the conditions of section 5(2)(b) and, or (3) obtain (section 47(2)).
2. Trade Mark Registration number 2358804 stands in the name of Imperial Chemical Industries PLC (“the Registered Proprietor”). The mark is STERISHIELD and the registration date is 29 October 2004. The goods for which STERISHIELD is registered are:

Class 2
Paints, varnishes, lacquers; driers including curing driers, thinners, colouring matters, all being additives for paints, varnishes or lacquers; priming preparations (in the nature of paints); wood stains; mastic; putty; repositionable patches of paint, varnishes or lacquers.
3. The earlier trade mark STERISHEEN was registered in the UK under number 1484605 on 8 January 1993¹ for goods in Class 2. Because the STERISHEEN

¹ The filing date of STERISHEEN is 4 December 1991.

registration was more than five years old at the date of the invalidation application, the Applicant was required to prove use of the mark in relation to the registered goods (section 47(2A)). The Hearing Officer found on the evidence that STERISHEEN had been used for: Coatings in the nature of paints, and restricted the application accordingly. There is no appeal against that part of the Hearing Officer's decision.

4. Otherwise, the Hearing Officer concluded, BL O/006/07 that neither the alleged absolute nor relative grounds for invalidity were made out.
5. On 2 February 2007, the Applicant filed notice of appeal to the Appointed Person under section 76 of the TMA. The Applicant disputes the Hearing Officer's findings under sections 47(1)/3(1)(c)² and 47(2)/5(2)(b) of the TMA but makes no challenge to his decision under sections 47(1)/3(1)(d) or 47(2)/5(3).
6. At the hearing of the appeal before me, Ms. Rigel Moss McGrath of W. P. Thompson & Co. appeared on behalf of the Applicant. Mr. Simon Malynicz of Counsel represented the Registered Proprietor.

Standard of review

7. There is no material difference between the parties in relation this. The appeal is a review of the Hearing Officer's decision and I should be reluctant to interfere in the absence of material error (*REEF Trade Mark* [2003] RPC 101, per Robert Walker L.J. at 109 – 110).

Sections 47(1)/3(1)(b) and (c)

8. The Hearing Officer directed himself in the familiar way as regards: (a) section 3(1)(b) by reference to the decision of the Court of Justice of the European Communities ("ECJ") in Joined Cases C-53/01 – C-55/01, *Linde* [2003] ECR I-3161, paragraphs 37, 39 – 41 and 47; and (b) section 3(1)(c) by reference to the ECJ decision in Case C-191/01 P, *Wrigley v OHIM (DOUBLEMINT)* [2003] ECR I-12447, paragraphs 28 – 32.
9. Starting his consideration with section 3(1)(c), the Hearing Officer continued (paras. 32 – 37):

“32. From this [*Wrigley*] it is clear that the prohibition to registration under section 3(1)(c) of the Act relates to signs that may not be being used as a designation of a characteristic of the relevant goods, but nonetheless could be apt for such use. It must therefore first be determined whether the mark designates a characteristic of the goods in question.

² The Hearing Officer's decision under section 3(1)(c) led also to his dismissal of the section 3(1)(b) objection.

33. The opponent's [sic] case is founded on the premise that the term STERI is an abbreviation that denotes "sterile" or similar, but despite these claims there is no evidence that this is the case, a fact confirmed by reference to the Collins English Dictionary of which I have taken judicial notice. There is evidence relating to the word "sterile" that not surprisingly shows it to be apt for use in relation to "sterile paint systems", but there is nothing that shows the term STERI is so used in relation to the goods covered by the application, or in the common parlance of the industry concerned.

34. Ms McGrath also seeks to establish that the word SHIELD is directly descriptive of a characteristic of the goods covered by the application. This is an ordinary English word that the reference from Chambers English Dictionary provided by Ms McGrath shows as meaning "to protect (something or somebody) with, or as if with a shield: to provide a protective cover or shelter". Ms McGrath has provided evidence obtained from the applicants' website relating to STERISHIELD which shows the product to be a paint that forms a film that "actively inhibits bacteria ..." from which Ms McGrath concludes that the product creates a barrier, or in other words, a "shield". The word is undoubtedly capable of describing the properties of something that creates a barrier, but is this the case in respect of a paint film? Such goods are not "shields" and if that word says anything about paints it is more a reference to the desired effect obtained from the use of the goods rather than the goods or a characteristic of them.

35. The "state of the register evidence" shown as Exhibit RKM5 shows SHIELD to be a suffix to a number of trade marks that have been applied for or registered. In *British Sugar Plc v. James Robertson & Sons Ltd* [1996] RPC 281 Jacob J (as he then was) said:

"In particular the state of the register does not tell you what is actually happening out in the market and in any event one has no idea what the circumstances were which led the registrar to put the marks concerned on the register. It has long been held under the old Act that comparison with other marks on the register is in principle irrelevant when considering a particular mark tendered for registration, see *e.g.* MADAME Trade Mark and the same must be true under the 1994 Act. I disregard the state of the register evidence."

36. Although it has not been established that STERI is an "officially recognised" abbreviation for "sterile", "sterilised" or similar, this does not necessarily mean it does not function as such in the market. In fact, in his evidence filed on behalf of the registered proprietors, Steve Snaith argues that STERI is in common use. From the evidence it is apparent that the goods that the applicants and the opponents [sic] use their respective marks in connection with are in some way connected to the function or concept of "sterilising". Being specialised products

most likely to be bought and used by particularly well informed and knowledgeable consumers, to my mind means that to these people STERI will be viewed in the same way as the word from which it is taken. Similarly, the SHIELD suffix to the registered proprietors' mark brings to mind the concept of something that protects, whereas the applicants use of SHEEN is also intended to indicate that the goods will achieve a glossy or shiny finish. The relevance of SHEEN can be seen in a brochure forming part of Exhibit JG6, which describes STERISHEEN as a "single pack, tough, modified acrylic, mid-sheen surface coating which ... contains a non-leaching anti-microbial system".

37. The fact that trade marks may bring to mind an idea because they are composed of a combination of linked concepts does not necessarily make them, as a whole, descriptive. Trade marks are often constructed to bring to mind an image that says something about the goods/services or a characteristic of them that the trader wishes to convey to the target consumer. This reference varies from the skilful and allusive, to those where the origins of the trade mark are plain to see, but are nonetheless not directly descriptive. Whilst I would place STERISHIELD in the latter group, this still means that the trade mark has a distinctive character, and in the absence of evidence to the contrary, is capable of functioning as a badge of origin when used in respect of the goods for which it is registered. The ground under Section 3(1)(c) is rejected, and I believe it follows that the ground under Section 3(1)(b) must also be dismissed."

10. The Applicant's complaints against the Hearing Officer's decision in relation to section 3(1)(c) are threefold. First, the Hearing Officer employed inconsistent reasoning in relation to the STERI prefix. Ms. McGrath referred me to two passages in the decision. She notes that at paragraph 33, the Hearing Officer states that there is no evidence that the term STERI is an abbreviation that denotes "sterile" or that the term STERI is used in relation to the goods covered by the application in the common parlance of the industry concerned. By contrast, at paragraph 36 the Hearing Officer comments:

"In fact, in his evidence filed on behalf of the registered proprietors, Steve Snaith argues that STERI is in common use. From the evidence it is apparent that the goods that the applicants and the opponents [sic] use their respective marks in connection with are in some way connected to the function or concept of "sterilising". Being specialised products most likely to be bought and used by particularly well informed and knowledgeable consumers, to my mind means that to these people STERI will be viewed in the same way as the word from which it is taken."

In her view, this means that the element STERI is directly descriptive of the registered goods.

11. Mr. Malynicz submits that there is no inconsistency between these passages. The Hearing Officer is merely saying STERI is not an officially recognised

abbreviation (hence the lack of dictionary mention) but since both parties are arguing that the prefix is in common use he will accept that. Mr. Malynicz referred me to the evidence of Steve Snaith on behalf of the Registered Proprietor. At paragraph 5 of his witness statement dated 23 February 2006, Mr. Snaith recounts (para. 5):

“5. Full availability trade mark searches were conducted in the United Kingdom in respect of both of the proposed new names and I was advised that there were no earlier registered trade marks which were similar to the mark STERISHIELD. I believe that this assessment was based in part on the fact that the prefix STERI- is a common constituent of trade marks in use and trade marks registered in respect of class 2 goods.”

12. I believe Mr. Malynicz is correct in his interpretation. I am unable to detect any error of principle in the Hearing Officer’s reasoning at paragraphs 33 and 36 concerning the prefix STERI-.
13. The Applicant’s second and third criticisms concern the Hearing Officer’s treatment of the SHIELD suffix for the purposes of section 3(1)(c). Here, Ms. McGrath took me to paragraph 34 of the decision where the Hearing Officer said:

“34. ... The word [“shield”] is undoubtedly capable of describing the properties of something that creates a barrier, but is this the case in respect of a paint film? Such goods are not “shields” and if that word says anything about paints it is more a reference to the desired effect obtained from the use of the goods rather than the goods or a characteristic of them.”

Ms. McGrath argues that the Hearing Officer fell into error because the “desired effect” obtained from the use of the goods equates with the intended purpose of the goods, which means that “shield” is directly descriptive of paints etc. Furthermore she contends that the Hearing Officer ignored evidence showing that the word “shield” is commonly used in the industry to indicate the intended purpose of the products in question. She cites Mr. Snaith’s evidence that the Registered Proprietor owns and uses a number of trade marks incorporating the SHIELD suffix, e.g., MOULDSHIELD, METALSHIELD, PYROSHIELD, FLOORSHIELD (witness statement, 23 February 2006, para. 4 and Exhibit SS1; see also Ms. McGrath’s witness statements dated 9 January and 8 May 2006, paras. 6 and 4 – 5 respectively). She also refers to a number of third party trade mark registrations in Class 2 incorporating the word SHIELD (Exhibit RKM5 to Ms McGrath’s first witness statement and Exhibit RKM2C to her second witness statement).

14. Mr. Malynicz responds that the Hearing Officer’s words should not be taken out of context. At paragraph 34 the Hearing Officer was considering the aptness of the word “shield” to describe characteristics of the goods in question (*DOUBLEMINT*, supra, A.G. Jacobs, paras. 56 – 61). Mr. Malynicz contends that when the Hearing Officer used the term “desired effect” all he

was doing was saying that “shield” was suggestive rather than descriptive in relation to the registered goods. Mr. Malynicz argues that in any event it is the overall impression of STERISHIELD on the public perception for the goods in question that matters. He referred me to the case of *Easynet Group Plc v. Easygroup IP Licensing Limited* [2006] EWHC 1872 (Pat) where Mann J. reviewed the appropriate ECJ and Court of First Instance authorities on the distinctiveness/descriptiveness of composite marks³ and concluded (at para. 34):

“What the cases overall indicate is that an overall assessment of the question is required going beyond a mere assessment of the constituent descriptive parts. It is the whole mark that has to be considered. If it remains purely descriptive then it falls foul of section 3(1)(c). If it remains no more than a combination of two descriptive words, then the combination will be descriptive. If it manages to achieve more than that, it is capable of being non-descriptive. Whether it achieves that is probably a question of degree. That is the test and that is how it works.”

I note that the ECJ recently reiterated in Case C-273/05 P, *OHIM v. Celltech R&D (CELLTECH)*, 19 April 2007 that the test under section 3(1)(c) requires an assessment of the descriptiveness of the mark considered as a whole (paras. 76 – 80).

15. I have studied the passage complained of in the context of the decision and in the light of the parties’ submissions. In my view, the Hearing Officer was merely responding to Ms. McGrath’s argument on the evidence that SHIELD is descriptive of the Registered Proprietor’s products by observing that at best the element is a reference to the desired effect of using paint rather than paint itself or its characteristics. Thus, even assuming that the Hearing Officer failed to appreciate that desired effect might equate with intended purpose (which I very much doubt) the point is immaterial because the Hearing Officer considered that the element was suggestive only. Moreover the Hearing Officer then moved on correctly to assess whether STERISHIELD as a whole fell within of section 3(1)(c) and concluded that it did not. In my judgment he was entitled to do this. I should add for the sake of completeness: (a) the fact that the Registered Proprietor has registered and used a number of trade marks containing the element SHIELD for Class 2 products does not, in my view, assist the Applicant’s case; and (b) state of the Register evidence does not necessarily reflect use in the marketplace and was properly disregarded by the Hearing Officer in assessing STERISHIELD under 3(1)(c).

Sections 47(2)/5(2)(b)

16. Again the Hearing Officer directed himself in accordance with the usual ECJ authorities, which are listed at paragraph 40 of his decision and I do not

³ Case C-363/99, *Koninklijke KPN Nederland v. Benelux-Merkenbureau (POSTKANTOOR)* [2004] ECR I-1619, Case C-37/03, *BioID AG v. OHIM (BioID)* [2005] ECR I7975, Case C-329/02 P *SAT.1 Satelliten-Fernsehen GmbH v. OHIM (SAT.2)* [2004] ECR I-8317, Case T-439/04, *Eurohypo AG v. OHIM (EUROHYPO)* [2006] ECR II-1269.

propose to re-list them here. There is no suggestion that the Hearing Officer misstated the applicable law.

17. The Hearing Officer then summarised the approach he should adopt (para. 41):

“41. Accordingly, I must consider the matter through the eyes of the average consumer of the goods in question, assuming them to be reasonably well informed, circumspect and observant, and on the basis that they will make comparisons of marks based upon an imperfect recollection kept in their mind, not by an analysis of its component parts, but as whole against whole. This must be balanced against the fact that in a comparison of trade marks it is inevitable that reference will be made to the elements of which marks are composed. Whilst this approach is consistent with the case law which requires that consideration be given to the distinctiveness and dominance of the component parts, it must be the marks as a whole that are compared”.

18. I have already mentioned that for the purposes of the opposition and as a result of the requirement for proof of use, the Applicant’s STERISHEEN mark was deemed to be registered only for: Coatings in the nature of paints (section 47(2E)). Bearing that in mind, the Hearing Officer proceeded to a comparison of the respective marks (para. 60):

“60. The selection of paints and coatings will primarily be a visual act, which means that similarity in the appearance of the marks will be of some significance. However, such goods may also be made orally, such as through an enquiry made of a sales assistant where it will be the aural similarity that will play its part. But however the goods at issue are obtained they are of such a nature that conceptual similarity will have some bearing. I am of course conscious that the consumer will not always be in a position to see the respective goods displayed side by side. They may well be able to do so in builders merchants, DIY stores and the like where goods are displayed together by type according to their purpose, particularly where this is specialised, but of course only in establishments that stock both brands and that is an unknown quantity.

61. In a visual comparison of long words such as STERISHIELD and STERISHEEN the number of letters in each is of less significance than the overall impact on the eye brought about by any similarities and/or differences in the sequencing and the relative strength of the letters and syllables, and whether there are elements that are discernible or more memorable to the consumer. It is also relevant to consider that it is generally the beginnings of words that are considered to have most significance in any comparison, as is the fact that in longer words, differences may have proportionately less significance than in shorter words.

62. Both of the respective marks begin with the element “STERI”. As I have already stated, whether or not this is a recognised abbreviation,

shortening form (or whatever), given the nature of the goods covered by the respective marks it is not unreasonable to infer that the relevant consumer is likely to recognise the element as separately indicating that the goods have a function related to sterilising. The remaining parts of the respective marks consist of ordinary English words that have an indirect reference to the goods. It therefore seems to me that whether viewed from the perspective of the Registrar, or the consumer of the goods in question, it is apparent that the respective marks are composed of two discernible elements.

63. To the extent that both marks begin with STERI they will be identical in sound and appearance. Although followed by different words, these both begin with the consonants “SH” preceding two vowels that add to the similarity, albeit more so in sound than appearance. These elements have a significant impact upon the aural impression of the respective marks, as does the fact that the difference exists in their termination which is generally accepted as being the least important because of the tendency of slurring. Both marks have a flow composed of three syllables, and although words are not usually spoken with regard to every letter and syllable, the letter “I” in STERI creates a natural break emphasising that the marks are composed of two distinct parts. In my view, that the second element is a well known word means that the eye is more likely to pick it out. This, in turn will influence the sound when spoken because the consumer will see and enunciate the marks in three steps – STER-I-SHIELD or STER-I-SHEEN. Taking a balanced view, I consider the respective marks to be similar in sound, but not so in appearance.

64. Insofar as these are, as a whole, invented words, they will convey that idea to the consumer. That the first element is identical and likely to be viewed as an indicator of something sterile or for sterilising adds to this conceptual similarity. However, the marks must be viewed in their totality, which is where the differences in meanings of the suffix words will diminish this conceptual overlap to the extent that I would say that in this respect these marks are not similar. In my view, balancing all of the factors for and against these marks being similar, I find them not to be.

65. If only by virtue of its positioning, the STERI prefix is clearly something that will stick in the mind, but this is lessened by the fact that the consumer of the relevant goods is likely to see it as an indication of some capacity or result obtained from their use. Equally, SHIELD and SHEEN are also likely to be regarded as having a similar reference. Consequently I do not consider there to be a distinctive element in the respective marks that significantly dominates; their distinctiveness rests in their whole, which in any event is how the case law says the consumer sees the mark.”

19. Next, the Hearing Officer compared the respective goods. Coatings in the nature of paints (STERISHEEN) and paints (STERISHIELD) clearly

overlapped and were identical. Moreover since both specifications were expressed in general terms, the relevant consumer was the public at large who would expend differing levels of attention depending on the product to be purchased. No criticism is made of those findings, or of the further finding that the Applicant had failed to establish reputation in its STERISHEEN mark.

20. Moving to a conclusion on sections 47(2)/5(2)(b), the Hearing Officer said (70 – 71):

“70. It seems that the applicants’ case rests on the proposition that the consumer will focus on the “STERI” prefix to the marks, will overlook the fact that the second element is different, and through “imperfect recollection” confuse the two. Such a finding would be against the prevailing case law which states that the relevant consumer will be reasonably well informed, circumspect and observant and will perceive a mark as a whole rather than analyse its various details. To my mind, whilst there are similarities these are more than counterbalanced by the fact that the respective marks have a relatively weak distinctive character, and are, as a whole different.

71. It is also important to take account of the fact that the respective parties both accept that the marks are composed of one or more elements that are in common use in their trade. In *Office Cleaning Services Ltd* [1946] RPC 49 it was held that where a trader adopts a trading name containing words in common use, some risk of confusion may be inevitable, but that risk must be run unless the first trader is allowed an unfair monopoly, and in such cases the Court will accept comparatively small differences as sufficient to avert confusion. This seems an eminently sensible approach. I do not consider that when appreciated “globally”, the facts and circumstances are such that use of the mark STERISHIELD by the registered proprietors will lead the public to believe, and wrongly so, that the goods are those of the applicants or some linked undertaking, and the ground under Section 5(2)(b) is dismissed.”

21. The Applicant contends that the Hearing Officer made three errors in rejecting the application for invalidation under section 5(2)(b): first, he artificially dissected the marks instead of comparing them overall; second, he failed to apply the principle of interdependency; and third, he ignored the conceptual association created by the common prefix STERI.
22. Ms. McGrath complains that the Hearing Officer’s analysis of the respective marks was complex and counter-intuitive. She particularly mentions paragraph 63 of the decision where the Hearing Officer stated that the letter “i” creates a natural break emphasising that the marks are composed of two distinct parts and continued: “In my view, that the second element is a well known word means that the eye is more likely to pick it out. This, in turn will influence the sound when spoken because the consumer will see and enunciate the marks in three steps – STER-I-SHIELD or STER-I-SHEEN”. Ms. McGrath says this goes against ECJ guidance that the average consumer

normally perceives a mark as a whole and does not proceed to analyse its various details (Case C-251/95, *Sabel v. Puma* [1997] ECR I-6191, para. 23). She adds that in any event the Hearing Officer accepted earlier that in view of the specialised nature of the goods actually marketed by the Applicant and Registered Proprietor, the relevant consumer would equate STERI with the word from which it was taken (“sterile”, “sterilised” or similar). So, she queries, why would the consumer pick out the second element?

23. It is trite law that marks must be compared overall for the purposes of section 5(2)(b) of the TMA (see most recently Case C-334/05 P, *OHIM v. Shaker di L. Laudato & C. Sas*, 12 June 2007, para. 35). However, in my judgement, the Applicant’s criticism is unjustified because that is exactly what the Hearing Officer did. In accordance with authority (Case C-342/97, *Lloyd Schuhfabrik Meyer v. Klijsen Handel* [1999] ECR I-3830, para. 27), he determined the degree of visual, aural or conceptual similarity between the marks, evaluating the importance to be attached to those different elements taking account of the category of goods in question and the circumstances in which they were marketed (decision paras. 40(d), 60 – 65). Having reminded himself of the importance of comparing the marks “whole against whole” (para. 41), he stood back at various points during that process to assess the overall impression on the average consumer (see, e.g., decision paras. 61, 64, 65 and 70).
24. I also reject the Applicant’s second contention that the Hearing Officer failed to apply the interdependency principle. In support, Ms. McGrath relied on the fact that the Hearing Officer did not deal expressly with the consequences of his finding that the specifications in question overlapped. On the other hand, the Hearing Officer instructed himself with regard to Case C-39/97, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Meyer* [1998] ECR I-5507, paragraph 17 setting out the interdependency principle (decision, para. 40(e)). Further, the Hearing Officer records that his decision to reject the application under sections 47(2)/5(2)(b) is grounded upon his appreciation of all the facts and circumstances in the case (para. 71). As Mr. Malynicz observed, identity of goods alone does not complete the globally assessed likelihood of confusion equation. I additionally bear in mind that the duty to give reasons must not be turned into an intolerable burden (*REEF*, supra, L.J. Robert Walker at para. 29).
25. Third, the Applicant says that the Hearing Officer erred in his assessment of the degree of conceptual similarity between the marks. Ms. McGrath took me paragraph 64 of the decision, where the Hearing Officer found that the differences in meanings between the suffixes SHIELD and SHEEN would diminish the otherwise conceptual similarity between the marks arising from: (a) their nature since both were invented words; (b) the identical prefix; and (c) the fact that STERI would be viewed as an indicator of something sterile or for sterilising. Ms. McGrath contends that his conclusion that the marks were on balance conceptually dissimilar is wrong because the conceptual association created through the common element STERI cannot be ignored. Further Ms. McGrath repeats the Applicant’s assertion that SHIELD and SHEEN are common to the trade.

26. Mr. Malynicz agrees that both marks begin with STERI and are conceptually similar to that extent. He disagrees that the evidence established that SHIELD was common to the trade (here he re-referred to the family of SHIELD marks his client owns and the unreliability of state of the register evidence; see paras. 13 – 15 above). He referred me to the ECJ judgment in Case C-206/04 P, *Mühlens GmbH v. OHIM* [2006] ETMR 57 to the effect that phonetic similarities between marks can be counteracted by conceptual dissimilarities between those marks where a verbal element in the earlier mark conveys a clear meaning to the consumer which is not present in, or is different from the meaning conveyed by the later mark (paras. 49 – 51). Mr. Malynicz says that the Hearing Officer's decision at paragraphs 63 – 65 is merely an application of that principle. Finally he drew my attention to the judgement of the Court of Appeal in *Reed Executive Plc v. Reed Business Information Ltd.* [2004] RPC 40, per Jacob L.J. at paragraphs 83 – 86, as authority for the proposition that marks which contain descriptive elements may be entitled to a lesser penumbra of protection in the global assessment of likelihood of confusion (decision, para. 71).
27. It seems to me that with regard to the final ground for appeal, the Applicant is inviting me to substitute my own view for that of the Hearing Officer contrary to *REEF*. The Hearing Officer did not ignore the conceptual association created by the common element STERI and cannot be said to have erred in that respect.

Conclusion

28. In the result the appeal fails. The Hearing Officer ordered the Applicant to pay the Registered Proprietor the sum of £2,750 as a contribution towards its costs. I will order the Applicant to pay the additional sum of £1000 towards the Registered Proprietor's costs of this appeal.

Professor Ruth Annand, 14 September 2007

Ms. Rigel Moss McGrath of W.P. Thompson & Co. appeared on behalf of Liquid Plastics Limited

Mr. Simon Malynicz of Counsel appeared on behalf of Imperial Chemical Industries PLC