

O-197-17

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 3107552

THE BERKSHIRE EYE CLINIC

IN THE NAME OF BERKSHIRE AND HARTLEY LLP

DECISION

1. This is an appeal against the decision O-587-16 of Mr Andrew Feldon sitting as the Registrar's Hearing Officer dated 14 December 2016 ("the Decision") whereby he refused the application for THE BERKSHIRE EYE CLINIC under ss.3(1)(b) and (c) Trade Marks Act 1994 ("the Act").
2. On this appeal the Applicant does not contest the finding that the mark is *prima facie* unregistrable as being descriptive of the geographical origin of the goods and services applied for under s.3(1)(c), but maintains that the objections had been overcome at the application date, 2 May 2015, as a result of acquired distinctiveness¹ in the following goods and services:

Class 09: Anti-dazzle spectacles, anti-glare spectacles, cases (eyeglass), chains for spectacles, children's eye glasses, contact lenses, contact lens blanks, corrective eyewear, correcting lenses [optics], eyeglass cases, eyeglass frames, eyeglass lenses, eyeglasses, eyepieces, eyepieces (instruments containing-), eyewear, frames for spectacles and sunglasses, glass ophthalmic lenses, instruments containing eyepieces, instruments for diagnosis [for scientific use], laboratory optical apparatus, lens blanks for eyesight correction, lenses (optical-), optical devices, enhancers and correctors, optical glasses, optical goods, optical lens sights, optical lenses, optical lenses for use with sunglasses, optical measurement apparatus, optical measuring components, opticians' goods, ophthalmic lenses, plastic lenses, sight glasses [optical], spectacle lenses, spectacles, spectacles [glasses], spectacles [optics], corrective glasses.

¹ See the proviso to s.3(1): "Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it."

Class 10: Artificial lenses for implantation in the eye, artificial surgical implants, eye baths, eye droppers, eye pads for surgical use, eye shields for medical use, eye shields for surgical use, eyes (artificial-), implants consisting of artificial materials, intra-corneal implants, intra-ocular implants, intraocular lens biometers, intra-ocular lenses, intraocular lenses, intraocular lenses for surgical implantation, laser beam delivery instruments for medical use, laser instruments for medical use, laser light treatment instruments for medical use, lasers for ophthalmic purposes, ocular implants, ophthalmoscopes, prostheses (intraocular-) [lenses] for surgical implantation, surgical implants comprised of artificial materials, surgical implants made of artificial materials, ultrasonic eye axis length meters.

Class 44: Advisory services relating to degenerative diseases, advisory services relating to the treatment of degenerative diseases, consultancy services relating to surgery, health care consultancy services [medical], information services relating to contact lenses, laser vision surgery services, optician services, performing diagnosis of diseases, providing laser therapy for treating medical conditions, provision of medical treatment, sight-testing [opticians'] services, surgery, surgical treatment services, technical consultancy services relating to medical health.

3. A detailed chronology of events is set out at §§1-29 of the Decision. They are not relevant to the substance of this appeal but they are relevant to the observations I make at the end. In short, the application was originally subject to an objection under ss.3(1)(b) and (c) of the Act. This was subsequently waived at an *ex parte* hearing, for a limited range of goods and services, on the basis of distinctiveness acquired through use.
4. Following the mark's publication, the Registrar received third party observations which led to a late objection of absolute grounds being raised under section 40 of the Act. This led to a second *ex parte* hearing, and the applicant's submission of additional evidence. A second Hearing Officer (Mr Feldon) was not persuaded that the mark had acquired distinctiveness, and so the application was refused. The Registrar was asked to produce a statement of reasons setting out the reasons for refusal, and it is that Decision which is the subject of this appeal.
5. The Applicant was represented by Mr Robert Lucas. Although he was not a professional representative, he clearly had a good understanding of the trade mark system and argued the points effectively and concisely on behalf of the Applicant.

6. Mr Nathan Abraham appeared on behalf of the Registrar. As the Applicant had not provided a skeleton argument in advance of the hearing² I was particularly grateful for the assistance I received from Mr Abraham's written summary of the issues arising on the appeal.

Standard of Review

7. The standard to be applied to appeals of this nature was not in dispute. As originally summarised by Daniel Alexander QC sitting as the Appointed Person in *TT Education Ltd v Pie Corbett Consultancy (O/17/17)* with minor revisions as supplied by Phillip Johnson sitting as the Appointed Person in O-173-17:

"52. Drawing these threads together, so far as relevant for the present case, the principles can therefore be summarized as follows.

- (i) Appeals to the Appointed Person are limited to a review of the decision of Registrar (CPR 52.21). The Appointed Person will overturn a decision of the Registrar if, but only if, it is wrong (CPR 52.21)
- (ii) The approach required depends on the nature of decision in question (*REEF*). There is spectrum of depending on the nature of the decision. At one end of the spectrum are decisions of primary fact reached after an evaluation of oral evidence where credibility is in issue and purely discretionary decisions. Further along the spectrum are multifactorial decisions often dependent on inferences and an analysis of documentary material (*REEF, DuPont*).
- (iii) In the case of conclusions on primary facts it is only in a rare case, such as where that conclusion was one for which there was no evidence in support, which was based on a misunderstanding of the evidence, or which no reasonable judge could have reached, that the Appointed Person should interfere with it (*Re: B and others*).
- (iv) In the case of a multifactorial assessment or evaluation, the Appointed Person should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions. In particular, where an Appointed Person has doubts as to whether the Registrar was right, he or she should consider with particular care whether the decision really was wrong or whether it is just not one which the appellate court would have made in a situation where reasonable

² As set out in §6.8.2 of the Trade Marks Manual: "Parties with legally qualified representatives are required to submit skeleton arguments in advance of a Substantive Hearing. Where parties intend to rely on authorities (other precedent cases) then details of these should be included within the skeleton arguments. **Parties who do not have a legally qualified representative are not required to provide skeleton arguments, although they may do so if they wish.**" (emphasis added)

people may differ as to the outcome of such a multifactorial evaluation (*REEF, BUD, Fine & Country and others*).

- (v) Situations where the Registrar's decision will be treated as wrong encompass those in which a decision is (a) unsupportable, (b) simply wrong (c) where the view expressed by the Registrar is one about which the Appointed Person is doubtful but, on balance, concludes was wrong. It is not necessary for the degree of error to be "clearly" or "plainly" wrong to warrant appellate interference but mere doubt about the decision will not suffice. However, in the case of a doubtful decision, if and only if, after anxious consideration, the Appointed Person adheres to his or her view that the Registrar's decision was wrong, should the appeal be allowed (*Re: B*).
- (vi) The Appointed Person should not treat a decision as containing an error of principle simply because of a belief that the decision could have been better expressed. Appellate courts should not rush to find misdirections warranting reversal simply because they might have reached a different conclusion on the facts or expressed themselves differently. Moreover, in evaluating the evidence the Appointed Person is entitled to assume, absent good reason to the contrary, that the Registrar has taken all of the evidence into account. (*REEF, Henderson and others*).

Bearing in mind the repeated reminders that different points are likely to be particularly relevant in other cases, this is not intended to be a summary of universal application for other cases where particular aspects of the approach may require different emphasis."

The Decision

- 8. The section of the Decision which deals with acquired distinctiveness begins at §48.
- 9. At §49 the Hearing Officer referred to joined cases C-108/97 and C-109/97 *Windsurfing Chiemsee Produktions-und Vertriebs GmbH (WSC) v Boots-und Segelzubehör Walter Huber and Franz Attenberger (Chiemsee)* ECLI:EU:C:1999:230, which is still the primary authority on the assessment of acquired distinctiveness in cases concerning terms of geographical origin. In §51 he summarised the relevant principles to be applied as follows:
 - (a) Mere evidence of use, even if substantial, does not make the case for acquired distinctiveness.
 - (b) A significant proportion of the relevant consumers need to be educated that the sign has acquired distinctiveness.
 - (c) If, to a real or hypothetical individual, a word or mark is ambiguous in the sense that it may be distinctive or descriptive then it cannot comply with the

requirements of the Act for it will not provide the necessary distinction or guarantee.

- (d) It follows that, with regard to the acquisition of distinctive character through use, the identification by the relevant class of persons of the product or service as originating from a given undertaking must be as a result of the use of the mark as a trade mark. The expression 'use of the mark as a trade mark' in section 3 refers solely to use of the mark for the purposes of the identification, by the relevant class of person, of the product as originating from a given undertaking.
- (e) Acquired distinctiveness cannot be shown by reference only to general, abstract data such as predetermined percentages.
- (f) The mark must have acquired distinctiveness through use throughout the territory of the UK.
- (g) In assessing whether a trade mark has acquired a distinctive character, the competent authority must make an overall assessment of the relevant evidence, which in addition to the nature of the mark may include: (i) the market share held by goods bearing the mark; (ii) how intensive, geographically widespread and longstanding the use of the mark has been; (iii) the amount invested by the proprietor in promoting the mark; (iv) the proportion of the relevant class of persons who, because of the mark, identify the goods or services as emanating from the proprietor; (v) evidence from trade and professional associations; and (vi) (where the competent authority has particular difficulty in assessing the distinctive character) an opinion poll. If the relevant class of persons, or at least a significant proportion of them, identifies goods or services as originating from a particular undertaking because of the trade mark, it has acquired a distinctive character.

10. None of this analysis is criticised on this appeal.

11. In relation to the sort of evidence that is required to establish acquired distinctiveness, the Hearing Officer explained at §53:

"The office must be able to determine how long the sign has been in use. Clearly it is the case that the longer a sign has been in the relevant market place, the more time the relevant public has to become accustomed to it and accept it as a badge of origin rather than a descriptive expression. It is also vital to show the extent of use of the sign geographically. A trade mark registration is a national right and, as such,

it must be the case when considering claims to acquired distinctiveness, that the relevant public across the relevant territory has become aware of the sign and educated, by use, that it is *more* than simply a descriptive term, and has evolved to become a badge of origin indicating the goods or services of one undertaking.”

12. The Applicant did not expressly dispute this statement in this appeal, but it complained that the Hearing Officer had imposed too high a hurdle in saying that the relevant public had not been exposed to the Applicant’s mark for long enough.
13. Mr Lucas confirmed on behalf of the Applicant that the identity of the average consumer by the Hearing Officer at §54 was correct, namely as being “*both the general public requiring advice about, and/or treatment for eye disease, and the professional consumer working in the field of degenerative eye diseases*”. However, there is a dispute about whether this is a complete statement, which I return to below. The Applicant also agreed with the Hearing Officer’s observation in §56 that the market for the relevant goods and services was of a specialist nature and niche.
14. The Hearing Officer summarised the evidence of acquired distinctiveness at §§57-. I do not repeat it all here, but quote the following relevant extracts from §58:

“The mark has been in use since December 2014, achieving a turnover of £205,689 by the end of April 2015. The applicant stated that such a level of turnover generated in “just over four months” should be considered significant when considering the likelihood of gaining a reputation in the field of eye care and eye treatment.

...

The applicant has not actively marketed or promoted the mark, relying instead on hospital referrals, industry networking and editorial features to raise awareness of the mark and the products provided under that sign. There appears to have been no expenditure in this area.”

15. The Hearing Officer also noted that the Applicant used another trade mark on its letters and invoices. This is a device mark which the Applicant confirmed at the hearing has been registered. It is UK Registered Trade Mark UK00003107550 in the following form registered in classes 9, 10 and 44:



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16. The Hearing Officer concluded in clear terms that the word mark in issue on this appeal had not acquired distinctive character at §§63-68. He characterised the evidence as “*wholly inadequate in terms of proving that the mark has acquired distinctive character*” (§63) and summarised his findings in §68 as follows:

68. Taken in totality, the body of evidence provided by the applicant shows that the mark ‘THE BERKSHIRE EYE CLINIC’ is rarely used as filed, in a trade mark sense. It shows that the mark has been used for a very short period of time prior to the filing date of 02 May 2015. It also shows that, at least prior to filing, the applicant spent nothing on marketing and promotional materials or activities but instead relied on ‘word of mouth’ and hospital referrals to raise awareness of its products. The level of sales revenue (by way of procedures carried out) is not particularly impressive in a field that, by its very nature, cannot be said to be inexpensive, and there is no evidence whatsoever of sales of any of the goods applied for. Finally, the geographical extent of use is limited mostly to the county of Berkshire and neighbouring Buckinghamshire/Hampshire, and so it cannot be established that the mark will be perceived by a wider public across the territory as the trade mark of one single undertaking.

17. Given these multiple findings of fact and the application of the law to the facts in the subsequent multifactorial assessment, the Applicant faces a significant challenge in overturning the conclusion of the Hearing Officer.

Grounds of Appeal

18. The Applicant put forward five reasons why the Decision should be reversed, which can be summarised as follows:

(a) The Hearing Officer was wrong to refer to ‘five years’ as being a reasonable threshold for length of use.

- (b) The specialised nature of the applicant's business meant that any consideration of acquired distinctiveness should be proportionate to the size and nature of the business, and should take into account its market position.
- (c) The Hearing Officer's consideration of the applicant's reputation was erroneously founded on the absence of 'irrelevant' marketing materials (such as flyers and advertisements), and should instead have taken into account other marketing activities such as networking and search engine optimisation.
- (d) The identification and consideration of the relevant public was incorrect.
- (e) An inconsistency of approach in the Registry on the basis of other 'Berkshire-plus-additional-element' trade marks having been registered.

Application to adduce further evidence

19. Before dealing with the grounds of appeal in turn, I should first deal with some further evidence of the state of the register which the Applicant sought to rely on at the hearing. Exhibit A was a register entry for a device mark "The Berkshire Clinic" registered on 20 January 2017. Exhibit B was the entry for "Berkshire Browns" registered for eggs in class 29 referred to in the fifth Ground of Appeal. It was registered on 26 February 2016. Finally, Exhibit C was an entry for a mark "Berkshire Eye Hospital" registered on 14 October 2016, apparently without any requirement for evidence of acquired distinctiveness having been supplied to the Registry.
20. The approach to the admission of fresh evidence on trade mark appeals is well established (see *Hunt-Wesson Inc's Trade Mark Application* [1996] R.P.C. 233). The principles were conveniently summarised by Amanda Michaels sitting as the Appointed Person in decision O-567-15 MY CHOICE. She identified the relevant factors in §16 as follows:
- 1. Whether the evidence could have been filed earlier and, if so, how much earlier.
 - 2. If it could have been, what explanation for the late filing has been offered to explain the delay.
 - 3. The nature of the mark.
 - 4. The nature of the objections to it.
 - 5. The potential significance of the new evidence.
 - 6. Whether or not the other side will be significantly prejudiced by the admission of the evidence in a way which cannot be compensated, e.g. by an order for costs.
 - 7. The desirability of avoiding multiplicity of proceedings.
 - 8. The public interest in not admitting onto the register invalid marks.

21. In the present case, neither Exhibit A or Exhibit C could have been relied on before the Hearing Officer because the marks were only registered after the hearing. As for the potential significance of the evidence, Mr Lucas fairly accepted at the hearing that registration of the device mark at Exhibit A did not really advance his case, not least because the Applicant is also in possession of its own registered device mark. He also accepted that Exhibit B did not take things much further than the Grounds of Appeal, and I deal with the issue on that basis below. Finally, following Mr Abraham's confirmation that the Registry did not appear to have required the proprietor of "Berkshire Eye Hospital" to submit any evidence of acquired distinctiveness, Mr Lucas accepted that Exhibit C could not assist in his appeal on acquired distinctiveness.
22. Accordingly I reject the Applicant's attempt to adduce this additional evidence on the basis that none of it had the potential to advance the Applicant's appeal. Admitting it would have made no difference to the outcome of this appeal. I will however return to Exhibit C under the heading "The Requirement for Consistency" below.

The First Ground: Length of Use

23. In relation to the First Ground, Mr Lucas said that the Hearing Officer should not have used a period of 5 years as a yardstick for acquired distinctiveness. He emphasised that the Applicant had achieved a significant turnover in a short time and referred to Hasbro's Cabbage Patch Dolls as an example of a brand achieving acquired distinctiveness in a shorter period. In short he submitted that revenue is the best proof of acquired distinctiveness.
24. Mr Abraham for the Registrar submitted that the 'five year threshold' was presented as guidance only. He did not dispute that there will be circumstances where use of less than five years will, when assessed in combination with other factors, be sufficient for demonstrating acquired distinctiveness. However, in this case, where the first demonstrable use occurred in March 2014 (only fourteen months prior to the date of filing), the Hearing Officer was entitled to decide that the brevity of use was a relevant factor. He submitted that there was no distinct or material error of principle, and therefore that this should not affect the validity of the refusal.
25. I agree that the Hearing Officer did not make an error of principle in this regard. He was fully entitled to take into account the short period of the Applicant's business in determining that it had not proven the necessary level of acquired distinctiveness. The Hearing Officer expressed himself in §63 as follows: "*Whilst the applicant has stated that the business has developed rapidly in a short space of time, it is*

uncommon for the Registrar to find evidence of acquired distinctiveness in circumstances where the duration of use is significantly less than five years.” Whilst he noted the custom in the Registry, he still went on to consider the evidence before him in full. See his subsequent discussion at §§63-68.

26. As for Mr Lucas' emphasis on turnover, the authorities make clear that turnover alone cannot demonstrate that relevant consumers have come to regard the mark as designating origin. Given the inherently descriptive nature of the Applicant's mark, further and better evidence of the length and extent of use would normally be required to establish acquired distinctiveness. In relation to the Cabbage Patch Doll example, in that case Hasbro may well have spent millions on advertising, in contrast to the Applicant in the present case. I therefore do not think the Hearing Officer fell into error in referring to the customary five year guidance period, or in his subsequent assessment of the extent of use of the mark by the Applicant.

The Second and Fourth Grounds: Specialist Business & Public

27. I shall take these grounds together as they are closely related. Mr Lucas' complaint under Ground 2 was that the Hearing Officer had failed to give sufficient weight to the fact that the Applicant was a small business in a small, niche market (which the Hearing Officer had correctly found in §56 of the Decision). In particular, he explained that because the majority of patients were dealt with by the NHS, the relevant market for the Applicant was the small percentage of patients prepared to pay privately for treatment, which he estimated at 10-15% of patients.
28. He relied on similar arguments in relation to Ground 4. He argued that patients with Age-related Macular Degeneration comprised only 0.003% of the population and that the target audience for the Applicant was private patients or NHS patients whose treatments had failed (a small percentage). Further, he submitted that the invoices exhibited showed a spread of patients across the country geographically.
29. Mr Abraham for the Registrar emphasised that the population of relevant consumers could not be limited by reference to those to whom the Applicant's advertising strategies were targeted. The Hearing Officer had to be sure that relevant consumers generally across the UK would recognise the mark as an indicator of origin rather than as being descriptive/geographical. The relevant public could be anyone with the capacity to suffer from a degenerative eye condition. He pointed to the reference to cataract treatment in some of the exhibits, which indicated there would be a broad spectrum of potential consumers.

30. In respect of the scale of the Applicant's operation and market penetration, the Registrar recognised that it will be smaller than that of brands such as Coca Cola and Colgate-Palmolive referred to by the Applicant. However, this does not mean that the absolute threshold for demonstrating acquired distinctiveness in respect of smaller operations can or should be any smaller than that applicable to large multi-national operations. The test remains the same i.e. a demonstration that the relevant public identifies products marketed under the trade mark as being from a specific commercial undertaking.
31. Again, I can find no error in the Hearing Officer's assessment of the material before him. I do not accept that the relevant market can be salami-sliced as the Applicant suggested into NHS and private patients, with the latter being the only relevant consumers. The goods and services for which the application is sought are not so limited and it would not be appropriate to attempt to limit them in this way. In any event Mr Lucas accepted at the hearing that NHS patients, their relatives and friends might still find the Applicant's marketing material of interest. The fact that the market is relatively specialist cannot elevate the evidence provided to the required standard. The argument that the only relevant public were those who actually took note of the Applicant's marketing material amounts to an attempt by the Applicant to lift itself by its own bootstraps and the Hearing Officer was correct to reject it.

The Third Ground: modern marketing methods

32. In relation to the third Ground, Mr Lucas confirmed that the Applicant had not carried out a marketing campaign prior to the application. He relied instead on the networking activities and reputation of the Applicant's medical professional and social media search engine optimisation and press releases. The Grounds of Appeal refer to 'networking' activity, attendance at business events, presenting at seminars, meta-tagging websites, and email marketing. Mr Lucas submitted that such modern methods of marketing were very cost effective and were sufficient to establish the relevant level of acquired distinctiveness.
33. For the Registrar, Mr Abraham acknowledged that the medium to demonstrate acquired distinctiveness can vary depending upon the circumstances of the case. Whilst such activities are all relevant to developing consumer recognition, it must be objectively quantifiable. In the present case there were no objective or quantifiable data or information relating to such activities. Claims to acquired distinctiveness must be substantiated in order to be taken into account, and in this case, very little substantiation was provided (whether in the form of actual related promotional materials, or in the form of data setting out the cost of engaging in such activities).

That being so, the Applicant's reference to 'intangible' marketing and its own performance could not be determinative of the case.

34. I agree that the evidence provided by the Applicant in relation to its activities clearly fell a long way short in all relevant categories identified in *Chiemsee*. Whilst there is no doubt that modern advertising techniques go far beyond traditional leaflet and print advertising, the Applicant had provided insufficient evidence that its activities in the short period prior to registration had established the required level of acquired distinctiveness amongst the relevant public.
35. The Hearing Officer therefore assessed the evidence before him without falling into any identifiable error. He identified in §64 major flaws and gaps in the evidence, such as the absence of any traditional marketing or promotional activity, a limited level of sales of services and a limited geographical spread of use of the mark across the relevant territory. He was correct to do so, and the failures to adduce better evidence in this regard and the fact that the mark had been used alongside more distinctive elements (as shown in the device mark above) meant that he was entitled to reject the evidence of the Applicant's marketing activities as being sufficient overall.

The Fifth Ground: inconsistency

36. Finally, the Applicant sought to rely on the grant of other Berkshire-related geographical marks as highlighting the error made by the Hearing Officer. Mr Lucas expressed concern about the grant of similar, related marks as showing an inconsistency in approach in the Office.
37. The Registrar submitted that the previous acceptance of UK Trade Mark Application Number 3138315 'Berkshire Browns' for eggs had little relevance to the application in suit. Mr Abraham explained that it is well established that the Registrar is not bound by previous acceptances (see the comments made in *Madame* [1966] RPC 545 as re-stated by Mr Justice Jacob in *Treat* [1996] RPC 25. He also emphasised that UK Trade Mark 3138315 was accepted, published and registered without reliance upon acquired distinctiveness.
38. I agree that none of the other registrations sought to be relied on by the Applicant can assist in an appeal against a finding of lack of acquired distinctiveness. None of those other registrations involved an assessment of acquired distinctiveness, and so they are simply irrelevant to the issues before the Hearing Officer. They do not expose an error of principle in the present decision. However I refer to them more generally below in relation to the issue of consistency.

Conclusion

39. Standing back and assessing the decision in the round, I have no doubt that the Hearing Officer was right to dismiss the application for lack of acquired distinctiveness. On any basis the evidence was plainly inadequate to establish the necessary level of perception by the relevant class of persons to the level required by the authorities. The appeal should be dismissed.
40. As is standard in appeals of this nature from ex parte hearings, I make no order as to costs.

The Requirement for Consistency

41. Notwithstanding my dismissal of the appeal, I share the Applicant's concern that the Registry appears to be applying different standards to the registration of similar related marks. In the present case, the Registry was originally prepared to allow the mark to proceed to registration on the basis of the evidence of acquired distinctiveness submitted, but then raised an objection following receipt of a third party observation. In the light of the Decision of the Hearing Officer and the outcome of this appeal, it is difficult to see on what basis the Registry can have determined that the evidence before it was sufficient to demonstrate acquired distinctiveness.
42. More worryingly, the Registry does not appear to have required any evidence of acquired distinctiveness for the mark "Berkshire Eye Hospital" registered for medical services in class 44. The Applicant expressed concern that if, as the Hearing Officer had (correctly, in my view) found, the mark "The Berkshire Eye Clinic" lacks sufficient inherent distinctiveness to be registered in classes 9, 10 and 44, "Berkshire Eye Hospital" should have been refused for similar reasons.
43. Mr Abraham conceded at the hearing that the differing treatment of these two marks does appear to show some level of inconsistency. He explained that decisions of the Registry could be contested, but this will be of limited comfort to the Applicant in the present case.
44. None of this causes me to doubt the correctness of the Hearing Officer's Decision for the reasons given above. But it does raise a concern that inconsistent standards are being applied to similar marks by the Registry. I hope that as a result of the Applicant raising the issue in this appeal, the Registry can take steps to ensure a consistent standard is applied to geographical marks, bearing in mind the important public interest in not allowing invalid marks to proceed to registration.

Thomas Mitcheson QC
The Appointed Person

The Applicant was represented by Mr Robert Lucas.
The Registrar was represented by Nathan Abraham.