

1 THE PATENT OFFICE

2 Harmsworth House,  
3 13-15 Bouverie Street,  
4 London EC4Y 8DP.

5 Thursday, 10th May 2007

6 Before:

7 MR. GEOFFREY HOBBS QC  
(Sitting as the Appointed Person)

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9 In the Matter of: **The Trade Marks Act 1994**

10 and

11 In the Matter of: UK trade mark application No. 2334368 **VOGUE**  
12 in the name of The Condé Nast Publications  
13 Limited and opposition thereto by United  
Toiletries & Cosmetics Limited under No.  
92259

14 and

15 In the Matter of: An appeal by The Condé Nast Publications  
16 Limited to the Appointed Person against the  
Hearing Officer's decision dated 19th  
17 October 2006.

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(Computer aided transcript of the Shorthand Notes of  
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20 **MR. IAN BARTLETT** (of Messrs. Beck Greener) appeared on behalf of  
21 The Condé Nast Publications Limited.

22 **MR. MICHAEL EDENBOROUGH** (instructed by Messrs. Venner Shipley)  
appeared on behalf of United Toiletries & Cosmetics Limited.

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24 **DECISION**  
(As Approved by the Appointed Person)

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1 THE APPOINTED PERSON: United Kingdom trade mark application  
2 No. 2334368 is a continuation at the national level of  
3 Community trade mark application No. 398206 filed on  
4 28th October 1996.

5 It covers the single word VOGUE for use as a trade mark  
6 in relation to the following goods in Class 3:

7 "Bleaching preparations, detergents, cleaning  
8 preparations, degreasing agents, soaps, perfumery, essential  
9 oils, cosmetics, hair lotions, dentifrices; but not including  
10 polishes for floor, furniture and shoes and leather  
11 dressings."

12 The application now stands in the name of The Condé Nast  
13 Publications Limited. On 23rd January 2004 it was opposed by  
14 United Toiletries & Cosmetics Limited. The Opponent objected  
15 to the inclusion of "soaps, perfumery, essential oils,  
16 cosmetics, hair lotions, dentifrices" in the specification of  
17 the opposed application. It objected under section 5(4)(a) of  
18 the Trade Marks Act 1994 on the basis that it was at the  
19 relevant date, i.e. 28th October 1996, entitled by virtue of  
20 the law of passing off to prevent the Opponent from using the  
21 designation VOGUE as a trade mark in the United Kingdom in  
22 relation to goods of the kind to which the opposition related.  
23 In support of that objection it relied on its own use of the  
24 designation VOGUE as a trade mark for fragrances sold and  
25 supplied in the United Kingdom over a period of approximately

1 12 years commencing in 1984.

2 The Applicant denied that the Opponent had acquired any  
3 protectable rights through use of the designation VOGUE.  
4 There were two dimensions to that denial. First, it was  
5 disputed that the Opponent had actually used the designation  
6 in the United Kingdom to any extent sufficient to invest it  
7 with the right to claim protection under the law of passing  
8 off. Second, it was contended that the Opponent would have  
9 been trading in a misleading and deceptive manner and could  
10 accordingly have had no legitimate basis for claiming relief  
11 in an action for passing off if it had been using the  
12 designation VOGUE as a trade mark for fragrances as asserted  
13 in its grounds of opposition.

14 The latter point was pleaded in paragraph 4 of the  
15 Applicant's counter-statement in the following terms:

16 "If, contrary to the Applicant's submissions, it is  
17 found that damaging confusion of the kind implicitly alleged  
18 by the Opponent's claims in passing off were likely at the  
19 material date, namely the filing date of the Application, such  
20 confusion would have been as a result of the Opponent's  
21 wrongful use of the mark VOGUE in contravention of the  
22 Applicant's registered and common law rights to the mark under  
23 the Trade Marks Acts in force at the relevant time and under  
24 the laws of passing off. Accordingly the use of the mark  
25 VOGUE by the Applicant for any of the goods in the Application

1 was and never has been liable to be prevented by the Opponent  
2 under the law of passing off or any other law and again,  
3 therefore, the grant of the application would not offend  
4 against the provisions of Section 5(4)(a) of the Act or any  
5 other provision."

6 The Opponent filed a total of 14 witness statements in  
7 support of its opposition to the application for registration.  
8 Two of these were witness statements of Peter Jackson, the  
9 managing director of Milton-Lloyd Limited, which was  
10 identified as the company which had effectively managed and  
11 administered the business of the Opponent since 1982.

12 In paragraphs 6 and 7 of his first witness statement  
13 dated 31st December 2004, Mr. Jackson gave evidence to the  
14 following effect:

15 "6. We first used the Trade Mark VOGUE on perfumes in  
16 1982 but the first version did not prove popular. In mid 1984  
17 we launched a new perfume under the Trade Mark VOGUE with a  
18 different design, get-up and logo for the packaging and  
19 marketing material. The product was and still is marketed as  
20 a 50ml spray and a 10ml roll-on. Sales made between 1984 and  
21 1991 were steady but not spectacular. Unfortunately we do not  
22 now have available any records from that period but I  
23 understand that evidence from persons who had knowledge of  
24 such sales will be filed in this opposition in support of my  
25 statement and to provide proof of the date of first use of

1 VOGUE perfumes and their subsequent reputation. For the years  
2 1984 to 1991 I estimate that an average of 2,000 units per  
3 year were sold in the UK from an approximate average total of  
4 100,000 units per year sold internationally.

5 "7. We have records of UK sales of VOGUE perfumes from  
6 1992 onwards, and the number of VOGUE 55ml Parfum de Toilette  
7 sprays sold worldwide during the same period.

8 These were:

	<b>No. of Units sold in UK</b>	<b>No. of Units sold Worldwide</b>
9		
10	1992:	1,044 57,000
11	1993:	2,724 60,000
12	1994:	7,622 89,000
13	1995:	7,004 94,000
14	1996:	12,580 147,000
15	1997:	14,004 110,000
16	1998:	21,540 193,000
17	1999:	27,972 163,000
18	2000:	25,392 146,000
19	2001:	22,572 235,000
20	2002:	29,532 268,000
21	2003:	26,784 277,000
22	2004:	17,136 488,064

23 (to September 2004).

24 "In volume terms, the sale of between 7,000-8,000 sprays  
25 in 1994/5 and 12,500 sprays in 1996 of VOGUE perfume make the

1 brand one of the most substantial selling fragrances in the  
2 UK. In addition, during the period 1994 to the present time  
3 Milton-Lloyd has sold additional other assorted VOGUE branded  
4 10ml roll-on perfumes, 50ml deodorant roll-ons and 75 ml/150ml  
5 body sprays."

6 This was the nucleus of his evidence. In other  
7 paragraphs of his witness statement he referred to the  
8 Opponent's marketing of VOGUE fragrances in the United Kingdom  
9 in narrative terms. His exhibit 3 contained copies of a few  
10 catalogue pages; two of which depicting VOGUE products carried  
11 dates in 1998. His exhibit 4 consisted of an example of the  
12 current box for the Opponent's VOGUE perfume spray.

13 He specifically confirmed that the Opponent had a policy  
14 of not advertising its fragrances, preferring instead to build  
15 its business through trade fairs and by approaching  
16 wholesalers who specialised in perfumery.

17 The remaining witness statements filed on behalf of the  
18 Opponent provided support for the proposition that the  
19 Opponent had obtained and marketed fragrances produced and  
20 presented as VOGUE products. However, they did not, save in  
21 one case, provide evidence of marketing in the United Kingdom  
22 as opposed to any of the various overseas territories to which  
23 the Opponent undoubtedly supplied such products.

24 The one case was the witness statement of Thomas Daniel  
25 dated 6th January 2005. He had worked as a salesman selling

1 the Opponent's products to customers in the United Kingdom  
2 from about October 1984 to March 1986. In paragraph 3 of his  
3 witness statement he said:

4 "I regret that my recollection of experiences of 20  
5 years ago, which are unrelated to my present experience is  
6 rather sketchy. However, I am sure that VOGUE was launched  
7 during my time at MLL. There is no doubt that a MLL/UTC UK  
8 perfumery sales base was successfully achieved, and that from  
9 1984 and for the next two years I earned a living exclusively  
10 selling MLL/UTC perfumes, which I believe include VOGUE in the  
11 UK."

12 Before leaving the evidence given on behalf of the  
13 Opponent, I should refer to a particular matter which strikes  
14 me as significant in terms of the light that it sheds on the  
15 Applicant's position in the present opposition.

16 In paragraph 5 of his first witness statement  
17 Mr. Jackson referred to the fact that in 1997 Condé Nast  
18 Publications, which I take to be the Applicant in the present  
19 proceedings, brought an action for passing off against  
20 Milton-Lloyd Holdings plc, Milton-Lloyd Limited and the  
21 Opponent. The action was evidently intended to prevent the  
22 defendants from marketing VOGUE fragrances. Having been  
23 commenced in the Chancery Division of the High Court under  
24 reference CH 1997-C-No 6766, the action was effectively  
25 abandoned for want of prosecution following representations on

1       behalf of the defendants as to the existence of their claim of  
2       right based on long-standing use of the designation VOGUE in  
3       relation to fragrances. It seems to me that against that  
4       background the Applicant could not realistically have expected  
5       to contest the present opposition without confronting the  
6       Opponent on the claim to which it, the Applicant, had  
7       apparently deferred in the High Court proceedings. The  
8       parties were in head-to-head conflict over that claim and  
9       paragraph 4 of the Applicant's counter-statement was  
10      symptomatic of that being the reality of the situation.

11             Two witness statements were filed in support of the  
12      application for registration. They contained the evidence of  
13      Pamela Raynor, the Applicant's Finance Director and Company  
14      Secretary. In her first witness statement dated 8th November  
15      2005 she set out to establish that the Applicant had at all  
16      material times been entitled to the benefit of a substantial  
17      goodwill and public reputation built up and acquired in its  
18      capacity as publisher of the United Kingdom edition of the  
19      well-known fashion and beauty magazine called VOGUE.

20             The thrust of her evidence appears from paragraphs 16  
21      and 17 of her first witness statement in which she said:

22             "16. I believe that the strong presence of the VOGUE  
23      brand in relation to fashion and beauty has created a climate  
24      in which, if the VOGUE brand had been used for perfumes,  
25      members of the public would have assumed such products were



1 connected with Condé Nast's VOGUE magazine and brand. I think  
2 this situation would have existed in October 1996 and at the  
3 time when as I understand it, United Toiletries say they first  
4 marketed such products, namely in the mid-1980s.

5 "17. For this reason, I cannot accept what I have been  
6 informed is the contention inherent in United Toiletries &  
7 Cosmetics' case namely that they would have had the right in  
8 October 1996 to prevent my company from using the VOGUE mark  
9 for perfumes. Given the intimate link between VOGUE magazine  
10 and fashion and beauty the use of the VOGUE mark for perfumes  
11 would have meant my company, not United Toiletries & Cosmetics  
12 and would continue so to do."

13 It can be seen that her evidence was, in substance,  
14 directed to the case raised in paragraph 4 of her company's  
15 counter-statement.

16 In her second witness statement dated 24th August 2006  
17 she responded to a number of points which had been raised on  
18 behalf of the Opponent by reference to the results of various  
19 trade mark and trade name searches. These included searches  
20 of the listings in specified editions of the Chemist &  
21 Druggist, The Cosmetic International Directory and Industry  
22 Guide, The Cosmetic Bench Reference (Cosmetics and  
23 Toiletries), The Perfume Handbook and The Gower Handbook of  
24 Cosmetic and Personal Care Additives.

25 The searches of the specified editions of those

1 publications had apparently revealed no listings for VOGUE  
2 fragrances marketed by the Opponent. It might reasonably have  
3 been thought that the absence of such listings was a point in  
4 favour of the Applicant and that the point was worth pursuing  
5 by way of a more comprehensive search of trade listings  
6 covering the period from 1984 to 1996. However, the  
7 Applicant's evidence in response made no reference to the  
8 point. Indeed, at the conclusion of the evidence, the  
9 position was that the Opponent's evidence relating to its use  
10 of the designation VOGUE in the United Kingdom since 1984 was  
11 not in any respect contradicted by anything said or shown in  
12 the evidence filed on behalf of the Applicant. Consistently  
13 with its diffident approach to the Opponent's evidence of use,  
14 the Applicant remained entirely silent on the subject of the  
15 abandoned action for passing off which had been commenced in  
16 the Chancery Division of the High Court in 1997.

17 The opposition proceeded to a hearing before Mr. George  
18 Salthouse acting on behalf of the Registrar of Trade Marks on  
19 26th September 2006. There was no request for  
20 cross-examination of any of the witnesses who had provided  
21 statements on behalf of the Opponent and there had at no stage  
22 been any request for disclosure of the documentary records  
23 referred to in paragraph 7 of Mr. Jackson's first witness  
24 statement or any other documents that could have been expected  
25 to clarify the position with regard to the use upon which the

1 Opponent relied.

2 It is clear, and it was confirmed at the hearing before  
3 me, that the Applicant took the view that it was for the  
4 Opponent to prove its case without any assistance from the  
5 Applicant. Disclosure and cross-examination were seen as ways  
6 in which the Opponent might be provided with an opportunity to  
7 strengthen its case and were eschewed for that reason.

8 The Applicant fought the hearing on the basis that the  
9 evidence filed by the Opponent was not sufficient to establish  
10 a prima facie basis for objection under section 5(4)(a). The  
11 evidence was not said to be untrue. It was said to be  
12 expressed in terms which were simply too elliptical and  
13 imprecise to provide a sound basis for accepting that the  
14 Opponent could claim to have acquired a protectable goodwill  
15 through use of the designation VOGUE in relation to fragrances  
16 in the United Kingdom between 1984 and 1996.

17 The evidence was also said to be insufficient on any  
18 view to justify exclusion of "cosmetics, hair lotions,  
19 dentifrices" from the specification of the opposed application  
20 for registration. The Hearing Officer was not pressed to  
21 reject the opposition on the basis put forward in paragraph 4  
22 of the Applicant's counter-statement.

23 In a written decision issued under Reference 0-298-06 on  
24 19th October 2006 the Hearing Officer upheld the opposition in  
25 relation to all of the goods in contention. He held that the

1 evidence on file was sufficient to entitle the Opponent to  
2 succeed:

3 "32) The opponent claims to have been using its mark  
4 'VOGUE' on perfume since the mid 1980s, with a false start in  
5 1982 and a successful re-launch in 1984. The opponent has  
6 supplied sales figures for the UK which whilst relatively  
7 modest (averaging approximately 4,600 units per annum for the  
8 four years 1992-1995 inclusive) are still substantial enough  
9 to provide goodwill. The opponent also sold roll-on perfume,  
10 deodorant and body spray under the mark although sales figures  
11 are not provided for these items. The opponent has also  
12 provided witness statements from suppliers of the bottles and  
13 components, packaging, the actual perfume and the roll-on  
14 perfume. All state that they supplied goods for a product  
15 called VOGUE. The opponent has also provided statements from  
16 salespersons involved in selling the product, both in the UK  
17 and also world-wide. ....

18 "36) In order to succeed under this head of opposition,  
19 the opponent must show that as at the date of the application,  
20 28 October 1996, it could have prevented use of the  
21 applicant's trade mark under the law of passing off. In my  
22 opinion the opponent has shown that at the relevant date it  
23 enjoyed goodwill and reputation in its mark 'VOGUE' in  
24 relation to perfumes. ....

25 "38) Clearly, the opponent's reputation is for perfumes

1 which are identical goods to 'perfumery' whilst being similar  
2 with respect to 'essential oils, soaps, cosmetics, hair  
3 lotions and dentifrices'. Mr. Bartlett sought to distinguish  
4 between the products, referring to the fact that perfumes are  
5 sometimes held behind the counter in chemists as they are of  
6 high value, a point I accept although I have seen cheaper  
7 varieties on normal shelves in chemists shops. He also sought  
8 to contend that the perfume market is 'quite apart' from the  
9 colour cosmetics market, the toothpaste market and the hair  
10 and body lotion market. Again, I accept that there are  
11 differences but overall the goods must be considered similar.

12 "39) The applicant has sought to register the mark VOGUE  
13 in a plain font in capital letters. The opponent has shown  
14 how it has used the mark, and the use has been consistent.  
15 The mark as used by the opponent begins with a large letter  
16 'v' and the whole mark is slightly stylised. However, it is  
17 unquestionably the word VOGUE and would not be mistaken for  
18 anything else. The applicant has not challenged the  
19 contention by the opponent that the mark used is the word  
20 VOGUE. The two marks are extremely similar, the slight  
21 stylisation does not affect the way that the average consumer  
22 would view the mark.

23 "40) In my opinion, the similarities between the marks  
24 and the goods are such that members of the relevant public  
25 would believe that the goods offered by the applicant are

1 goods of the opponent or that the businesses are connected."

2 Having referred to the judgment of the Court of Appeal  
3 in *Draper v Trist and Trisbestos Brake Linings Ltd* (1939) 56  
4 RPC 429 in relation to the likelihood of damage, he went on to  
5 find that all requirements for liability in passing off could  
6 be taken to have been established in the present case. He  
7 ordered the Applicant to pay £2,000 to the Opponent as a  
8 contribution towards its costs of the Registry proceedings.

9 In the course of dealing with the Applicant's  
10 submissions as to the inadequacies of the Opponent's evidence  
11 the Hearing Officer said this:

12 "34) The applicant also questioned whether the comments  
13 of trade suppliers should be accepted as they were in a  
14 contractual relationship with the opponent and had no  
15 knowledge of whether the end product was being sold in the UK  
16 and under what mark it was being sold. I accept that the  
17 statements by the suppliers do not, by themselves, amount to  
18 evidence of sales of the product in the UK. But they do add  
19 to the overall story, and can be viewed as evidence that  
20 within the Fragrance industry in the UK the opponent had a  
21 reputation for perfumes under the VOGUE mark. Even if all of  
22 the output were sold overseas, which Mr. Jackson states was  
23 and is not the case, then the opponent would have a  
24 protectable goodwill in the UK. In *Macy's Trade Mark* [1989]  
25 RPC 546 it was held that '(2) the effect of Section 31 is that

1 the marking of goods for export is qualifying use for Section  
2 11 of the 1938 Act.' I accept that this is an 'old Act' case.  
3 However, I believe that the underlying principles remain  
4 applicable."

5 I understand that these observations relating to the  
6 effect of section 31 of the Trade Marks Act 1938 and the  
7 decision in *Macy's Trade Mark* were made by the Hearing Officer  
8 on his own initiative and not on the basis of any submissions  
9 addressed to him on behalf of the parties. I have  
10 considerable doubts as to the correctness of the way in which  
11 the distinction between foreign and domestic use was treated  
12 as immaterial in this paragraph of the decision.

13 However, the point has not been pursued in argument  
14 before me and the Hearing Officer's observations upon it were  
15 obiter being in terms addressed to a hypothesis "**which**  
16 **Mr. Jackson states was and is not the case**". I therefore  
17 propose to say nothing further about it.

18 The Applicant now appeals under section 76 of the 1994  
19 Act, contending in substance that the Hearing Officer's  
20 decision should be set aside because it was not open to him on  
21 the basis of the evidence on file to conclude that the  
22 Opponent had a sustainable objection under section 5(4)(a).

23 This contention was developed in argument at the hearing  
24 before me. However, I remain unpersuaded that the Hearing  
25 Officer reached a conclusion which was not open to him. The

1 evidence that was before him was, as I have already indicated,  
2 in all material respects uncontradicted. It was not  
3 challenged by cross-examination or put to the test of an order  
4 for production of documents. In the circumstances the Hearing  
5 Officer had no alternative but to accept the evidence and  
6 assess it for what it was worth, bearing in mind the  
7 criticisms which the Applicant had made of it. That is what  
8 he did.

9 As I pointed out in the *WILD CHILD* case, the Registrar  
10 is often required to act upon evidence that might be regarded  
11 as less than perfect when judged by the standard applied in  
12 High Court proceedings. That is also on a daily basis the  
13 position in civil tribunals up and down the country. It does  
14 not follow that assertions without any real substantiation  
15 must be accepted as sufficient to support the contentions of  
16 those who put them forward. It is none the less necessary to  
17 assess the evidence that has been presented and decide whether  
18 it is or is not sufficient to enable the decision-taker to  
19 reach a conclusion on the civil standard as to what the  
20 outcome should be.

21 Moreover, as confirmed by the Court of Appeal in  
22 *Stephens v Cannon* [2005] EWCA Civ 222 (14th March 2005),  
23 a decision-taker should not resort to the burden of proof for  
24 the purpose of determining the rights of the parties in civil  
25 proceedings unless he or she cannot reasonably make a finding



1 in relation to the disputed issue or issues on the basis of  
2 the available evidence, notwithstanding that he or she has  
3 striven to do so.

4 I accept that the evidence filed on behalf of the  
5 Opponent is in varying degrees open to the criticisms to which  
6 it was subjected before the Hearing Officer and before me on  
7 appeal. Nevertheless, on applying the principles I have  
8 outlined above, I cannot say that the Hearing Officer was not  
9 entitled to find that the evidence was sufficient to support  
10 an objection under section 5(4)(a).

11 With regard to the scope of that objection, I think that  
12 the Applicant is on much stronger ground. The evidence and  
13 findings did not in my view entitle the Opponent to a broad  
14 scope of protection. It appears to me that the decision below  
15 entered the realms of conjecture when it upheld the Opponent's  
16 objection in relation to the inclusion of "cosmetics, hair  
17 lotions and dentifrices" in the opposed application. I am  
18 therefore prepared to allow the appeal to that extent.  
19 However, in relation to the main issue the appeal will be  
20 rejected for the reasons which I have given. That is my  
21 decision on this appeal.

22 Would you like to address me on costs?

23 MR. BARTLETT: I do not know whether it is for me to speak first  
24 on the issue of costs, sir.

25 THE APPOINTED PERSON: You would be asking for a discount.

1 MR. BARTLETT: I certainly would, sir.

2 THE APPOINTED PERSON: And some allowance on this appeal.

3 MR. BARTLETT: I would think it equitable that the costs of the  
4 entire action, both below and here, be split between the  
5 parties; in other words, no order should be made as to costs.

6 THE APPOINTED PERSON: What do you say, Mr. Edenborough?

7 MR. EDENBOROUGH: Given that the Applicant has tried to sue the  
8 Opponent in particular for its use upon perfumes, it knew or  
9 at least thought it knew that the Opponent had used in regard  
10 to perfumes. It also presumably had done some work before it  
11 issued the proceedings in 1997 to ascertain the scope of the  
12 use by the Opponent, also, coupled with the fact that this  
13 opposition was very focused in the sense that, first, only one  
14 ground was relied upon (it was not a kitchen sink type  
15 pleading), and, secondly and in particular, the opposition was  
16 against only a certain sub-set of the goods for which the  
17 Applicant sought registration.

18 In my submission, what the Applicant should have done is  
19 to assess the situation realistically and come back in essence  
20 at an earlier stage with respect to a sensible offer. Now, it  
21 did not do that. Rather, it went hell for leather and  
22 basically tried to get the whole thing, and it has maintained  
23 that position in essence throughout.

24 The argument with respect to the scope of the  
25 specification both here and below has occupied a very much

1 smaller part of a number of things: first, the skeleton  
2 argument, and actually the oral submissions, and the decision  
3 -- both your decision and below. So, therefore, if there were  
4 a discount, then that discount actually ought to be quite  
5 small so as to reflect the much smaller scope and ambit and  
6 time and effort that has been taken up in considering that  
7 part of the case.

8 My first submission is that there should not be any  
9 discount because, in essence, if the Applicant had acted in  
10 a sensible manner, it would have come back with a proper  
11 counter-offer when it saw the focused opposition in the first  
12 place.

13 THE APPOINTED PERSON: Would you like to come back on that?

14 MR. BARTLETT: By the same token the Opponent levelled its  
15 opposition against all of the personal products listed in the  
16 application. The fact that it did not level its opposition at  
17 bleaching and cleaning preparations -- those kinds of domestic  
18 products -- is neither here nor there. The main focus of its  
19 attack was on all of the products that were really at stake in  
20 this application and it has failed to make its opposition good  
21 by the imperfect quality (to which you yourself alluded) of  
22 its evidence. In those circumstances I think it would be, in  
23 my submission, punitive to the Applicant in these proceedings  
24 to have to suffer the consequences of that failure.

25 THE APPOINTED PERSON: The Hearing Officer ordered the Applicant

1 to pay the Opponent £2,000 as a contribution towards its costs  
2 on the basis that the Opponent had been 100% successful in its  
3 opposition. In the light of the decision I have just given,  
4 it is correct, I think, to recognize that the Opponent was to  
5 a lesser extent than 100% successful. That should, I think,  
6 lead to a proportionate reduction in the costs award below.  
7 I think the right order is to reduce the award of £2,000 made  
8 by the Hearing Officer to a sum of £1,500.

9 Applying a similar discounted approach in relation to  
10 the costs of this appeal before me, I think that the right  
11 thing to do is to order the Applicant to pay the Opponent the  
12 sum of £1,100 in respect of its costs of the appeal. Both of  
13 those sums should be paid within a period of, I will say, 21  
14 days from today's date. Does that conclude it? I think it  
15 does.

16 MR. EDENBOROUGH: Yes.

17 THE APPOINTED PERSON: Thank you both very much indeed and thank  
18 you for coming back at four o'clock. It was very helpful to  
19 me that you did.

20 MR. EDENBOROUGH: Thank you very much, sir.

21 MR. BARTLETT: Thank you very much.

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