

O-088-09

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION No. 83038  
BY JEREMY KERNER  
FOR REVOCATION OF TRADE MARK No. 2238698  
STANDING IN THE NAME OF  
STEWART WATERS**

## BACKGROUND

1) The following trade mark is registered in the name of Stewart Waters.

Mark	Number	Registration completed	Class	Specification
INoTheScore	2238698	2 February 2001	41	Gambling services; gaming services; betting services; pools services; conducting competitions; sports betting games; information and advisory services relating to the aforesaid including such services being available via the Internet.

2) By an application dated 20 September 2007 Jeremy Kerner applied for the revocation of the registration under the provision of Sections 46(1)(a) & (b) claiming there has been no use of the trade mark in suit in the five years following completion of the registration process nor in the five year period prior to 20 September 2007. The applicant requests revocation with effect from 3 February 2007 or 20 September 2007.

3) On 28 December 2007 the registered proprietor filed a counterstatement stating that he has used the mark in suit on all the services registered and/or it has been used with his consent.

4) Both sides filed evidence. Both sides seek an award of costs. Neither side wished to be heard, but both provided written submissions which I shall refer to as and when relevant.

## REGISTERED PROPRIETOR'S EVIDENCE

5) The registered proprietor filed two witness statements. The first, dated 13 December 2007, is by Stewart Waters, the registered proprietor. He states that the mark in suit is used in relation to a game played via the Internet. This involves players predicting the exact score of ten FA Premiership matches, and there are monthly and seasonal cash prizes. He states that the game has been promoted by word of mouth and that each player pays £20 per season as a subscription. At exhibit SW1 he provides a list of the current members. This shows a list of twenty names with a table showing totals for goals, correct results etc. Mr Waters states that cash constraints have prevented a national launch of the game. In addition he has been in negotiations to expand the game to national levels and has put forward a formal business plan to various companies. At exhibit SW2 he provides a copy of this plan, which is a substantial document detailing numerous aspects of the business and how it could be developed.

6) Mr Waters states that this plan was discussed with Sky Sports Production in 2001. At exhibit SW3 he provides copies of correspondence with Sky. He comments that Sky was not interested in the project at the time. In 2002 work was undertaken to create and launch an internet site under the mark in suit. This work was carried out by an IT company called Newleaf Ltd. He states that although the software was

developed the launch was halted due to financial issues. At exhibit SW4 he provides a copy of a proposal for a pilot of the website. He claims that recently another game operator has spoken to him regarding launching the game using the mark in suit to a wider audience via the internet. This is being investigated. However, Mr Waters states that the main reason that the game has not been exploited is because he has been in negotiations with the applicant for revocation for the last two years. At exhibit SW5 he provides a copy of an e-mail, dated 18 August 2005 from the applicant which mentions that Mr Kerner will be in touch regarding their agreement and payment arrangements.

7) Mr Waters states that he had discussions with the applicant, and had reached a verbal agreement. Mr Waters even went so far as to register himself with the FA Premier League website under the name "Stew 100" and informed members of his game that it was being presented to the applicant. As agreement had been reached which was going to be formalised in writing Mr Waters did not seek to exploit the game further and ceased searching for or negotiating with other parties. He states that he has been trying to formalise the agreement between himself and the applicant during the last two years but this has been hampered as he has been abroad a lot due to work commitments. In early 2007 he instructed his trade mark agent to formalise the licence agreement and the terms and conditions were all agreed. However, at the last minute instead of signing the agreement the applicant filed for revocation.

8) The second witness statement, dated 27 December 2007, is by Puravee Shah the proprietor's Trade Mark Attorney. She states that she has been responsible for the negotiations between the two parties. She also states:

"4. From November 2006 until May 2007 there was a stream of correspondence between myself and Jeremy Kerner in order to finalise the Licence Agreement. There is now produced and shown to me marked exhibit "PS1" the Licence Agreement that was agreed by both parties.

5. During the negotiations of the Licence Agreement, Jeremy Kerner was representing himself and therefore all my correspondence was with him directly. There is now produced and shown to me marked Exhibit "PS2" a selection of correspondence between myself and Jeremy Kerner which clearly illustrates his acknowledgement to the consent provided by my client to use of his trade mark InoTheScore and an exchange for an agreed royalty figure.

6. Throughout my communication with Jeremy Kerner I was under the impression that he acknowledged the consent provided by my client from 2005, he agreed to royalty payment being backdated from 2005 to the present time, and that he agreed with all of the terms of the Licence Agreement. On 11 June 2007 I sent an email to Jeremy Kerner containing details of how the royalties were to be paid and also requesting two copies of the executed Licence Agreement.

7. My client nor myself [sic] did not receive an executed copy of the Licence Agreement and Jeremy Kerner ceased all communication in respect of the Licence Agreement. On 22 June 2007 we received a letter from SJ Berwin informing us that Jeremy Kerner had terminated the licence discussion."

9) The agreement at exhibit PS1 refers to Mr Kerner assisting Mr Waters in maintaining the registration. Exhibit PS2 contains correspondence between Mr Kerner and Ms Shah including the comment from Mr Kerner “4b – I have just finished the 4<sup>th</sup> year of IKTS. I am assuming that £2000 is due for these years plus £500 more for the season coming up?” There is also an email from Ms Shah to Mr Kerner stating that Mr Waters is not prepared to assign the mark but is willing to enter into a licence agreement.

## **APPLICANT’S EVIDENCE**

10) The applicant filed a witness statement, dated 8 April 2008, by Mr Jeremy Kerner, the applicant for revocation. Mr Kerner makes a number of observations and submissions regarding the lack of use shown by the proprietor which I will refer to as and when relevant in my decision. At exhibit JK1 he provides a copy of a report by Farncombe International, an investigation company. The report states that the investigator found no use of the mark in suit. Mr Kerner claims to have been using the his mark (IKNOWTHESCORE) since August 2003 in conjunction with the FA Premier League. At exhibit JK3 he provides a copy of the web page. This shows various other parties trade marks such as the Premier League, Barclays and Budweiser. It shows how to enter into the competition. The print out is dated 7 April 2008 whilst on the screen the only date visible is one which states “08/04 (19:45)”. He states:

“7. Around mid-2005, the Registrant contacted me about my use of IKNOWTHESCORE, a brand I have used in conjunction with the FA Premier League since around August 2003 (a webshot of the use that I make in conjunction with the FA Premier League is at “JK3”). The nature of the approach by the Registrant was that, in the light of his ownership of the Trade Mark, I and the Premier League should be paying a licence fee for our alleged use of the trade mark.

8. In light of this approach by the Registrant I am advised that the subsequent discussions between myself and the Registrant (and his advisors) are “without prejudice” and should not have been disclosed or discussed in the Registrant’s evidence. Whilst reserving my rights to challenge the admissibility of evidence concerning the communications between myself and the Registrant I would note as follows:

- a) Use of my own mark IKNOWTHESCORE commenced before I had heard of the Registrant and before he contacted me in 2005.
- b) There was no “verbal agreement” as alleged between myself and the Registrant. As can be seen from the exchanges at exhibit “PS2” to PS’s witness statement, negotiations never concluded (as the Registrant himself accepts such negotiations were in any event “informal”). By way of example only I would note as follows:
  - (i) 22 January 2007 – An email from me to PS in which I enquired, amongst other things, about buying the Trade Mark. I also noted that it

might be a good idea for the Registrant and myself to discuss the preferred options.

- (ii) 6 March 2007 – Email from PS to me rejecting the proposed assignment and instead putting to me a financial proposal.
- (iii) 25 April 2007 – PS sends me a draft Licence agreement “for you [i.e. me] to review”.
- (iv) 9 May 2007 – Email from PS to me chasing me for comments on the draft licence agreement. I reply the same day noting that I am waiting on comments from the Premier League.
- (v) 27 May 2007 – Email from me to PS with my substantive comments on the draft licence Agreement.

9. In the circumstances there was no agreement between myself and the Registrant, whether verbal or otherwise. Rather we engaged in negotiations that were informal, without prejudice and did not proceed to a conclusion.”

#### **REGISTERED PROPRIETOR’S EVIDENCE IN REPLY**

11) The registered proprietor filed two witness statements. The first, dated 8 July 2008, is by Puravee Shah who has already provided evidence in this case. She states:

“4. I would also like to confirm that all communication between Jeremy Kerner and myself were not “without prejudice” and no indications were made at any time by Jeremy Kerner that all communications were “without prejudice”.”

12) The second witness statement, dated 5 July 2008, is by Stewart Waters who has previously provided evidence in this case. He repeats earlier claims that he paid for software to create an Internet site in 2002 but the launch of the game was on hold until he could get the financial support for the game to be exploited at a national level. He also confirms again that he held discussions with other game owners but is not able to disclose details. Mr Waters states that the other players in his game are not related to him and he has no connection to them other than playing the game. He provides details of the specifics of the game which do not assist my decision. He also denies that the negotiations with Mr Kerner were “without prejudice”. He states that a verbal agreement was reached and this was the basis of the agreement sent to Mr Kerner which included payment of past royalties. He also states that on the basis of his understanding that he had reached an agreement with Mr Kerner, he himself registered with the applicant’s game.

#### **APPLICANT’S FURTHER EVIDENCE**

13) The applicant, Mr Kerner, filed a second witness statement dated 25 November 2008. He states that the investigation report filed with his previous statement is relevant as it shows no use has been made of the mark in suit. He also points out that the Football Premier League has proprietary rights in the use of the football fixture

information and that to use this information a licence is required. He points out that no such licence has been exhibited by the proprietor.

14) That concludes my review of the evidence. I now turn to the decision.

## **DECISION**

15) The revocation action is based upon Section 46 of the Trade marks Act 1994, the relevant parts of which read as follows:

“46.-(1) The registration of a trade mark may be revoked on any of the following grounds -

- (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
- (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;
- (c) .....
- (d) ....

(2) For the purposes of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made.

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.”

16) The applicant alleges that the mark has not been used in the five years following registration or in the five years prior to the date of the application which was filed on 20 September 2007. The periods in question are therefore 3 February 2002 – 2 February 2007 and 20 September 2002 – 19 September 2007.

17) Where the registered proprietor claims that there has been use of the trade mark, the provisions of Section 100 of the Act make it clear that the onus of showing use rests with him. It reads:

“100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

18) I take into account the judgement in Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* where the European Court of Justice, on 11 March 2003, stated at paragraphs 35-42:

“35. Next, as Ansul argued, the eighth recital in the preamble to the Directive states that trade marks ‘must actually be used, or, if not used, be subject to revocation’. ‘Genuine use’ therefore means actual use of the mark. That approach is confirmed, *inter alia*, by the Dutch version of the Directive, which uses in the eighth recital the words ‘werkelijk wordt gebruikt’, and by other language versions such as the Spanish (‘uso efectivo’), Italian (‘uso effettivo’) and English (‘genuine use’).

36. ‘Genuine use’ must therefore be understood to denote use that is not merely token, serving solely to preserve the rights conferred by the mark. Such use must be consistent with the essential function of a trade mark, which is to guarantee the identity of origin of goods or services to the consumer or the end user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin.

37. It follows that ‘genuine use’ of the mark entails use of the mark on the market for the goods or services protected by that mark and not just internal use by the undertaking concerned. The protection the mark confers and the consequences of registering it in terms of enforceability *viv-a-vis* third parties cannot continue to operate if the mark loses its commercial *raison d’etre*, which is to create or preserve an outlet for the goods or services that bear the sign of which it is composed, as distinct from the goods or services of other undertakings. Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations for by the undertaking to secure customers are under way, particularly in the form of advertising campaigns. Such use may be either by the trade mark proprietor or, as envisaged in Article 10(3) of the Directive, by a third party with authority to use the mark.

38. Finally, when assessing whether there has been genuine use of the trade mark, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, in particular whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark.

39. Assessing the circumstances of the case may thus include giving consideration, *inter alia*, to the nature of the goods or services at issue, the characteristics of the market concerned and the scale and frequency of use of the mark. Use of the mark need not, therefore, always be quantitatively significant for it to be deemed genuine, as that depends on the characteristics of the goods or services concerned on the corresponding market.

40. Use of the mark may also in certain circumstances be genuine for goods in respect of which it is registered that were sold at one time but are no longer available.

41. That applies, *inter alia*, where the proprietor of the trade mark under which such goods were put on the market sells parts which are integral to the make-up or structure of the goods previously sold, and for which he makes actual use of the same mark under the conditions described in paras [35] to [39] of this judgement. Since the parts are integral to those goods and are sold under the same mark, genuine use of the mark for those parts must be considered to relate to the goods previously sold and to serve to preserve the proprietor's rights in respect of those goods.

42. The same may be true where the trade mark proprietor makes actual use of the mark, under the same conditions, for goods and services, which, though not integral to the make-up or structure of the goods previously sold, are directly related to those goods and intended to meet the needs of customers of those goods. That may apply to after-sales services, such as the sale of accessories or related parts, or the supply of maintenance and repair services.”

19) I also take into account the comments of the Court of First Instance (CFI) in *La Mer Technology Inc v. Office for Harmonisation in the Internal Market* [2008] E.T.M.R. 9 where, at paragraphs 64-66 the CFI said:

“64. Secondly, as the applicant rightly noted and as taken into account by the Board of Appeal in [24] of the contested decision, none of the 10 invoices taken into account by the Board of Appeal contains the earlier mark.

65. However, the fact that the earlier mark is not referred to on those invoices cannot prove that the latter are irrelevant for the purposes of proving genuine use of that mark.

66. In this case, as the applicant conceded at the hearing, besides the mark applied for being a house brand, so that it is natural that it does not appear on the invoices which contain only the names of the products enabling them to be identified, it must be stated that the products referred to on those invoices are clearly identifiable, and the packaging which was supplied by the intervener, and was sold on the dates substantiated by those invoices, proves that they have either the reference “le laboratoire de la mer” or “laboratoire de la mer” (“Iodus” range). Accordingly, in respect of the “Iodus” make-up remover fluid referred to on invoice no. 22214 of 3 January 1995, it must be stated that the packaging of the product contains the term “goemar” and, below it, “laboratoire de la mer”. Likewise, in respect of the products listed in invoice nos. 24085 of 4 May 1995, 31348 of 26 March 1997, 32096 of 12 May 1997, 32257 of 21 May 1997, 32574 of 9 June 1997 and 34365 of 28 November 1997 under the name Thalasso boain or Thala. Bain, it is clear that their packaging includes “goemar” and, underneath, “le laboratoire de la mer”. Those terms also appear on the two packaging samples containing products in that range.”



20) And later at paragraph 90:

“90. The sales effected, even though they are not considerable, constitute use which objectively is such as to create or preserve an outlet for the products concerned and which entails a volume of sales which, in relation to the period and frequency of use, is not so low that it may be concluded that the use is merely token, minimal or notional for the sole purpose of preserving the rights conferred by the mark (Ansul at [35] and [36]; see, to that effect, VITAFRUIT at [49]).”

21) I now turn to consider the evidence filed in this case. The applicant sought to question the evidence filed regarding the negotiations between the two parties. It was contended that the correspondence and the discussions were “without prejudice” and as such inadmissible. The Registry work manual deals with this issue at Chapter 7.2.7 which states:

#### **“7.2.7 Without prejudice and privileged correspondence**

In general the principles of without prejudice correspondence applicable in the court will likewise be applied before the Registrar. The public interest justification for “without prejudice” communications not being used as evidence is that parties should be at liberty to pursue negotiations and settlement without running a risk that documents relating to such discussions will be put forward in relation to the strengths or weaknesses of their substantive cases. In addition to the “public” argument there is also an implied agreement out of what is commonly understood to be the consequences of offering or agreeing to negotiate on a without prejudice basis (see e.g. *Unilever Plc v The Procter & Gamble Company* [2000] FSR 344 and the authorities cited in that case). Exceptions to the without prejudice rule exist, these are set out in the *Unilever* case referred to above:

“Nevertheless there are numerous occasions on which, despite the existence of without prejudice negotiations, the without prejudice rule does not prevent the admission into evidence of what one or both of the parties said or wrote. The following are among the most important instances:

(1) As Hoffmann L.J. noted in the first passage set out above, when the issue is whether without prejudice communications have resulted in a concluded compromise agreement, those communications are admissible. *Tomlin v. Standard Telephones and Cables* [1969] is an example.

(2) Evidence of the negotiations is also admissible to show that an agreement apparently concluded between the parties during the negotiations should be set aside on the ground of misrepresentation, fraud or undue influence. *Underwood v. Cox* (1912) 4 D.L.R. 66, a decision from Ontario, is a striking illustration of this.

(3) Even if there is no concluded compromise, a clear statement which is made by one party to negotiations, and on which the other party is intended to act and does in fact act, may be admissible as giving rise to an estoppel.

That was the view of Neuberger J. in *Hodgkinson & Corby Ltd v. Wards Mobility Services Ltd* [1997] F.S.R. 178 at 191, and his view on that point was not disapproved by this court on appeal.

(4) Apart from any concluded contract or estoppel, one party may be allowed to give evidence of what the other said or wrote in without prejudice negotiations if the exclusion of the evidence would act as a cloak for perjury, blackmail or other "unambiguous impropriety" (the expression used by Hoffmann L.J. in *Foster v. Friedland*, November 10, 1992, CAT 1052). Examples (helpfully collected in *Foskett's Law & Practice of Compromise*, 4th ed., paragraphs 9-32) are two first-instance decisions, *Finch v. Wilson* (May 8, 1987) and *Hawick Jersey International v. Caplan* (The Times, March 11, 1988). But this court has, in *Foster v. Friedland and Fazil-Alizadeh v. Nikbin*, 1993 CAT 205, warned that the exception should be applied only in the clearest cases of abuse of a privileged occasion.

(5) Evidence of negotiations may be given (for instance, on an application to strike out proceedings for want of prosecution) in order to explain delay or apparent acquiescence. Lindley L.J. in *Walker v. Wilsher* (1889) 23 Q.B.D. 335, at 338, noted this exception but regarded it as limited to "the fact that such letters have been written and the dates at which they were written". But occasionally fuller evidence is needed in order to give the court a fair picture of the rights and wrongs of the delay.

(6) In *Muller* (which was a decision on discovery, not admissibility) one of the issues between the claimant and the defendants, his former solicitors, was whether the claimant had acted reasonably to mitigate his loss in his conduct and conclusion of negotiations for the compromise of proceedings brought by him against a software company and its other shareholders. Hoffmann L.J. treated that issue as one unconnected with the truth or falsity of anything stated in the negotiations, and as therefore falling outside the principle of public policy protecting without prejudice communications. The other members of the court agreed but would also have based their decision on waiver.

(7) The exception (or apparent exception) for an offer expressly made "without prejudice except as to costs" was clearly recognised by this court in *Cutts v. Head* [1984] Ch. 290 and by the House of Lords in *Rush & Tomkins*, as based on an express or implied agreement between the parties. It stands apart from the principle of public policy (a point emphasised by the importance which the new Civil Procedure Rules, Part 44.3(4), attach to the conduct of the parties in deciding questions of costs). There seems to be no reason in principle why parties to without prejudice negotiations should not expressly or impliedly agree to vary the application of the public policy rule in other respects, either by extending or by limiting its reach. In *Cutts v. Head* Fox L.J. said (at page 316) "what meaning is given to the words 'without prejudice' is a matter of interpretation which is capable of variation according to use in the profession. It seems to me that, no issue of public policy being involved, it would be wrong to say that the words were given a meaning in 1889 which is immutable ever after".

(8) In matrimonial cases there has developed what is now a distinct privilege extending to communications received in confidence with a view to matrimonial conciliation: see *Re D* [1993] 2 All E.R. 693, at 697, where Sir Thomas Bingham MR thought it not

... fruitful to debate the relationship of this privilege with the more familiar head of "without prejudice" privilege. That its underlying rationale is similar, and that it developed by way of analogy with "without prejudice" privilege, seems clear. But both Lord Hailsham and Lord Simon in *D. v. National Society for the Prevention of Cruelty to Children* [1977] 1 All E.R. 589 at 602, 610 [1978] A.C. 171 at 226, 236 regarded it as having developed into a new category of privilege based on the public interest in the stability of marriage."

In our own proceedings, for example, evidence of the fact that negotiations have taken place and their state of play, insofar as this may be relevant to an application for an extension of time would be admissible Where inadmissible documents are filed with the registry, the Registrar may return the documents and/or state that they cannot be taken into account in determining the substantive matters.

Documents do not have to be marked "without prejudice" to be such: *Prudential Assurance Co Ltd v Prudential Insurance Co of America* [2004] ETMR 29 CofA Chadwick LJ:

"The rule applies to exclude all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence. A competent solicitor will always head any negotiating correspondence "without prejudice" to make clear beyond doubt that in the event of the negotiations being unsuccessful they are not to be referred to at the subsequent trial. However, the application of the rule is not dependent upon the use of the phrase "without prejudice" and if it is clear from the surrounding circumstances that the parties were seeking to compromise the action, evidence of the content of those negotiations will, as a general rule, not be admissible at the trial and cannot be used to establish an admission or partial admission."

Any communications between a party and their trade mark attorney (being a registered trade mark attorney) is privileged or protected from disclosure in legal proceedings. Section 87 of the Trade Marks Act 1994 refers. Professional privilege is not necessarily limited to registered trade mark agents; it will extend to all those covered by enactments other than the Trade Mark Act, insofar as those other enactments provide for privilege.

The phrase "without prejudice" is also used in letters to the Registrar meaning that the writer is preserving their position, e.g. they withdraw the application without prejudice to their clients' rights. In this instance the wording is part of an open statement and is not afforded any protection."

22) In the light of the above it appears to me that the fact that the two parties have been in negotiations for some time is admissible as it explains the absence of use by the registered proprietor in the same manner as “apparent acquiescence” referred to in paragraph 5 above. The fact that the parties were in negotiations is not challenged, the applicant’s only comment being that no agreement was signed. The details provided are, to my mind, sufficient to prove that such negotiations took place with only slight details of the actual substance of the discussions. The evidence clearly indicates that a royalty fee going back four years had been discussed and verbally agreed. I note that the applicant raised no objections in his e-mail referred to in paragraph 9 above where the issue of back royalties was referred to. The applicant’s comments make it clear that the issue of royalties had been discussed and agreed, otherwise he would surely have taken issue over the question of payment in his e-mail.

23) The applicant also referred me to the ECJ decision in Case C-246/05 *Armin Haupl v Lidl Stiftung & Co. KG* where the issue of the breadth of the “proper reasons” exception was considered and commented on thus:

“It would be contrary to the scheme of Article 12(1) of the Directive to confer too broad a scope on the concept of proper reasons for non-use of a mark.”

24) The applicant also pointed out that in a recent case, *Trigon* Revocation No 82841, the Registry held that if a trade mark proprietor stops using a mark as the result of agreeing to do so (for example, under a term of co-existence agreement), this does not constitute a proper reason for non-use.

25) In the instant case the “proper reason” for the non-use of the mark by the registered proprietor is that he was in negotiations with the applicant with regard to an assignment and/or the sale of the mark in suit. This is not disputed, indeed the applicant’s own evidence confirms that this was the case. I consider that this to be a proper reason for non-use. If the negotiations had not proceeded the registered proprietor could have sued for infringement and, *prima facie*, had a very strong case. The application for revocation therefore fails.

26) As the registered proprietor has been successful he is entitled to a contribution towards his costs. I order the applicant to pay the registered proprietor the sum of £800. This sum 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 31st day of March 2009**

**George W Salthouse  
For the Registrar,  
the Comptroller-General**