

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No 2182726
BY WING CHUNG
TO REGISTER THE TRADE MARK:
THAI ELEPHANT
IN CLASS 42**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER No 49770 BY N.V. TOPRANK CORPORATION**

TRADE MARKS ACT 1994
IN THE MATTER OF Application No 2182726
BY WING CHUNG
TO REGISTER THE TRADE MARK:
THAI ELEPHANT in class 42 and
IN THE MATTER OF Opposition thereto under no 49770
by N.V. TOPRANK CORPORATION

Background

1. On 23/11/1998 Wing Chung of Croydon, Surrey applied to register the trade mark: THAI ELEPHANT. The application was published with the following specification: *restaurant and catering services; preparation and catering for the provision of food and drink.*
2. On 17 May 1999 N.V. Toprank Corporation of the Netherlands Antilles filed notice of opposition to this application.
3. The opponent stated that he is the registered proprietor of United Kingdom registration nos 1293125 and 2015376 of the trade mark:



which are registered respectively in respect of: *catering services; preparation of canned and deep frozen food and drink; preparation of food and drinks; all included in Class 42*

and

Prepared meals; meat, fish, poultry, game and dishes prepared from these goods; preserved, dried and cooked vegetables and fruits and dishes prepared from these goods in class 29
Prepared meals, confectionery, sauces, spices in class 30.

4. The opponent claimed that the respective trade marks are similar and encompass identical or similar goods; consequently registration of the application in suit would be contrary to Section 5(2) of the Act. The opponent also stated that he had made significant use of his earlier registration and that the trade mark has acquired a substantial reputation in the United Kingdom. Consequently use of the application in suit would take unfair advantage of or be detrimental to the distinctive character or repute of his trade mark and so would be contrary to Section 5(3). The opponent stated that owing to the reputation of his trade mark that registration of the application in suit is liable to be prevented by the law of passing off and so would be contrary to Section 5(4)(a) of the Act. The opponent claimed that owing to the reputation of his trade mark the applicant would not have adopted the trade mark of the application in suit except to benefit from the reputation of the opponent. Consequently the application had been made in bad faith and its

registration would be contrary to section 3(6).

5. The opponent requested that the application should be refused or that there should be an appropriate restriction of the goods (sic) and services of the application in suit. He also sought an award of costs.

6. The applicant filed a counterstatement denying the above grounds and seeking an award of costs.

7. Both parties filed evidence. They both agreed that a decision could be made on the basis of the papers filed. Consequently a decision will be taken from a careful study of the papers.

8. Acting on behalf of the Registrar I duly give the following decision.

Opponent's evidence

9. The opponent's evidence consists of a statutory declaration by Thaviseuth Phouthavong, who is the director of Blue Elephant Limited - which is a franchise operation, the franchiser being the opponent - dated 10 September 1999.

10. Mr Phouthavong stated that the trade mark the subject of registration no 1293125 was first used in the United Kingdom in relation to catering services in 1986. He stated that the restaurant established under this trade mark was established in London in 1986. He stated that ready prepared meals sold under the BLUE ELEPHANT name are available through selected delivery services in London. He stated that the turnover figures in respect of the trade mark are as follows

Year	Sales (£)
1987	711,651
1988	1,202,278
1989	1,405,269
1990	2,092,275
1991	3,083,285
1992	2,319,533
1993	2,611,284
1994	2,805,964
1995	3,004,211
1996	3,242,391
1997	3,419,522
1998	3,510,647

11. He gave a history of the BLUE ELEPHANT organisation.

12. Mr Phouthavong stated that the following had been expended on advertising

Year	Sales (£)
1987	29,565
1988	23,107
1989	19,123
1990	19,003
1991	20,280
1992	30,456
1993	54,805
1994	28,000
1995	46,725
1996	46,368
1997	55,039
1998	66,247

13. He gave a list of publications where features about his restaurant and advertisements for his restaurant have appeared. These included a number of magazines and national newspapers.

14. Mr Phouthavong listed awards which his restaurant has won. He also referred to references to his restaurant in “polls and surveys” in “London’s Favourite Restaurants” and “The Observer”. He referred to a cookbook - “The Blue Elephant Cookbook” - however, this was published in 1999, so after the relevant date.

15. Mr Phouthavong referred to the opponent’s web site - however, the pages he has exhibited were all downloaded after the relevant date and there can be no certainty of the state of the web site at the relevant date.

16. Mr Phouthavong made various comments that could not be characterised as representing evidence of fact but as submissions; the issues raised will be dealt with in my decision and I need say no more about them here.

17. Mr Phouthavong referred to the state of the register - he stated that there is only one other registration in relation to restaurant services, being ENOUGH 2 FEED AN ELEPHANT, which he did not consider on a par with his trade mark. Mr Phouthavong stated that the opponent had opposed an application for GOLDEN ELEPHANT THAI RESTAURANT, which following the filing of evidence by the opponent had been abandoned.

Applicant’s evidence

18. The applicant’s evidence consists of statutory declaration by Wing Chung, who is the applicant and the owner of the Thai Elephant Restaurant, dated 28 March 2000. He stated that his restaurant serves Thai cuisine, and exhibited a menu in relation to this. He stated that his restaurant has a seating capacity of eighty and is generally full or almost full everyday. He also stated that the majority of his customers are from the local area.

19. Mr Phouthavong made various comments that could not be characterised as representing evidence of fact but as submissions; the issues raised will be dealt with in my decision and I need say no more about them here.

20. Mr Chung stated that he was aware of no instances of confusion between his restaurant and that of the opponent. He stated that the ELEPHANT element of his trade mark is not fanciful as elephants are a well-known part of Thai culture. Finally he stated that he had offered to limit his services to restaurant services provided in the Kent/Surrey area but that the opponent had not responded to this proposal.

Submissions of the applicant

21. The applicant stated that in relation to section 5(2)(a) the respective trade marks are not identical.

22. In relation to section 5(2)(b) the applicant submitted that the respective trade marks are not similar because their only similarity is the word ELEPHANT, which he asserted was a common word for restaurants and food products and a well known part of Thai culture. He stated that the device element of the opponent's trade mark put further distance between the respective trade marks. The applicant submitted that there is no likelihood of confusion. He also referred to the opponent's trade mark not being cited against the application in suit at the ex parte examination stage. He made reference to the opposition action referred to by the opponent. He stated that the trade mark involved was not on a par with his trade mark and that a decision had never been issued as the application had been withdrawn.

23. In relation to section 5(3) the applicant stated that the opponent had submitted no evidence that his trade mark would take unfair advantage of or be detrimental to any distinctive character or repute of the opponent's trade mark. He also stated that the opponent had submitted no evidence that confusion would occur. He asserted that without confusion there could be no question of unfair advantage or detriment to any distinctive character of the trade mark, or indeed likelihood of association.

24. In relation to section 5(4)(a) the applicant stated that one restaurant was in Croydon and one in Fulham, he asserted that it was inconceivable that customers for the BLUE ELEPHANT would visit the THAI ELEPHANT supposing that there was any connection between them. He stated that no evidence of actual confusion had been lodged.

25. The applicant stated that the opponent had lodged no evidence in respect of section 3(6).

Decision

26. The grounds of opposition pursued by the opponents are those under sections 5(2), 5(3), 5(4)(a) and 3(6) of the Trade Marks Act 1994. The relevant provisions read as follows:

Section 3(6): A trade mark shall not be registered if or to the extent that the application is made in bad faith.

Section 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.

(3) A trade mark which -

(a) is identical with or similar to an earlier trade mark, and

(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark, in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

(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....

“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.”

Reputation/recognition/goodwill of the earlier trade mark

27. For various of the grounds of opposition the above issues can be determinate or affect the outcome. I, therefore, deal with all these matters before considering the particular grounds of

opposition.

28. It is to be noted that the claims that the opponent has made in relation to reputation relate to the trade mark represented by registration nos 1293125 and 2015376; not to the words BLUE ELEPHANT sans device. In relation to the law of passing-off there was no requirement to rely upon the registered trade mark. Consequently much of the evidence furnished by the opponent does not assist him as it does not feature the trade mark but the words BLUE ELEPHANT. (It is also to be noted that many of the press cuttings are from after the relevant date.) Exhibits TP/4, TP/5, TP/6 and TP/11 show use of the trade mark. However, exhibit TP/11 emanates from well after the relevant date. In exhibit TP/7 there are but three exhibits which show use of BLUE ELEPHANT and an elephant device, and even these are in a different form to that registered.

29. In *General Motors Corporation v Yplon SA Case C-375/97* the European Court of Justice established the parameters for claiming a reputation in relation to section 5(3):

“Article 5(2) of the First Council Directive (89/104/EEC) of 21 December 1988 to approximate the laws of the Member States relating to trade marks is to be interpreted as meaning that, in order to enjoy protection extending to non-similar products or services, a registered trade mark must be known by a significant part of the public concerned by the products or services which it covers. In the Benelux territory, it is sufficient for the registered trade mark to be known by a significant part of the public concerned in a substantial part of that territory, which part may consist of a part of one of the countries composing that territory.”

30. The opponent, in the instant case, has to show that his trade mark is known to a significant part of the public concerned in a substantial part of the United Kingdom. The evidence of the opponent shows that he has one restaurant serving Thai cuisine in one area of London. He has shown that the restaurant is normally identified as the BLUE ELEPHANT. From the turnover figures, awards and press reviews it would seem that the restaurant is a successful business. However, proving that he has a successful business is not the same as proving that his trade mark satisfies the criteria of the European Court of Justice. The evidence is indicative that a section of the public will be aware of the BLUE ELEPHANT, not of the trade mark as registered. I do not consider that this section of the public will be necessarily extensive. Would someone recognise or recall or make a note of the restaurant if they do not eat in London, if they do not like or know Thai food, or if they are not willing to spend money in a restaurant which the evidence suggests is at the upper end of the price range? That the restaurant appears in restaurant reviews in newspapers does not guarantee a national recognition or reputation. I would doubt that the majority of the British public regularly read restaurant reviews. I have no evidence before me to support the notion that they do. If they do read restaurant reviews and they do not live or visit the south west part of London I would doubt that they would take much notice of the review or to take the time to note - even mentally - a restaurant in which they are unlikely to eat. I do not discount that one restaurant could satisfy the criteria of the European Court of Justice, however in the instant case I certainly do not consider that the opponent has proved the required reputation of his earlier trade mark in relation to section 5(3). (It is also to be noted that the use is for restaurant services which are identical or similar to the services of the applicant - see below - therefore Section 5(3) would not have a bearing upon the instant case.)

31. The European Court of Justice in *Sabel BV v. Puma AG* [1998] R.P.C. 199 ruled that public recognition of an earlier trade mark can affect the issue of likelihood of confusion.

“In that respect, it is clear from the tenth recital in the preamble to the Directive that the appreciation of the likelihood of confusion 'depends on numerous elements and, in particular, on the recognition of the trade mark on the market....”

32. The European Court of Justice has not defined the parameters which should be set for recognition on the market. I consider that firstly I need to consider the nature of the market. The evidence furnished by the opponent relates to a restaurant. The market for restaurants effectively covers the entire population of the country. Public recognition under *Sabel* increases the penumbra of protection of a trade mark; to allow for such an increase from the norm it must, I consider, be necessary to demonstrate a wide scale recognition of the trade mark amongst the relevant public - in this case the relevant public would be the population at large. I am fortified in this opinion by the comments of Mr Thorley, acting as the appointed person in *DUONEBS* (SRIS 0/048/01) (unpublished) where he stated:

“In my judgment, I believe what the ECJ had in mind was the sort of mark which by reason of extensive trade had become something of a household name so that the propensity of the public to associate other less similar marks with that mark would be enhanced. I do not believe that ECJ was seeking to introduce into every comparison required by section 5(2), a consideration of the reputation of a particular existing trade mark.”

33. The opponent has furnished no survey evidence to indicate that there is a wide scale recognition of his trade mark amongst the public in the United Kingdom - and I do not consider the evidence that he has furnished is indicative of such a fact. That a cook book has been published, if after the relevant date, is I consider indicative that the restaurant enjoys a certain kudos or fame but such fame is not the same as recognition for the Trade Marks Act. It is a fame which is likely to be limited to a small section of the population. Again any recognition must be in the trade mark that is registered, not in the BLUE ELEPHANT sans device; on this score the case of the opponent is further weakened and must be rejected.

34. I turn now to the issue whether the opponent has demonstrated goodwill in his trade mark. I comment again that the opponent has based his claim in relation to passing-off upon the basis of the registered trade mark - not upon BLUE ELEPHANT simpliciter. If he had based it upon the latter I would have had no hesitation that he had demonstrated that he enjoyed goodwill in relation to restaurant services. However, I have been presented with very little evidence in relation to the trade mark for which the opponent claims to enjoy goodwill. From the evidence before me I consider that the goodwill lays with BLUE ELEPHANT and not the trade mark upon which the opponent bases his opposition. Even if the diner is presented with a menu, for instance, that shows the trade mark he is likely to see the device element as a mere decorative element and will view the trade mark as BLUE ELEPHANT. Without evidence to show that the public identifies the trade mark as a whole with the opponent I cannot find that he has established that he enjoys goodwill in the trade mark.

35. I, therefore, find that the opponent has not established that his trade mark enjoys reputation, recognition or goodwill.

Section 5(2)(a) objection

36. The respective trade marks are not identical, therefore, this ground of opposition is rejected.

Section 5(2)(b) objection

37. In determining the question 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] R.P.C. 199, *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* page 224;

(b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v. Puma AG* page 224; 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.* page 84, paragraph 27.

(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* page 224;

(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* page 224;

(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* page 7, paragraph 17;

(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* page 8, paragraph 24;

(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* page 224;

(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* page 732, paragraph 41;

(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* page 9 paragraph 29.

Likelihood of confusion

Comparison of services/goods

38. The services encompassed by the application in suit are: *restaurant and catering services; preparation and catering for the provision of food and drink*. The services encompassed by registration no 1293125 are: *catering services, preparation of canned and deep frozen food and drinks; all included in Class 42*. The term *catering services* encompasses all types of catering, I consider that all the services of the application in suit fall within the parameters of these services. I, therefore, must find that identical services are involved. In relation to registration no 2015376, which encompass goods and so cannot be identical to the services of the application in suit, the opponent cannot be in a better position and therefore I need say no more about this registration.

Comparison of signs

39. The signs to be compared are:

Earlier registrations:



Application in suit:

THAI ELEPHANT

40. In the comparison of the trade marks I must consider them in their entireties, their overall impressions. However, I need also to take into account their dominant and distinctive components. In relation to catering related services I must consider whether an elephant, whether described by word or image, is indicative of the type of cuisine. In my experience restaurants selling a wide range of oriental cuisine often make use of elephant devices; for instance in relation to Indian cuisine. It is, therefore, possible that in relation to the relevant services that the ELEPHANT element of the respective trade marks is not a very strong element.

41. Visually the only similarity between the respective trade marks is the word ELEPHANT, the word in the earlier registration is in a slightly stylised form, but I do not consider that anything turns upon this matter. The upper part of the earlier registration consists of a large device element, which is completely alien to the application in suit. The words THAI and BLUE have no visual

similarity - they do not share one common letter. Viewing the respective trade marks in their entirety I do not consider that the respective trade marks are visually similar.

42. It was established under the 1938 Act that the beginnings of words are more important in assessing similarity than the ends (*TRIPCASTROID* 42 RPC 264 at page 279). I consider that this is a reflection of human perception and so is not an issue that changes because of a change in trade mark acts. Therefore, it seems to me that this view is equally valid under the 1994 Act. It is also a position that OHIM follows, for instance in decision no 1126/2000 - Official Journal 10/2000 at page 1506.

43. The beginnings of the word elements of the respective trade marks commence with two different words and I consider that the principles of *TRIPCASTROID* equally apply when viewing trade marks as a whole. Therefore, in the instant case the respective trade marks commence with very different words. Words that it is difficult to envisage being confused. I, therefore, consider that aurally the respective trade marks are not similar.

44. Conceptually both trade marks refer to elephants. However, one refers to an elephant that is clearly identified with the country of Thailand. The other refers to an elephant that has the unusual, for an elephant, colour of blue. As has been discussed above it is possible that elephants, whether in picture or word form, are not particularly distinctive in relation to the relevant services. Therefore, I find that the respective trade marks are not conceptually similar.

45. Subsequent upon the above I hold that the respective trade marks are not similar.

Conclusion

46. The applicant referred to the lack of proof of confusion. However, all this proves is that there is no evidence of confusion. The proving of a negative is a very hard task. In the instant case there is also some distance between the establishments. This could change at some later stage. I, therefore, do not take into any account the lack of evidence of confusion.

47. The applicant referred to the earlier registrations not being cited during the ex parte examination. I have to judge the case upon the facts presented to me and my interpretation of them and the appropriate law. The issue of whether at ex parte stage a citation was raised or not has no weight upon me. There is no infallibility in the searches conducted by the Patent Office. Also there is no other party to argue his case. That the earlier registrations of the application in suit were not cited at the examination stage has had no bearing upon my deliberations and is discounted by me.

48. The opponent has referred to the state of the register in relation to the use of ELEPHANT in relation to restaurant services. For the most part state of the register evidence proves very little if anything - it is what happens in the market place that is important. I am fortified in this view by the findings of Jacob J in *Treat (1996) RPC 281*:

“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 to the Registrar to put the marks concerned on the Register. It has long been held that 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. MADAME Trade Mark* (1966 RPC 541) and the same must be true of the 1994 Act. I disregard the state of the register evidence.”

49. As I have held that the respective trade marks are not similar I must find that there is no likelihood of confusion. The ground of opposition under section 5(2)(b) is, therefore dismissed.

Section 5(3)

50. As the opponent has not established a reputation for the earlier registrations the grounds of opposition under section 5(3) must be dismissed. If the opponents had proved a reputation it would have been in respect of identical or similar services and the opposition would have fallen upon this ground - section 5(3) deals with non-similar goods and services. Owing to the clear proximity of the services it is difficult to understand why this ground was pleaded. It is also to be noted that I have decided that the respective signs are not similar and so again this ground of opposition must be dismissed.

51. I need say no more in relation to section 5(3). However, I will comment that contrary to the submission of the applicant it is well established that there is no requirement for confusion to be proved for a party to be successful under this ground. In *Sabel* at paragraphs 20 and 21 the European Court of Justice held:

“Furthermore....Article 4(3) and (4)(a) and Article 5(2) of the Directive.... permit the proprietor of a trade mark which has a reputation to prohibit the use without due cause of signs identical with or similar to his mark and do not require proof of confusion, even where there is no similarity between the goods in question.”

52. Subsequent upon the contents of the first paragraph above the objection under section 5(3) is dismissed.

Section 5(4)(a) objection

53. 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 stated that:

"The question raised by the Grounds of Opposition is whether normal and fair use of the designation WILD CHILD for the purposes 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 Art. 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."

54. 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 matters 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 filing of the application in suit.

55. Misrepresentation is an essential component of the tort of passing off. This depends upon confusion and deception brought about by the use or proposed use of an indicium adopted by a defendant (in this case, applicant). I have already considered the likelihood of confusion in my findings under Section 5(2)(b). The opponents are in no better position under Section 5(4)(a) and cannot succeed to a greater extent. I have also held that the opponent has failed to prove that at the relevant date that he had established goodwill in his trade mark.

56. For either of the above reasons the opposition under Section 5(4)(a) would have to be dismissed. **The opposition under section 5(4)(a) is, therefore, dismissed.**

Section 3(6) objection

57. The opponents have put forward neither no evidence to substantiate their claim that the application in suit was made in bad faith. **The opposition under section 3(6) is, therefore, dismissed.**

58. Subsequent upon the above findings all the grounds of opposition are dismissed. The applicant is entitled to a contribution towards his costs and I therefore order the opponent to pay him the sum of £435. 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 17 day of October 2001

**D.W.Landau
For the Registrar
the Comptroller-General**