O-207-05

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION No. 81901 FOR A DECLARATION OF INVALIDITY IN RESPECT OF TRADE MARK REGISTRATION No. 2310340 IN THE NAME OF QUORN TRAVEL SERVICES LIMITED

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BACKGROUND

1. Trade Mark No. 2310340 is for the mark THE POWER STATION which is registered in Classes 35, 36, 39, 41 and 42 in respect of the following services:

> **Class 35**
> Marketing services; business consultancy services; business and market research services; publicity and promotional services; statistical analysis services.
>
> **Class 36**
> Travel insurance services.
>
> **Class 39**
> Travel agency services; arranging transportation of goods, passengers and travellers; travel reservation and travel booking services; advisory and information services relating to the aforesaid.
>
> **Class 41**
> Production of corporate and promotional videos; organisation and provision of conferences, seminars and exhibitions; corporate hospitality services; educational and training services.
>
> **Class 42**
> Creating and maintaining websites; design, drawing and commissioned writing, all for the compilation of web pages on the Internet; art work design; brochure design; consultancy services relating to design; corporate identity, image and logo design services; design of exhibition stands; design of marketing, publicity, advertising and promotional materials, none of the aforesaid services relating to medical products.

2. The mark stands registered from a filing date of 11 September 2002.

3. On 25 October 2004, Parkview International London Plc applied for the invalidation of the trade mark under Section 47(2)(a) of the Act because the applicant is the proprietor of an earlier trade mark to which the conditions set out in Section 5(2)(b) of the Act obtain, because the mark registered is similar to the following earlier registration which is registered for identical or similar services in Classes 39, 41 and 42 and there is a likelihood of confusion.

REGISTRATION No.	MARK	DATE REGISTRATION EFFECTIVE	GOODS AND SPECIFICATION OF SERVICES
2234324	THE POWER STATION AT BATTERSEA THE POWER STATION @ BATTERSEA (series of 2)	31 May 2000	**Class 25:** Clothing, footwear and headgear. **Class 35:** Buying of goods for others. **Class 39:** Transport services including rail transport services; booking of rail tickets; arranging transportation of passengers and goods; rental of railway vehicles; the provision of information regarding rail transport. **Class 41:** Entertainment services including the provision of live entertainment, cinema, exhibitions, fairgrounds, concerts, shows, circus; radio, television, theatre entertainment services; amusement machines, competitions; booking entertainment services; club entertainment services; sporting and cultural activities; health club services including the provision of health club (physical exercise) facilities; advisory services, production services and education services relating to all of the aforesaid. **Class 42:** Design of retail stores, shopping fixtures and displays. **Class 43:** The provision of temporary accommodation; rental of temporary accommodation; hotel management services; crèche

			services; rental of space for use as retail outlets; rental of space for use as temporary accommodation or for use in the provision of all of the aforementioned services. **Class 45:** Advisory services relating to the selection of goods.

4. The registered proprietor filed a Counterstatement denying the grounds of invalidity.

5. Both parties have filed evidence and ask for an award of costs in their favour.

6. The parties are content for a decision to be taken without recourse to a hearing and they have both forwarded written submissions for the Hearing Officer's attention.

APPLICANT'S EVIDENCE

7. The applicant's evidence consists of a witness statement by Thomas Albertini dated 20 January 2005. Mr Albertini is a Trade Mark Attorney employed by Simmons & Simmons, the applicant's professional advisors in these proceedings.

8. Mr Albertini explains that the applicant has not yet used the earlier registered marks in relation to any goods or services. Consequently, normal and fair use of these marks should be assumed across the full width of the specifications. Mr Albertini adds that actual confusion in the market place cannot be an issue.

9. Mr Albertini states that during the prosecution of the application for trade mark registration 2234324, UK trade mark registration number 2234012 THE POWER STATION CAFE was cited in relation to identical and similar services in Class 42 and the citation was maintained at a hearing before an ex-parte Hearing Officer, which resulted in the deletion of the similar and identical services.

10. Mr Albertini goes on to refer to the applicant's prosecution of trade mark application No. 2234317 for the mark BATTERSEA POWER STATION and the opposition thereto under No. 90312 by Power Station Limited based upon the earlier trade mark, POWER STATION CAFE. A copy of the Hearing Officer's decision (BL O/019/04) is attached as Exhibit TA3 to Mr Albertini's statement. In particular, Mr Albertini refers to the following extract from paragraph 27 of the decision:-

> "… Instead of referring to a famous building with all its conceptual associations these earlier trade marks [referring to the Company's marks registered under No. 2234324], refer to THE POWER STATION in the geographical location of Battersea. These trade marks do not bring to mind BATTERSEA POWER STATION. One could readily imagine that in this

context that these trade marks would be seen as just referring to a POWER STATION CAFÉ which is in Battersea."

11. Mr Albertini submits that these comments demonstrate that the dominant element of the Company's Trade Marks registered under UK Trade Mark No. 2234324 are the words THE POWER STATION, which are identical to the mark that is the subject of the registration.

REGISTERED PROPRIETOR'S EVIDENCE

12. The registered proprietor's evidence consists of a witness statement by Darren Gilbert dated 9 March 2005. Mr Gilbert is the Finance Director of Quorn Travel Services Limited (the registered proprietor company).

13. Mr Gilbert refers to Exhibit DG2 to his statement comprising pages downloaded from a number of internet sites namely:

a) www.wandsworth.gov.uk
b) www.newsbbc.co.uk
c) www.batterseapowerstation.org.uk
d) www.thisislondon.co.uk
e) www.dmgt.co.uk

14. Mr Gilbert makes the following comments in relation to these sites:

"The pages downloaded from www.wandsworth.gov.uk state that Parkview International London Plc acquired the (disused) Battersea Power Station in 1996 and that Wandsworth Borough Council considered various planning applications made by Parkview, relating to the redevelopment of the site, from March 1997 – October 2001. I note from the www.wandsworth.gov.uk website that over 1 million people visited the website in 2004 and I presume that the number of visitors for previous years had been this sort of large number. I note that the borough of Wandsworth currently has approximately 260,000 residents and is the largest of the inner London boroughs. Suffice to say that, in my opinion, Parkview's activities and their THE POWER STATION AT BATTERSEA / THE POWER STATION @ BATTERSEA trademarks will have had exposure to a potentially very wide audience.

The pages downloaded from www.newsbbc.co.uk (the on-line BBC news service, which I understand is one of the most visited Internet sites for UK news, attracting several million visitors daily) date between 7 December 1997 and 10 October 2003 and relate to publicity surrounding Parkview's development of the site. I particularly note that: (i) a festival, anticipated to attract 170,000 visitors, was held at the site in 1997; (ii) the power station was reportedly used in 1999 in connection with a NICORETTE anti-smoking campaign and (iii) there has been a High Court case involving Parkview and "those opposed to the development of the Grade II listed Battersea Power Station". Once again, I believe this exposure constitutes use of the other side's trademark.

Furthermore there is likely to have been and is likely to be ongoing publicity as of 31 May 2000 and the pages downloaded from www.thisislondon.co.uk comprise a series of articles featured in the Evening Standard newspaper between 31 August 2000 and 15 October 2004, relating to Parkview's development of the site (I note from the article dated 15 October 2004 that there were planning issues being publicly debated as of that date following an intervention by the Deputy Prime Minister, John Prescott). The pages downloaded from www.dmgt.co.uk show that the daily circulation figure for the Evening Standard newspaper in 2000 was approximately 400,000 – 450,000 and the daily circulation, as of January 2005, was over 350,000 and this again demonstrates, in my opinion, that there has been, and continues to be, very significant exposure of Parkview's activities and their THE POWER STATION AT BATTERSEA / THE POWER STATION @ BATTERSEA trademarks, in the UK.

The pages downloaded from www.batterseapowerstation.org.uk relate to the activities of "Battersea Power Station Community Group" (BPSCG), reportedly founded in 1983 and whose aim is stated to be "to keep Battersea Power Station in the news and to focus attention on its deteriorating state and the neglect of developers and protection agencies alike".

I note the report of a BPSCG Forum, that took place on 25 February 1995, and which was attended by eighty people, including Anita Pollack – MEP for London S.W. and spokesperson on environmental issues, Councillor Guy Senior – chairman of the planning committee of Wandsworth Borough Council and Charles Madden – Parkview International.

I believe therefore that there has been use / exposure of the other side's THE POWER STATION AT BATTERSEA / THE POWER STATION @ BATTERSEA trade marks at the time of my company's application and that scope for confusion could have existed but there has been none and is likely to be none, given the fact that the other side's marks include the word BATTERSEA and this clearly serves to distinguish Parkview's trademarks from my company's Trademark."

15. Mr Gilbert goes on to make a number of submissions on the similarity of marks position and concludes that the marks as a whole are different as the word BATTERESEA is the dominant component of the applicant's marks. In this regard, Mr Gilbert notes that "Battersea" appears in "Collins English Dictionary" (5th Edition 2000) as "a district in London, in Wandsworth; noted for its dogs' home, power station (being developed into a leisure centre), and park" and he refers to Exhibit DG3 to his statement, which includes a copy of the pages from UK Trade Mark Registry's Opposition Decision No. BL O/019/04 where this definition is reproduced. Also included in Exhibit DG3 is a copy of the entry for "Battersea" in "Pears Encyclopedia" (1998-1999), where it is defined as "dist. London, Eng; S. of R. Thames; famous park; lge. power sta. now disused; part of Wandsworth".

16. Mr Gilbert confirms that the registered proprietor has continuously used the mark in suit in respect of the services covered by Registration No. 2310340, since at least as early as May 2002, in the United Kingdom. He adds that the (a) approximate annual

turnover value of the services offered in association with the trade mark in the United Kingdom and (b) approximate amount spent on promoting the services offered in association with the trade mark in the United Kingdom, over this period are as follows:

PERIOD	TURNOVER	PROMOTIONAL SPEND
May 2002 - 31 July 2003	£920,921	£10,000-15,000
1 August 2003 - 31 July 2004	£264,078	£10,000-15,000
1 August 2004 - 31 January 2005	£192,338	£10,000-15,000

17. Mr Gilbert explains that the promotion referred to above has been in the form of brochures, videos, presentation packs, client testimonials and via the website www.theqgroup.co.uk and he refers to Exhibit DG5 which comprise examples of these promotion materials.

18. Mr Gilbert states that Quorn has not been made aware of any instances of confusion between the trade mark and Parkview's THE POWER STATION AT BATTERSEA / THE POWERSTATION @ BATTERSEA trade marks, on the part of consumers in the UK, since Quorn commenced using the trade mark in the United Kingdom, despite, as he contends, the extensive public and media attention that Parkview's development has attracted.

19. Turning to Mr Albertini's comments about earlier proceedings before the Registry, Mr Gilbert points out that each case must be considered on its own particular merits.

20. Finally, Mr Gilbert draws attention to Exhibit DG8 to his statement which comprises copies of pages downloaded from a number of websites that originate from parties that are, as far as he is aware, independent of this invalidity action, as follows:

(a) www.briandeer.com
(b) www.totaltravel.co.uk
(c) www.worldphotos.org
(d) www.photopost.com
(e) www.viewfinder.english-heritage.org.uk
(f) www.panterandhall.com

21. Mr Gilbert states that all of these pages include references to "the power station at Battersea" and, in each instance, the building referred to is "Battersea Power Station", ie the site of Parkview's development, which suggests to him that these terms are, in the mind of UK consumers, interchangeable, and that the inclusion of "Battersea" serves to distinguish Parkview's mark from his company's trade mark.

APPLICANT'S EVIDENCE IN REPLY

22. This consists of a second witness statement by Thomas Albertini. It is dated 25 April 2005.

23. In relation to the websites referred to in Mr Gilbert's statement, Mr Albertini submits that none of these third party websites show any instances of use of the mark in suit by the applicant in relation to any goods and services.

24. Mr Albertini goes on to submit that the definitions of "Battersea" provided in Mr Gilbert's statement do not demonstrate that it is the prominent element in the applicant's mark. He adds that the mark THE POWER STATION AT BATTERSEA would indicate that the goods and services are provided in the geographical location of "Battersea" and therefore THE POWER STATION element is distinctive. He adds that the earlier Registry decisions also indicate that the words THE POWER STATION are distinctive.

25. Mr Albertini does not accept that references to "the powerstation at Battersea" demonstrate that his phrase is interchangeable with the building referred to as "Battersea Power Station", at least in relation to normal and fair use of the marks at issue.

APPLICANT'S WRITTEN SUBMISSIONS

26. The applicant's written submissions are contained in a letter dated 16 June 2005 from Simmons & Simmons, the applicant's professional advisors in these proceedings.

27. In relation to the comparison of marks, the applicant contends that the respective marks both share the same common, dominant and distinctive element, namely the words THE POWER STATION.

28. On the comparison of services, the applicant submits that:

(i) the mark in suit's Class 39 services are identical with and/or similar to, the broad services by the applicant's earlier registration;

(ii) the mark in suit's Class 41 services are identical to the services encompassed within Class 41 of the applicant's earlier registration;

(iii) in Class 42 the services covered by the mark in suit are identical with or similar to the services covered by the earlier registration.

29. The applicant states that in normal and fair use there is a likelihood of confusion.

REGISTERED PROPRIETOR'S WRITTEN SUBMISSIONS

30. The registered proprietor's written submissions are contained in a letter dated 15 June 2005 from Eric Potter Clarkson, the registered proprietor's professional representatives in these proceedings.

31. The registered proprietor submits that the word "Battersea" forms a very dominant part of the applicant's mark and forms a distinctive and dominant component. The overall impression is that the respective marks are not confusingly similar.

32. The registered proprietor repeats that the earlier decisions of the Registry are not relevant but, in any event, the applicant for invalidity in these proceedings were successful in demonstrating that the POWER STATION CAFE and BATTERSEA POWER STATION trade marks were distinguishable. It draws attention to point 27 (the last paragraph) of the Hearing Officer's decision in BL O/019/04 and states that this contains specific comment concerning the conceptual association of the marks which supports the contention that the marks are distinguishable.

33. The registered proprietor maintains its position relating to use and the marketplace.

34. This completes my summary of the evidence and submissions in these proceedings.

DECISION

35. Section 5(2) of the Act 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."

36. An earlier right is defined in Section 6, the relevant parts 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".

37. I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v. Puma AG* [1998] E.T.M.R. 1, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc* [1999] E.T.M.R. 1, *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen 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*, paragraph 23, 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. Klijsen 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*;

(c) 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*;

(d) 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*;

(e) 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*;

(f) 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*;

(g) 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*;

(h) 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*.

38. 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 considerations on whether there are similarities sufficient to show a likelihood of confusion I am guided by the recent judgments of the European Court of Justice mentioned above. The likelihood of confusion must be appreciated globally and I need to address the degree of visual; aural and conceptual similarity between the marks, evaluating the importance to be attached to those different elements taking into account the degree of similarity in the services, the category of services in question and how they are marketed.

39. From paragraph 3 of the applicant's statement of case it is apparent that the application for cancellation is only directed at Classes 39, 41 and 42 of the mark in suit.

40. The applicant has drawn my attention to earlier decisions of Registry Hearing Officers (ex-parte on application No. 2234324 and opposition in number BL O/019/04). However, these decisions concern different proceedings involving a different mark ie POWER STATION CAFE, and other considerations. Accordingly, I must focus on the proceedings currently before me and consider the evidence and submissions on their merits in relation to the circumstances of the present case.

41. In the context of no confusion in the market place, the registered proprietor submits that the applicant's mark has been used and is well known. It has forwarded a good deal of evidence relating to this point, in the form of downloads from the internet.

42. The evidence indicates (not surprisingly) that Battersea Power Station is a well known building within London. However, while it also indicates that the planned development of the Battersea Power Station site by Parkview International is well known, the evidence does not demonstrate that, at the relevant date for these proceedings, the applicant had been using THE POWER STATION AT BATTERSEA, or indeed BATTERSEA POWER STATION, as a trade mark in respect of the relevant services. In relation to events held at the site prior to the relevant date, it seems that Battersea Power Station was used and perceived as a location. I would add that if the registered proprietor had shown that the applicant's mark would be readily recognised in the market place, this may have had the effect of widening its penumbra of protection – see Steelco (BL O/268/04). In any event the fact that no actual instances of confusion are demonstrated is not necessarily telling in relation to relative grounds – see *Compass Publishing BV v Compass Logistics Ltd* [2004] EWCA (Ch).

43. In the light of my finding above, I must consider the matter on the basis of notional fair use of the respective marks across the relevant specification of services.

44. I now go to a comparison of the respective services in Classes 39, 41 and 42.

45. In determining whether the services covered by the registration are similar to the services covered by the earlier trade mark I have considered the guidelines formulated by Jacob J in *British Sugar Plc v James Robertson & Sons Ltd* [1996] RPC 281 (pages 296, 297) as set out below:

> "the following factors must be relevant in considering whether there is or is not similarity:
>
> (a) The respective uses of the respective goods or services;
>
> (b) The respective users of the respective goods or services;
>
> (c) The physical nature of the goods or acts of services;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors."

46. While I acknowledge that in the view of the CANON-MGM judgment by the European Court of Justice (3-39/97) the Treat case may no longer be wholly relied upon, the ECJ said the factors identified by the UK government in its submissions (which are listed in *TREAT*) are still relevant in respect of a comparison of goods or services.

47. First I turn to the services specified in Class 39 of the registration, which the applicant submits are identical and/or similar to its Class 39 services.

48. The applicant's Class 39 specification is widely drafted in relation to transport services and also includes services which would be provided by travel agents. I have no hesitation in concluding that the applicant's Class 39 services are identical and/or closely similar to those Class 39 services encompassed within the registration in suit.

49. I turn next to Class 41. Here the position is less straightforward. The applicant's earlier mark covers entertainment services (at large), sporting and cultural activities, health club services and advisory, production and education services relating to the aforesaid. The registration is in respect of the production of corporate and promotional videos; the organisation and provision of conferences, seminars and exhibitions; corporate hospitality services; and education and training services.

50. Both Class 41 specifications encompass education(al) services and the registered proprietor's "training services" would be identical or very closely similar to such services. The provision of conferences, seminars and exhibitions could be related to cultural activities and it seems to me that similarity exists in respect of such services. It is also my view that entertainment services at large would incorporate hospitality services and identity or close similarity exists in respect of such services. However, the registered proprietor's "Production of corporate and promotional videos" service, relates to a discrete and highly specialised activity in its own right, any similarity with the applicant's services is slight.

51. Now the Class 42 position. The applicants Class 42 specification is concise and relates to the design of retail stores, shopping fixtures and displays. The registered proprietor's Class 42 specification includes a number of specialised, discrete and different services. While the design of displays is identical to the registered

proprietor's design of exhibition stands and similarity of services would exist with the registered proprietor's consultancy services relating to design, any remaining similarity of services is, at best, relatively slight. In my view, there is no similarity in respect of the website and internet based activities/services.

52. I now go to a comparison of the respective marks.

53. The mark in suit comprises the obvious dictionary words THE POWER STATION while the applicant for cancellation's earlier registration is for a series of two marks ie THE POWER STATION AT BATTERSEA and THE POWER STATION @ BATTERSEA, consisting of obvious dictionary words combined with a geographical place name.

54. 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 circumstance of trade. I must bear this in mind when making the comparisons.

55. The parties dispute the dominant distinctive component of the applicant's earlier mark, but it seems to me that the nature of this mark is such as not to warrant any such dissection – it stands as a whole. THE POWERSTATION AT BATTERSEA / THE POWERSTATION @ BATTERSEA has its own meaning which will be readily perceived by the public. It is a well known building and I am fortified in this conclusion by the following extract from "Collins English Dictionary" (5th Edition 2000):

> "BATTERSEA n. a district in London, in Wandsworth, noted for its dogs home, power station (being developed into a leisure centre), and park".

56. While in a visual, aural and conceptual context it is obvious that the respective marks share the words THE POWER STATION, the BATTERSEA element of the earlier mark goes beyond that of a geographical indicator in that the relevant public will perceive the earlier mark as having its own identity and conceptual associations. The applicant's mark merely brings into mind a power station, a different conceptual association, leading to a different appreciation and recollection. I am reminded of the decision of Mr Hobbs QC, the Appointed Person in Cardinal Place (BL O/339/04), in which it was stated that the word PLACE had a qualifying effect on the word CARDINAL, so that CARDINAL PLACE had locational perceptions and recollections, as opposed to the word CARDINAL which, in itself, has ecclesiastical perceptions and recollections. Indeed, I would add, in that particular case the qualifying effect of the word PLACE is less obvious than the qualifying effect of the word BATTERSEA in the present proceedings.

57. In light of the above findings notwithstanding the common elements within the marks, I do not consider the marks to be distinctively similar in their totalities.

58. Without similarity of marks the Section 5(2)(b) ground cannot succeed but even if

I am wrong on this point and there is some distinctive similarity in relation to the respective marks it seems to me that on a global appreciation, even after taking into account that the customer for the services will include the public at large, there is no likelihood of confusion, given the perception and recollection the applicant's mark will invoke within the customer, as opposed to the perception and recollection invoked by the registered proprietor's marks.

59. The application for invalidation fails.

COSTS

60. The registered proprietor is entitled to a contribution towards its costs and I order the applicant for invalidity to pay the registered proprietor the sum of £1000, which takes into account that no hearing took place 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 22nd day of July 2005

JOHN MacGILLIVRAY
For the Registrar
the Comptroller-General