

O-533-19

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 3313429
BY WAGGY DOGGY DOODAHS LTD
TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASSES 31 AND 35

AND

OPPOSITION THERETO UNDER NO. 413766
BY INSPIRED PET NUTRITION LIMITED

BACKGROUND AND PLEADINGS

1. On 25 May 2018, Waggy Doggy Doodahs Ltd (“the applicant”) filed trade mark application number UK00003313429 for the mark detailed on the cover page of this decision. The application was accepted and published for opposition purposes on 15 June 2018, in respect of the following goods and services:

Class 31 Foodstuffs for animals; edible pet treats; edible treats, bones and sticks for pets; pet food and beverages.

Class 35 Advertising, marketing and sales promotions; online ordering services; retail services relating to foodstuffs for animals, edible pet treats, edible treats, bones and sticks for pets, pet food and beverages; consultancy, information and advisory services to all the aforesaid services.

2. Inspired Pet Nutrition Limited (“the opponent”) opposes the application in full under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”), relying upon United Kingdom trade mark (“UKTM”) no. 1266150, the pertinent details of which are as follows:

Representation: WAGG

Filing date: 30 April 1986

Registration date: 02 October 1989

Goods: Class 31 Foodstuffs for dogs and foodstuffs for domestic pets; all included in Class 31, but not including fresh fruit or fresh vegetables or any goods of the same description as fresh fruit or fresh vegetables.

3. For the purposes of these proceedings, the opponent relies upon all the goods for which its mark is registered. The mark qualifies as an earlier mark in accordance with section 6 of the Act.

4. The opponent’s case under section 5(2)(b) is that the applied-for mark is visually, aurally and conceptually highly similar to its earlier mark and that the respective goods and services are identical or highly similar, resulting in a likelihood of confusion.

5. The applicant filed a counterstatement in which it denies a likelihood of confusion due to the marks at issue not being visually, aurally or conceptually similar. Given its registration date, the earlier mark is subject to the proof of use provisions contained in section 6A of the Act. However, the applicant did not request that the opponent provide proof of use of its earlier mark. As such, the opponent may rely upon all the goods for which its mark is registered.

6. Only the applicant filed evidence. Neither party requested a hearing. Both parties filed written submissions in lieu of a hearing. The opponent is represented by Bailey Walsh & Co LLP. The applicant represents itself.

EVIDENCE

7. The applicant has filed evidence to demonstrate the branding of its company, by way of five images showing the applied-for mark, in whole or in part, used as advertising, signage, or on product packaging. I will refer to this evidence, where relevant, throughout this decision.

DECISION

Section 5(2)(b)

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

“A trade mark shall not be registered if because –

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

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

Relevant law

9. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably 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, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) 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;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

10. The competing goods and services are shown in the table below:

Earlier mark	Applied-for mark
Class 31: Foodstuffs for dogs and foodstuffs for domestic pets; all included in Class 31, but not including fresh fruit or fresh vegetables or any goods of the same description as fresh fruit or fresh vegetables.	Class 31: Foodstuffs for animals; edible pet treats; edible treats, bones and sticks for pets; pet food and beverages. Class 35: Advertising, marketing and sales promotions; online ordering

	<p>services; retail services relating to foodstuffs for animals, edible pet treats, edible treats, bones and sticks for pets, pet food and beverages; consultancy, information and advisory services to all the aforesaid services.</p>
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Class 31

11. The General Court (“GC”) confirmed in *Gérard Meric v OHIM*¹ that even if goods/services are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa):

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut fur Lernsysteme v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

12. In accordance with *Merich*, the applicant’s ‘edible pet treats; edible treats, bones and sticks for pets; pet food and beverages’ fall within the scope of the opponent’s ‘foodstuffs for dogs and foodstuffs for domestic pets’. The opponent’s ‘foodstuffs for dogs and foodstuffs for domestic pets’ falls within the scope of the applicant’s ‘foodstuffs for animals’. These goods are identical.

Class 35

13. In *Oakley, Inc v OHIM*,² at paragraphs 46-57, the GC held that although retail services are different in nature, purpose and method of use to goods, retail services

¹ Case T-133/05

² Case T-116/06

for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

14. In *Tony Van Gulck v Wasabi Frog Ltd*,³ Mr Geoffrey Hobbs QC, sitting as the Appointed Person, reviewed the law concerning retail services v goods. He said that:

“9. The position with regard to the question of conflict between use of **BOO!** for handbags in Class 18 and shoes for women in Class 25 and use of **MissBoo** for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent’s earlier trade mark in all the circumstances in which the trade mark applied for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are ‘*similar*’ to goods are not clear cut.”

15. However, on the basis of the judgments in *Sanco SA v OHIM*,⁴ and *Assembled Investments (Proprietary) Ltd v. OHIM*,⁵ upheld on appeal in *Waterford Wedgwood Plc v. Assembled Investments (Proprietary) Ltd*,⁶ Mr Hobbs concluded that:

i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer’s point of view, they are unlikely to be offered by one and the same undertaking;

³ BL O/391/14

⁴ Case C-411/13P

⁵ Case T-105/05, at paragraphs [30] to [35] of the judgment

⁶ Case C-398/07P

ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services normally associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;

iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark was registered for goods X;

iv) The General Court's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

16. In *Frag Comercio Internacional, SL v OHIM*,⁷ the GC held that a registration for 'retail services', which did not identify the kinds of goods covered by the services, was too vague to permit a proper comparison to be made between those services and the goods covered by the later mark. It was not therefore possible to determine that the respective services and goods were similar.

17. In *Major League Baseball Properties, Inc v Giant UK Limited ("Giant")*,⁸ Ms Anna Carboni, sitting as the Appointed Person, considered *Oakley* in the context of a case involving the comparison of the retailing of bicycles against clothes. She said:

"44. I reject Mr Onslow's suggestion that complementarity can only be found where there is identity of goods with the subject goods of retail services, and only in those circumstances can the relevant goods and retail services be found to be similar. In my view, it must be a question of fact to be assessed in each case, as the Courts have done in countless cases, including the General Court in *Oakley* itself.

...

⁷ Case T-162/08

⁸ BL O/264/14

54. So far as complementarity is concerned, the hearing officer did not find this to exist between clothing and retail services for bicycles and bicycle accessories. So the only feature of similarity that he found was “the potentially common retail environment”. Here, I go back to my earlier comments about the need for care when considering overlaps in distribution channels and sales outlets, due to the possibility of finding all sorts of otherwise quite different products and services being provided in one place. When it is possible to find products and services together, it is worth delving a bit deeper and considering, for example, whether they are usually purchased together or whether one is needed for the use of the other. In this case, as Mr Onslow submitted, the purchase of cycle clothing is not indispensable or important to the purchase of a bicycle; their purchase is optional. While of course clothing is generally necessary to be worn when bicycling, it is not necessary to buy clothes at the same time or through the same outlets as the bicycle, and in any event the same could be said for virtually any other activity. The connection between the two is therefore at a very general level.

55. In my assessment, the fact that cycle clothing covered by the Earlier Mark might be offered through the same outlet as retail services for bicycles and bicycle accessories, whether specialist or more general outlets, cannot be enough to reach an overall finding of similarity in circumstances where the other Canon factors point quite strongly in the other direction (in the case of nature, purpose and method of use) or are absent (in the case of competitiveness or complementarity). While the requirement of similarity of goods/services - just like that of similarity of marks - is not a high one, the bar must not be set at an unduly low level.”

18. I take from the authorities above that in comparing retail services against goods, there may be some similarity based upon complementarity and shared trade channels; the goods do not have to be identical to the subject goods of the retail service; and that the level of similarity may be weak depending on the presence or absence of the other *Canon* factors.

19. Services and goods *per se* differ in nature since services are intangible whereas goods are tangible items which serve different needs. *Retail services* consist in bringing together, and offering for sale, a wide variety of different goods, thus allowing consumers to conveniently satisfy different shopping needs at one stop. This is not the purpose of goods. However, there is a complementary relationship since the services are generally offered in the same places where the goods are offered for sale. Further, they target the same public and share distribution channels.

20. Taking the guidance set out above into account, I consider the contested 'retail services relating to foodstuffs for animals, edible pet treats, edible treats, bones and sticks for pets, pet food and beverages' to be similar to a medium degree to the identical goods covered by the opponent's earlier mark, namely 'foodstuffs for dogs and foodstuffs for domestic pets'.

21. There is no similarity between the remaining services in the applicant's class 35 specification ('advertising, marketing and sales promotions; online ordering services; consultancy, information and advisory services to all the aforesaid services') and any of the opponent's goods. As such, the opposition fails in respect of these services.

The average consumer and the nature of the purchasing act

22. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*.⁹

23. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*,¹⁰ Birss J. described the average consumer in these terms:

⁹ Case C-342/97

¹⁰ [2014] EWHC 439 (Ch)

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

24. The average consumer of the goods and services at issue (for which I have found similarity or identity) will be a member of the general public who owns a pet. The consumer does not pay, as such, for the services but pays for the goods offered by that service. The goods are relatively inexpensive and are purchased frequently. The consumer will consider characteristics such as the type of pet food, ingredients and suitability for their pet, for example. Overall, a medium level of care and consideration will be adopted during the purchasing process. The purchase of the goods and the selection of the services is likely to be predominantly visual: the goods will be self-selected from physical stores, catalogues or websites and the services will be selected by eye, seeing the establishment’s name displayed on the venue itself, on the internet, or on advertising material. However, I do not discount an aural element to the purchase.

Comparison of marks


25. It is clear from *Sabel* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated at paragraph 34 of its judgment in *Bimbo*, that:

“...it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relevant weight in the perception of the target public, and then, in the light of that overall

impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

26. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the trade marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the trade marks.

27. The trade marks to be compared are as follows:

Earlier mark	Applied-for mark
WAGG	 The applied-for mark features the words "Waggy Doggy" in a black, rounded, cursive-style font. To the right of the text is a stylized white dog's head with large, floppy ears and a smiling expression. The entire graphic is set against a black rectangular background that is wider than it is tall.

28. The parties have made submissions on the similarities and differences of the marks. I have considered them all in reaching my decision and will refer below to some of the arguments raised (although I do not propose to reproduce the submissions in full).

Overall impression

29. The earlier mark consists solely of the word WAGG, with no stylisation or figurative elements. The overall impression of the mark rests in the word itself.

30. The applied-for mark consists of the words Waggy Doggy, in a black stylised font, followed by a figurative device of a dog. All the elements are surrounded (to the top half of the mark) by a black, block border. The dominant elements of the mark are the words Waggy Doggy. A lesser role is played by the dog device since it reinforces the

meaning of the textual components. The black border is likely to be seen as little more than a background.

Visual comparison

31. The earlier mark is reproduced identically in the first four letters of the applied-for mark: w-a-g-g. The stylisation of those letters in the applied-for mark creates a slight visual difference, but the capitalisation of them in the earlier mark does not create a difference because, notionally, the marks could be used in all upper-case, all lower-case, or title case lettering.

32. In terms of differences, the applied-for mark contains multiple additional elements – the letter ‘y’ at the end of ‘wagg’, the word ‘Doggy’, a dog device and a black border – none of which are present in the earlier mark.

33. Taking all of these factors into account, and bearing in mind the overall impressions I have outlined, I consider the two marks in question to be visually similar to a low degree.

Aural comparison

34. Both marks will be articulated in their entirety: the earlier mark as the one-syllable ‘WAGG’ and the applied-for mark as the four-syllable ‘WAGG-EEE DOGG-EEE’. Overall, I find a low to medium degree of aural similarity between the marks.

Conceptual comparison

35. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM*.¹¹ The assessment must be made from the point of view of the average consumer.

¹¹ [2006] e.c.r.-I-643; [2006] E.T.M.R. 29

36. In relation to the earlier mark, the applicant submits that “conceptually the word “*Wagg*” has become an end in itself and no longer can be considered to have a connection to “*wag*” in the dictionary sense”. I disagree. I think it would be quite obvious to the average consumer that the word ‘*wagg*’, particularly used on goods relating to pets, is a misspelling of the ordinary dictionary word ‘*wag*’; a verb meaning “(especially of a tail or finger) to move from side to side or up and down, especially quickly and repeatedly”.¹²

37. In the applied-for mark, the concept of ‘*waggy*’ will be similar to that of the earlier mark, but with a descriptive nature, i.e. an adjective to describe the noun, in this case, the ‘*doggy*’. As the applicant has submitted, ‘*Waggy Doggy*’ hangs together and conjures, in the mind of the average consumer, an image of a dog wagging its tail. This is reinforced by the figurative dog device.

38. Overall, I find the marks to be conceptually similar to a medium to high degree.

Distinctive character of the earlier mark

39. The degree of distinctiveness of the earlier mark must be assessed. This is because the more distinctive the earlier mark, the greater the likelihood of confusion (see *Sabel*). In *Lloyd Schuhfabrik Meyer* the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

¹² www.dictionary.cambridge.org

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

40. The opponent has not claimed to have used its earlier mark to the extent that it has an enhanced degree of distinctive character. However, even if it had, I have not been provided with any evidence to determine whether the earlier mark has an enhanced distinctive character. Accordingly, I have only the inherent distinctiveness of the earlier mark to consider.

41. I have found that the opponent’s earlier mark will be seen by the average consumer as a misspelling of the ordinary dictionary word ‘wag’, which is allusive of the goods for which it is registered. Consequently, I find the earlier mark to have a low to medium degree of distinctive character.

Likelihood of confusion

42. The factors assessed so far have a degree of interdependency (*Canon*); a global assessment of them must be made when determining whether there exists a likelihood of confusion (*Sabel*). However, there is no scientific formula to apply. It is a matter of considering the relevant factors from the viewpoint of the average consumer and determining whether they are likely to be confused.

43. Confusion can be direct (which occurs when the average consumer mistakes one mark for the other) or indirect (where the average consumer realises the marks are not the same but puts the similarity that exists between the marks/goods and services down to the responsible undertaking being the same or related).

44. The marks have been found to be visually similar to a low degree, aurally similar to a low to medium degree and conceptually similar to a medium to high degree. The goods and services have been found to be either identical or similar to a medium degree (I have already found that the opposition fails in respect of ‘advertising, marketing and sales promotions; online ordering services; consultancy, information and advisory services to all the aforesaid services’, for which there are no similar terms in the opponent’s specification).

45. Due to the clear and obvious visual and aural differences between the marks, I am satisfied that the average consumer will not mistake one mark for the other. The additional elements in the applied-for mark will not go unnoticed by the average consumer. Even bearing in mind the concept of imperfect recollection, there is no likelihood of direct confusion.

46. I go on now to consider indirect confusion. This was dealt with by Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*:¹³

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

¹³ BL O/375/10

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI”, etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

47. I have borne in mind that the examples given by Mr Purvis QC are not exhaustive. Rather, they were intended to be illustrative of the general approach.¹⁴

48. I also bear in mind the guidance of Mr James Mellor QC, sitting as the Appointed Person in *Duebros Limited v Heirler Cenovis GmbH*:¹⁵

“81.4. Fourth, I think it is important to stress that a finding of indirect confusion should not be made merely because the two marks share a common element. When Mr Purvis was explaining in more formal terms the sort of mental process involved at the end of his [16], he made it clear that the mental process did not depend on the common element alone: ‘Taking account of the common element in the context of the later mark as a whole.’ (my emphasis).”

¹⁴ See *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17 at paragraphs [81] to [82]

¹⁵ BL O/547/17

49. I go now to consider whether the average consumer, recognising that the marks are different, would consider the common element of both marks and determine, through an instinctive mental process, that the marks are related and originate from the same, or an economically linked undertaking.

50. The common element of both marks is 'WAGG'. Considering the allusive nature of this word for the goods and services at issue, I am of the view that the average consumer will consider the use of the word (albeit, part of a different word in the applied-for mark) as a coincidental and unsurprising use of allusive language within the context of two different trade marks. Considering the addition of the letter 'y' following 'Wagg' in the applied-for mark to create a different word, and the addition of the second word 'Doggy', neither of which are elements that one would expect to find in a sub-brand or brand extension, I can see no logical step which would induce the consumer to be indirectly confused. I find that the average consumer, being well informed and reasonably observant and circumspect, would not assume that the goods and services were provided by the same or a related undertaking. This is so even for the goods I have found to be identical. I do not consider indirect confusion to be likely.

CONCLUSION

51. There is no likelihood of confusion. The opposition has failed, and the applicant's mark may continue to registration.

COSTS

52. As the applicant has been successful I consider that it is entitled to an award of costs in its favour. As the applicant is unrepresented, at the conclusion of the evidence rounds the tribunal invited it to indicate whether it wished to make a request for an award of costs, and if so, to complete a pro-forma including a breakdown of their actual costs, including providing accurate estimates of the number of hours spent on a range of given activities relating to the defence of the opposition. The tribunal letter also set out that the Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the

minimum level of compensation for litigants in person in court proceedings at £19 per hour.

53. The applicant returned its costs pro-forma to the tribunal on 2 July 2019. In it, the applicant states that it spent 7 hours and 20 minutes in activities relating to the defence of the opposition. I consider the amount claimed to be reasonable.

54. Taking this into account, I award the applicant **£140.00**. I order Inspired Pet Nutrition Limited to pay Waggy Doggy Doodahs Ltd the sum of **£140.00**. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 10th day of September 2019

Emily Venables

For the Registrar,

The Comptroller-General