

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION No 2184498A BY  
ORCHARD TRADING LIMITED TO REGISTER A SERIES OF  
MARKS IN CLASSES 3, 18, 20 AND 21**

**AND**

**IN THE MATTER OF OPPOSITION THERETO UNDER No 50037  
BY HELENA RUBINSTEIN**

**AND**

**IN THE MATTER OF APPLICATION No 2184498B BY  
ORCHARD TRADING LIMITED TO REGISTER A MARK  
IN CLASSES 3, 18, 20 AND 21**

**AND**

**IN THE MATTER OF OPPOSITION THERETO UNDER No 50038  
BY HELENA RUBINSTEIN**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF Application No 2184498A by Orchard Trading Limited to register a Series of marks in Classes 3, 18, 20 and 21**

**and**

**IN THE MATTER OF Opposition thereto under No 50037 by Helena Rubinstein**

**and**

**IN THE MATTER OF Application No 2184498B by Orchard Trading Limited to register a Mark in Classes 3, 18, 20 and 21**

**and**

**IN THE MATTER OF Opposition thereto under No 50038 by Helena Rubinstein**

**DECISION**

1. On 15 December 1998 Spectacular Cosmetics Ltd applied to register the following series of four marks:

**SPECTACULAR BY SPECTACULAR COSMETICS**

**SPECTACULAR  
BY  
SPECTACULAR COSMETICS**

**Spectacular by Spectacular Cosmetics**

**Spectacular  
by  
Spectacular Cosmetics**

for a specification of goods which reads:

Class 3:

Cosmetics; colour cosmetics; adhesives for cosmetic purposes; beauty masks; bleaching preparations for cosmetic purposes; body glitter gel; blusher; cream blusher; concealer; cosmetic kits; cosmetic paint; body and nail decoration transfers and decalcomania; cotton sticks for cosmetic purposes; cotton wool for cosmetic purposes; emery paper; eye make-up; eyeshadow; eyebrow cosmetics; eyebrow pencils; false eyelashes and adhesives for attaching false eyelashes; cosmetic preparations for eyelashes; eyeliner; adhesives for affixing false hair; false nails and adhesives for affixing false nails; glitter and glitter dust for use as a cosmetic; greases for cosmetic purposes; paper guides for eye make-up; hair colorants; hair dyes; hair wax for cosmetic purposes; hair spray; hair glitter spray; jelly for cosmetic purposes; kohl pencils; cosmetic pencils; lacquer removing preparations; lipsticks; lip shields; lip liner pencil; lip crayon; lip gloss; lip balm; lotions for cosmetic purposes; make-up; liquid make-up; make-up powder; make-up preparations; make-up removing preparations; mascara; hair mascara; nail care preparations; nail polish; nail varnish; nail stencils; nail polish remover; varnish-removing preparations.

Class 18:

Bags; light-weight bags; drawstring bags.

Class 20:

Display apparatus; display stands and display boards.

Class 21:

Combs; sponges and brushes; toothbrushes; hairbrushes.


2. This application is numbered 2184498A. The A suffix is the result of the division of the original application. The other part of the divided application, No. 2184498B, carries the same filing date and the same specification of goods and is for the following mark:



The logo features the word "Spectacular" in a large, black, cursive script font, slanted upwards from left to right. A thin horizontal line is drawn beneath the word. Below this line, the word "by" is written in a small, lowercase, sans-serif font. At the bottom of the logo, the words "SPECTACULAR COSMETICS" are written in a bold, uppercase, sans-serif font.

3. Subsequent to the filing of the applications there has been an assignment to Orchard Trading Limited. So far as I can see nothing turns on the fact of the assignment.

4. On 30 July 1999 Helena Rubinstein SA (now Helena Rubinstein) filed notices of opposition to each of these applications. The grounds relied on are under Sections 3(1)(a), (b), (c), and (d) of the Act along with Sections 5(1) and 5(2)(b). The latter objections are based on the existence of an earlier trade mark, details of which are as follows:

No.	Mark	Class	Specification
2110001		3	Perfume, toilet water; gels and salts for the bath and the shower; toilet soaps; body deodorants; cosmetics; creams, milks, lotions, gels and powders for the face, the body and the hands; sun care preparations; make-up preparations; shampoos; gels, sprays, mousses and balms for hair styling and hair care; hair lacquers; hair colouring and hair decolorant preparations; permanent waving and curling preparations; essential oils for personal use; dentifrices.

5. Objection is also said to arise under Section 5(4)(a) having regard to the use that is said to have taken place of the above mark.

6. A detailed counterstatement was filed on behalf of the applicants which, along with some background information and claims, denies the grounds of opposition.

7. Both sides ask for an award of costs in their favour. Both sides filed evidence. For the opponents this comes in the form of statutory declarations by Helena Sampson, their Marketing Manager, and are dated 10 May 2000 and 11 May 2001. The applicants have filed a statutory declaration dated 12 February 2001 by Alistair Robertson Gay of David Keltie Associates, Trade Mark Attorneys.

8. Neither side has asked to be heard in the matter. Acting on behalf of the Registrar and after a careful study of the papers I give this decision. The issues and evidence are substantially common to both sets of proceedings and I do not understand either side to suggest that a different outcome is likely in respect of the individual applications. I am therefore issuing a single composite decision. That said the cases have not to the best of my knowledge been formally consolidated. It will remain open for the parties to appeal against part of the decision if either is so minded.

9. I will take the objections in order and draw on the evidence in doing so. Section 3(1) reads:

"3.-(1) The following shall not be registered -

- (a) signs which do not satisfy the requirements of section 1(1),
- (b) trade marks which are devoid of any distinctive character,
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,
- (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade:

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

10. The opponents' position appears to be that the word SPECTACULAR is objectionable as an unused mark but through use has become distinctive of Helena Rubinstein in relation to cosmetics. Specifically Ms Sampson says:

"I believe that the trade mark of Spectacular Cosmetics ["hereinafter referred to as "the Applicants"] consists essentially of the word SPECTACULAR and is therefore in itself devoid of any distinctive character because it is descriptive of the "impressive nature" of the cosmetics i.e. it refers to the "look" of the cosmetics and how long the product stays on the skin. It is perfectly normal to describe make-up as "Spectacular", for example as "what spectacular lipstick" or "your eyeshadow is spectacular", or to say "has that foundation really lasted all day without re-touching? That is spectacular".

In any case I do not believe that customers would refer to the Applicants' goods as with the long and contorted phrase SPECTACULAR BY SPECTACULAR COSMETICS but rather just as SPECTACULAR and this mark has come to denote the products of HELENA RUBINSTEIN."

11. So far as Section 3(1)(a) (and Section 1(1)) is concerned there is an inherent difficulty in the claim that the mark is not capable of distinguishing the goods of one undertaking from those of other undertakings when a part of that mark is considered to be distinctive of the opponents. The proviso to Section 3(1) has no part to play in relation to Section 3(1)(a). As Mr Hobbs QC indicated in AD 2000, Trade Mark, 1997 RPC 168, the requirements of Section 1(1) are satisfied even in cases where a sign represented graphically is only "capable" to the limited extent of being "not incapable" of distinguishing goods or services of one

undertaking from those of other undertakings". I doubt that the word SPECTACULAR solus could be said to fail that test. The marks applied for are, of course, more than simply the word SPECTACULAR. I have no hesitation in finding that the opposition cannot succeed under Section 3(1)(a).

12. The wording used in Ms Sampson's declaration suggests that the opponents' main objection is to be found in Section 3(1)(b). There is no evidence to support an objection under Section 3(1)(d). Can it nevertheless be said that the mark applied for consists exclusively of "signs or indications which may serve in trade ....." to designate certain descriptive characteristics for the purposes of Section 3(1)(c) or is otherwise devoid of distinctive character for the purposes of Section 3(1)(b) as the opponents suggest?

13. The test for distinctiveness was clearly set out by Jacob J in *British Sugar plc v James Robertson & Sons Ltd*, 1996 RPC 281 (the TREAT case)

"Next, is "Treat" within section 3(1)(b)? What does *devoid of any distinctive character* mean? I think the phrase requires consideration of the mark on its own, assuming no use. Is it the sort of word (or other sign) which cannot do the job of distinguishing without first educating the public that it is a trade mark? A meaningless word or a word inappropriate for the goods concerned ("North Pole" for bananas) can clearly do. But a common laudatory word such as "Treat" is, absent use and recognition as a trade mark, in itself (I hesitate to borrow the word inherently from the old Act but the idea is much the same) devoid of any distinctive character."

14. I would be inclined to agree with Ms Sampson's view that SPECTACULAR, being an ordinary dictionary word with a well known laudatory meaning, would struggle to achieve any measure of distinctiveness as an unused trade mark. Particularly in the context of cosmetic goods (the main product area on which the opposition case is based) it seems to me to be entirely possible that other traders might wish to describe their goods as having spectacular colours or giving spectacular appearance. But I part company with Ms Sampson's approach when she suggests that the mark "consists essentially of the word SPECTACULAR" and proceeds to base the opponents' objection on that premise. The mark must be considered in its totality. Even allowing for the fact that the word SPECTACULAR may be lacking in distinctive character I cannot see how the same can be said about the combination SPECTACULAR BY SPECTACULAR COSMETICS. The overall content and construction of the mark must be taken into account as well as the words themselves. It is not unusual for cosmetics marks to consist of a sub brand used in association with an established housemark. The mark applied for is constructed along those lines albeit that it contains the repeated use of the word SPECTACULAR. I note that Ms Sampson herself suggests that SPECTACULAR BY SPECTACULAR COSMETICS is a "long and contorted phrase". That is no doubt true.

It is also part of the reason why I do not think it can be said that the totality is devoid of distinctive character.

15. It is nevertheless argued that because the applied for mark is a long and contorted phrase customers will refer to it simply as SPECTACULAR. There is no evidence to that effect. Equally I cannot say that it will not happen. It is sometimes the case that customers will use

abbreviated versions of marks as a convenient shorthand. Thus Marks and Spencer is sometimes referred to as Marks's, Manchester United as Man U or simply United. However I do not think I can or should approach the matter on that basis. I must take the marks as applied for and assume that the applicants will use them in a normal and fair manner. To do otherwise involves speculation as to how the public would view the marks and, potentially, appraisal of marks other than the ones that are the subject of the applications. In short the Section 3(1)(b) objection fails along with the other Section 3(1) grounds. I should just add that I have dealt with the Section 3 objections on the basis on which the opponents put their case, that is in relation to the Class 3 goods. As the objections have failed in relation to those goods the opponents clearly cannot succeed in relation to the balance of the specification involving goods in Classes 18, 20 and 21.

16. Section 5(1) and (2) read:

"5.-(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

(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."

17. The marks at issue are:

**Applicants' Marks**

**Opponents' earlier trade mark**

**SPECTACULAR BY SPECTACULAR COSMETICS**

**SPECTACULAR  
BY  
SPECTACULAR COSMETICS**

**Spectacular by Spectacular Cosmetics**

**Spectacular  
by  
Spectacular Cosmetics**

*Spectacular*  
SPECTACULAR COSMETICS

**HR**  
**HELENA RUBINSTEIN**  
**SPECTACULAR**

18. Despite the fact that Section 5(1) has been pleaded I can see no conceivable basis for such a claim. The marks are clearly not identical. I take the main objection to be that under Section 5(2)(b). 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.

19. I will say at the outset that the opponents have offered no evidence or submissions bearing on any similarity in the goods of their earlier trade mark to the applicants' goods in Classes 18, 20 and 21. Given the difference in the marks and the global nature of the test I can see no basis for any objection to the goods in Classes 18, 20 and 21. The main battleground is, therefore, Class 3 where it is clear that the respective specifications cover identical goods. The matter, therefore, turns on the marks themselves.

20. The opponents' mark is a composite one the most prominent element of which is the elided letters HR. Beneath the elided letters are the words Helena Rubinstein which thus effectively explains and reinforces the significance of the letters. Beneath the words Helena Rubinstein is the word SPECTACULAR. The combination creates an entirely distinctive mark. For reasons which I will explain in a little more detail in relation to Section 5(4)(a) I am not persuaded that the use the opponents claim to have made of their mark adds greatly if at all to its inherent attributes.

21. The applicants' mark consists of relatively non-distinctive elements brought together in a slightly unusual way. It is perhaps memorable for its construction and repetition rather more than the nature of the words themselves.

22. With those preliminary observations in mind I go on to consider the visual, aural and conceptual similarities between the marks and the likelihood of confusion. Visually, having regard to their distinctive and dominant components, they are in my view quite different. Not only is the word SPECTACULAR a subsidiary element in the opponents' mark but it is also a weakly distinctive element particularly when combined with the visually more striking elided letters and the more obviously distinctive name Helena Rubinstein.

23. So far as aural/oral use is concerned I note that Ms Sampson says:

"As can be seen from the extensive sales shown in Exhibit Number HS 5, HR cosmetics are referred to and asked for by its customers as SPECTACULAR ROUGE, SPECTACULAR MAKE-UP, SPECTACULAR LINER and the like, and the mark SPECTACULAR when used in relation to cosmetics has become wholly distinctive of HELENA RUBINSTEIN, by virtue of the extensive use made by it."

24. Despite that claim there is no evidence from customers as to how they refer to the mark or explanation as to the circumstances in which it occurs. It seems more likely that Helena Rubinstein is used as a primary identifier and that reference to any supplementary identifier or sub brand takes place after the housemark has played its part. For instance a customer who has identified the Helena Rubinstein counter in a shop would then only need to ask for the sub



brand. In any case I am required to assume normal and fair use of the opponents' earlier trade mark and not just part of it. I do not consider there is any significant oral/aural similarity.

25. Conceptually it might be said that both marks consist of a sub brand (SPECTACULAR) in association with a housemark or name (HELENA RUBINSTEIN and SPECTACULAR COSMETICS). But where the common element, SPECTACULAR, is relatively weak I do not regard the overall conceptual similarity to be significant. It is in any case far more likely that visual and to a lesser extent aural considerations are important to the process of buying cosmetics. After all customers want to see and/or smell the products in order to make their purchasing decisions. Weighing all these factors and applying the average consumer test (per *Lloyd Schuhfabrik v Klijsen Handel* paragraph 23 et seq) I am of the view that there is no likelihood of confusion. Accordingly the Section 5(2) ground fails.

26. I now turn to the ground of opposition under Section 5(4)(a). This reads:

"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."

27. The conventional test for determining whether the opponents have succeeded under this section has been restated many times and can be found in the decision of Mr Geoffrey Hobbs QC sitting as the Appointed Person, in *WILD CHILD Trade Mark* [1998] RPC 455. Adapted to opposition proceedings, the three elements that must be present can be summarised as follows:

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

28. The very full guidance given in the *WILD CHILD* case by Mr Hobbs by reference also to Halsbury's Laws of England can be found at pages 460 and 461 of that decision.

29. Ms Sampson gives evidence as to her company's use as follows:

- "4. Samples of the packaging bearing the trade mark are now produced and shown to me marked Exhibit Number HS 2. It can be seen that H.R.'s trade mark registration features prominently on the packaging.
5. My Company sells HR products in over 20 outlets in the United Kingdom and there is now produced and shown to me marked Exhibit Number HS 3 a list of these outlets in which customers can find a Helena Rubinstein counter. In addition, my Company also sells HR products throughout the United Kingdom and offers advice via the HR Hot Line on 01732 741 000 between 9 am and 5 pm Monday to Friday.
6. The approximate total sales figures of products sold in the UK and Eire under the mark HR HELENA RUBINSTEIN SPECTACULAR are:

1995	20,385 units
1996	25,977 units
1997	26,147 units
1998	33,633 units
1999	24,048 units

7. Details of the approximate wholesale sales value of the goods are as follows:

1995	£146,000
1996	£197,000
1997	£205,000
1998	£293,000
1999	£233,000

8. The goods sold under HR's trade mark have been advertised and promoted throughout the United Kingdom. Details of the approximate amount spent on advertising and promoting the goods are as follows:

1995	£106,000
1996	£ 43,000
1997	£ 6,000
1998	£205,000
1999	£ 66,000

- 9 My Company advertises HR goods in high quality fashion magazines such as Vogue and Red. Copies of advertisements are now produced and shown to me marked Exhibit Number HS 4. In addition, my Company advertises its products in brochures such as "The Mail Boutique" a copy of which is now produced and shown to me marked Exhibit Number HS 5. Examples of the products sold under the mark HELENA RUBINSTEIN SPECTACULAR can be found on pages 10-13 of this brochure."

30. Later in her declaration she says:

"12. As can be seen from the extensive sales shown in Exhibit Number HS 5, HR cosmetics are referred to and asked for by its customers as SPECTACULAR ROUGE, SPECTACULAR MAKE-UP, SPECTACULAR LINER and the like, and the mark SPECTACULAR when used in relation to cosmetics has become wholly distinctive of HELENA RUBINSTEIN, by virtue of the extensive use made by it."

31. It can be seen from the above that the opponents firstly give turnover figures for products sold under the mark HR HELENA RUBINSTEIN SPECTACULAR but also claim that their products are referred to and asked for by customers by reference to the word SPECTACULAR. I take that to be a claim that SPECTACULAR has become a distinguishing feature in its own right and not just as part of a composite sign. If that is the case it raises a fundamentally different claim to the one considered under Section 5(2) and, if substantiated, might offer the opponents a stronger case under Section 5(4)(a). There is no direct evidence from customers or the trade to support the claim made by Ms Sampson. I can only, therefore, judge the matter on the basis of the evidence and particularly the supporting exhibits.

32. As I have already indicated I do not regard SPECTACULAR as being a word that is particularly distinctive in its own right. However as is noted in Wadlow's *The Law of Passing-off* (Second Edition) at 6.02

"Passing-off is relatively unconcerned with the distinction drawn in trade mark law between inherent capacity to distinguish and distinctiveness in fact. If factual distinctiveness exists, then it does not matter whether it was achieved with ease for a mark well adapted to distinguish or with difficulty for a mark of the opposite kind. If factual distinctiveness does not exist a traditional passing-off case must fail. Passing-off never has to deal with the common situation in trade mark law of deciding how readily a mark not yet in use may become distinctive: the question is always whether an existing mark is distinctive in fact. Because of this, and because there are few *a priori* restrictions on what may be considered distinctive, the supposed inherent capacity of a mark to distinguish is only one factor among many. If the plaintiff adopts a mark which is obviously descriptive or otherwise of low capacity to distinguish then the evidential burden on him becomes higher, but never impossible. The other effect of low inherent distinctiveness is that smaller differences will serve to differentiate the defendant's goods when the plaintiff's mark is only marginally distinctive, but this is true if the mark is weakly distinctive for whatever reason." (footnotes omitted).

33. Apart from the low inherent capacity of the word SPECTACULAR to distinguish it suffers from the further weakness that it is easily overwhelmed by the presence of the strong housemark. However I accept that none of this means that it is incapable of functioning as a distinguishing feature either within the context of the composite sign HR HELENA RUBINSTEIN SPECTACULAR or on its own. Whether or not it does so is a question of fact to be determined from the evidence. There is nothing before me to put the trading figures given by Ms Sampson into context within the cosmetics trade as a whole or to indicate consumer awareness of the brand. Taken at face value I am not prepared to regard the figures

as establishing more than a modest level of trade. In terms of the effect of the opponents' use on consumers I must turn to the exhibits - particularly HS 2, HS 4 and HS 5.

34. HS 2 is a single photocopied page showing three examples of product packaging. In each case the top part of the packaging shows the elided letters HR and the words HELENA RUBINSTEIN. The central portion of the packaging is blank. The bottom portion shows a number (presumably a cataloguing number of some sort) and, respectively, the words SPECTACULAR MASCARA, SPECTACULAR LINER and SPECTACULAR MAKE-UP along with various pieces of descriptive text. The SPECTACULAR elements are in slightly larger type than the descriptive text but are not obviously rendered in such a way that they would be taken as distinctive or distinguishing signs. I do not know what customers would make of such use. In my view the words send what is at best an ambiguous message. Given the overall impression of the product packaging and the separate presentation of the housemark I am not prepared to say that SPECTACULAR associated with the name of the goods would be seen as other than laudatory/descriptive usage.

35. Exhibit HS 4 consists of two copy advertisements from Vogue and Red magazines. The dates of the publications are not shown. The first advertisement, which I take to be a full page one, shows the HR HELENA RUBINSTEIN mark at the top of the advertisement. Most of the page shows the face of a model wearing a glossy lipstick. Beneath the mouth are the words SPECTACULAR ROUGE along with some supporting text. I am left with the clear impression that SPECTACULAR is simply being used as a laudatory puff for the colour. The second advertisement again shows the HR HELENA RUBINSTEIN mark at the top with, in bold letters underneath, A LASTING EXPERIENCE and below that and in smaller type "SPECTACULAR MAKE-UP, FOUNDATION, SPECTACULAR HOLD, SPECTACULAR COMFORT". There is in addition a picture of a bottle with HELENA RUBINSTEIN and SPECTACULAR MAKE-UP on it. Again the message is at best ambiguous. For my part I have considerable doubts as to whether anyone encountering the advertisement would take from it the message that the opponents were using SPECTACULAR as an indication of origin.

36. The final exhibit, HS 5, is a mail order brochure. It offers what I take to be the full range of HELENA RUBINSTEIN products or at least that part of the range that the company chooses to offer in this way.

37. Pages 10 to 13 show the word SPECTACULAR appearing as a sub head along with a variety of other words. Earlier pages in the brochure show a variety of other products again using the sub-head format. Thus the entries on the first product page (page 4) shows 'Mat Specialist Deep Clarifying Cleansing Foam', 'Delicate Aromatic Lotion', 'Fresh Foaming Gel', 'Fresh Honey Tonic'. All of these seem to be wholly descriptive in nature. In fairness to the opponents a number of the other sub-heads are arguably of rather greater trade mark character (Force C Premium for instance on page 6). However the overall impression is that the sub-heads are likely to be regarded as largely descriptive in character. The SPECTACULAR MAKE-UP and SPECTACULAR ROUGE sub-heads are likely to be seen in that context.

38. The result is that on the evidence before me I am not persuaded that the public has come to recognise SPECTACULAR as a distinguishing feature of the opponents to which goodwill

is attached either as part of the combination HR HELENA RUBINSTEIN SPECTACULAR or in its own right. The Section 5(4)(a) case fails.

39. The opposition as a whole has failed. The applicants are entitled to a contribution towards their costs. I order the opponents to pay them the sum of £750. This is a combined award in respect of the two cases. It takes account of the fact that the cases have not been formally consolidated; separate sets of evidence have been filed; and the fact that the evidence is substantially the same in each case. The above 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 26<sup>TH</sup> day of September 2001**

**M REYNOLDS  
For the Registrar  
the Comptroller-General**