

O-193-11

TRADE MARKS ACT 1994

**IN THE MATTER OF THE REGISTERED CERTIFICATION MARK No. 2486398
IN THE NAME OF AXLE ASSOCIATES LTD
IN RESPECT OF:**

BRAMLEY OLD SPOT PORK

AND

**AN APPLICATION (NO 83673) FOR INVALIDATION BY
GLOUCESTERSHIRE OLD SPOTS PIG BREEDERS' CLUB**

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THE BACKGROUND AND THE PLEADINGS

1) The registered certification mark the subject of these proceedings stands in the name of Axle Associates Ltd ("Axle"). It was filed on 30 April 2008, it was published in the Trade Marks Journal on 15 August 2008 and it completed its registration procedure on 21 November 2008. The certification mark consists of the words BRAMLEY OLD SPOT PORK and is registered in respect of:

Class 29: Pork, all of which is from the progeny of pigs sired by a Gloucester Old Spot boar; Bacon, all of which is derived from pork, which is from the progeny of pigs sired by a Gloucester Old Spot boar; prepared meals and sausages, all containing pork and apple.

Class 30: Pies and meat products, all containing pork and apple.

2) On 2 February 2010 Gloucestershire Old Spots Pig Breeders' Club ("Club") applied for a declaration of invalidity in respect of the above registration. The application is made on the basis of the following claims:

- i) Section 5(4)(a) - That there is a collective goodwill in the sign GLOUCESTERSHIRE OLD SPOTS in respect of pedigree Gloucestershire Old Spots Pigs ("GOS") and products derived therefrom. The claim made is that the mark would lead consumers into the mistaken belief that the products covered by the registration were derived from pedigree GOS pigs and that this would damage the collective goodwill. This is, in essence, a claim to what is often referred to as the extended form of passing-off.
- ii) Section 3(3)(b) – That the inclusion in the mark of the distinctive words OLD SPOT would suggest that both parents of the pig from which the products are derived are of the GOS breed.

3) Axle filed a counterstatement denying the grounds of invalidation. A number of points are made in the counterstatement, including:

- i) That the regulations governing the use of the certification mark are transparent with no suggestion that both parents of the pig from which the products are derived are pedigree GOS.
- ii) That the above is consistent with other certification schemes, e.g. Aberdeen Angus which is also based on a cross-breed.
- iii) That a condition in the regulations requires retailers selling pre-packed products to clearly label them highlighting that the pig from which the products are derived are cross-bred (sired by a GOS).
- iv) That Club has allowed other traders (Waitrose) to sell meat from cross-bred GOS pigs subject to it being clearly labeled. This is said to be inconsistent with the application for invalidation, particularly when the certification mark does not even refer to the GOS.
- v) That since registration, significant sums of money have been spent on developing the certification mark and several farmers have made sizable investments in good faith to breed livestock for the certification mark.

4) Both sides filed evidence. The matter was then heard before me where Club was represented by Mr Mark Armitage of Withers & Rogers. Axle also attended the hearing and was represented by its director, Mr James Ironside.

THE PREVIOUS DECISION

5) The parties have previously locked horns in another dispute concerning the name BRAMLEY OLD SPOT PORK. This was in the context of an opposition against a trade mark application sought by Axle in respect of live pigs. The proceedings were determined in Club's favour under section 3(3)(b)¹. Both parties have referred to this earlier decision. I have, of course, taken note of this earlier decision, but, for sake of clarity, I should record that the earlier decision is not binding upon me. Even though I will make reference to this earlier decision, my conclusions are based on the facts and arguments presented in these proceedings.

THE EVIDENCE

Club's evidence

6) This comes from Richard Lutwyche, secretary of Club. He begins by referring to the previous decision and that it was decided in Club's favour. He states that the matters are substantially the same so he has re-filed the evidence from the earlier proceedings. I have read the evidence in detail, but I do not intend to re-

¹ See BL O-316/09

summarise it so I gratefully adopt Mr James' (the hearing officer in the previous proceedings) summary which was as follows:

“4. The opponent’s evidence takes the form of two witness statements by Richard Lutwyche, who is the Secretary of Club. Mr Lutwyche states that Club was formed in 1990 to promote the Gloucestershire Old Spots (“GOS”) pig breed and to help dealers. Most of its members are involved in breeding and marketing the GOS breed and products derived from such pigs. According to Mr Lutwyche, the GOS is the oldest spotted pedigree pig breed in the world and:

“..consumers encountering the name Gloucester Old Spots in connection with pigs expect the pork to be derived from such meat to be of particularly high standard and to be especially tasty and succulent and are willing to pay an (sic) correspondingly high price.”

5. Mr Lutwyche says that an important aspect of the GOS breed is that such pigs should be registered with the British Pig Association which requires that, unless both parents are of the GOS breed, the offspring cannot be called GOS. Mr Lutwyche exhibits to his witness statement (as RL2) some undated pages from Club’s web site and information leaflets, which as one would expect provide a history of the GOS breed and its commercial potential. One of the web pages notes that the GOS breed is sometimes known as ‘Gloster Spot’ or just ‘Old Spot’.

6. Mr Lutwyche gives evidence that on 13 February 2004 Club applied to DEFRA to register the name ‘Traditionally farmed Gloucestershire Old Spots Pork’ under Council Regulation EEC 2082/92 as a Traditional Speciality Guaranteed. Two copies of the application are in evidence (exhibit RL3 to Mr Lutwyche’s first statement and exhibit RL8 to his second statement). It is clear from these that the form of the application has evolved along the way. It is not clear whether either of the applications in evidence reflect the exact terms of the original application in 2004. What is clear is that the application seeks to reserve the above name for use in relation to meat products derived from pigs for which the appropriate classification appears to be “Fresh Meat”. At least by 2008, the proposed specification included a requirement that the meat must come from registered pedigree GOS pigs. It appears that the application has been approved by DEFRA and the European Commission and has just been, or shortly will be, published so that other Member states, third countries, or interested parties based outside the UK are able to object to the proposed registration in accordance with the procedure adopted in Council Regulation EEC 509/06. According to that procedure (which is set out in RL4) interested parties in the UK should have been given the opportunity to object to the application before it was forwarded to the Commission. It is not clear whether Axle had an opportunity to lodge such an objection.

7. Club is regarded as an 'interested party' by the Local Authorities Coordinators of Regulatory Services ("LACORS"), which provides guidelines to Trading Standards Officers in the field of food labelling. Mr Lutwyche says that Club was consulted by LACORS and he provides (as exhibit RL5) a copy of a letter from LACORS dated 28 May 2008. The letter is addressed to "Interested Parties" and thanks those parties for contributing views and technical information relating to "Labelling of Gloucester (sic) Old Spot (sic) Pork Products". It goes on to record that the issue was considered at a meeting of the LACORS Food Labelling Focus Group on 22 May 2008. It continues that:

"The Focus Group agreed that the original LACORS advice on rare breeds referred almost entirely to Aberdeen Angus and Hereford cattle and should be viewed as stand alone advice dealing solely with cattle breeds. All references to other species should be removed and separate LACORS advice should be developed to cover Gloucestershire Old Spot (sic) GOS pork products specifically. It was further agreed that this advice should be developed in consultation with all interested parties".

8. The letter continues that this advice will cover how consumers can be informed as to the difference between products from a GOS sire/GOS dam and those from a GOS sire/hybrid dam.

9. This activity at the beginning of 2008 may have been connected with another matter mentioned in Mr Lutwyche's first statement, which is dated 21 January 2009. He says that around a year earlier "Waitrose launched a bacon pack majoring on 'Gloucestershire Old Spot' even though it was produce of cross-bred stock". Club opposed this use (it is not clear how) and Waitrose subsequently changed its labelling so as to make it clear that the bacon in question was "produced from pigs sired by registered Gloucestershire Old Spot boars".

10. LACORS subsequently issued guidance on the matter under the title 'LACORS guidance on the Labelling of meat and meat products for all species other than beef sold by breed'. The guidance states that:

- Consumers require sufficient information about product labelling by breed so as to avoid being misled.
- There is a need for labelling of meat to distinguish between products derived from the mating of pedigree GOS pigs and those derived from the mating of a pedigree GOC sire with a hybrid sow.

- Any reference to a specific breed should refer to an animal registered by an officially recognised registration authority, such as the British Pig Association.
- Any trade mark applied to the products should not be similar to the name of the breed in question.

11. Rather oddly, despite the generality of the advice suggested by the title, the guidelines make no mention of any animal breed other than GOS. It is not clear when these guidelines came into effect. Mr Lutwyche's first statement on 21 January 2009 gives the impression that the LACORS guidelines had already been issued, but his second statement dated 31 July 2009 states that the wording of the guidelines had "now" been finalised, and he attaches a copy of them dated 31 January 2009 (as RL 9)."

7) In addition to the evidence filed in the earlier proceedings, Club topped up its evidence with a further witness statement from Mr Lutwyche, from which the following emerges:

- That in response to the previous decision, Axle indicated that the live pigs would simply be described as Bramley pigs with no trade mark involved.
- In respect of the reference in paragraph 5 of Mr James' evidence summary (an extract from Club's website which states that GOS is sometimes referred to as "Golster Spots" or "Old Spot") and Mr James' subsequent comment (paragraph 35 of his decision) that it is not clear when this website was dated, Mr Lutwyche provides a leaflet produced by Club which he describes as being produced considerably prior to the date of the certification mark. The claim to being old is made on the basis that the leaflet contains an old style telephone number. I note from the leaflet that the breed is "often referred to as a Gloucester Old Spot or even just Gloucester Spot". The leaflet provides information about the history of the breed. It refers to the GOS producing high quality meat which will be appreciated by the more specialist, discerning customer. Reference is made to cross-breeding and that the resulting all-white offspring make excellent commercial pigs. The leaflet also explains that the GOS females make good mothers and that it is extremely hardy. The pig is (or was at the time the leaflet was produced) part of the Rare Breeds Survival Group, although it is stated that it is more numerous than other breeds of rare pig. I also note that the GOS was known locally as the orchard pig as it often ate windfall waste from apple orchards.
- In relation to the use by Waitrose, Club has continually pressed for better labelling. The current Waitrose labelling is included which includes the words (as part of a product description) "Specially selected Waitrose Free

Range pork produced from pigs sired by registered Gloucestershire Old Spot Boars.....". It is stated that the label is better than previous versions (although not fully LACORS compliant) and that such use is not made under a GOS label.

- That a voluntary code of practice has now been introduced by BPEX (a subsidiary of the Agricultural and Horticultural Development Board) in relation to meat (pork) labelling. In terms of the use of breed names, the practice is that such meat should come from pigs the result of the mating of a pedigree boar and sow of the same breed. In relation to meat obtained from cross-bred pigs, the labelling should contain statements such as "Berkshire Cross Breed Bacon". It is also highlighted that any reference to a specific breed should refer to an animal registered by an officially recognised registration authority. Mr Lutwyche states that Axle's sires are not. Also highlighted from the code of practice is that :

"any trade mark applied to the products should not be capable of being confused with the actual breed/cross-breed of the product"

- That the application to register the TSG is now going ahead. An e-mail from DEFRA dated 12 May 2010 confirms this, albeit the process has not been finally completed. Articles from various publications are provided about the TSG: *Farmers Guardian*, *The Times*, *Western Daily Press*, a press release on DEFRA's website, and an article on the website of BBC NEWS Gloucestershire (all are dated June 2010).

Axle's evidence

8) This comes from Mr James Ironside, a director of Axle. The main parts of his evidence focus on:

- Exchanges between the parties following the earlier decision whereby Club requested that Axle surrender its certification mark. The matters contained in these letters have no relevance to the decision I am required to reach.
- That the live pigs are to be described as "Bramley" pigs with no trade mark involved.
- That the rules and regulations which govern the use of the certification mark are robust and fully transparent. A copy is provided in Exhibit J1(2). I will come back to some of their content shortly.
- That the above regulations are based on the certification mark Aberdeen-Angus Beef but with added transparency and traceability. The Aberdeen-Angus Beef scheme has been active for over 25 years. Mr Ironside

managed the scheme for over a decade. He adds that it would be inconsistent if one is acceptable but not the other.

- That Club do not own the breed but rather they represent a specific group of farmers who breed, buy and sell pedigree GOS and market produce from their progeny. He says that other traders should not be prevented from accessing GOS livestock to market in any way they choose providing that the product offered is clearly labelled to show a true description of the product offered. Reference is made to one of Axle's certification mark license certificates which makes clear that the product is "a blend of native UK breeds".
- Mr Ironside states that Club's members have sold products not derived from registered pedigree GOS; Mr Ironside states that he purchased such produce between 2006 and 2008.
- Allegations (which are denied) are made as to the health of GOS and that diseases sometimes occur in them and what some members of Club do in respect of this. I do not consider any of this to be relevant to the decision required of me so I will say no more about it.

Club's reply evidence

9) This comes, again, from Mr Lutwyche. The main points are:

- That even though the certification mark regulations state that prepared meals and certain products (e.g. pies and sausages) must contain Bramley apples, Axle's website (which now relates to Bramley Vintage Pork rather than Bramley Old Spot Pork) makes a reference to such products but does not list them as containing apple of any sort. This is highlighted to show that the regulations are not as robust as claimed.
- That the Aberdeen-Angus certification mark is an anomaly and consumers would assume that the beef comes from two pure-bred animals. This anomaly is why the breed-related labelling guidance produced by Lacors does not relate to beef/beef products.
- Mr Ironside's claim that he obtained GOS from non-registered GOS livestock is strenuously denied and in the absence of corroborative evidence I am invited to ignore this statement.
- That Club has no objection to Axle's business methods. It does not object to its new certification mark for Bramley Vintage Pork even though the specification refers to GOS boars. No objection is made because the trade mark itself does not constitute a misrepresentation/deception.

DECISION

10) I will deal firstly with the ground pleaded under section 3(3)(b) of the Act.

SECTION 3(3)(B) OF THE ACT - DECEPTION

11) Section 3(3)(b) of the Act states that a mark (including a certification mark²) shall not be registered if it is:

“of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service).”

12) Section 3(3)(b) of the Act derives directly from article 3(1)(g) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 (“the Directive”). In *Elizabeth Florence Emanuel v Continental Shelf 128 Ltd* Case C-259/04 the Court of Justice of the European Union (“CJEU”) stated:

“47 Nevertheless, the circumstances for refusing registration referred to in Article 3(1)(g) of Directive 89/104 presuppose the existence of actual deceit or a sufficiently serious risk that the consumer will be deceived (Case C-87/97 *Consorzio per la tutela del formaggio Gorgonzola* [1999] ECR I-1301, paragraph 41).”

13) It is clear from the comments made in the above case that the deception envisaged must be borne of the intrinsic qualities of the mark itself. In terms of when such an assessment should be made, Mr David Kitchen QC (sitting as the Appointed Person) in the above case ([2004] RPC 15) suggested that the position ought to be tested at the date on which the application for registration was applied for; this is the approach I will adopt which, in any event, is consistent with the scheme envisaged by the Act and the Directive.

14) The specification of the certification mark is limited, in so far as meat is concerned, to meat obtained from pigs sired by GOS boars. The prepared meals and goods such as sausages and pies are not so limited but the regulations governing the use of the certification mark indicate that all pork products will contain pork that is from the progeny of GOS boars. I take the reference to “all pork products” to include prepared meals, sausages and pies etc. It is also clear that whilst the pig from which the pork is obtained is sired by a GOS boar, the pig’s sow is not a GOS. The pig from which the pork is obtained is, therefore, a cross-breed. This can be seen from the following wording which the regulations require retailers to use in respect of pre-packaged pork products:

“Bramley Old Spot Pork is a Gloucestershire Old Spot Cross Breed produced from Pigs Sired by Pure Gloucestershire Old Spot Boars”

² Paragraph 1 of Schedule 2 of the Act indicates that the provisions of the Act apply to certification marks.

15) The regulations do not identify which breed of pig the sow should be. The sow could, therefore, be of another recognised breed or a pig with no specific breed (perhaps one that it already crossed). The assessment I make will be based on the mark being used in respect of meat and meat products containing pork from a cross-bred pig which has been sired by a GOS boar.

16) There is no evidence of any actual deceit, however, the claim must nevertheless be upheld if there is a sufficiently serious risk of deception. There can, though, only be a sufficiently serious risk of deception if the consumer is aware of the GOS pig. Whilst there are a number of other factors, if this primary question is not answered in the affirmative then there can be no deception. The relevant consumer group will include as a predominance members of the general public. It will also include professionals such as restaurateurs, caterers etc. At the hearing, Mr Ironside submitted that whilst very discerning consumers may know of the GOS, the percentage of the population with such knowledge may be very small. Mr Armitage highlighted that the GOS is a traditional pig breed, indeed one of the very oldest. He highlighted the application for the TSG (which now appears to be going ahead), the very fact of which must be indicative of an existing reputation. In my view, I consider it a reasonable and fair inference to draw that whilst the GOS pig may not be known by everyone, it would have been known by a significant enough proportion of the relevant consumer group for the claim to deception to potentially bite. The evidence shows that the GOS is an old and longstanding breed of pig. There is evidence of products containing GOS meat (or at least meat from cross-bred pigs sired by GOS) being sold in supermarkets. The background circumstances of the TSG etc. also point to an existing reputation, albeit not an all encompassing one. The fact that Axle have used OLD SPOT in the certification mark at least supports (although I accept it does not prove so I place no real weight on this) this proposition as if there were no public awareness at all of the GOS then why was it included?

17) The next factor I will deal with is whether BRAMLEY OLD SPOT PORK will be taken as a direct reference to the GOS. In the context of the previous opposition to the trade mark for live pigs, it was held that a direct reference would be made on account of the self-evident potential for GOS to be abbreviated to OLD SPOTS/OLD SPOT with the resulting perception that BRAMLEY would be understood as an origin-denoting element (the trade mark element) and OLD SPOT PORK as a descriptive element. Whilst no additional evidence has been filed showing GOS abbreviated to OLD SPOT/OLD SPOTS, the potential still exists for the same perception to be taken. Regardless of the role that BRAMLEY plays (it could be perceived as a trade mark element or even as a descriptive element relating to the Bramley apple), I consider it likely that BRAMLEY on the one hand and OLD SPOT PORK on the other will be perceived as independent elements, the second element being taken as a direct reference to the GOS pig. This is particularly so given that OLD SPOT is a unique (to the GOS) term (there being no evidence that such words are used in the names of other breeds of pig) and that BRAMLEY has no link to the names of pig breeds.

18) The next factor is tied to the first, namely, whether the construction of the mark as whole will put the consumer on warning that the meat being sold under the certification mark is meat from a cross-bred pig (with a GOS parent) and not necessarily meat from a pure-bred GOS. The assessment I gave above deals with this. If the consumer is likely to perceive the certification mark as consisting of the two elements BRAMLEY and OLD SPOT PORK, there is nothing intrinsic in the mark itself to alert the consumer to the fact that the OLD SPOT PORK actually comes from a cross-bred pig. The message the consumer takes away is that OLD SPOT PORK is a direct reference to the GOS pig breed.

19) This all leads to the final determining question, whether the factors assessed so far result in a serious risk of deception. It could be argued that what I have said so far should lead to an automatic finding that there is a serious risk of deception. However, if the sign in question does not move the consumer to buy the product on the basis of the meat coming from a pure-bred GOS then it is difficult to see that there is a serious risk of deception. The position can be contrasted with the previous case (in respect of live pigs) given that the consumer there will have a better understanding of the characteristics of the GOS and a consequential clearer expectation such that deception will arise (as was found) if the live pig purchased was a cross-bred pig sired by a GOS boar rather than a pure-bred GOS. There is little by way of evidence to fully understand what the consumer's (of pork products) expectation levels would have been at the relevant date. That being said, I think it is a reasonable inference that unless there is something intrinsic in the mark to suggest otherwise, the consumer is likely to assume that the meat sold under the mark comes from the particular breed suggested, and that this would be a pure-bred GOS. All consumers will have a rudimentary understanding of animal breeding and that, ordinarily, the taking of a specific breed of animal and then mating it with another breed means that the resulting offspring would ordinarily be referred to as a cross-breed rather than being referred to as an actual breed mirroring one or other of its parents.

20) I say "ordinarily" because Mr Ironside filed evidence about the Aberdeen Angus certification scheme which relates to meat that could also be described as cross-bred. Whilst I have borne this in mind, this tells me little about consumer expectations (the consumer may not know the detail of the certification scheme) and, furthermore, the BPEX guidelines provided by Club in its evidence demonstrate that it is still (for sake of consumer protection) necessary to differentiate between pure-bred and cross-bred pigs. Although these are recent guidelines, it can be inferred that the position now would have been no different to the position at the relevant date. I accept, therefore, that the Aberdeen Angus scheme may be more of an anomaly than representing true consumer expectations.

21) In summing up my views on the risk of deception, I have come to the view that a sufficient proportion of the relevant consumer group will know of the GOS

pig breed and that they will also assume that the use of the words OLD SPOT PORK in the certification mark is a reference to the GOS. I have also come to the view that the ordinary assumption will be that the reference they have perceived is a reference to a pure-bred GOS rather than some form of cross-bred pig with GOS parentage and that there is nothing intrinsic in the mark itself, or from ordinary consumer expectations, that would change that perception. In terms of deception itself, for those that know of the GOS they will know that it is an old traditional breed of pig. It follows, in my view, that such a person will have an expectation about the meat sold under the sign that will not be met if the meat they actually receive is from a cross-bred pig even if one of its parents is a GOS. That traditional aspect from a longstanding breed has, effectively, been altered. The consumer may not know what specific characteristic the meat of a GOS will give (they will likely assume a high quality flavour and succulence), but the cross-breeding with another pig, potentially from a whole host of other breeds or, indeed, cross-breeding with a pig which is already a cross-breed, will certainly be viewed as quite different from that expectation. This all means that there is, on face value, a serious risk of deception.

22) Before moving on, I should say that nothing in what I have said should be taken as demonstrating that Axle is intending through the use of its certification mark to purposefully attempt to deceive the public. Axle intends to label certain of its products (a point I will come on to) and it suggests that the meat it produces is, in certain respects, better than GOS meat. I have no reason to doubt this and Club have indicated that it has no objection to Axle's business plans. That being said, the question is about the mark itself and whether there is a serious risk that the public will be deceived. For the reasons given, I consider that there is such a risk.

23) I used the words "on face value" in my finding. This is because Axle intends to mitigate the risk of deception by the use of labelling. Mr James dismissed this argument in the previous decision, but the position is slightly different here given that the use of a certification mark is tied to the regulations which govern its use. The regulations should be borne in mind when the objective circumstances regarding the use of the certification mark are being considered. That being said, there is still something of a disparity between the requirement for deception to be intrinsic in the mark itself and a possible way of avoiding that deception by way of use of accompanying labelling. I will, though, consider Axle's argument, not least because in the *Vodkat* case Arnold J indicated (albeit in the context of passing-off) that deception could be avoided by relevant explanations and labelling. The regulations require retailers to label pre-packaged meat products with the following text:

"Bramley Old Spot Pork is a Gloucestershire Old Spot Cross Breed produced from Pigs Sired by Pure Gloucestershire Old Spot Boars"

24) Whilst the information in the above text is reasonably clear, it is quite difficult, without seeing what the resulting packaging will look like, to form a clear view as to whether deception will be mitigated. This is particularly so when one bears in mind that the consumer may not always look at small print and may simply take the reference to OLD SPOT PORK in the mark itself as an explanation of what the product contains (meat from a GOS pig) and will not look beyond that. I do not consider that the content of the regulations regarding the labelling is sufficient to overcome the intrinsic deceptiveness in the mark. This, in any event, covers the position only in respect of pre-packaged products. Products not packaged (for example, those sold over the meat counter or in a butcher's shop) have no such requirement. Mr Ironside stated at the hearing that, in practice, a license certificate may be displayed which the consumer can read – I consider this to be most unlikely (at least in terms of the consumer reading it) and such a suggestion also has no impact on the risk of deception. I have also borne in mind the parties' references to the labelling used by Waitrose. Whilst the form of wording highlighting the progeny of the pork is similar, Club is right in its argument that the position is different here because the labeling used by Waitrose is not accompanied by a sign which intrinsically points to a GOS pig. This is in complete contrast to the use of the certification mark BRAMLEY OLD SPOT PORK. The ground of invalidation under section 3(3)(b) is upheld.

25) Given the above finding, I do not consider it necessary to deal with the ground under section 5(4)(a) of the Act – similar issues overlap and Club is in no stronger position. As the application for invalidation succeeds, Axle's certification mark registration is deemed never to have been made.

Costs

26) Club has been successful and is entitled to a contribution towards its costs³. I note that in the previous decision the costs award made in Club's favour was reduced due to criticisms about dealing with matters sequentially rather than in a consolidated fashion. I agree with Club that it would be wrong to penalize them again. That said, much of the evidence filed is a repeat of that filed in the earlier proceedings albeit with some additional evidence. I hereby order Axle Associates Ltd to pay Gloucestershire Old Spots Pig Breeders' Club the sum of £1300. This sum is calculated as follows:

Preparing a statement and considering the other side's statement
£200

Expenses (invalidation fee)
£200

³ Costs are normally awarded on the basis of the registrar's published scale in Tribunal Practice Notice 4/2007.

Filing evidence and considering Axle's evidence
£500

Attending the hearing
£400

27) 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 6 day of June 2011

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