

O-266-04

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 789926
BY PRINCIPE SPA TO REGISTER A TRADE MARK
IN CLASSES 18, 25 AND 42**

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER No. 70981
BY PRINCIPLES RETAIL LTD**

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by Principe SpA to register a trade mark in
Classes 18, 25 and 42**

and

**IN THE MATTER OF Opposition thereto under No. 70981
by Principles Retail Ltd**

BACKGROUND

1. On 5 June 2002 Principe SpA applied to register the following trade mark in the United Kingdom under the Madrid Protocol on the basis of registration in Italy:



Mark description:

The trademark consists of two “P”s, inserted in an oval figure whose sides are drawn with thick lines; inside the oval figure, there is a crown comprising sixteen elements, placed above the two “P”s; the word “PRINCIPE” is located below the two “P”s.

2. Registration was sought in respect of the following goods and services:

Class 18:

Handbags, suitcases, large bags for travel, vanity cases, wallets; attaché cases, school satchels, umbrellas.

Class 25:

Dresses made from skins; men's, women's and children's clothing, shirts; ladies' shirts; skirts; jackets; trousers; shorts; undershirts; knitwear; pyjamas; shoes; socks; sleeveless knitwear; blouses; garter belts; panties and underpants; slips; slippers; footwear in general; hats; sashes; scarves; neckties; waterproof clothing; overcoats; coats; bathing suits; sports' outfits; anoraks; ski trousers; belts; furs.

Class 42:

Research and development service, which consists in the elaboration of technical projects and designs for goods, with particular reference to stylistic design of clothing, footwear, leather ware, furnishings and ornaments and household and industrial manufactured goods.

3. The application was subsequently published in the Trade Marks Journal and on 18 February 2003 Principles Retail Ltd (formerly Arcadia Group Brands Limited) filed a Notice of Opposition. In summary the grounds were:

(i) Under Section 5(2)(b) of the Act because the mark applied for is similar to the following earlier registered trade marks owned by the opponent and cover identical goods in Classes 18 and 25, and there exists a likelihood of confusion on the part of the public –

Registration No.	Mark	Date Registration Effective	Goods/Services
European Community Trade Mark No. 67546	PRINCIPLES	1 April 1996	<p>Class 03: Soaps; perfumes; perfumery; eau de cologne; essential and herbal oils; non-medicated preparations for the application to, conditioning and care of hair, scalp, skin and nails; cosmetics; make-up preparations; non-medicated toilet preparations; preparations for use in the bath or shower; bath and shower oils, gels, creams and foams; skin cleansers and moisturizers; preparations for use before and after shaving; facial washes; facial scrubs; talcum powders; depilatory preparations; deodorants for personal use; anti-perspirants; dentifrices; shaving soap; shaving creams; shaving gels; after-shave preparations; pre-shave preparations; hair gels; toiletries; shampoos.</p> <p>Class 14: Precious metals and their alloys and goods in precious metals or coated therewith; semi- precious and precious stones; horological and other chronometric instruments; watches, clocks, jewellery and imitation jewellery; parts and fittings for all the aforesaid goods.</p> <p>Class 18: Articles of leather and imitations of leather; trunks and travelling bags; travel cases; luggage; suitcases; holdalls; portmanteaux; valises; bags; handbags; shoulder bags; toilet bags; carrier bags; rucksacks; backpacks; bumbags; sports bags; casual bags; briefcases; attaché cases; music cases; satchels; beauty cases; carriers for suits, for shirts and for dresses; tie cases; notecases; notebook holders; document cases and holders; credit card cases and holders; chequebook holders; wallets;</p>

			purses; umbrellas; parasols; walking sticks; shooting sticks; belts; parts and fittings for all the aforesaid goods.
UK Trade Mark No. 1215843	PRINCIPLES	3 March 1984	Class 25: Articles of clothing.
UK Trade Mark No. 1237866	PRINCIPLES	15 March 1985	Class 18: Bags included in Class 18, suitcases, holdalls, purses (not of precious metal or coated therewith), pocket wallets, umbrellas, parasols and walking sticks.

(ii) Under Section 5(4)(a) by virtue of the law of passing off.

4. The opponent has made it clear that these proceedings are only in respect of Classes 18 and 25. No opposition is taken against Class 42 of the application.

5. On 27 May 2003 the applicant filed a Counterstatement denying the above grounds. The applicant drew my attention to its following UK registration in Class 18 and stated that the co-existence of this mark on the register with the opponent's UK trade marks is *prima facie* evidence that the marks are not confusingly similar or alternatively, that Community Trade Mark No. 67546 is not validly registered –

Registration No.	Mark	Date Registration Effective	Goods
1397812	 <small>Registration of this mark shall give no right to the exclusive use of the letter "P"</small>	12 September 1989	Class 18: Leather, hide, artificial leather, artificial hide and goods made from these materials; articles of luggage, bags, handbags, handbags for men, travelling bags, satchels, trunks, portfolios, folders; purses; sunshades, umbrellas, beach umbrellas; walking sticks; harness and other saddlery articles; parts and fittings for all the aforesaid goods; all included in Class 18.

6. The opponent filed evidence and both sides have asked for an award of costs in their favour. The parties were content for a decision to be taken without recourse to a hearing and the applicant forwarded written submissions for the hearing officer's attention.

Opponent's Evidence

7. The opponent's evidence consists of a statutory declaration by Peter Davies dated 4 December 2003. Mr Davies is Managing Director of Principles Retail Limited (the opponent).

8. Mr Davies states that the trade mark PRINCIPLES was first used in 1985 in relation to men's, women's and children's clothing, footwear, headgear and also numerous other goods including articles of leather and imitations of leather, trunks, travel bags, luggage, handbags, shoulder bags, document cases and holders, umbrellas, parasols, walking sticks, purses, wallets and brief cases.

9. Mr Davies goes on to draw attention to the following exhibits to his declaration:

- (i) Exhibit PD1 - a jacket bearing the PRINCIPLES trade mark in relation to which he adds that the mark has always been used in this way since 1985;
- (ii) Exhibits PD2(a) and (b) - a promotional leaflet on PRINCIPLES products valid from 26 September 1999 to 9 October 1999 and a copy of a PRINCIPLES headed letter sent to a Principles Account Holder in 1999 enclosing "money – off" vouchers for money spent at PRINCIPLES.

10. Mr Davies declares that the UK turnover of goods sold bearing the PRINCIPLES trade mark for the years 1986 to 2002 has been as follows:

<u>Year</u>	<u>Turnover in £ Million</u>
1986	58.5
1987	77.5
1988	87.8
1989	98.4
1990	112.3
1991	104.6
1992	100.2
1993	91.6
1994	104.7
1995	119.5
1996	127.5
1997	150.1
1998	149.6
1999	145.2
2000	118.0
2001	120.7
2002	133.7

11. Mr Davies states that the annual amount spent on advertising the goods is not available to him, but he estimates that a total of about £5 million to £6 million has been spent on advertising since the date of first use. Mr Davies explains that this money would have been spent on leaflets, magazine newspaper advertisements. He draws attention to Exhibit PD3 to his declaration which is a copy of a "Fashion Special" of the men's magazine Esquire dated March 1997 which contains a two page advertisement relating to the PRINCIPLES for men range of clothing. Mr

Davies adds that other publications in which his company advertise include Vogue, Marie Claire, Glamour, She, In-Style and Red.

12. Mr Davies confirms that goods bearing the trade mark PRINCIPLES have been sold to customers throughout the whole of the UK and Northern Ireland and he goes on to list numerous geographical locations. Mr Davies states that his company has 70 Principles shops in high streets nationwide as well as 140 concessions in department stores.

13. Mr Davies declares that PRINCIPLES goods have been available on line since January 2001 and he draws attention at Exhibit PD4 to his statement, to copies of extracts from the Principles website, www.principles.co.uk.

14. Mr Davies submits that the trade mark PRINCIPE is visually and phonetically very similar to the trade mark PRINCIPLES. He adds that the marks share the identical first two syllables “PRIN” and “CIP”.

Applicant's Written Submissions

15. The applicant's written submissions are in a letter dated 9 July 2004 from Wilson Gunn Gee, the applicant's professional advisors in these proceedings.

16. The applicant does not deny that the goods are substantially similar if not identical but it submits that the respective marks are different.

17. On the issue of visual similarity the applicant states that the mark of the present application is a device mark incorporating a stylised crown, the dominant element of the logo mirrored image P, under which lies PRINCIPE, the three elements bordered by a substantially ellipsoidal line. The applicant submits that the element PRINCIPE is a relatively small part of the mark and as PRINCIPLES is a word mark, the marks are visually very different overall.

18. Turning to phonetic considerations, the applicant submits that if one pronounces the mark of the present application Prin-seep, then although the marks would have in common the first syllable “Prin”, there is very little resemblance between the marks. Furthermore, the applicant states that PRINCIPE is a “disyllabic” word whereas PRINCIPLES is trisyllabic.

19. On conceptual similarity the applicant submits that the mark in suit as a whole has an allusion to royalty because of the presence of the crown device and the word PRINCIPE which is the Italian for the word “Prince”. The applicant adds that the dominant element, the mirror image Ps, have no particular allusion. In the applicant's view, conceptually the word PRINCIPLES connotes a moral viewpoint.

20. On a global comparison the applicant contends that the respective marks are different in every conceivable manner and there is no likelihood of confusion.

21. Finally, the applicant submits that if the applicant cannot succeed on the Section 5(2)(b) ground, the Section 5(4)(a) ground cannot succeed as there is no chance of misrepresentation.

22. This concludes my summary of the evidence and submissions. I now turn to the decision.

DECISION

Section 5(2)(b)

23. Firstly, I go to the ground of opposition based upon Section 5(2)(b) of the Act. Section 5(2) reads as follows:

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

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

24. An earlier right is defined in Section 6, the relevant parts of which state:

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

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

25. I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v Puma AG* [1998] RPC 199 *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] E.T.M.R. 1, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijzen Handel B.V.* [2000] F.S.R. 77 and *Marca Mode CV v Adidas AG* [2000] E.T.M.R. 723.

It is clear from these cases that:

- (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v Puma AG*
- (b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v. Puma AG*, 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; *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijzen Handel B.V.*

- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV v. Puma AG*
- (d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v. Puma AG*
- (e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*
- (f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v. Puma AG*
- (g) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v. Puma AG*
- (h) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v. Adidas AG*
- (i) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*

26. The reputation of a trade mark is an element to which importance may be attached in Section 5(2) considerations in that it may enhance the distinctive character of the mark at issue and widen the penumbra of protection of such a mark. The opponent has filed evidence in relation to the reputation of the mark covered by its earlier registrations. The evidence confirms, in my view, that the opponent has, since 1985 a very considerable presence in the UK in respect of clothing and “fashion accessories” such as bags. Although deficiencies exist in the opponent’s evidence e.g. there is no indication of the opponent’s market share or supporting evidence from the trade or third parties, it seems to me that the extent of the opponent’s activities, the scale of its turnover, the estimated advertising expenditure and its marketing activities means that, on balance, I am able to infer that at the relevant date, the opponent possessed a reputation in its PRINCIPLES trade mark in respect of clothing and “fashion accessories” such as bags, goods falling within Classes 18 and 25 and covered by its earlier registrations.

27. In essence the test under Section 5(2) is whether there are similarities in marks and services which would combine to create a likelihood of confusion. In my consideration of whether there are similarities sufficient to show a likelihood of confusion I am guided by the recent judgements

of the European Court of Justice mentioned earlier in this decision. The likelihood of confusion must be appreciated globally and I need to address the degree of visual, aural or conceptual similarity between the marks, evaluating the importance to be attached to those different elements, taking into account the degree of similarity in the goods, the category of goods in question and how they are marketed. In this case it is accepted that the opponent's mark has a reputation. However, it was held in *Marca Mode v Adidas AG* (2000) ETMR 723:

“The reputation of a mark, where it is demonstrated, is thus an element which, amongst others, may have a certain importance. To this end, it may be observed that marks with a highly distinctive character, in particular because of their reputation, enjoy broader protection than marks with a less distinctive character (*Canon*, paragraph 18). Nevertheless, the reputation of a mark does not give grounds for presuming the existence of a likelihood of confusion simply because of the existence of a likelihood of association in the strict sense.”

28. Furthermore, in addition to making comparisons which take into account actual use of the respective marks, I must also compare the mark applied for and the opponent's registrations on the basis of their inherent characteristics assuming normal and fair use of the marks on a full range of the goods covered within the respective specifications.

29. Firstly, I turn to a comparison of the respective services. The opponent's earlier UK trade mark registration 1215843 in Class 25 is for “Articles of clothing” at large and accordingly it covers identical goods to Class 25 of the application. The opponent's earlier UK trade mark registration No. 1237866 in Class 18 is for bags, holdalls, purses, wallets, umbrellas, parasols and walking sticks, while its European Community registration No. 67546 covers an even wider Class 18 specification including articles of leather and imitations of leather. I have no doubt that the opponent's earlier registrations in respect of Class 18 cover the same and closely similar goods to those applied for under the mark in suit. I also note that the applicant, in its written submissions does not deny that the respective goods “are substantially similar if not identical”.

30. I now go on to a comparison of the mark in suit with the opponent's earlier registrations. In the evidence the applicant has drawn my attention to the co-existence of its registered mark No. 1397812, with the opponent's prior registrations – paragraph 5 of this decision refers. However, the applicant has provided me with no evidence as to whether the above mark, or the mark in suit, has been used in the UK. This amounts to no more than “state of the register” information. I am not assisted by this evidence and I am guided on this point by the following comments of Mr Justice Jacob in *British Sugar plc v James Robertson & Sons Ltd* [1996] RPC 281:

“Both sides invite me to have regard to the state of the register. Some traders have registered marks consisting of or incorporating the word “Treat”. I do not think this assists the factual inquiry one way or the other, save perhaps to confirm that this is the sort of word in which traders would like a monopoly. In particular the state of the register does not tell you what is actually happening out in the market and in any event one has no idea what the circumstances were which led the Registrar to put the marks concerned on the register. It has long been held under the old Act that comparison with other marks on the register is in principle irrelevant when considering a particular mark

tendered for registration, see e.g. *MADAM Trade Mark* and the same must be true under the 1994 Act. I disregard the state of the register evidence.”

31. My decision involves a comparison of the applicant’s and opponent’s particular marks and must be made on its own merits, taking into account the use of the opponent’s mark and also notional and fair use of the respective marks.

32. I go on to compare the mark in suit with the opponent’s earlier mark.

33. The opponent’s mark consists of the obvious dictionary word PRINCIPLES, whilst the applicant’s mark is a composite mark comprising a crown device, the “mirror image” P, the word PRINCIPE, which has no obvious meaning in the UK, the whole surrounded by an oval border.

34. The guiding authorities make it clear that I must compare the marks as a whole and by reference to overall impression. However, as recognised in *Sabel BV v Puma AG* (mentioned earlier in this decision) in my comparison, reference will inevitably be made to the distinctiveness and dominance of individual elements. It is, of course, possible to over analyse marks and in doing so shift away from the real test which is how the marks would be perceived by customers in the normal course and circumstances of trade. I must bear this in mind when making the comparisons.

35. I turn to a visual comparison of the respective marks. The marks both contain a word element but differ in that the mark applied for contains a device of a crown and the “mirror image” letter P – I do not believe the oval border adds much to the applicant’s mark. It seems to me that the differing elements are highly prominent within the applicant’s mark, are at least as dominant as the word element and comprise distinctive elements in their own right. While the word elements – PRINCIPLES and PRINCIPE – within each mark share the first seven letters, the termination of the respective words differs. While I have no doubt that the respective words, in themselves, share obvious superficial similarities, I believe that the word PRINCIPLES would be commonly known to the public and in this context I believe the meaning and look of a word will be closely associated by the public. A common word will be identified within its meaning when it is viewed and the visual interpretation will be based upon the identification of the word. Accordingly, this is a factor which goes some way towards distinguishing the dictionary word PRINCIPLES and the applicant’s word element within their mark ie. PRINCIPE.

36. In the totality of the visual comparison, I see no reason why the crown device and the “mirror image” P would be overlooked or marginalised. These obvious differences, combined with the fact that the word elements to each mark, although sharing obvious similarities, can to some degree be distinguished in that the word PRINCIPLES may be perceived and viewed within the obvious dictionary definition, mean that, as a whole, the marks are not similar.

37. In relation to aural use, the opponent’s position is stronger in that the device element in the mark in suit is unlikely to be referred to as in composite marks, “words speak louder than devices”. Although the respective word elements within the marks, share the first two syllables, I take into account that the marks may have a differing aural impact given the obvious meaning of the word PRINCIPLES and that the word PRINCIPE in aural use is likely to sound like a non-

English language word, possibly a word from one of the Romance languages. In my view it could be pronounced as PRIN-SIP-A, PRIN-SIP-E or PRIN-SEEP.

38. Furthermore, in relation to aural use I bear in mind that the relevant goods are clothing in Class 25 and include fashion accessories in Class 18. On this issue I draw attention to the following comments which appeared in a Registry Decision (In the matter of Application No. 2001040 by React Music Limited to register a trade mark in Class 25 and in the matter of Opposition thereto by Update Clothing Limited under No. 45787):

‘There is no evidence to support Ms Clarke’s submission that, in the absence any particular reputation, consumers select clothes by eye rather than by placing orders by word of mouth. Nevertheless, my own experience tells me it is true of most casual shopping. I have not overlooked the fact that catalogues and telephone orders play a significant role in this trade, but in my experience the initial selection of goods is still made by eye and subsequent order usually placed primarily by reference to a catalogue number. I am therefore prepared to accept that a majority of the public rely *primarily* on visual means to identify the trade origin of clothing, although I would not go so far as to say that aural means of identification are not relied upon.’

39. This view was supported on appeal to the Appointed Person (*REACT Trade Mark* [2000] 8 RPC 285, at 289 lines 22 to 26) and I believe it appropriate to the Class 25 goods in the application in suit and also to the Class 18 goods which, it seems to me, would also be likely to be purchased following visual inspection and selection, which includes looking through catalogues. Consequently this considerably mitigates any likelihood of aural confusion.

40. Next I turn to a conceptual comparison of the marks. The opponent’s strongest case rests on a comparison of its mark, with the word element within the applicant’s mark. However, as mentioned earlier in this decision, the word PRINCIPLES has an obvious dictionary meaning, whereas the word PRINCIPE has not such connotation and is likely to be perceived as an invented word or foreign language word, possibly one taken from one of the “Romance Languages”. I am not convinced that the marks are conceptually similar overall.

41. In my considerations relating to the global appreciation of a likelihood of confusion I must consider the goods at issue and the average customer for the goods. It seems to me that the respective specifications cover goods which would be purchased by the public at large. Earlier in this decision I found that the goods would normally be purchased following a visual inspection. I would add that the customer for clothing, fashion accessories and items of luggage would normally be relatively discerning. Such articles are purchased after taking into account factors such as style, fit, colour, quality, weight and size, as the purchaser will either be wearing the goods or carrying their possessions within the goods. While this would mitigate against confusion, it does not follow that there is not a likelihood of confusion and all relevant circumstances must be taken into account.

CONCLUSION

42. I now turn to my conclusion as to whether there is a likelihood of confusion on the part of the public in relation to the application in suit. On a global appreciation, notwithstanding that identical and closely similar goods are involved and that the opponent has a reputation in its earlier mark, it seems to me, the overall differences in the respective marks are such that the customer for the particular goods at issue, would not be likely to confuse the applicant's mark with the opponent's earlier registrations or believe that the goods emanated from the same undertaking.

43. The opposition under Section 5(2)(b) fails.

Section 5(4)(a)

44. Next, the Section 5(4)(a) ground. Section 5(4)(a) of the Act states:

“5.- (4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

- (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or
- (b)

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

45. I intend to adopt the guidance given by the Appointed Person, Mr Geoffrey Hobbs QC in the *WILD CHILD* case [1998] 14 RPC 455. In that decision Mr Hobbs states that:

“The question raised by the grounds of opposition is whether normal and fair use of the designation WILD CHILD for the purpose of distinguishing the goods of interest to the applicant from those of other undertakings (see Section 1(1) of the Act) was liable to be prevented at the date of the application for registration (see Article 4(4)(b) of the Directive and Section 40 of the Act) by enforcement of rights which the opponent could then have asserted against the applicant in accordance with the law of passing off.”

"A helpful summary of the elements of an action for passing off can be found in Halsbury's Laws of England 4th Edition Vol 48 (1995 reissue) at paragraph 165. The guidance given with reference to the speeches in the House of Lords in *Reckitt & Colman Products Ltd v Borden Inc* [1990] RPC 341 and *Erven Warnink BV v J Townend & Sons (Hull) Ltd* [1979] ACT 731 is (with footnotes omitted) as follows:

"The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

- (1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- (2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the defendant are goods or services of the plaintiff; and
- (3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation."

46. The date at which the matter must be judged is not entirely clear from Section 5(4)(a) of the Act. This provision is clearly intended to implement Article 4(4)(b) of Directive 89/104/EEC. It is now well settled that it is appropriate to look to the wording of the Directive in order to settle matter of doubt arising from the wording of equivalent provisions of the Act. It is clear from Article 4(4)(b) that the earlier right had to have been "acquired prior to the date of application for registration of the subsequent trade mark, or the date of the priority claimed" the relevant date is therefore the date of the application for the mark in suit.

47. Earlier in this decision I found that the application in suit and the opponent's registrations were not likely to be confused. Accordingly, it is my view that the necessary misrepresentation required by the tort of passing off will not occur. The opposition under Section 5(4)(a) therefore fails.

COSTS

48. The applicant is entitled to a contribution towards costs and I order the opponent to pay the applicant the sum of £1000, which takes into account that no hearing took place on this case and that the applicant did not file evidence in these proceedings. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 1st day of September 2004

**JOHN MacGILLIVRAY
For the Registrar
the Comptroller-General**