

O-067-11

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 2518901
BY UNIL ELECTRONICS CORP EUROPE LTD
TO REGISTER A TRADE MARK IN CLASSES 9, 11 & 21**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 99976 BY BEAUTOPIA LLC**

BACKGROUND

1. On 17 June 2009, Unil Electronics Corp Europe Ltd (“Unil”) applied to register **CLOUD 9** as a trade mark for the following goods:

Class 9: Hair irons; hair tongs; hair curlers; electric hair rollers; parts and fittings for the aforesaid goods.

Class 11: Hairdryers.

Class 21: Hair brushes.

The application was accepted and published for opposition purposes on 9 October 2009 in Trade Marks Journal No.6806.

2. On 7 January 2010, Beautopia LLC (“Beautopia”) filed a notice of opposition. This consisted of a single ground based upon section 5(2)(a) of the Trade Marks Act 1994 (as amended) (the Act). Beautopia indicates that the opposition is directed against all of the goods in the application for registration. Beautopia rely upon one earlier Community trade mark registration:

Trade Mark	No.	Application date	Registration date	Goods relied upon
CLOUD 9	E5384251	13/10/06	3/9/07	3 - Hair care preparations, hair lotions, shampoo, conditioner, hair repair mousse, style cream, flat iron and curling spray, and styling serum.

3. In their Statement of Grounds Beautopia state:

“2. [Beautopia’s] goods [identified above] are similar to [Unil’s goods]. [Beautopia’s] goods will be applied to the hair before styling with a hair brush, and to protect the hair from heat damage before using a hairdryer or the goods in class 9 of the application. The goods of the application share the same purpose as the goods of the opponent, namely hair care and stylisation and are thus complementary goods.

3. Due to the complementary nature of these goods, they inevitably share the same distribution channels and will be sold in beauty/cosmetic department stores and pharmacies and will be sold directly to hairdressers and styling salons.

4. The consumers of the contested goods are the same, namely the general public buying hair care products and accessories.

6. It is not uncommon for one undertaking to produce hair care preparations as specified in the opponent's specification in class 3 and the goods of the application. An example of such undertakings include Vidal Sassoon, Umberto Giannini and Mark Hill."

4. On 22 March 2010 Unil filed a counterstatement which consisted, in essence, of a denial of the ground of opposition.

5. Both parties filed evidence. While neither party asked to be heard, both filed written submissions (Unil during the course of proceedings and Beautopia when the evidence rounds had concluded); I will refer to these submissions as necessary below.

EVIDENCE

Beautopia's evidence

6. This consists of a witness statement, dated 19 May 2010, from Matthew Sammon who is a Partner in the firm of Marks & Clerk, Beautopia's professional representatives in these proceedings. Mr Sammon explains that the information in his statement comes from his "own knowledge, based on my research."

7. Exhibit MS1 consists of pages downloaded on 5 May 2010 from www.ghdhair.com upon which Mr Sammon comments:

"GHD are a leading manufacturer of hair products and the extract clearly shows a range of GHD branded hair products to include shampoo and conditioner as well as a range of electronic hair straighteners also sold under the GHD brand."

8. Exhibit MS2 consists of pages downloaded on 5 May 2010 from www.nickyclarke.com upon which Mr Sammon comments:

"Nicky Clarke is a well known celebrity hairdresser in the United Kingdom and the extracts clearly show the sale of a range of electronic hair products including straighteners under the Nicky Clarke brand and a range of haircare and styling products."

9. Exhibit MS3 consists of pages downloaded on 5 May 2010 from www.andrewcollinge.com upon which Mr Sammon comments:

"Andrew Collinge is another well known hairdresser in the United Kingdom and again the website clearly shows the sale of electronic goods such as hair straighteners under the Andrew Collinge brand and a range of haircare products, conditioners and hair styling products."

10. Exhibit MS4 consists of pages downloaded on 5 May 2010 from www.sassoon.com upon which Mr Sammon comments:

“Sassoon is again a well known brand in the United Kingdom and the extract clearly shows sale of hair conditioning and styling products along with electrical appliances such as straightening irons.”

11. Exhibit MS5 consists of pages downloaded on 5 May 2010 from www.vo5.co.uk upon which Mr Sammon comments:

“VO5 is a household brand in the United Kingdom for haircare products and the extracts shown is taken from the section on the website entitled heat defence collection and shows a range of VO5 branded products used to protect the hair from exposure to heat. Also shown is a range of general hair styling products under the VO5 brand.”

12. Exhibit MS6 consists of a page downloaded on 5 May 2010 from www.argos.co.uk offering for sale a “VO5 Vibration Straightener” at a cost of £49.99.

13. Exhibit MS7 consists of pages downloaded on 5 May 2010 from www.store.toniandguy.com upon which Mr Sammon comments:

“from the website of Toni & Guy the high street hairdressing chain. The extracts clearly show the sale of electronic hair treatment products such as straightening irons under the Toni & Guy brand. The extracts also show a range of haircare products including shampoo also available to buy directly from the Toni & Guy website.”

14. Exhibit MS8 consists of a page downloaded on 5 May 2010 from www.tresemme.com upon which Mr Sammon comments:

“Tresemme are another household name in haircare products and the extract shows a range of products tailored particularly to treat heat damage for heat damaged hair.”

15 Exhibit MS9 consists of two pages downloaded on 5 May 2010 from www.argos.co.uk offering for sale, inter alia, a “Philips TRESemme Salon Straightener” at a cost of £19.99 and a “Philips TRESemme Saloncare Control Dryer” at a cost of £18.50.

16. Exhibit MS10 consists of two photographs taken by Mr Sammon on 5 May 2010 at the Superdrug retail outlet in Leeds City Centre. Mr Sammon says these photographs clearly show:

“that electronic hair treatment products are stocked alongside haircare products such as shampoos, conditioner and styling products.”

17. Exhibit 11 consists of a page downloaded on 5 May 2010 from www.superdrug.com indicating that Superdrug “have over 900 stores throughout the UK and Ireland.”

18. Exhibit MS12 consists of a photograph taken by Mr Sammon on 5 May 2010 at the Boots retail outlet in Leeds City Centre. The photograph which relates to a “TRESemme Professional Diffuser Dryer” bears, inter alia, the following text:

“Free Inside – 24 Hour Body – root boosting spray and volume diffuser.”

19. Exhibit MS13 consists of undated pages downloaded from www.markhill.co.uk upon which Mr Sammon comments:

“clearly showing the sale of a range of electronic hair straightening products and a range of haircare and hairstyling products under the same branding.”

Unil’s evidence

20. This consists of a witness statement, dated 3 August 2010, from Alastair Rawlence who is a trade mark attorney at William A Shepherd & Son, Unil’s professional representatives in these proceedings. Attached to Mr Rawlence’s statement are two exhibits. Exhibit AJR1 consists of (i) a copy of the examination report issued in relation to the application in suit on 9 July 2009, from which I note that only a query relating to the specification of goods was raised, and (ii) a copy of the Trade Marks Registry’s cross search list downloaded from www.ipo.gov.uk on 24 June 2010.

21. That concludes my summary of the evidence filed to the extent that I consider it necessary. I should perhaps say at this point that while all of Beautopia’s evidence is from after the material date in these proceedings, Unil have not chosen to take this point in either their evidence or written submissions. I have taken Unil’s silence as a realistic acceptance on their part that the state of the market for the goods at issue would not have been materially different at the date of their application for registration.

DECISION

22. The opposition is based upon section 5(2)(a) of the Act which reads as follows:

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

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

(b)...

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

23. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“6.-(1) In this Act an “earlier trade mark” means -

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

24. Beautopia’s trade mark is an earlier trade mark and is not subject to proof of use, as per The Trade Marks (Proof of Use, etc) Regulations 2004, as it had not been registered for five years at the time of the publication of Unil’s trade mark application.

Comparison of trade marks

25. Both parties’ trade marks consist of the word and numeral CLOUD 9 presented in the same format; they are, self evidently, identical.

26. In reaching a decision I must take into account the guidance provided by the European Court of Justice (ECJ) in a number of judgments. As the respective trade marks are identical, the following cases are relevant: *Sabel BV v. Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* [1999] R.P.C. 117, *Lloyd Schuhfabrik Mayer & Co. GmbH v. Klijsen Handel B.V* [2000] F.S.R. 77 and *Marca Mode CV v. Adidas AG + Adidas Benelux BV* [2000] E.T.M.R. 723. It is clear from all these cases that:

(a) the likelihood of confusion must be appreciated globally, taking account of all the relevant factors: *Sabel BV v. Puma AG*, paragraph 22;

(b) the matter must be judged through the eyes of the average consumer of the good/services in question; *Sabel BV v. Puma AG*, paragraph 23, who is deemed to be reasonably well informed and circumspect and observant – but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27;

(c) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17;

(d) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v. Puma AG*, paragraph 24;

(e) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v. Puma AG*, paragraph 26;

(f) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v. Adidas AG + Adidas Benelux BV*, paragraph 41;

(g) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 29.

The average consumer and the nature of the purchasing process

27. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which these goods are likely to be selected by the average consumer in the course of trade. The goods at issue in these proceedings are preparations for use on the hair and apparatus for the care of the hair. In relation to who is the average consumer for such goods, there appears to be a measure of agreement between the parties. In their written submissions Beautopia say:

“The contested goods of the application share the same consumers; namely the general public buying hair care products and accessories.”

And in their written submissions Unil say:

“Whilst it is fair to say that the respective users of the goods of [the parties] are likely to be similar to one another i.e. ordinary customers of hair care and electrical and consumer products (hair care professionals etc)...

28. In my view these are the sorts of goods which will be bought by both a member of the general public and by those engaged in the hairdressing industry; they then are the average consumer for such goods.

29. As to how the goods will be selected by the average consumer this is (as the evidence shows) most likely to consist of a visual act made on the basis of self selection

in either a retail environment, from a catalogue or on-line (see the comments of the Appointed Person in *React Trade Mark* [2000] RPC 285). The evidence shows that the cost of the goods can vary from very modest sums for, for example, hair care preparations (exhibit MS10 refers) to much more significant sums in respect of, for example, hair straighteners (exhibit MS1 refers). All of the goods at issue are designed to enhance one's appearance either by improving, repairing, modifying, drying or simply caring for the hair. Given, for example, the importance of selecting the correct preparation to achieve a desired result and one which is compatible with e.g. one's hair type and colouring, suggests to me that the average consumer is likely to pay at least a reasonable level of attention to the selection of the goods in class 3. While this level of attention may reduce somewhat when, for example, selecting a simple hairbrush, it is, in my view, likely to return to at least a reasonable level when selecting the electric appliances in classes 9 and 11 for which some pre-purchase research may be required.

Comparison of goods

30. For the sake of convenience the competing goods are shown below:

Beautopia's goods	Unil's goods
Hair care preparations, hair lotions, shampoo, conditioner, hair repair mousse, style cream, flat iron and curling spray, and styling serum	Class 9: Hair irons; hair tongs; hair curlers; electric hair rollers; parts and fittings for the aforesaid goods. Class 11: Hairdryers. Class 21: Hair brushes.

31. In their written submissions Unil refer to the Trade Marks Registry's cross search list, a copy of which was provided as an exhibit to Mr Rawlence's witness statement. Of this they say:

"UKIP Office practice therefore is clear that the goods of the subject application are not similar to the goods of [Beautopia's] trade mark."

32. In their written submissions Beautopia say of this evidence:

"The fact that the UK Examiner did not cite [Beautopia's] mark in the search is not evidence that the respective mark and goods are not confusingly similar. The UK Registry do apply a cross search list which is used as a guide only.."

33. Beautopia is referring to the following text which appears in the explanatory introduction to the cross search list:

"We will only look in classes that may contain the same or similar goods or services to those in your application. Our cross search list sets out those classes in which we would normally consider searching. **It is intended to be a guide**

only. The list is not exhaustive – we will use our discretion to decide exactly what classes to search.”(my emphasis).

34. The text I have highlighted confirms Beautopia’s view of the matter i.e. the fact that the cross search list (which is used during the ex-parte examination phase) does not include references to the goods Beautopia consider to be similar to those of Unil is irrelevant. I must consider the matter afresh on the basis of the leading authorities on how to determine similarity between goods and services, which are: *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* [1999] R.P.C. 117 and *British Sugar Plc v James Robertson & Sons Ltd (Treat)* [1996] R.P.C. 281. In the first of these cases the ECJ accepted that all relevant factors should be taken into account including the nature of the goods/services, their intended purpose, their method of use and whether they are in competition with each other or are complementary. The criteria identified in the *Treat* case (to which Unil refer in their written submissions) were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market.
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

35. In their written submissions Beautopia state:

“3. All the goods of [Beautopia’s] registration, and in particular hair repair mousse, style cream, flat iron and curling spray and styling serum are highly complementary to the goods of [Unil’s] mark. The goods of [Beautopia’s] mark will be applied to the hair before styling to protect the hair from heat damage when using the goods covered by [Unil’s] mark in class 9.

4. The goods in class 11 and 21 of [Unil’s] mark are also complementary. The application of a hairbrush and a hairdryer is completed by the application of a hair serum or hairspray to hold the style.

5. The contested goods of the application share the same consumers; namely the general public buying hair care products and accessories.

6. The contested goods share the same distribution channels as [Beautopia's] goods; namely beauty cosmetic department stores/pharmacies, hairdressers and styling salons.

7. The contested goods are complementary; they are used together to achieve a common purpose; namely to style and groom hair.

16. [Mr Sammon's witness statement] contrary to the submissions of [Unil] evidences the trend of undertakings who offer electronic hair products and accessories and hair care products in the market...."

Beautopia also refer me to a range of decisions of the Office for Harmonisation in the Internal Market (OHIM); I will return to these below.

36. In their written submissions Unil state:

"Whilst it is fair to say that the respective users of the goods of [the parties] are likely to be similar to one another i.e. ordinary customers of hair care and electrical and consumer products, (hair care professional etc) the respective parties' goods differ from one another in all others aspects quoted above. For example, the respective uses to which [Unil's] goods are different from one another, even if they fall within the general term of hair and beauty care. The goods of [Beautopia] are directed towards body and hair cleanliness and beauty whereas the goods of [Unil] are practical goods (electronic and non-electronic) for drying, styling and brushing hair.

The physical nature of the goods is also different from one another. In determining the physical nature of goods a variety of criteria can be used e.g. their composition, "functioning principle", their physical condition (liquid/solid). Obviously the composition of the respective parties' goods (e.g. the raw materials, ingredients or finished materials combined) is wholly different from one another. Their functioning principle is also different from one another as class 3 goods (sic) are electronic and non-electronic hand tools with our (sic) without a motor which is obviously a different functioning principle from that of [Beautopia's] class 3 goods. The physical condition of the products are also likely to be different from one another as [Unil's] goods are "solid" plastic, metal and/or wooden hand tools and the class 3 goods of [Beautopia] are likely to be in the nature of creams, liquids etc.

The respective channels of trade of both sets of goods are different from one another. In particular, the goods of classes 9 and 11 are electronic white goods made by specialist manufacturing companies which are highly unlikely to produce any of the class 3 goods of [Beautopia]. [Unil's] goods (in particular the

goods of classes 9 and 11) are likely to be sold by electronic goods specialists to buyers of electrical products working for retail companies. On the other hand, the class 3 goods of [Beautopia] are likely to be sold by cosmetic and beauty staff to buyers who are specialist in these products in the relevant retail environments.

OHIM provides some further guidance on the question of similarity of goods and in particular they note that one can consider a) the methods of use of the respective goods; and b) whether the goods are in competition with one another. Firstly, the OHIM opposition guidelines (November 2007 – current version) note that “the method of use determines how the good is to achieve its purposes. It can be usually inferred from:- the functioning principle of a good i.e. the nature, and the function that the goods or services fulfil in the marketplace (needs satisfied or problem solved) i.e. purpose of use”.

We have seen that the functioning principle of the respective parties' goods i.e. their fundamental nature is different from one another. We have also noted above that their purpose is also different from one another. Furthermore, goods are in competition with one another when they are offered to the same group of customers who may chose to substitute one for the other for the same purpose. In such a case, the goods are also defined as “interchangeable”. Clearly, one cannot substitute [Beautopia's goods in class 3] with [Unil's goods in classes 9, 11 and 21] as they have different purposes.”

In relation to the evidence of Mr Sammon, Unil state:

“The fact that the same or similar mark may be applied to both class 3 and class 9 goods does not of itself mean that these goods are similar to one another when the correct legal comparison is applied using the above criteria”.

37. I mentioned above that in their written submissions Beautopia drew my attention to a number of decisions of the OHIM which they felt assisted them in these proceedings. In my view the two most relevant decisions are those in cases R 979/2006-1 dated 28 June 2007 and B1418096 dated 28 April 2010. In the first of these cases the First Board of Appeal at OHIM considered the relationship between hair lotions in class 3 and a range of goods in classes 8, 9, and 11. They said inter alia:

“17 Among the goods of the application, ‘electric hair cutting machines’ (Class 8), ‘electric heated hair styler and electric heated thermo brushes (Class 9) and ‘apparatus and instruments for drying the hair, hair steaming, hair radiation apparatus, hand-held electric hair dryers’ (Class 11) of the CTM applied for present some similarities with ‘hair lotions’. They serve the same purpose (hair care and stylisation) and are complementary. They are used together and may be purchased in the same outlets (beauty shops).

18 ...The goods are aimed at average consumers caring for their hair as well as at professionals in this field e.g. hair dressers and persons running hair dresser's shops.

38. In the second case the Opposition Division at OHIM considered the relationship between, inter alia, hair lotions in class 3 and combs and brushes in class 21. They said inter alia:

"The complementary nature of the contested combs and brushes (other than for painting) and the earlier cosmetics cannot be denied, since these products are normally sold together within e.g. a kit or also sold separately but side by side and distributed via the same channels and directed at the same target consumer. On the other hand, the aforementioned contested goods also share a complementary nature with the earlier hair lotions as they are directed at the same target consumer and, in some case, are necessarily used together. Consequently, these goods are considered to be similar."

39. Having outlined both the parties' and OHIM's view of the matter, I now turn to my own view. Unil accept that the respective users of the parties' goods are the same. I agree (for the reasons Unil outline above) that the physical nature of the competing goods is different and that the goods at issue are unlikely to be in competition with one another.

40. However, when considering the intended purpose of the respective goods (and in particular the relationship between the goods identified by Beautopia in paragraph 35 sub-paragraph (3) above) and the goods of Unil, the conclusions reached by the Board of Appeal and Opposition Division are helpful. In my view, the respective goods in these proceedings share the same intended purpose (i.e. the care of the hair and its stylisation) and as they may also, in certain circumstances, be used together (for example flat iron and curling sprays may be used in conjunction with hair irons and hair tongs) a clear complementary relationship between them also exists. In this respect, I note, for example, the following text which appears in exhibit MS8 in relation to the TRESemme brand:

"Heat damaged hair care – THERMAL CREATIONS, our vitamin-enriched salon quality styling products are specially formulated to work with your hot irons and blow dryers to get the latest salon styles you want, while protecting your hair from heat damage."

41. While the evidence does not show that the same undertakings manufacture the respective goods, what it does show is that a range of undertakings trade in the goods at issue in these proceedings and that they offer those goods to the average consumer under the same trade mark. As Beautopia comment in their written submissions:

"What is relevant is the evidence adduced to show that it is common in the industry for undertakings to produce goods in classes 3, 9, 11 and 21 which is in

consequence of their highly complementary nature. Consumers who see the complementary goods of [Unil] bearing the identical mark of [Beautopia] will believe that the goods are an extension of the goods normally offered by [Beautopia].”

42. The evidence also shows that in a retail outlet such as Superdrug the goods are to be found on the same or adjacent shelves. This combined with the similarity in users and intended purpose, and the clear complementary relationship that exists between the respective goods, results, in my view, in a relatively high degree of similarity between them.

Distinctive character of Beautopia’s earlier trade mark

43. I must also assess the distinctive character of Beautopia’s trade mark. The distinctive character of a trade mark must be appraised first by reference to the goods in respect of which it has been registered and, second, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585. As Beautopia have not provided any evidence they may have made of their CLOUD 9 trade mark, I have only its inherent characteristics to consider.

44. Neither the word CLOUD nor the numeral 9 are invented elements. When considered as a totality the conceptual message the combination CLOUD 9 is likely to convey to the average consumer is one of a state of happiness. While it could be argued that the trade mark describes the effect the goods will, or are intended to have on the average consumer, that is, in my view, far-fetched. When considered in relation to the goods upon which Beautopia rely in these proceedings, the trade mark CLOUD 9 is allusive, and, as such, is possessed of a reasonably high degree of inherent distinctive character.

Likelihood of confusion

45. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the goods and vice versa. It is also necessary for me consider the distinctive character of Beautopia’s trade mark, as the more distinctive this trade mark is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods, the nature of the purchasing process and that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind.

46. I have concluded that the competing trade marks are identical, that the respective parties' goods are similar to a relatively high degree and that Beautopia's earlier trade mark possesses a reasonably high degree of inherent distinctive character. In those circumstances, I have no hesitation in concluding that the average consumer will assume that the goods of Unil are those of Beautopia and the opposition succeeds accordingly.

Costs

47. As Beautopia have been successful they are entitled to a contribution towards their costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 4 of 2007. Using that TPN as a guide, I award costs to Beautopia on the following basis:

Preparing a statement and considering the other side's statement:	£200
Preparing evidence and considering and commenting on the other side's evidence:	£700
Written submissions:	£300
Fee for filing opposition:	£200
Total:	£1400

48. I order Unil Electronics Corp Europe Ltd to pay to Beautopia LLC the sum of £1400. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 23 day of February 2011

C J BOWEN
For the Registrar
The Comptroller-General