

O/306/13

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 2622621 IN THE NAME OF
CONQUEST CONFIGURATIONS LTD T/A SECRET CONQUEST

AND

OPPOSITION THERETO UNDER NO 104001 BY COMPAGNIE DES MONTRES
LONGINES FRANCILLON S.A. (LONGINES WATCH CO., FRANCILLON LTD)

Background

1. Application No 2622621 seeks registration of the following mark:

SECRET CONQUEST

It has a filing date of 28 May 2012 and stands in the name of Conquest Configurations Ltd t/a Secret Conquest (“the applicant”). Registration is sought in respect of the following goods:

Class 14:

Precious metals and their alloys, jewellery, costume jewellery, precious stones


Class 18:

Leather and imitations of leather, animal skins, hides; trunks and travelling bags; handbags, rucksacks, purses; umbrellas, parasols and walking sticks; whips, harness and saddlery; clothing for animals

Class 25:

Clothing, footwear, headgear

2. Following publication in the *Trade Marks Journal*, notice of opposition was filed by Compagnie des Montres Longines, Francillon S.A (Longines Watch Co., Francillon Ltd) (“the opponent”). Relying originally on grounds founded under sections 5(2)(b) and 5(3) of the Act, the latter ground was struck out at a Case Management Conference (“CMC”) which took place before me on 10 June 2013. In respect of the remaining grounds of opposition, the opponent relies on the following trade mark:

Mark	Application/ registration dates	Specification of goods
1238568 	25 March 1985/ 27 January 1989	Horological and chronometric instruments and parts and fittings therefor

3. The applicant filed a counterstatement in which, essentially, it denies the claims made.

4. Only the opponent filed evidence. The matter came before me for a hearing on 19 July 2013 at which Dr Jesse Mashate of Graceland Solicitors represented the applicant and Mr Martin Krause of Haseltine Lake LLP represented the opponent.

Preliminary issue

5. Whilst the opposition was originally directed at all of the goods of the application, and, in response to specific questioning from me, the opponent maintained this at the CMC, in its skeleton arguments, received the day before the hearing, it indicated that it no longer objected to the application insofar as it seeks registration in respect of goods in classes 18 and 25. When it became aware of the opponent's intentions, Dr Mashate, sent an email to the IPO which included the following:

“the hearing of 19 July 2013 may have to be adjourned, to enable us obtain fresh instructions and our barristers to make proper preparations for the hearing based on issues in contest. It would amount to trial by ambush if we were proceeded with this hearing against the aforementioned developments. We shall duly inform you when we are instructed further as specified.”

6. At my instruction, both parties were duly advised that the hearing would go ahead as planned. As I explained further at the hearing, the amendment to the opponent's case had the effect of limiting the extent of its opposition. Its objection to registration of the trade mark in respect of the goods in class 14 had existed since the opposition was filed and the applicant should have been in a position to deal with that objection regardless of the very late amendment to the opponent's case. In addition, there was no indication that barristers had been instructed and certainly no indication that the applicant was to be represented at the hearing by anyone other than Dr Mashate but again, even if that were the case, a limitation of this nature was not something that would require any additional preparation. At the hearing, Dr Mashate indicated his acceptance of my position.

Decision

The objection under section 5(2)(b) of the Act

7. As indicated above, there is a single ground of opposition founded on section 5(2)(b) of the Act. This reads:

“5 (2) A trade mark shall not be registered if because -

- (a) ...
- (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

8. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“6.-(1) In this Act an “earlier trade mark” means -

- (a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,
- (b)
- (c)

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

9. The opponent relies on the trade mark shown at paragraph 2 above. It is an earlier mark within the meaning of section 6(1) of the Act. As the earlier mark was registered more than five years before the publication date of the mark for which registration has been applied, the provisions of section 6A of the Trade Marks (Proof of Use, etc) Regulations 2004 would be relevant, had the applicant put the opponent to proof of use of the earlier mark. The applicant completed the relevant section of its counterstatement by indicating that proof of use was “N/A”. It has not put the opponent to proof of use of its earlier mark and thus the opponent is entitled to rely on it in respect of each of the goods for which it is registered.

10. The test for determining whether there is a likelihood of confusion is well established. In his decision in *La Chemise Lacoste SA v Baker Street Clothing Ltd - BL O/330/10* (approved by Arnold J in *Och-Ziff Management Europe Ltd v Och Capital LLP* [2011] FSR 11), the Appointed Person, Mr Geoffrey Hobbs Q.C., expressed the test under this section (by reference to the CJEU cases mentioned) on the basis indicated below:

The CJEU cases

Sabel BV v Puma AG [1998] RPC 199; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77; *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723; *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market* (Trade Marks and Designs) (OHIM), Case T-6/01; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04; *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market* (Trade Marks and Designs) (OHIM) C-334/05 P.

The principles

“(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well

informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks causes the public to wrongly believe that the respective goods [or services] come from the same or economically-linked undertakings, there is a likelihood of confusion.”

11. In essence, the test under Section 5(2)(b) is whether there are similarities in marks and goods which, when taking into account all the surrounding circumstances, would combine to create a likelihood of confusion. The likelihood of confusion must be appreciated globally and I need to address factors such as the degree of visual, aural and conceptual similarity between the marks, evaluating the importance to be attached to those different elements and taking into account the degree of similarity in the goods, the category of goods in question and how they are marketed.

The evidence

12. The opponent's evidence consists of a very short witness statement that serves to introduce a four page exhibit. The exhibit is said to be printouts from three UK websites downloaded on 29 April 2013 i.e. after the relevant date in these proceedings. Whilst the print quality of the pages is quite poor, I can see that there are two pages taken from the hsamuel.co.uk website and one page each from thepiajewellery.com and longines.com websites. Each shows various watches. On the first two pages of the exhibit, the watches shown are described as "bangle (or semi-bangle)" watches with some of them also being referred to as "stone set". The last page of the exhibit shows an 18 carat gold watch set with diamonds.

The average consumer and the nature of the purchasing process

13. The opponent's *horological and chronometric instruments* is a fairly broad term but Mr Krause's submissions centred primarily on watches. These are goods which are bought by the general public. They are goods which vary widely in price dependent on such factors as the materials from which they are made, their technical complexity and how they are powered. The consumer is likely to pay at least a reasonable degree of attention to their purchase, which will be made after visual inspection, to ensure that the goods are not only made from the required material and within his price range but also to ensure that the item meets his technical requirements e.g. whether it has an analogue or digital display, records the time in seconds, has an alarm or date indicator etc. The applicant's *jewellery* and *costume jewellery* are goods bought by the general public and are also such as will vary widely in price dependent on e.g. the material from which they are comprised or the complexity of design of a finished article. The consumer will pay at least a reasonably high degree of attention to their purchase whether because of the cost or composition of the item or for such reasons as jewellery being for personal adornment. Whilst *precious metals and their alloys* and *precious stones* are goods which are often a component of jewellery, of themselves they are most likely to be bought by a trader who will fashion them into e.g. jewellery. Whilst *precious metals and their alloys* may be bought e.g. by telephone, the remainder of the applicant's goods are ones which will be bought after visual inspection given such factors as the attractiveness of the design or clarity or cut of the stone is likely to play a significant part in the purchasing decision.

Comparison of the respective goods

14. For ease of reference, and taking into account the opponent's indication that it no longer seeks to oppose all the goods of the application, the goods to be compared are as follows:

Opponent's goods	Applicant's goods
Class 14 Horological and chronometric instruments and parts and fittings therefor	Class 14 Precious metals and their alloys, jewellery, costume jewellery, precious stones

15. Dr Mashate denied the respective parties had any shared market and submitted that as the opponent does not trade in jewellery, the respective goods cannot be the same.

16. I referred the parties to the findings of the Court of First Instance (now General Court) set out in the *Saint-Gobain SA v OHIM* Case T-364/05 where it said:

“67... it is important to reiterate that the comparison between the goods in question is to be made on the basis of the description of the goods set out in the registration of the earlier mark. That description in no way limits the methods by which the goods covered by the earlier mark are likely to be marketed.”

17. I am also mindful of the findings of the Court of First Instance (now General Court) in the case of *NHL Enterprises BV v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)* Case T-414/05:

“71 The Court considers, first, that that assessment by the Board of Appeal is not called in question by the particular conditions in which the applicant’s goods are marketed, since only the objective marketing conditions of the goods in question are to be taken into account when determining the respective importance to be given to visual, phonetic or conceptual aspects of the marks at issue. Since the particular circumstances in which the goods covered by the marks at issue are marketed may vary in time and depending on the wishes of the proprietors of those marks, the prospective analysis of the likelihood of confusion between two marks, which pursues an aim in the general interest, namely that the relevant public may not be exposed to the risk of being misled as to the commercial origin of the goods in question, cannot be dependent on the commercial intentions of the trade mark proprietors-whether carried out or not- which are naturally subjective (see, to that effect, *NLSPORT*, *NLJEANS*, *NLACTIVE* and *NLCollection*, cited at paragraph 61 above, paragraph 49, and Case T-147/03 *Devinlec v OHIM – TIME ART (QUANTUM)* [2006] ECR II-11, paragraphs 103 to 105, upheld on appeal by the Court by judgment of 15 March 2007 in Case C-171/06 P *TIME ART v OHIM*, not published in the ECR, paragraph 59).”

18. I therefore have to compare the respective goods on the basis of the specifications as registered (opponent’s earlier mark) and for which the applicant has applied for registration.

19. In considering the similarity or otherwise of the respective goods, I take into account the comments of Jacob J in *British Sugar PLC v James Robertson & Sons Ltd* [1996] RPC 280 (“*Treat*”), where he said (at 289):

“When it comes to construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of trade. After all, a trade mark specification is concerned with use in trade.”

He went on (at 295) to set out the following factors as being relevant to the question of similarity (insofar as relevant to goods), without reference to the classes in which they fell:

- (a) the respective uses of the respective goods;
- (b) the respective users of the respective goods;
- (c) the physical nature of the goods;
- (d) the respective trade channels through which the goods reach the market;
- (e) in the case of self-service consumer items, where in practice they are respectively found or likely to be found in supermarkets;
- (f) the extent to which the respective goods are competitive. This enquiry may take into account how those in trade classify goods, for instance whether market research companies put the goods in the same or different sectors.

20. In *Canon Kabushiki Kaisha v MGM Inc.* (referred to above), the CJEU stated the following:

“23. In assessing the similarity of the goods or services concerned, ... all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, *inter alia*, their nature, their end users and their method of use and whether they are in competition with each other or are complementary.”

21. In *El Corte Ingles v OHIM* Case T-420/03, the Court commented:

“96...goods or services which are complementary are those where there is a close connection between them, in the sense that one is indispensable or important for the use the other in such a way that customers may think that the responsibility for the production of those goods or provision of those services lies with the same undertaking (Case T-169/03 *Sergio Rossi v OHIM-Sissi Rossi* [2005] ECR II-685)”

22. Horological and chronometric instruments (and parts and fittings therefor) are items which may be used by the general public on an everyday basis e.g. a watch to record the time of day, or may be items used by a professional e.g. a chronometer used in the scientific field to measure periods of time to the nth degree. Whatever the level of accuracy or scope of the measurement they record, they are each items which measure time or are for timekeeping. In the case of goods such as watches, they are goods which may be sold quite widely either in a supermarket or department store but may also be sold through specialist outlets such as a jeweller's or other specialist supplier.

23. I compare, first, the opponent's goods with the applicant's *precious metals and their alloys* in class 14. The applicant's goods will include materials such as gold or platinum. Whilst these may be sold in e.g. ingot or bar form, these materials will require some sort of processing to enable them to be made into or used as part of something else. They are used by manufacturers who will fashion them into (a component of) an end product. Mr Krause submitted that each of these respective goods is such as are bought for investment purposes and they are therefore similar goods. Many goods may be bought with an eye to future profit, e.g. a classic car or property but that is not, of itself, justification for finding that the goods have any similarity. Mr Krause also submitted that each of the respective goods are sold in a jeweller's, however, as far as precious metals and their alloys are concerned this is not something that I am prepared to accept without evidence. In my view, precious metals and their alloys, as opposed to goods made from them, are likely to be sold by specialist bullion dealers rather than a high street jeweller's. Whilst watches are goods bought by large numbers of the general population, it is highly unlikely that precious metals and their alloys, as raw materials, are so widely purchased. I accept that horological and chronometric instruments, sometimes at least, contain components made of precious metals and their alloys, however, I take note of the findings made in *Les Éditions Albert René V Office for Harmonisation in the Internal Market (Trade Marks & Designs) (OHIM) T-336/03*, where it was held:

“The mere fact that a particular good is used as a part, element or component of another does not suffice in itself to show that the finished goods containing those components are similar since, in particular, their nature, intended purpose and the customers for those goods may be completely different.”

24. In my view, these respective goods are dissimilar. Whilst it is possible they may each be bought with investment in mind, their nature, intended purpose, users and trade channels all differ and they are not complementary goods.

25. The applicant also seeks registration for *Jewellery* and *costume jewellery*. At the hearing, Mr Krause accepted these respective goods were not identical but submitted that they were highly similar. For his part, Dr Mashate submitted that “jewellery can be part of a watch but it is an optional accessory not a part of it”. He said that many goods will have a clock as part of it, such as a clock radio, but submitted that this does not make them similar goods. The term *jewellery* and *costume jewellery* will include such items as bangles and bracelets. They are decorative items used by the general public to e.g. adorn the body or complement an outfit. They are widely sold in supermarkets or department stores as well as through specialist suppliers such as a jeweller's. The opponent's goods are, essentially, goods with the functional purpose of allowing one to tell the time. I take note of and adopt the reasoning of the hearing officer in *Facets of Love Application O-440-10* where she said:

“It is artificial to conclude that a watch is a purely functional item. Watches can be selected as much for their appearance as, for example, a bracelet. Watches are frequently designed with the timepiece almost hidden within an ornate bracelet resulting in an end product which is as much about appearance as it is about function. Watches and jewellery are often sold through the same outlets both on the high street and through online retailers

and it is common for a consumer to own several watches in the same way as they would a selection of jewellery. Both can be considered items for personal adornment. Taking these factors into account, I find the respective goods to have a reasonably high degree of similarity.”



26. In addition, watches and jewellery such as bracelets are sometimes sold as part of a co-ordinated set and watches are sometimes sold with interchangeable ‘straps’ to co-ordinate with different outfits. For all these reasons, I consider the applicant’s *jewellery and costume jewellery* to have a reasonably high degree of similarity to the opponent’s goods.

27. Finally, the applicant seeks registration in respect of *precious stones*. These are natural minerals or organic material. Whilst some may be used in an industrial environment, e.g diamonds in a drill, they are often used to be made into jewellery and will be used by jewellery makers who will buy them from specialist suppliers. They may also be used either to decorate e.g. a watch or may be used in a quasi functional capacity e.g. in place of a particular numeral on the face of the watch. Whilst there may be some overlap in the channels of trade between the respective goods, for the reasons set out above at paragraph 24 above, I consider precious stones to be dissimilar to the opponent’s goods.

Comparison of the respective marks

28. It is well established that the average consumer is considered to be reasonably well informed, circumspect and observant but perceives trade marks as wholes and does not pause to analyse their various details. In addition, the average consumer rarely has the chance to make direct comparisons between trade marks but must, instead, rely on the imperfect picture of them he may have kept in mind. In reaching a conclusion on similarity, I must identify what I consider to be the distinctive and dominant elements of the respective trade marks and, with that conclusion in mind, I must go on to compare the respective trade marks from the visual, aural and conceptual perspectives.

29. Again for ease of reference, the marks to be compared are:

Opponent’s mark	Applicant’s mark
	

30. The opponent’s mark consists of the single word Conquest in title case and cursive, but otherwise unremarkable, script. As a single word, no part of which is highlighted in any way, its distinctiveness rests in its totality. The applicant’s mark consists of the two words SECRET and CONQUEST both in upper case but unremarkable font. The words are contained within an open-ended upper (shaded) and lower (double lined) border though both are unremarkable. Mr Krause submitted that the word SECRET is an adjective that is used in context as a word which qualifies the word CONQUEST: the word CONQUEST is, he submitted, the

dominant and distinctive element of the applicant's mark. As neither of the words is highlighted in any way and given that SECRET is an adjective which reads into the word which follows it, in my view the words hang together to form the dominant and distinctive element of the mark.

31. To the extent that both marks consist of or contain the word CONQUEST, there is a degree of visual and aural similarity between them. There is also a degree of visual and aural dissimilarity between the respective marks given the word SECRET appears only in the applicant's mark.

32. The word CONQUEST conjures up the subjugation of something or someone but is unlikely to bring any specific image to mind. The words SECRET CONQUEST conjures up the subjugation of some unknown thing or person. Mr Krause submitted that the inclusion of the word SECRET does not significantly alter the meaning but is suggestive of a conquest which is secret or an indulgence or something special. Whilst the presence of the word SECRET is suggestive of something clandestine, the word does act as a qualifier to the word CONQUEST which is common to both marks and means that there is a high degree of conceptual similarity between the respective marks.

33. The respective marks are similar to a reasonably high degree.

The distinctive character of the earlier mark

34. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which it has been acquired and, secondly, by reference to the way it is perceived by the relevant public (see *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings (see *Windsurfing Chiemsee v Huber and Attenburger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585).

35. The opponent has not provided any evidence of what use may have been made of its earlier mark. That being the case, I take into account only the inherent distinctiveness of the mark. The mark consists of the word CONQUEST which has no particular meaning in relation to the goods for which it is registered but is an ordinary dictionary word with which the public will be familiar. On that basis, it is a mark with an average level of inherent distinctive character.

The likelihood of confusion

36. In determining whether there is a likelihood of confusion, a number of factors have to be borne in mind. The first is the interdependency principle whereby a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. I also have to factor in the distinctive character of the earlier mark as the more distinctive it is, the greater the likelihood of confusion. I must also keep in mind the average consumer

for the goods, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them he has retained in mind.

37. Earlier in this decision I found that:

- the applicant's *jewellery and costume jewellery* have a reasonably high degree of similarity to the opponent's goods;
- the applicant's *precious metals and their alloys* and *precious stones* are dissimilar to the opponent's goods;
- the purchase of the goods which I have found to have some similarity is primarily a visual act and will involve a reasonably high degree of attention;
- the respective marks have a degree of visual and aural similarity but also a degree of visual and aural difference and have a high degree of conceptual similarity which leads to a reasonably high degree of similarity overall between the respective marks;
- the earlier mark is a mark with an average degree of inherent distinctive character which has not been shown to have been enhanced through use.

38. In order for there to be a likelihood of confusion, there has to be at least some similarity between the respective goods. Taking all matters into account, I find that there is a likelihood of confusion insofar as the applicant seeks registration of its mark in respect of *jewellery and costume jewellery*. Given that the visual aspect of the marks will be the primary factor due to the nature of the purchasing process for these goods, I do not consider that the average consumer of the goods will directly confuse one mark with the other. I do consider, however, that there will be indirect confusion i.e. the average consumer will believe the respective goods come from the same or an economically linked undertaking. The opposition succeeds in relation to *jewellery and costume jewellery*.

Summary

39. The opposition to the application succeeds in respect of *jewellery and costume jewellery*.

Costs

40. At the hearing, Mr Krause stated that he had had difficulties in trying to contact Dr Mashate and stated that he had been unable to find any references to him in relation to Graceland Solicitors. He said he could find no references to Dr Mashate on relevant registers and queried whether he had any legal qualifications. He also intimated that he may be related to the person behind the applicant company. He said that the situation was relevant as to costs. Dr Mashate made no comment on his relationship to the applicant company and insisted that he was qualified to

represent the applicant and had the relevant authority in respect of Graceland Solicitors.

41. Mr Krause had not previously raised any query about Dr Mashate's qualifications or relationship to the applicant company's principals. Neither did he make any specific submissions as to why the matter was relevant to costs. I consider it is unreasonable to raise such issues for the first time at the hearing. That said, given that a party can appoint whomever it chooses to represent it in proceedings before the registrar and, in view of his comment that he had "no problem" with Dr Mashate representing the applicant, whether as a McKenzie friend or otherwise, I do not intend to consider the matter further.

42. What is clear from the papers is that neither side has acted in what could be described as an exemplary fashion. Whilst Dr Mashate has, at times, appeared to be unfamiliar with various aspects of opposition proceedings and case law and filed his skeleton argument late, that is not, perhaps regrettably, a particularly uncommon situation in proceedings before the registrar. I accept that some of the applicant's correspondence would have had the consequence of adding unnecessarily to the work involved for the opponent. The opponent's very late indication of the withdrawal of the opposition against goods in classes 18 and 25 is also open to some criticism, particularly in view of its insistence at the CMC, held the month before the substantive hearing, of maintaining its opposition against them. It also filed its skeleton arguments late. The only evidence filed, was a single page witness statement on behalf of the opponent which did no more than act as a vehicle to exhibit a few pages downloaded from the Internet which would have taken very little time to locate and prepare. Despite the paucity of this evidence, the opponent did not seek to withdraw its objection raised under section 5(3) of the Act: rather, the objection was struck out at the CMC.

43. Taking all matters into account and considering that both parties have achieved a measure of success, I order that each should bear its own costs.

Dated this 02 day of August 2013

**Ann Corbett
For the Registrar
The Comptroller-General**