

O-075-13

**IN THE MATTER OF THE TRADE MARKS ACT 1994**

**-and-**

**IN THE MATTER OF APPLICATION NO. 2515338 in the name of KURT  
GEIGER LIMITED**

**-and-**

**IN THE MATTER OF OPPOSITION NO. 99854  
BY A-LIST CORPORATE LIMITED**

**APPEAL TO THE APPOINTED PERSON FROM THE DECISION OF BEVERLEY  
JONES , HEARING OFFICER, ACTING ON BEHALF OF THE REGISTRAR OF  
TRADE MARKS DATED 30<sup>TH</sup> MAY 2012**

**DECISION**

**Introduction**

1. The trade mark application under opposition is in the name of Kurt Geiger Limited. It is for the following device, which I shall refer to as 'the Shoe Boudoir London device' or 'the mark applied for':



2. The application was made on 4 September 2009 in class 35 for the following categories of services:

*Advertising and promotional services; sales incentive and loyalty schemes; the bringing together for the benefit of others of a variety of goods, namely, footwear, leather goods, luggage, travelling bags and travelling sets, umbrellas, handbags, purses, wallets, precious metals and their alloys; jewellery, costume jewellery, precious stones, horological and chronometric instruments, clocks and watches, key rings and accessories, enabling customers to conveniently view and purchase these goods in a retail shop or in a retail department store environment, by email order or via a global communications system.*

3. The application was opposed by a company called A-List Corporate Limited under s5(2)(b) of the Trade Marks Act 1994

on the basis of the following earlier mark which I shall refer to as the 'Boudoir by Disaya device' or 'the earlier mark'.

*Boudoir*  
**BY DISAYA**

4. This mark was registered as of 6 December 2006 in respect of various goods in classes 14 and 25 as follows:

*Class 14: boxes of precious metal; bracelets; chains; charms; tie-clips; earrings; jewellery; paste jewellery; costume jewellery; key rings of precious metal; necklaces; ornaments; pearls; precious stones; rings*

*Class 25: bath robes; bath sandals; bath slippers; bathing drawers; bathing suits; beach clothes; beach shoes; belts; boots; caps; clothing of leather; coats; top-coats; hats; jackets; jersey shirts; jersey overcoats; jersey pants; jersey sweaters; jumpers [shirt fronts]; knitwear; lace boots; body linen garments; overcoats; pants; pyjamas; sandals; scarves; shirts; skirts; slippers; shoes (except sports shoes); sports shoes; stockings; suits; sweaters; swimsuits; tee-shirts; trousers; underpants; underwear; lingerie; panties; bras; crop tops; tank tops; camisoles; bodysuits.*

5. No evidence was filed on behalf of the opponent. The applicant filed evidence to the following effect:

- (a) it had operated concessions under the brand 'Shoe Boudoir London' (by which I assume it meant the device mark applied for) for some 3 years in Debenhams departments stores, achieving a total turnover of over £25M. The concessions sell predominantly footwear and accessories and the mark is used as a retail mark only.
- (b) the opponent had (to its knowledge) only used its mark to a limited extent on products sold over the internet, although it had recently set up a website under the name [boudoirbydisaya.com](http://boudoirbydisaya.com).
- (c) it had come across no evidence of confusion from customers or anyone else within the trade.
- (d) the term 'boudoir' is quite commonplace in the retail marketplace for products of the kind being applied for, being used for example in the marks 'Luella's Boudoir' and 'Vivienne Westwood Boudoir'. I note in passing (although it is not mentioned in the evidence and the hearing officer declined to investigate the matter herself) that an internet search reveals that Luella's Boudoir is a bridal boutique in Wimbledon and Vivienne Westwood Boudoir is a perfume.

6. The Hearing Officer held that the opposition partially succeeded. She allowed the mark to proceed in relation to the following services only:

*Advertising and promotional services; sales incentive schemes; the bringing together for the benefit of others of a variety of goods namely luggage, travelling bags and travelling sets, umbrellas, wallets and clocks enabling customers to conveniently view and purchase those goods in a retail shop or in a retail department store environment, by email order or via a global communications system*

The opposition therefore succeeded and registration was refused in relation to:

*Loyalty schemes; the bringing together for the benefit of others of a variety of goods namely footwear, leather goods, handbags, purses, precious metals and their alloys, jewellery, costume jewellery, precious stones, horological and chronometric instruments and watches, key rings and accessories, enabling customers to conveniently view and purchase these goods in a retail shop or in a retail department store environment, by email order or via a global communications system*

7. The applicant has appealed and there is no respondent's notice.
8. The Hearing Officer set out the relevant legal principles accurately. She commenced with the familiar 12 point distillation of the case law of the Court of Justice of the European Union on the assessment of likelihood of confusion. This is the template generally used by Hearing Officers at the

Trade Marks Registry to remind themselves of the principles to be applied.

9. She then turned to consider whether the services applied for were similar to the goods of the earlier mark, citing the guidance of the CJEU in Canon v MGM [1999] RPC 117, and Jacob J in British Sugar v James Robertson [1996] RPC 281. In relation to the similarity between retail services for the sale of particular goods and a registration for those goods, she cited the decision of the General Court in Oakley v OHIM T-116/06 at para 54. She then considered the various categories of service covered by the specification for the mark applied for, putting them in groups for convenience as suggested in Separode BL O-399-10.
10. Some 'non-retail' services were found not to pass the threshold of having any similarity with the goods for which the earlier mark is registered. These were '*advertising and promotional services; sales incentive schemes*' and registration was permitted for these accordingly.
11. One 'non-retail' service, namely '*loyalty schemes*' was held to pass the threshold of similarity because it would cover for example a loyalty scheme whereby points were accrued by a purchaser for buying goods covered by the earlier mark. This service was characterized as having a '*reasonable degree of similarity*' with the goods of the earlier mark.

12. So far as the retail services are concerned, the Hearing Officer divided them up into the following categories of goods which are said in the specification to be brought together for viewing or purchase:

- (i) footwear, leather goods, precious metals and their alloys, jewellery, costume jewellery, precious stones, key rings and accessories;

Such goods were held to be identical or near identical to some of the goods covered by the earlier mark, from which it was concluded *'applying the guidance provided by the GC in Oakley'* that there was a *'good degree of similarity between the respective goods and services'* (ie between the goods and the retail activity of selling those goods).

- (ii) watches and horological and chronometric instruments

The retail activity of selling watches was held to be *'reasonably similar'* to the goods covered by the registration for 'jewellery', because jewels and watches were commonly sold together. Since watches were a subset of horological and chronometric instruments, the same applied to the activity of selling such instruments.

(iii) clocks

The retail activity of selling clocks (as opposed to watches) was held to have only a *'low similarity'* to the goods covered by the registration for 'jewellery' and 'ornaments' because clocks were primarily functional rather than decorative and were less commonly sold with jewellery than in the case of watches.

(iv) Handbags and purses

The retail activity of selling handbags and purses was held to have a *'reasonable degree of similarity'* to a number of different goods covered by the registration of the earlier mark including belts, hats, jackets, scarves and shoes. This was because the trade channels for selling the goods of the registration might be the same, and the goods had a similar purpose in terms of personal adornment.

(v) Luggage, travelling bags and travelling sets, umbrellas, wallets

The retail activity of selling all these items was held to be *'not similar'* or at best to have *'a very low degree of similarity'* with any of the goods covered by the registration.

13. The hearing officer then turned to consider the average consumer which she identified as being the same in the case of the mark applied for as in the case of the registered mark, namely the general public paying *'a reasonable level of attention but not the highest level'*. The exception to this was *'precious stones, precious metals and their alloys'* in which case the purchasers would be designers and makers of jewellery paying a greater degree of attention.
  
14. Turning to compare the marks in question, the hearing officer first identified what she termed the *'dominant and distinctive components'* of the two marks. She concluded that the word 'Boudoir' was *'the dominant distinctive element'* of the Boudoir by Disaya device owing to its position and size. As for the Shoe Boudoir London device, she concluded that the *'dominant distinctive element'* was the words 'Shoe Boudoir'.
  
15. Applying the Sabel v Puma approach, she then considered the visual, aural and conceptual similarities of the marks in turn:
  - (a) Visual similarity was held to exist to a *'reasonably high degree'* between the marks due to the presence of the word Boudoir in a very similar font;
  
  - (b) Aural similarity was held to exist to a *'moderate degree'*;

- (c) Conceptual similarity was said to be *'moderately high'* as a result of the general concept of a bedroom or similar kind of private room conjured up by the word Boudoir.

Weighing up the 3 types of similarity, she concluded that there was a *'reasonably high degree of similarity overall between the respective marks'*.

16. The hearing officer next considered the distinctive character of the earlier mark. There was no acquired distinctiveness, given an absence of evidence of use, but she held the inherent distinctiveness of the mark to be *'high'*.
17. Finally the hearing officer turned to consider the question of likelihood of confusion. She reminded herself of the imperfect recollection doctrine in Lloyd Schuhfabrik Meyer v Klijsen [2000] FSR 77. She rejected the evidence from the applicant that Boudoir was a mark in common use in the UK, and the evidence that there were a number of other Boudoir marks on the Register (following the guidance of the General Court in Zero Industry v OHIM T-400/06). She concluded that the purchasing act for all the respective goods and services was *'primarily visual'* thus making the visual similarity more important. She stressed the similarity of what she had held to be the *'dominant and distinctive components'* of the marks, and the conceptual similarity of the marks.

18. The hearing officer concluded that there was a likelihood of confusion in that the average consumer would believe that the goods and services in question emanated from the same undertaking, save where the services were sufficiently dissimilar from the registered goods as to fall into the category of only having a *'low similarity'*.

### **The scope of this appeal**

19. It is of course well established that an appeal to the Appointed Person against a multifactorial decision such as that on likelihood of confusion under s5(2) can only succeed where a distinct error of principle is shown or where the decision is otherwise manifestly wrong.

20. The Grounds of Appeal raise only one point of principle, namely that the Hearing Officer erred in the way she approached the comparison between the marks, and in particular in her approach to the *'distinctive and dominant components'* of those marks.

21. The limited scope of the Grounds of Appeal has not deterred counsel for the Appellant from attacking the decision of the Hearing Officer on a range of other grounds, including:

- (i) 'bias' and 'lack of objectivity', being 'seemingly determined to make findings adverse to the Appellant'

- (ii) not taking account of the evidence of fact on widespread use of the word 'Boudoir'
- (iii) not taking account of the evidence of fact on lack of actual confusion
- (iv) not applying Practice Amendment Note PAN 8/07 on similarities between retail services and goods and thereby wrongly holding similarity
- (v) not requiring actual evidence of confusion
- (vi) 'failing to exercise proper skill and judgment'

22. The purpose of Grounds of Appeal is to set out and to delimit the basis on which the judgment below is being attacked. One reason for this is that the Respondent should know what points it has to address in its own submissions. Thus in the present case the Respondent's written submissions noted at paragraph 18 that the Grounds of Appeal contained no reference to the similarity of services and therefore proceeded on the assumption that the decision of the Hearing Officer on this point was accepted.

23. If, when drafting the written submissions on an appeal, it becomes apparent to the Appellant or the legal representative responsible that further Grounds of Appeal should have been raised, the appropriate course is to apply to amend the existing

Grounds. In the absence of such an amendment, the Appointed Person will not consider the unpleaded grounds. I therefore propose to limit myself to the sole ground of appeal actually pleaded.

24. I should also say that a number of the accusations made against the Hearing Officer, in particular those set out in paragraph 22(i) above, were wild and baseless. Allegations of bias should never be made without proper foundation and there was no foundation at all in the present case.

25. I should also point out to the Respondent that if it wishes to challenge any finding of the Hearing Officer, this should be done by way of a Respondent's Notice. In the present case, paragraph 19 of the Respondent's written submissions took issue with the Hearing Officer's finding of lack of similarity or low similarity between retail services in respect of wallets and the goods for which the mark is registered, in particular key rings of precious metal. In the absence of a Respondent's Notice, this argument is not open to the Respondent and I do not therefore propose to address it.

**Similarity of marks - error of principle?**

26. As I have indicated, the Appellant alleges that the Hearing Officer erred in principle in her approach to the similarities between the two marks.

27. I believe that there is substance in this complaint.
28. Both marks in question are device marks containing a number of words presented in a very particular way. It is in the nature of such marks that they convey a message in a more subtle fashion than a mark consisting merely of a single word or even a series of words. In such cases, I believe that it is particularly important to follow the guidance of the CJEU in Sabel v Puma [1998] RPC 199 at 23, Medion v Thomson C-120/04 at 29 and Shaker di Laudato [2009] ETMR 16 at 40 respectively:

*'The average consumer normally perceives a mark as a whole'*

*'In the context of consideration of the likelihood of confusion, assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see Matratzen Concord at [32]).'*

*'assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in*

*question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components. It is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element. That could be the case, in particular, where that component is capable alone of dominating the image of that mark which members of the relevant public keep in their minds, such that all the other components are negligible in the overall impression created by that mark'*

29. The Hearing Officer appeared to proceed on the basis that it was necessary to determine what were the 'distinctive and dominant' elements of the two marks before making any assessments of similarity and likelihood of confusion. Thus paragraphs 38 and 39 of her Decision were preceded by the heading '**Dominant and distinctive components**'. In paragraph 38 she considers the Boudoir by Disaya device. She ascertains that the words 'BY DISAYA' appear in bolder type (she might have added that they were in capitals), but concludes that the fainter word 'Boudoir' '*constitutes the dominant distinctive element*' because of its '*positioning above the words BY DISAYA and being in a larger font*'. In paragraph 39 she proceeds with a similar analysis of the Shoe Boudoir London device and concludes that '*the dominant distinctive element of the mark as a whole is the phrase "Shoe Boudoir"*'.

30. I believe that this approach was wrong in principle. It is not necessary to identify one particular element of a mark as being its 'distinctive and dominant element'. It is right of course that '*in certain circumstances*' there may be such an element which dominates the overall impression of a mark (see the quote from Matratzen above), but that is very often not the case, and even if it is the case it does not absolve the tribunal from the obligation to consider the overall impression given by the marks as a whole.

31. The problem with forcing marks through an analysis such as that carried out by the Hearing Officer in paragraphs 38 and 39 is that it necessarily involves mentally dividing the mark into its component parts, thus losing the overall impression given by the combination of those parts and by the way in which they are combined. This is not the approach which the average consumer is deemed to take, nor the approach he or she would actually take in real life. When assessing likelihood of confusion, this approach is therefore likely to lead to error.

32. In the present case I believe that the exercise carried out by the Hearing Officer led to a false view of the overall impression given by the marks in two respects:

(a) The idea that the word 'Boudoir' is the dominant and distinctive element of the Boudoir by Disaya device in the

Matratzen or Shaker di Laudato sense is in my view wrong for the following reasons:

- (i) Although it appears in larger font, the letters of the word 'Boudoir' appear fainter and are harder to read than those of the words 'BY DISAYA' (partly because of the complexity of the font used).
- (ii) The word 'Boudoir' is written in lower case letters (save for the initial B), as opposed to the capitals used for the whole of the words 'BY DISAYA'.
- (iii) The word 'Boudoir' is a familiar word, allusive both to the idea of dressing up and to a certain ornate aristocratic style. The word 'DISAYA' is likely to be entirely unknown to the average consumer and is thus more striking.
- (iv) The construction of the phrase 'Boudoir by Disaya' suggests that 'Boudoir' is a style or sub-brand within an overall brand responsible for its creation – see for example 'Polo by Ralph Lauren'. This leads to the impression that 'Disaya' is the primary brand.

In my view, there is no basis for treating the word 'Boudoir' as having any more significance in an overall comparison of the marks than the words 'BY DISAYA'.

(b) The significance of the way in which the words are presented pictorially seems to have been lost in the search for the dominant and distinctive component. In particular, when considering the mark applied for, the Hearing Officer mentions on one occasion the fact that in the 'Shoe Boudoir London' device the words are against a black background. But there is no recognition that this creates quite a distinctive impression in its own right, with a huge contrast between the words and the background (perhaps conjuring up the idea of a neon sign at night) very different from the subtle grey-on-white of the registered mark.

33. In my view, the Hearing Officer between paragraphs 38 and 39 engaged in precisely the '*artificial dissection of the marks*' against which she had warned herself in paragraph 37 and came to the wrong conclusion. This was an error of principle which undermined her assessment of the likelihood of confusion to a material extent.

### **Likelihood of Confusion**

34. Having held that the Hearing Officer has erred in principle, it is necessary for me to come to my own view on likelihood of confusion in this case.

*Similarity of services/goods*

35. I accept the Hearing Officer's findings about the various levels of similarity between the retail services applied for and the goods for which the earlier mark is registered. I have set these out above.

*Average consumer*

36. The relevant average consumer here is the consumer of the applicant's services who would be a member of the public save in the case of precious metals and precious stones where he would be likely to be a trade user of such materials. It is right to point out that the description of the goods being offered through the retail services in question is entirely general and therefore covers the cheapest end of the market. However, the nature of those goods is such that the shopping transaction will still be undertaken with some care and consideration regardless of price.

*Distinctive character of the earlier mark*

37. The earlier mark has a reasonable degree of distinctive character.

38. The Hearing Officer cited Sabel v Puma at paragraph 50 of her decision for the proposition that *'the more distinctive it*

*is, either by inherent nature or by use, the greater the likelihood of confusion*'. This is indeed what was said in Sabel. However, it is a far from complete statement which can lead to error if applied simplistically.

39. It is always important to bear in mind what it is about the earlier mark which gives it distinctive character. In particular, if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all. If anything it will reduce it.

40. To take a simple example, the a device mark for the word 'SOAP' presented with each letter intertwined with barbed wire would have considerable distinctive character even if registered for soap. However, this distinctiveness is provided entirely by the barbed wire element in the device, not by the word SOAP which is entirely descriptive. The high distinctive character of the device would not therefore increase the likelihood of confusion in the event of someone else using the word SOAP in a trade mark for soap but presenting the letters in the form of a fish.

41. In the present case, as the Hearing Officer recognized at paragraph 51, much of the distinctiveness of the Boudoir by Disaya mark is provided by the word 'DISAYA' which appears to an English speaker to be an invented word (though I understand it may in fact be a name in Thailand, and it is a

town in the Congo). However, since there is no equivalent of DISAYA in the mark applied for, that distinctiveness cannot add to the likelihood of confusion. The reverse is in fact the case, since the average consumer is much more likely to notice the absence of a highly distinctive element in the later mark.

42. When assessing the inherent distinctiveness of the earlier mark in the present case, one must therefore implicitly discount the distinctiveness provided by the words 'BY DISAYA' and consider the distinctiveness of the word 'Boudoir', in its fancy script. The word 'Boudoir' is not descriptive of the goods for which it is registered, but is a familiar word for a room in which a female would dress up in many of the clothes and accessories covered by the registration. It is therefore gently allusive of clothing and accessories. The fancy script adds to the distinctiveness, although not to a huge degree.

43. All in all, I consider that the relevant distinctive character of the earlier mark is only moderate.

44. I should add that I have taken no account of the evidence of Ms McClymont on the question of the commonness of usage of the word 'Boudoir' in trade marks on the Registry or in use by traders. So far as entries on the Registry are concerned, the evidence was entirely unspecific and in any event the Hearing Officer was right to find that the presence of a mark (or even several marks) on the Registry did not prove actual use of those marks in the real world. As for the two traders which

were said to use the marks (about whom no details were provided, not even the nature of their business), this did not advance the case at all.

*Similarities between the marks*

45. Similarity should be looked at, as the Hearing Officer recognized, visually, aurally and conceptually.
  
46. Visually there is some similarity in that one of the words in the Boudoir by Disaya device is the same as one of the words in the mark applied for. The similarity is increased by the fact that the word Boudoir is written in very similar script in both marks. However, the effect of that similarity is decreased by (i) the striking presentation of the mark applied for (white on black); (ii) the absence of the striking words 'By Disaya' in the mark applied for; (iii) the fact that in the mark applied for the word 'Boudoir' follows the word 'Shoe' written in the same script; (iv) the presence of the word London in the mark applied for. Overall, the similarity is no more than moderate.
  
47. Aurally, the similarity is again only moderate. Compared with the visual similarity, the impact of the similarity of script in which the word Boudoir is written is lost, but so is the dissimilarity of other elements of the presentation of the marks (black on white as opposed to white on black).

48. Conceptually, I consider that the similarity is relatively low. It is important here to have in mind the nature of the goods/services for which the marks are respectively registered/applied for.
49. The mark Boudoir by Disaya is registered for certain items of clothing and accessories. It conveys the idea of a particular style or range of such goods created by a designer called Disaya. The word Boudoir would be taken as alluding to a room where a wealthy lady would (perhaps historically) dress up in or try on such clothing or accessories, but as no more than an allusion.
50. The mark Shoe Boudoir London is applied for in respect of retail services for the sale of various products including shoes. In that context it conveys the idea of a luxurious, comfortable dressing room for trying on shoes in London.

*Evidence*

51. As I have indicated, evidence was filed on behalf of the Applicant, in the form of a witness statement by its retail director Ms McClymont, to the effect that no confusion had come to their attention in the 3 years or so in which the mark applied for had been used. This evidence is heavily relied on in the skeleton argument filed in support of the appeal.

52. The evidence of lack of confusion is irrelevant in the present case because there is no evidence that the Boudoir by Disaya mark has been used on any significant scale at all, let alone in relation to the goods covered by the registration. As Ms McClymont herself asserts in paragraph 7:

*'It is my belief that the Opponent does not have a physical presence in the UK and its sales are made entirely or largely over the Internet on websites which do not operate under the trade mark on which this opposition is based and that, indeed, that trade mark is very little used by them....'*

53. In other words there has been little or no opportunity for confusion to arise, so the absence of actual confusion cannot assist in answering the question of whether confusion would be likely given normal and fair use of the marks across the scope of their specifications. See for example Compass v Compass Logistics [2004] RPC 41.

*Likelihood of confusion*

54. Bearing all this in mind, is there a likelihood of confusion in the present case? In my view there is not.

55. In assessing likelihood of confusion it is first necessary to consider an average consumer familiar with the Boudoir by Disaya device used in a normal and fair way in relation to the products for which it is registered. Such normal and fair use

would be by way of branding on the goods themselves and in advertising and promotional material for those goods.

56. The next step is to consider the same consumer coming across an ordinary and fair use of the Shoe Boudoir London device in relation to the services for which it is applied for. These being essentially retail services, the ordinary and fair use of this device would be by way of a shop sign or advertising and promotional material for a shop (whether physical premises or a website) selling goods within the range of goods it has been applied for.
57. In my view, the average 'reasonably circumspect and observant' consumer would not mistake the Shoe Boudoir London device used in this context for the Boudoir by Disaya device with which he was familiar. The devices are observably different and distinct.
58. That being the case, the only question is whether the average consumer would believe, from the similarity of names and the complementary nature of the goods and services, that the Shoe Boudoir London retail outlet was economically connected with the undertaking responsible for Boudoir by Disaya.
59. I believe that it is far-fetched to consider that there is any likelihood of such an association being made. The concept of a 'Shoe Boudoir in London' is a fairly obvious one. The word

'Boudoir' has a clear purpose in the mark which the average consumer would understand and he/she would therefore not consider that it was intended to indicate a connection with Boudoir by Disaya. The average consumer would expect that if Boudoir by Disaya were to set up a retail outlet for the purpose of selling its goods, the words 'by Disaya' or 'Disaya' would appear in the name. The word Boudoir itself is simply not distinctive enough, even in fancy script, that it would be relied on to carry that meaning all by itself.

60. I therefore consider that there is no likelihood of confusion in this case in relation to any of the services covered by the application.

### **Conclusion**

61. There being no likelihood of confusion, the opposition under s5(2) fails and the mark should proceed to grant in respect of all the services applied for.

62. I direct that the opponent shall pay the applicant's costs which I hereby assess at £300. This is a very low figure but I bear in mind the following facts: (i) the counterstatement was extremely short; (ii) the evidence filed on behalf of the applicant was irrelevant; (iii) the applicant filed no submissions before the Hearing Officer; (iv) no hearing took place before the Hearing Officer or before me; (v) there was only one ground of appeal; (v) the written skeleton filed on behalf of the applicant before me included, as I have indicated,

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a great deal of complaints which went beyond the grounds of appeal including a baseless attack on the impartiality of the Hearing Officer.

**IAIN PURVIS QC**  
**THE APPOINTED PERSON**  
**14 FEBRUARY 2013**