

O-088-11

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION No. 2421827
IN THE NAME OF FON WIRELESS LTD FOR THE TRADE MARK**

FON

IN CLASSES 9, 38 AND 42

**AND IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF
INVALIDITY THERETO UNDER NO 83606
BY NFON AG**

TRADE MARKS ACT 1994

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In the name of Fon Wireless Ltd for the trade mark

FON

and

**IN THE MATTER OF an application for a declaration of invalidity thereto
under No. 83606 by nfon AG**

BACKGROUND AND PLEADINGS

1. The registered trade mark the subject of these proceedings stands in the name of FON Wireless Ltd of 8 Clifford Street, London W1S 2LQ (hereafter "Fon"). The mark was applied for on 15th May 2006 and completed its registration procedure on 18th May 2007. The trade mark comprises the word FON and the goods and services for which it is registered are as below:

Class 09:

Communications software, wireless communication systems and devices, transmission equipment for communication via the Internet, on-line or via a computer network.

Class 38:

Provision of communications services.

Class 42:

Design and development of communications software and equipment

2. On 21st October 2009 nfon AG of Leonrodstrasse 68, 80636 Munich, Germany (hereafter "nfon") applied for a declaration of invalidity in respect of Fon's registration in its entirety. The grounds of invalidity are as follows:-
 - under section 3(1)(b), in that the mark is devoid of distinctive character as it consists exclusively of the word 'FON', being the German word for 'phone'. In relation to the goods and services of the registration this would be seen as descriptive and otherwise would be seen as 'origin neutral' and non-distinctive;
 - under section 3(1)(c), in that the mark consists exclusively of a sign or indication which may serve in trade to designate the kind, quality, intended purpose, value, geographical origin, the time of production of goods or rendering of services because it consists exclusively of the German word

'FON', being the German word for 'phone', which would be descriptive of the goods and services; and

- under section 3(1)(d), because the mark has become customary in the current language or in the bona fide and established practices of the trade, because in German business language 'FON' is very often used in letterheads and other business stationery to indicate a phone number.
3. Fon filed a defence and counterstatement in which they put nfon to strict proof of all allegations and made no admission as to the meaning of the word 'FON' in German, nor as to the alleged use of the term in Germany, nor as to the relevance of either the alleged meaning or use of the term.
 4. Evidence was filed by both parties which I shall summarise below. Neither party requested to be heard but both provided submissions and both parties also requested costs.

Evidence of the applicant for a declaration of invalidity

5. This comprises a witness statement dated 29th March 2010 from Terry Rundle who is a registered trade mark attorney with the firm Wilson Gunn, acting on behalf of the applicant. Exhibit TRR-1 comprises a copy of a decision by the Fifth OHIM Board of Appeal (the "OHIM Board") dated 29th April 2008 in Case R 1744/2007-5. This case concerns the same applicant, Fon, the same mark 'FON', the same goods and services, and, in large part, equivalent grounds of opposition or invalidity, namely those based upon non-distinctiveness and/or descriptiveness. In its discussion in relation to the descriptiveness objection, the OHIM Board says at para 18 that the mark applied for is made up of a German word, and accordingly the relevant public is German speaking. Paras 19, 20 and 21 then read:

"19. The Board first notes that the sign 'FON' is the German way of writing 'PHON' which is derived from the old Greek word 'PHON' which means sound, and which is used in many modern words as a prefix or suffix, as for instance in '*Phonetik, Phonogramm, Phonotek, Grammophon* and *Telefon*'. Lately 'FON' has also been used in German as the abbreviation in written language, for example, on business cards as indicated by the third party, for '*Telefon*' (Telephone). The use of 'Fon' can be compared to the use of the word 'Fax', instead of 'Telefax' in German.

20. The term is neither unusual nor striking, nor even grammatically incorrect. It is not a misspelling either, as the term appears as such in German dictionaries of which a copy has been submitted.

21. When used for the goods and the services applied for, it describes their nature or their purpose, namely that they are intended to be used by

phone or that they are used for phones, they even include the design and development of phones and related communication software.”

6. Mr Rundle says it is not only in Germany where the word ‘FON’ is extensively used, but also in the UK where it is used on websites and other advertising materials which contain phone numbers, both in and outside Europe. Exhibit TRR-2 comprises a selection of websites of companies showing the use of ‘FON’ as a shortened form for the German word ‘Telefon’, meaning ‘telephone’. The first website is that of Dictanet Dictation Systems (“Dictanet”) and shows a series of UK addresses to which customers of the systems can refer if they need support. The contact details of those addresses include the word ‘FON’ as in, eg “Fon +44 (1489) 609010”. It is also clear from the details at the bottom of the web page exhibited that Dictanet is based in Berlin, Germany.
7. The second example comprises a list of locations for a company called Solarlux, including in German, UK, US, Netherlands and Switzerland. All the contact details include the designation ‘FON’, when referring to the phone details. Solarlux are identified as ‘Solarlux GmbH’ at the bottom of the web page.
8. The third example comprises search results on the Dooyoo price comparison site. The search is in relation to Youth Hostels in the Middle East. The contact details of each of the Youth Hostels identified contains the word ‘FON’.
9. The fourth example comprises the web pages of Compass India (UK) Ltd (“Compass”), a hospitality company providing ‘high end’ travel services, notably in connection with India. The contact details of Compass include the word ‘FON’.
10. Finally, there is the web page of a company called Nanoboron, who appear to be an online retailer. They also have an address in London and telephone number which is indicated by the word ‘FON’. It may be noted that the English word ‘phone’ also appears on the web page at the bottom in the context of the provision of contact details.
11. Exhibit TRR-3 comprises a print from the online, user-generated encyclopedia Wikipedia. It shows a map of Europe indicating knowledge of the German language. In the adult population of the UK, knowledge of German is put at 5-9% of the population. A graph (also from Wikipedia) is shown at Exhibit TRR-4 showing the same statistics. The data is said to be taken from an EU survey published on the official website www.ec.europa.eu.
12. Mr Rundle then says he has obtained from CILT, the National Centre for Languages, the number of pupils in England that studied German in

secondary schools during the period 1994-2009. Exhibit TRR-5 shows a graph obtained from the CILT website showing the trend in language study for the period. In relation to German, the graph shows the numbers studying German in 1994 was 110,000 which rose to 130,00 in 2001, but from that year it started to decline to around 68,300 in 2009.

13. Finally, Mr Rundle says the numbers of visitors from the UK to Germany in 2006 were 2,106,669, falling to 1,749,663 in 2009. These figures are obtained from the German National Tourist Office and are shown on a table at Exhibit TRR-6.

Evidence of the registered proprietor

14. This comprises a witness statement dated 1st June 2010 from Mr Timothy Pendered, a patent and trade mark agent with the firm R G C Jenkins, acting for the registered proprietor. Exhibit TGP-6 provides details of the ownership of the websites featured in Mr Rundle's Exhibit TRR-2, these details taken from the WHOIS database, provided by Nominet UK. This shows, in respect of all the websites exhibited at TRR-2, that they are registered in the names of non-UK companies, corporations or individuals. Dictanet, Solarlux and Nanoboron are all German. The registrant's address for Dooyoo is in Turkey. The registrant's address for Compass is in India.
15. Exhibits TGP 1-5 show additional pages relating to each of the websites of Mr Rundle's Exhibit TRR-2. In particular, it is noted by Mr Pendered that use of 'FON' is not consistent or uniform, eg Exhibit TGP-1 comprises Dictanet pages which show the contact details for its partners using the term "Telefon", not "FON". That is evidently true also for the Nanoboron site which also uses the English word "phone", as shown on Exhibit TGP-5.
16. At Exhibit TGP-7 there is print out of two articles by BBC News on the level of British worker's knowledge of foreign languages. Described by the Former Chief Inspector of English Schools as a nation of "barbarians", the first article draws on research published in 2004, which suggested that fewer than 1 in 10 of British workers could speak a foreign language. In a European Commission survey in 2001, the first article reports, it was found that 65.9% of UK respondents only spoke their native tongue – by far the highest proportion among the EU countries polled. In the second article by BBC News, it is said that companies language skills are increasingly vital with French, Spanish and Japanese being the most needed.
17. Finally, Mr Pendered submits that Mr Rundle's evidence of visitor numbers to Germany is meaningless in the absence of specific information on the actual persons involved, namely whether they are Britons, whether they are Britons with any understanding of German, and whether the figures include repeat visitors.

DECISION

Preliminary Issue

18. Paragraphs 9 and 15 of the written submissions supplied by the attorneys for the applicant for invalidity refer to evidential material which has not been properly put in evidence prior to the submissions. Specifically, the applicant's agent has conducted a GOOGLE search on the words "fon site:co.uk" and supplied the results of that search as an attachment to the submissions. The aim is to show the existence of UK businesses trading under (or using) names featuring the word 'FON' as an obvious equivalent of the English word 'phone'. There are firms such as 'FON-A-COACH', 'FON-A-CAB' and 'FON-A-CAR'. There is also evidence that the word 'FON' is used as part of a larger trade mark, as in 'AVM FRITZ!BOX FON BRAND' or 'BEA-FON', to refer to mobile phones.
19. Unsurprisingly, attorneys for the registered proprietor object to this evidence.
20. Whilst I agree with the attorneys for the registered proprietor as, (a) the material has not been supplied in the proper evidential format set out and permitted by rule 64 of the Trade Marks Rules 2008 ("the rules"), and (b), no leave to file such additional evidence has been sought, which would have included, eg reasons for its lateness, its relevance and potential lack of prejudice to the registered proprietor, I nevertheless intend to refer to this evidence in my decision below. The evidence will be referred to as the 'additional evidence', and my intention is to show that even had the evidence been properly adduced and discretionary leave given to file, it would not have altered my overall conclusion on this case.

The law

21. Section 3(1) (b) (c) and (d) of the Act are relevant in invalidation proceedings in view of the provisions of Section 47(1) of the Act, the relevant parts of which read:

"47. - (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration). Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

...

(5) Where the grounds of invalidity exists in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.”

Section 3(1) (b) (c) and (d) of the Act read:

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

(a) ...

(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 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.

22. I may just mention before starting my analysis that I am proceeding on the basis that if the mark were the English word, ‘phone’, it would be objectionable for all the goods and services of the registration. In other words, I do not intend in this case to focus upon (and the case does not turn upon) any argument as to the nature of the goods/services, and whether the grounds of objection apply to all or some only of those goods/services. The argument in this case is one of linguistics only.
23. My final introductory comment relates to the relevant date at which the assessment as to whether any, or all, the grounds of objection is, or are, made out. This is the date of registration of the mark, being 15th May 2006. I do not understand however, the registered proprietor to be contending that the evidential material filed by the applicant is, by virtue of the relevant date only, immaterial or otherwise weakened. The focus of the registered proprietor is not the date the evidence was collected, but rather other matters, with which I shall deal in due course.

Section 3(1) (c)

24. There are now a number of judgments from the Court of Justice of the European Union (CJEU) which deal with the scope of Article 3(1) (c) of First Council Directive 89/104 (recoded and replaced by Directive 2008/95/EC on 22 October 2008) and Article 7(1) (c) of the Community Trade Mark Regulation (“the CTMR”), whose provisions correspond to Section 3(1) (c) of the UK Act. The following main guiding principles, relevant to this case, are noted below:

- subject to any claim in relation to acquired distinctive character, signs and indications which may serve in trade to designate the characteristics of goods or services are deemed incapable of fulfilling the indication of origin function of a trade mark – *Wm Wrigley Jr & Company v OHIM* – Case 191/01P (*Doublemint*) paragraph 30;
- thus, Article 7(1)(c) (Section 3(1)(c)) pursues an aim which is in the public interest that descriptive signs or indications may be freely used by all – *Wm Wrigley Jr v OHIM*, paragraph 31;
- Section 3(1) (c) of the Act excludes signs which may serve, in trade, to designate the kind of goods or other characteristics of goods. It follows that in order to decide this issue it must first be determined whether the mark designates a characteristic of the goods in question;
- it is not necessary that such a sign be in use at the time of application in a way that is descriptive of the goods or services in question. It is sufficient that it could be used for such purposes – *Wm Wrigley Jr v OHIM*, paragraph 32;
- it is irrelevant whether there are other, more usual signs or indications designating the same characteristics of the goods or services. The word ‘exclusively’ in paragraph (c) is not to be interpreted as meaning that the sign or indication should be the only way of designating the characteristic(s) in question – *Koninklijke KPN Nederland NV and Benelux-Merkenbureau, Case C-363/99 (Postkantoor)*, paragraph 57;
- there must be a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of the category of goods and services in question or one of their characteristics – *Ford Motor Co v OHIM*, General Court Case T-67/07;
- a sign’s descriptiveness may only be assessed, first, in relation to the goods or services concerned and, secondly, in relation to the perception of the target public, which is composed of the consumers of those goods or

services – *Ford Motor Co v OHIM (as above)*.

25. In addition to this broad guidance, the CJEU, in Case C-421/04 *Matratzen Concord AG v Huckla Germany SA (“Matratzen”)* has said, in connection with the registration of foreign words specifically:

“Article 3(1)(b) and (c) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks does not preclude the registration in a Member State, as a national trade mark, of a term borrowed from the language of another Member State in which it is devoid of distinctive character or descriptive of the goods or services in respect of which registration is sought, unless the relevant parties in the Member State in which registration is sought are capable of identifying the meaning of the term”.

26. This has been interpreted and applied in Registry Examination Guidance (relied upon by nfon) as follows:

“... there are no grounds for refusing registration of trade marks on the basis that they are relevantly descriptive or non-distinctive in a language which is unlikely to be understood by the relevant trade in the UK or by the relevant average consumer UK consumer of the goods/services in question. Consequently the registrar will only object to the registration of word marks which are likely to be recognised as a description of a characteristic of the goods or services (or otherwise be descriptive of the goods/services) in the application.

In general, the most widely understood European languages in the UK are French, Spanish, Italian and German. The majority of UK consumers cannot be assumed to be fluent in any of these languages, but most of them will have an appreciation of some of the more common words from these languages.

The more closely a non-English descriptive word resembles its English equivalent, the more likely it is that its descriptive significance will be understood by the consumer.”

27. My starting point is that it is very important to recognise that Registry guidance is just that, simply guidance; in this case to assist in the prima facie examination of marks. Under no circumstances can it be allowed to displace, or otherwise colour, evidence, or persuasive submission, filed in an inter partes dispute such as this. In particular in this case, it is necessary to say that where that guidance speaks of the assumed knowledge of the UK consumer of foreign languages and also says that the more closely a non-English word resembles its English equivalent the more likely its descriptive significance will be understood, these are both broad assumptions made to assist in prima facie examination, and as such have to be tested against

evidence presented in an inter partes case and all the specific circumstances of that case.

28. It is also important to recognise of course, that any view arrived at by the OHIM Board in the specific decision raised before me is not binding upon me, and in any event only makes conclusions about the German speaking consumer, and not a predominantly English speaking UK consumer.
29. Under section 3(1)(c), the nub of the argument revolves around the likely reaction of the average UK consumer on seeing the word 'FON' *solus* used in connection with the goods and services of the application. I believe there is also a second question which relates to whether there is, otherwise, a need to keep the term 'free for others' to use in the UK. To address the first question, or to put it slightly differently, does the average consumer in the UK see the word 'FON' as a descriptive term, being the German written abbreviation for 'phone', or would they see it as a fanciful word and thus non-descriptive? I should mention that, although I use the term 'non-descriptive' in the above question, in fact, section 3(1)(c) actually does not talk of 'descriptiveness' at all (a fact often overlooked), but rather, of the 'designation' of a characteristic. In this case nothing hinges however on this particular distinction.
30. The answer to my question is plain to me; namely that the average consumer in the UK will see the word 'FON' as a fanciful word. They will not pause for a second to ponder whether it is in fact is the German word, still less, a written abbreviation, for 'phone', and therefore merely descriptive. I would add at this point that I have evaluated exactly who the relevant consumer in the UK in this case is going to be, and that will be a mix of the general public for the goods and services. Business users will also comprise the average consumer, notably in respect of the services in Class 42.
31. I should also add that I am reinforced in my view above by the fact I believe most consumers in the UK will recognise the correct spelling of the word 'phone' and appreciate that 'FON' is different. By way of simple analogy, people know 'car' is spelt 'C-A-R' and not 'K-A', and thus 'KA' presents, at least visually and possibly aurally as well, as a fanciful word, capable of registration and function as a trade mark. It is the same with 'FON', and I would add that its visual fancifulness is amplified by aural pronunciation, which is likely to be entirely different to the English word, 'phone'. 'Phone' is pronounced 'fone' in English. In English, 'FON' is likely to be pronounced 'fon', as in 'don' (with a short 'o'), which is markedly different.
32. In arriving at my view however, I also need to pass comment on the evidence filed by nfon which has sought to show that the word 'FON' has seeped into business usage, and therefore consumer recognition, such that, in effect, it may have lost its 'fancifulness'. This is my paraphrase of the argument being

put, and it rather sounds like the paraphrase of a section 3(1)(d) and not (c) ground. Nonetheless I must deal with it.

33. The evidence of such 'seepage' into UK consumer recognition is poor to say the least. What we have is a collection of websites which, though accessible to web users in the UK, are in the ownership of non-UK, predominantly German or other overseas businesses. Such companies will use the designation 'FON' (naturally, because of who they are), but it cannot be said that as a result, the average UK consumer has been educated, from his or her linguistically challenged status, to the point of recognition of German words, let alone written abbreviations. In the case of Dictanet, it is noted even they do not use the word 'FON' consistently, also using the word 'telefon' on their website.
34. Evidence about the knowledge of German amongst students (Exhibits TRR 3-6) in the UK and the number of visits made by tourists from the UK to Germany struggles to be classified even as 'weak'. Firstly Mr Pendered criticises its source, which is Wikipedia, the well known user generated encyclopedia. Having said that, it nonetheless appears that certain of the evidence, albeit published on Wikipedia, is based on EU survey material, giving it somewhat more credibility. Mr Pendered also says that it is unlikely that the teaching of German in schools for example would include the teaching of slang or abbreviation.
35. On closer inspection, such evidence actually shows a substantial *decline* in the numbers of people learning German from 2001, but most crucially, it is impossible to say, or even gauge, from this evidence exactly (or even approximately) how many UK consumers will identify the term 'FON' *solus* as a German written abbreviation for 'phone'. I place emphasis on the word 'solus' (again) because most people, even if they do not speak German, will, upon seeing the word 'FON', used before a series of numbers and other contact details, inevitably conclude that it means 'phone' in English, without necessarily recognising from what particular language 'FON' is derived. But the mark applied for has no other matter in it, except the word, 'FON', and any assessment of notional and fair use of that mark can only have regard to the mark as applied for.
36. The same 'contextual' point can be made of the additional evidence filed by nfon. What that additional evidence shows is that there is a business in Nottingham that calls itself 'FON-A-CAR'. A business in Northern Ireland called 'FON-A-CAB', and possibly other businesses elsewhere trading under the name 'FON-A-CAR', or alternatively 'cab' or 'coach'. It also says that there is one, perhaps two examples of companies that may refer to their phones or phone equipment by use, but not sole use of the word 'fon'. Taking the latter usage first, the terms 'Bea-fon S20 Black Mobile Phone' or 'AVM FRITZ!Box Fon Brand', far from showing that 'FON' would be understood to be

descriptive, actually shows it to be an integral part of larger *trade marks*. As regards the former usage, in connection with cab and coach firms, this shows the word 'FON' operating within the context of larger trade marks connected with services far removed from those applied for this case. The additional evidence filed by nfon, far from demonstrating the UK consumer is familiar with the term 'FON' actually reinforces my view that it can serve a trade mark function, on its own or as part of a larger trade mark, for the goods and services applied for.

37. I should just mention that in the additional evidence, there are other hits which show use of 'FON', followed by a number, some of these companies may be German and I would have to have more information on any others for such evidence to have any weight. So, as regards the additional evidence, whilst it is strictly speaking inadmissible, even if it had been presented in correct format it would not have altered my view in any event.

38. I did mention in para 30 above that there was a second question which reflects the underlying public interest behind the section 3(1)(c) ground, namely whether there is a need to keep the word 'FON' free for others (ie manufacturers and other traders) to use in the UK. I do not find any such a case is made out either. Such use of 'FON' as has been shown, is incidental rather than systemic; it is in a particular context and used by mostly German companies and finally, it does not specifically go to the goods and services of the registration. In all the circumstances, I do not find any need to keep the word 'FON' free to use for other traders.

39. I therefore conclude, as regards section 3(1)(c) of the Act, this ground fails and the registration is not invalid on that ground.

Section 3(1)(d)

40. The conclusion and reasons for that conclusion I have come to under section 3(1) (c) can be said to determine my finding under section 3(1)(d) as well, but for the sake of completeness I shall give my view on this section as well, independently of section 3(1) (c).

41. Section 3(1) (d) of the Act requires consideration of the nature of use in the market place and a finding that the sign has become customary in the current language or in the *bona fide* and established practices of the trade.

42. It is established that reference in Section 3(1) (d) of the Act to being "customary in the current language" does not relate to use by the relevant trade but to the perception of the relevant public (see *Merz & Krell GmbH & Co.* [2001] ECR I-6959, para 41, and the comments of Ruth Annand, sitting as the Appointed Person in *STASH* (BL O-281-04), para 30). In the current proceedings, there is no evidence whatsoever on how the relevant consumer

views the term 'FON' and as such, the opposition under Section 3(1) (d) cannot succeed on this basis.

43. The second limb of Section 3(1) (d) is that the term has become customary in the bona fide and established practices of the trade". This is patently not made out: (a), as the website evidence relates in the main to German companies who in one case at least use the word 'FON' interchangeably with 'telefon', (b), does not comprise usage of the word 'FON' solus but instead, it is followed by telephone numbers, (c), the evidence does not come from undertakings in the same field as the goods and services of the registration, and (d), the evidence cannot be said to show genericism in any event, by which I mean a selection of just five websites located cannot be said to indicate genericism. As far as the additional evidence is concerned, this also falls well short of showing genericism; a couple of examples of trade mark usage (as part of larger marks) in connection with mobile phones or communication equipment, plus a number of examples of incorporation into larger marks in the realm of cab, car or coach hire does not amount to genericism.

44. I conclude then, that the ground under section 3(1)(d) of the Act also fails and the registration is not invalid on that ground.

Section 3(1)(b)

45. As is recognised, section 3(1)(b) can be broader in scope and application than both sections 3(1)(c) and (d), and as such it needs to be considered independently. Having said that it is plain in this case that my determinations under section 3(1)(c) and (d) in effect determine this particular case under section 3(1)(b). Although it is perfectly possible for section 3(1)(b) to encompass in its scope marks which, whilst not descriptive or generic are nonetheless devoid of distinctive character, this is not the case here. Having concluded that this mark is not descriptive or generic in nature, such a finding effectively determines the question whether it is otherwise devoid of distinctive character. I have already concluded that the average UK consumer will see 'FON' as a fanciful word and it is thus not devoid of distinctive character.

46. I conclude then that the ground under section 3(1)(b) of the Act also fails and the registration is not invalid on that ground.

Overall conclusion

47. None of the grounds of a declaration of invalidity have been made and out and the registered proprietor is thus entirely successful in defending the registration.

Costs

48. FON Wireless Ltd has been totally successful in defending against the application for a declaration of invalidity. Accordingly, it is entitled to a contribution towards its costs and neither party sought costs off the normal scale. In the circumstances I award FON the sum of £1400 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

1. Preparing counterstatement and considering statement - £300
2. Preparing evidence and considering evidence of the other side-
£700
3. Preparing submissions - £400

Total £1400

49. I order nfon AG to pay FON Wireless Ltd the sum of £1400. The sum should 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 day of 02 March 2011

**Edward Smith
For the Registrar
The Comptroller-General**