

O-321-09

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 2437520

BY ACKERMAN GROUP PLC

TO REGISTER IN CLASS 16 THE TRADE MARK:

COSMOS

AND

IN THE MATTER OF OPPOSITION NO 95901 BY

FRANCKH-KOSMOS-VERLAGS GMBH

TRADE MARKS ACT 1994

**In the matter of application No 2437520
By Ackerman Group Plc
to register in class 16 the trade mark COSMOS**

and

**In the matter of opposition No 95901 by
Franckh-Kosmos-Verlags GmbH**

Background

1. Ackerman Group Plc (“Ackerman”) applied for the above trade mark on 3 November 2006. Although applied for and published with a wider specification, the goods now¹ sought for registration are:

Class 16: Childrens novelty pens, pencils, erasers, pencil sharpeners, pencil boxes and rulers; childrens novelty stationery.

2. On 24 January 2008 opposition to the registration of Ackerman’s application was made by Franckh-Kosmos-Verlags GmbH (“Franckh”) under the sole ground of section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). Franckh relies on its earlier community trade mark (“CTM”)² for the word KOSMOS which is registered in a number of classes including classes 9, 16 & 28. The earlier trade mark did not complete its registration procedure until 21 July 2006 so the proof of use provisions contained in section 6A³ of the Act do not apply. Consequently, the earlier mark may be taken into account for its specifications as registered.

3. Ackerman filed a counterstatement denying the grounds of opposition. It denied that there was any conflict, be it pre or post its amended specification.

4. Both sides filed evidence, this is summarised below. Neither side requested a hearing, although, Ackerman filed written submissions in lieu of attendance. Franckh did not file any written submissions, however, I will take into account its arguments in its statement of case and evidence.

¹ Ackerman restricted its specification on 30 April 2008

² Reference 00959460

³ Section 6A of the Act was added to the Act by virtue of the Trade Marks (Proof of Use, etc.) Regulations) 2004 (SI 2004/946) which came into force on 5th May 2004.

Franckh's evidence

5. The evidence is given by Mr Axel Meffert the managing director of Franckh. He states that Franckh is the proprietor of CTM 959460 (details of the CTM are provided in Exhibit AM1) and he highlights part of its registered specification, namely:

“Instructional and teaching materials in the form of printed matter, pictures for hanging, games and educational playthings; photographic products; playing cards; printers' type; books; periodicals”

6. Mr Meffert states that, through its licensees, Franckh sells experimental kits and games in the UK. Catalogues and other literature are provided in Exhibit AM2 illustrating the goods it sells. The literature is from 2007 onwards which is after the relevant date here. Of the 9 catalogues only two are in English. These (like the others appear to be) are in the nature of a “Kosmos” foreign rights catalogue, presumably aimed at suppliers rather than end consumers. One of the English language catalogues features a wide range of books on a range of topics (gardening, nature, astronomy, golf, pets, horses, fishing, children's learning). The Kosmos name is carried on the books and it will be seen, effectively, as the publisher. Some of the children's books also carry the name Kosmolino. Similar books are shown in the other catalogues. The other English language catalogue is loose-leaf and is from “Thames & Kosmos”. It features a range of science kits which contain articles that teach children about certain scientific matters. To illustrate the purpose, the following text is taken from the catalogue:

“Begin a lifetime of scientific investigation and understanding with 25 fun experiments in five key areas: nature, physics, chemistry, air and water.”

7. Mr Meffert states that the above kits and games might be sold through the same shops as stationery items, for example warehouses, bookshops, department stores, Amazon and toy shops. Mr Meffert states that its books are sold through Amazon and he provides at Exhibit AM3 extracts from Amazon to support this. I note that the extract was printed on 30 September 2008 but Mr Meffert states that sales have been made through Amazon since as early as 1998.

8. Details on annual turnover in the UK are then provided, namely: 2005 2,278 Euro (£1,981), 2006 91,091 Euro (£79,210) & 2007 12,444 Euro (£10,821). The Sterling equivalents are calculated at a rate of 1.15 Euros to the pound.

9. Mr Meffert suggests that the above figures do not reflect the true picture in the UK. This is because he has been informed by one of Franckh's licensees that some “hard-core” gamers follow the German market before titles are available in the UK and may even buy the German editions. There is little I can take from this evidence because the extent of German imports is not provided, nor the type of

products they may relate to (the use of the term “hard core gamers” seems an unusual choice when the only games set out in evidence are educational games). In any event, the evidence is hearsay as Mr Meffert is merely describing what he has been told by someone else.

10. He concludes his evidence by giving his views on the likelihood of confusion, although I will take this into account, I will not detail it here because it is submission rather than evidence of fact.

Ackerman’s evidence

11. The evidence is given by Mr David Ackerman a director of Ackerman. He begins by stating that its COSMOS trade mark was adopted in 2006 for use on a range of stationery intended for children. A logo was developed and the one used is shown below (taken from Exhibit DA1):



12. Mr Ackerman states that the restricted specification (as set out in paragraph 1) more accurately reflects the goods that it sells under the COSMOS brand. Exhibit DA2 shows 6 products. Shown are pens, pencils, erasers and pencil sharpeners. The logo as shown above is featured on the packaging. Mr Ackerman states that the target consumers are children.

13. Sales figures are provided for the years 2007 (£70,000) and 2008 (£100,000). Mr Ackerman states that the trade channels of Ackerman’s goods are quite different from the experimental kits and games referred to by Mr Meffert in his evidence (although Mr Ackerman does not state why). He goes on to refer to sales through Amazon (as referred to by Mr Meffert). He considers that as Amazon sell such a range of products, conflict based on this would be too wide to consider. Mr Ackerman completes his evidence by referring to the preliminary indication issued in these proceedings; I will say no more about this as the preliminary indication can have no bearing on my decision⁴.

The section 5(2)(b) - decision

Legislation and the relevant authorities

14. Section 5(2)(b) of the Act states:

⁴ See the judgment in *esure Insurance Limited v Direct Line Insurance Plc* [2007] EWHC 1557 (Ch)

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

(a)

(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.”

15. When reaching my decision I will take into account the guidance provided by the European Court of Justice (“ECJ”) in a number of judgments germane to this issue, notably: *Sabel BV v. Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* [1999] R.P.C. 117, *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* [2000] F.S.R. 77, *Marca Mode CV v. Adidas AG + Adidas Benelux BV* [2000] E.T.M.R. 723, *Medion AG V Thomson multimedia Sales Germany & Austria GmbH* (Case C-120/04) and *Shaker di L. Laudato & Co. Sas* (C-334/05). The above judgments set out the primary principles to be applied in matters such as these; I will refer to them, when and where relevant, in more detail later in this decision.

Comparison of the goods

16. Ackerman’s goods are:

“Childrens novelty pens, pencils, erasers, pencil sharpeners, pencil boxes and rulers; childrens novelty stationery”

17. Franckh’s specifications cover a large range of goods and services. However, in its statement of case it highlights certain of its goods and services together with where they conflict with Ackerman’s goods. I consider it appropriate to deal with such goods and services as representing Franckh’s best case, I can see nothing better in the remainder of its specifications. The relevant goods and services are:

“Apparatus for instructional and teaching purposes and for private study; teaching apparatus and instruments, diskettes, compact discs, magnetic tapes, video tapes, computer programmes and CD-roms” - Class 9

“Instructional and teaching materials in the form of printed matter, pictures for hanging, games and educational playthings” (particular emphasis is placed on games and educational playthings) – Class 16

“Games and playthings” – Class 28

“Computer programming” – Class 42

18. All relevant factors relating to the goods/services in the respective specifications should be taken into account when determining this issue. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the ECJ stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, *inter alia*, their nature, their end users and their method of use and whether they are in competition with each other or are complementary.”

19. Other factors may also be taken into account such as, for example, the distribution channels concerned (see, for example, paragraph 53 of the judgment of the CFI⁵ in Case T-164/03 *Ampafrance S.A. v OHIM – Johnson & Johnson GmbH*).

20. Before making any comparisons it is necessary to consider what the respective specifications cover, this is particularly so in relation to any broad terminology that is used. In terms of approach, the case-law informs me that “in construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of the trade”⁶ and that I must also bear in mind that words should be given their natural meaning within the context in which they are used; they cannot be given an unnaturally narrow meaning⁷.

21. Most of Ackerman’s goods are self explanatory, singularly defined items. The one broader term is “children’s novelty stationery”. In its statement of case, Franckh state that the term stationery would include anything sold in a stationery shop. Although this argument was put forward prior to Ackerman’s restriction to its specification (by qualifying its stationery items to being children’s novelty stationery items), the term still requires analysis. The Collins English Dictionary defines stationery as:

“any writing materials, such as paper, envelopes, pens, ink, rulers etc”

22. Although a stationery store will sell traditional stationery as its main business activity, it will also sell other goods. However, this does not mean that such other

⁵ The Court of First Instance of the European Communities

⁶ See *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 281

⁷ See *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267

goods would be regarded as items of stationery. Stationery should be regarded as a term, as defined above, covering items such as paper, envelopes, pens, pencils etc. This would, it seems to me, reflect the normal understanding and natural meaning of the term. There is nothing in the evidence to suggest that this is not how the trade would regard it. Taking into account Ackerman's restricted specification, such items would be novelty shaped or perhaps carrying novelty type depictions.

23. In relation to Franckh's goods, again, most are self explanatory. Of those that need definition, "teaching and instructional apparatus" in class 9 would include electronic or scientific apparatus to assist in teaching and learning activities and may also include goods such as interactive computer programs or CDs/DVDs for learning. In class 16 such goods would be in the form of text books and other types of instructional material as well as the learning kits that Franckh highlighted in its evidence.

24. In terms of the comparison, some of the conflicts highlighted by Franckh can be dealt with relatively quickly. Computer programming in class 42 bears no relationship with any form of stationery let alone children's novelty stationery. The fact that a stationery store may sell computer manuals (which Franckh suggests computer programmers require access to) does not make such goods an item of stationery. The purpose, method of use and trade channels of stationery (as defined above) are all quite different from computer programming services, as are the end users. **Computer programming is not similar to any of the goods in Ackerman's specification.**

25. Looking next at goods such as diskettes, compact discs, magnetic tapes, video tapes, computer programmes and CD-roms, again, the purpose and method of use of these goods is quite different from items of stationery. Although both may potentially be sold in a stationery store, stationery stores, as stated earlier, sell a wide range of goods. To find similarity purely on this point alone seems inappropriate⁸. The goods are not competitive nor do I see that they are complementary in the sense that one is indispensable or important for the use of the other⁹. **Diskettes, compact discs, magnetic tapes, video tapes, computer programmes and CD-roms are not similar to any of the goods in Ackerman's specification.**

26. Looking next at "apparatus for instructional and teaching purposes and for private study; teaching apparatus and instruments" in class 9, I have already given my views on what such terms would cover. The purpose of the specific

⁸ See the judgment of the CFI in Case T-443/05, *El Corte Inglés SA v OHIM* paragraph 44) to similar effect.

⁹ See, for example, *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM) Case T- 325/06.

apparatus would be to assist in teaching be it by the product being some form of teaching aide or other apparatus or perhaps some form of audio-visual instrument or apparatus or interactive learning media. Either way, it seems to me that the purpose of such goods is different to an item of stationery, the method of use is different, the nature is different, and the trade channels would have only a superficial overlap even if both could be sold in the same store (see my comments in the preceding paragraph). The goods are not competitive or complementary. **Apparatus for instructional and teaching purposes and for private study; teaching apparatus and instruments, are not similar to any of the goods in Ackerman's specification.**

27. I next consider "Instructional and teaching materials in the form of printed matter, pictures for hanging, games and educational playthings". Franckh places particular emphasis on games and educational playthings. In its statement of case it states:

"It is not inconceivable that such instructional and teaching materials may comprise writing and drawing implements or artist's materials, as included in the Applicant's Class 16 specification of goods"

28. Whilst I agree that it is possible for instructional and teaching materials in the form of games and educational playthings to include items within that product that would be classed as stationery (such as pens or pencils), this does not mask the fact that such a product would still, at its heart, be a game or an educational plaything. Such an item would not consist exclusively of stationery otherwise it would not be described as a game or an educational plaything. The purpose of Franckh's products is to teach or educate whereas the purpose of stationery would be merely to facilitate writing or drawing. The resulting methods of use are not the same, although, I accept that an element of the use of certain items of stationery could form part of the method of use of a game or educational plaything. There is nothing to suggest that the goods utilize the same trade channels beyond the possibility that they could be sold in the same shops. There is certainly nothing in the evidence to suggest that they are sold next to or in close proximity to each other. I do not see how the goods compete nor do I see that they complement. Any degree of overlap described is of the most superficial nature. **Overall, I do not consider the respective goods to be similar.** However, if I am wrong on that, any degree of similarity must be only very low in view of my analysis.

29. The **other forms of teaching material** do not improve Franckh's position. They would cover items such as text books or other pictorial products for teaching. In view of my above comments, **these goods are not similar to anything in Ackerman's specification.** Neither do I consider that **games and playthings** in class 28 will improve Franckh's position. The degree of overlap is likely to be less (or at least no greater) than the degree of overlap identified in relation to the class 16 goods, **there is no similarity here.**

30. As can be seen from my primary findings on goods/services similarity, there are no similar goods/services in play. It is a prerequisite for a finding under section 5(2) for there to be similarity between the respective goods and services¹⁰. **In view of this, the ground of opposition, and consequently the opposition as a whole, must fail.**

31. Notwithstanding the above, I have also made a finding in the event that I am wrong on my assessment of goods/service similarity. In view of this, I will go on to give my views on the other relevant factors under this ground of opposition including whether there exists a likelihood of confusion. I will only do so where, as a fall-back finding, I have found there to be a degree (albeit very low) of similarity, namely, between the educational and teaching materials in the form of games and educational playthings of Franckh and the children's novelty stationery of Ackerman.

The average consumer and the purchasing act

32. As matters must be judged through the eyes of the average consumer (*Sabel BV v. Puma AG*, paragraph 23) it is important that I assess who this is. Ackerman's goods, whilst likely to be used by children, will most often be purchased by a parent or guardian of the child. The average consumer is, therefore, a member of the general public, albeit those who are likely (due perhaps to having children in their immediate or extended family) to buy for children. In relation to Franckh's goods, the same considerations apply, however, its goods may also be purchased by teachers or by other educational professionals.

33. The case-law informs me that the average consumer is to be regarded as reasonably observant and circumspect (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27). This general presumption can, however, change depending on the particular goods in question (see, for example, the decision of the CFI in *Inter-Ikea Systems BV v OHIM* (Case T-112/06). There is nothing, however, in the case before me to suggest that the average consumer will pay a significantly higher or lower degree of attention than the norm when purchasing Ackerman's novelty stationery.

34. In relation to Franckh's goods, educational professionals may adopt a more attentive manner to ensure that the educational aspect of the product is fit for purpose (age, subject, learning objective, the relevant curriculum); whilst some of this may also be true for the general public, the additional attentiveness will not be as high or significant. However, given the goods nature as an educational game or plaything, this is likely to mean that the product is of low or moderate

¹⁰ See, for example, the ECJ's judgment in *Waterford Wedgwood plc v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case C-398/07.

cost and so, the degree of attentiveness being displayed even by the educational professional will not be of the highest order.

35. Both sides have referred to a variety of establishments where the goods could be purchased ranging from stationery stores to toy shops. Both sets of goods could also be ordered over the Internet or by mail order. Most of this suggests that visual considerations apply most, but this does not mean that aural considerations should be ignored completely.

Comparison of the marks

36. When assessing this factor I must do so with reference to the visual, aural and conceptual similarities between the respective marks bearing in mind their distinctive and dominant components (*Sabel BV v. Puma AG*, paragraph 23). The marks to be compared are:

Ackerman's mark: COSMOS

Franckh's mark: KOSMOS

37. The marks will be pronounced in the same way and are, thus, aurally identical. There is no dispute between the parties on this. In terms of visual similarity, there is a clear point of similarity in that the marks are of identical length and they share the last five of their 6 letters. There is a point of difference though in that the initial letter is different. In terms of this difference, I note the judgment of the CFI in *Inter-Ikea Systems BV v OHIM* where it stated:

“54 As regards the visual comparison between the verbal element of the contested mark and the earlier word marks, the applicant claims that the only difference between them is the presence of the letter ‘d’ in the contested mark and the letter ‘k’ in the earlier word marks. However, the Court has already held in Case T-185/02 *Ruiz-Picasso and Others v OHIM – DaimlerChrysler(PICARO)* [2004] ECR II-1739, paragraph 54) that, in the case of word marks which are relatively short, even if two marks differ by no more than a single consonant, it cannot be found that there is a high degree of visual similarity between them.

55 Accordingly, the degree of visual similarity of the earlier word marks and the verbal element of the contested mark must be described as low.”

38. The above judgment relates to the words IDEA/IKEA which are shorter than the respective marks here. On the other hand, the fact that the point of difference is at the beginning of the marks is likely to be noticed more. Taking all this into account, this creates a degree of visual similarity that is neither low nor high, there is a reasonable degree of visual similarity.

39. In terms of concept, Ackerman argue that the words COSMOS and KOSMOS can be distinguished. In its written submissions (although I note not filed in evidence) Ackerman provided a list of Google references for the respective words. None of the references are shared. The first for COSMOS relates to the universe and the first for KOSMOS relates to Soviet and Russian rockets. Given that this is not in evidence, of more significance are the dictionary definitions of the respective words and the knowledge and understanding that I believe the average consumer will have of them. To this extent, the Collins English Dictionary defines COSMOS, amongst other things, as the universe; the same dictionary provides no definition for KOSMOS. In *Case T-292/01 Phillips-Van Heusen v OHIM – Pash Textilvertrieb und Einzelhandel (BASS)* [2003] ECR the CFI stated:

“Next, it must be held that the conceptual differences which distinguish the marks at issue are such as to counteract to a large extent the visual and aural similarities pointed out in paragraphs 49 and 51 above. For there to be such a counteraction, at least one of the marks at issue must have, from the point of view of the relevant public, a clear and specific meaning so that the public is capable of grasping it immediately. In this case that is the position in relation to the word mark BASS, as has just been pointed out in the previous paragraph. Contrary to the findings of the Board of Appeal in paragraph 25 of the contested decision, that view is not invalidated by the fact that that word mark does not refer to any characteristic of the goods in respect of which the registration of the marks in question has been made. That fact does not prevent the relevant public from immediately grasping the meaning of that word mark. It is also irrelevant that, since the dice game Pasch is not generally known, it is not certain that the word mark PASH has, from the point of view of the relevant public, a clear and specific meaning in the sense referred to above.

The fact that one of the marks at issue has such a meaning is sufficient – where the other mark does not have such a meaning or only a totally different meaning - to counteract to a large extent the visual and aural similarities between the two marks.”

40. In view of the above, it is, therefore, clear and specific meanings of which I must be concerned. I must also be mindful of not assuming too readily the degree of knowledge that the average consumer may possess¹¹. It is, though, possible that despite the absence of a specific meaning for the mark as a whole, it may nevertheless be suggestive or evocative of something, or of another

¹¹ See the decision of Anna Carboni (sitting as the Appointed Person) in *Chorkee/Cherokee* BL O-048-08

word¹²; such suggestive meanings and underpinning concepts may also be taken into account so long as they are capable of immediate grasp.

41. In my view the average consumer will be aware of the meaning of the word COSMOS (relating to the universe). It is a dictionary word in current use that will be familiar to the general public. It therefore has a clear and specific meaning capable of immediate grasp. In relation to the word KOSMOS, my view is that the average consumer will not readily perceive this word as a reference to a Russian rocket or any of the other meanings set out by Ackerman. Instead, I believe that the average consumer will approximate the word KOSMOS to the word COSMOS, the former being seen as a misspelling or variant spelling of the latter. This gives the marks virtual identity on a conceptual level.

42. Taking all of the above into account, it seems to me that the net effect of assessing the visual, aural and conceptual aspects of the respective marks is that the degree of similarity between them is high.

Distinctive character of the earlier trade marks

43. The distinctiveness of the earlier mark is another factor to consider because the more distinctive it is (based either on inherent qualities or because of the use made of it), the greater the likelihood of confusion (see *Sabel BV v. Puma AG*, paragraph 24). From an inherent point of view, I have already identified the meaning that will be attributed to the KOSMOS mark. This word is neither suggestive nor evocative of the goods and services for which the mark is registered (with the exception that certain sub-categories of the goods could, potentially, relate to astronomy/cosmology). For all other goods (those not relating to astronomy/cosmology) the mark enjoys a reasonable degree of distinctive character. It is not, however, of the highest degree of distinctiveness such as that enjoyed by a truly invented or highly unusual word(s).

44. In terms of the use made of the earlier mark, the annual turnover does not strike me as being particularly significant. There is nothing to suggest that the mark has been promoted to any significant extent. I can take little from the references to the German imports (see my comments in paragraph 9). The use made of the mark does not enhance its distinctive character.

Likelihood of confusion

45. It is clear that the relevant factors have a degree of interdependency (*Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17) and that a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel BV v. Puma AG*, paragraph 22). However, there is

¹² See, for example, the decision of the CFI in *Usinor SA v OHIM* (Case T-189/05).

no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer(s) and determining whether these factors result in a likelihood of confusion.

46. The respective marks are highly similar. This is an important point because this has the capacity to offset a low degree of similarity between the goods. The earlier mark is reasonably distinctive, but it is not highly so. I also accept that the concept of imperfect recollection is important here (a concept relating to the fact that consumers rarely have the chance to make direct comparisons between trade marks and must instead rely on the imperfect picture of them he or she may have kept in mind - *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B*). This is important given that the marks share the same conceptual hook and so, whilst the concept is likely to be recalled, the fact that one of the marks is a miss/variant spelling of COSMOS may not be recalled.

47. All of the relevant factors create a finely balanced determination. However, in my view, the very low degree of similarity between the goods is not enough, balanced against all the other relevant factors, to result in the average consumer understanding or believing that the respective products are the responsibility of the same or an economically linked undertaking. The average consumer may bring the other mark to mind, but association is not enough (see *Marca Mode CV v. Adidas AG + Adidas Benelux BV*) without an assumption of economic connection (see *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*). The similarity between the marks could easily be put down to a co-incidental sharing of a similar name rather than being indicative of trade connection. Furthermore, there is no evidence to suggest that the goods that represent Franckh's best case have a commonality of trader/supplier with Ackerman's goods, nor does Franckh's mark possess a high degree of distinctiveness. **All things considered, there is no likelihood of confusion.**

Summary of conclusions

48. None of Ackerman's goods are similar to the goods and services in the specifications of Franckh's CTM. The opposition under section 5(2) is dismissed for this reason.

49. Even if I am wrong on my primary finding and there is, in fact, a low degree of similarity between the goods/services, there would not, in any event, be a likelihood of confusion. The opposition would also be dismissed for this reason.

Costs

50. Ackerman has been successful and is entitled to a contribution towards its costs. I hereby order Franckh-Kosmos-Verlags GmbH to pay Ackerman Group Plc the sum of £1400. This sum is calculated as follows:

Preparing a statement and considering the other side's statement - £400

Preparing evidence and considering and commenting on the other side's evidence - £600

Preparing written submissions - £400

Total - £1400

51. The above sum should 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 14th day of October 2009

**Oliver Morris
For the Registrar
The Comptroller-General**