

O-087-11

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 2519992
BY OCS GROUP UK LIMITED TO REGISTER
A SERIES OF TRADE MARKS IN CLASS 43**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 99680 BY ADAM FAHN**

BACKGROUND

1. On 1 July 2009, OCS Group UK Limited ("OCS") applied to register the following as a series of two trade marks:



The application was accepted and published for opposition purposes on 7 August 2009 in Trade Marks Journal No.6797 for the following services in class 43:

Services for providing food and drink; café, restaurant, bar and catering services.

2. On 27 October 2009, Adam Fahn filed a notice of opposition. Following amendment, this consisted of a single ground based upon section 5(2)(b) of the Trade Marks Act 1994 (as amended) (the Act). Mr Fahn indicates that the opposition is directed against all of the services in the application for registration. Mr Fahn relies upon one earlier national trade mark registration:

Trade Mark	No.	Application date	Registration date	Services
 CULTURE CAFE	2520118	29/6/09	23/10/2009	43- Contract catering services; café service; provision and operation of bars and restaurants; services for the provision of food and drink.

3. In his statement of grounds Mr Fahn states:

“We are both working in the same field and our customers would expect one Culture Café to be from the same company as another. There would be confusion if we were both operating cafes in colleges for example as the term Culture Café would lose its exclusivity. For us it has many associations with local produce, recycling, international menus and cultural links in the local community.

They too offer catering services to colleges and other businesses with a focus on ethnic cuisine. While the food offered is different this is a small part of the overall concept and would weaken our brand if other people could offer Culture Cafes as this is a major definition of what we do.

When the trading name is written on documents or websites and the logo is not present, the words Culture Café would be associated to my company and trademark and hence would cause confusion if OCS were also allowed to use the term as a trademark.”

4. On 18 February 2010, OCS filed a counterstatement which consisted, in essence, of a denial of the ground of opposition.

5. Only OCS filed evidence. While neither party asked to be heard, both filed written submissions, Mr Fahn during the course of proceedings and OCS in lieu of attendance at a hearing; I will refer to these submissions as necessary below.

EVIDENCE

OCS's evidence

6. This consists of a witness statement, dated 21 July 2010, from Louise Westbury who is a trade mark attorney at Cleveland LLP, OCS's professional representatives in these proceedings. In her statement Ms Westbury says:

“2. [OCS] will argue that the term “culture café” is not distinctive. To that end I have carried out a Google internet search (of pages from the UK only) using the search term “culture café” and reviewed pages at the links found in that search.”

7. Attached to Ms Westbury's statement are ten exhibits, these are as follows:

Exhibit LW1 – consists of the first six pages of the results of a Google® internet search for the words culture cafe conducted on 18 May 2010; only brief extracts of pages from the United Kingdom are provided. Given the nature of the search term used i.e. culture cafe (as opposed to “culture café”), the search has, not surprisingly, retrieved a number of irrelevant hits. For example, there are numerous references to Café Culture, and to sites where the words appear in proximity but are clearly not relevant, such as: “Norwich

City of **Culture – Café Writers**”, “Coffee **Culture – Guliford Cafes & Coffee Shops Reviews**”, “Counter **Culture Café Ltd**” (all of which appear on page 9 of the search).

Exhibit LW2 - consists of three pages downloaded from www.rosetheatrekingston.org on 18 May 2010. The pages include, inter alia, the following text:

“Culture Café Events

Rose Theatre Culture Café

The Rose Theatre’s Culture Café offers a relaxing atmosphere in which to sample a range of irresistible refreshments whilst taking in the latest art exhibition or enjoying a free lunchtime concert.”

I note the final page includes, inter alia, the following text:

“© Rose Theatre – Kingston 2008...”

Exhibit LW3 consists of a page downloaded from www.city.ac.uk on 18 May 2010. The page includes, inter alia, the following text:

“Language and Culture Cafe

Welcome to our Language and Culture Cafe. You will find information on foreign language-related events in London, such as foreign films currently in cinemas, talks by foreign artists, foreign plays, coming to London, shows etc. We also aim to provide a comprehensive list of language-related websites to help you with your studies outside the classroom.”

Exhibit LW4 consists of a page downloaded from www.bbc.co.uk/programmes on 18 May 2010. The page contains, inter alia, the following text:

“The Culture Café

Provocative discussions, inspiring guests and news about trends, fashion, music, theatre and art.”

Exhibit LW5 – consists of two pages downloaded on 18 May and 10 June 2010 from www.tcrhub.org which Ms Westbury explains is part of Teesdale Community Resources. The pages contain, inter alia, the following text:

“CULTURE CAFE

As with other zones, the Culture Cafe has more than one designed function.

Not only does it provide a purpose-built and modern refreshment area for young people attending The Hub where they can meet, relax and discuss with others, it also has full internet access, allowing the young people to interact with the wider world.”

Exhibit LW6 – consists of a page downloaded on 18 May 2010 from www.discovernorthernireland.com. The page contains, inter alia, the following text:

“Northern Culture Cafe

Northern Culture is Belfast’s First Northern Irish and Ulster-Scots culture café. Come in and enjoy a traditional cup of tea or a cup of our award winning coffee, have a bite to eat and learn about the unique culture of Northern Ireland.”

Exhibit LW7 consists of a page downloaded on 18 May 2010 from www.markbowness.com. The page, which is dated 17 October 2007, contains, inter alia, the following text:

“Mark Bowness’ Liverpool Culture Cafe shortlisted for an award

Liverpool Culture Cafe, is a concept which aims to bring people together who have a passion for Liverpool in order to develop a Culture Cafe, at the heart of Liverpool, which will impact the cities future and provide employment for those who have had little opportunity.”

Exhibit LW8 consists of a page downloaded on 18 May 2010 from www.sheffieldforum.co.uk. The page, which is dated 16 July 2009, contains, inter alia, the following text:

“Platform 3 and Culture Cafe closed down?

I’ve also noticed that the Culture Cafe on Glossop Road, Broomhill has only been open rather sporadically lately. Again there is never a sign in the window giving explanation if they are closed when they should be open. They used to do very good falafels...”

8. Ms Westbury goes on to say:

4. [OCS] will argue that [Mr Fahn] uses the term “culture café” as a descriptive term.”

Exhibit LW9 consists of three pages. Two were downloaded on 10 June and 15 July 2010 respectively from www.vendesent.co.uk, which Ms Westbury explains is Mr Fahn’s website; the final page was downloaded on 10 June 2010 from www.beds.ac.uk. The page downloaded on 10 June 2010 from www.vendesent.co.uk contains, inter alia, the following text:

“A Culture Café™ is our concept that was created for Local Authority buildings such as Town Halls and Libraries and also College and University campuses. Not to rule out Business and Industry sites, a Culture Café works anywhere there are people looking for a good drink, light meal or snack and some enlightening surroundings.

Here we blend top quality, quickly prepared food and drinks with arts, crafts, world cultures, poetry, education, social interaction and intellect.

Put simply, some weeks we will have an art exhibition on display, other times a local crafts person will put on an exhibition. Special menus linked to civilisations around the world are introduced periodically and the whole time you are in a Culture Café you are experiencing new ideas and expanding your mind.

We are always happy to hear from people who would like a Culture Café. If you are looking to get a new contractor in for your food and beverages or are looking for a partner to add value to your building, please contact us...”

I note that the “Registered Address” details shown are the same as those held by the Trade Marks Registry for Mr Fahn’s registered trade mark. The final page of the exhibit is entitled “University help for business to become regional leader.” After recounting the origins of the Vendesent business it goes on to say:

“In 2007, the operated route of the vending business was sold and the company focussed solely on setting up its Culture Café and Rapid Retreat brands. In 2008, the first Culture Café was created for Bedfordshire County Council in the Leighton Buzzard Library. The concept was a high quality, light food and drink outlet offering reasonable prices in an enlightened modern atmosphere. The café has become a community cultural hub liaising with theatre, artistic and cultural groups in the town creating menus and promotion tied in with cultural events and schemes.”

Finally, exhibit LW10 consists of a page downloaded on 10 June 2010 from OCS’s website www.ocs.co.uk. The page reads as follows:

“Cultural Food Options

Culture Café is a dynamic new food catering service specifically designed to meet ethnic and religious food diversity requirements. We aim to create a relaxed atmosphere with flexible menu options and the ability to offer established brands such as Costa Coffee.

We are ahead of the challenge of providing hot, healthy, nutritious menus that appeal across a broad spectrum of cultures and our Culture Café brand is particularly popular in schools and colleges. Where possible all food is locally

sourced and our chefs ensure that the menu is constantly changing and features a selection of multi-cultural foods, including a wide range of Halal food and Kosher food products, or cuisine to suit your employees, students or clients.

Our Culture Café branding has a vibrant look and incorporates mood boards and area themes, which can be designed and adapted to create the perfect relaxed atmosphere.”

9. That concludes my summary of the evidence filed to the extent that I consider it necessary.

DECISION

10. The opposition is based upon section 5(2)(b) of the Act which reads as follows:

“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, or

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

11. 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,

(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.”

12. Mr Fahn’s registration is an earlier trade mark and is not subject to proof of use, as per The Trade Marks (Proof of Use, etc) Regulations 2004, as it had not been registered for five years at the time of the publication of OCS’s trade mark application.

Section 5(2)(b) – case law

13. In reaching a decision I must take into account the guidance provided by the European Court of Justice (ECJ) in a number of judgments. The principal cases are: *Sabel BV v. Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* [1999] R.P.C. 117, *Lloyd Schuhfabrik Mayer & Co. GmbH v. Klijsen Handel B.V* [2000] F.S.R. 77 and *Marca Mode CV v. Adidas AG + Adidas Benelux BV* [2000] E.T.M.R. 723, *Medion AG V Thomson multimedia Sales Germany & Austria GmbH* (Case C-120/04) and *Shaker di L. Laudato & Co. Sas* (C-334/05),

It is clear from all these cases that:

(a) the likelihood of confusion must be appreciated globally, taking account of all the relevant factors: *Sabel BV v. Puma AG*, paragraph 22;

(b) the matter must be judged through the eyes of the average consumer of the good/services in question; *Sabel BV v. Puma AG*, paragraph 23, who is deemed to be reasonably well informed and circumspect and observant – but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV v. Puma AG*, paragraph 23;

(d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v. Puma AG*, paragraph 23;

(e) when considering composite marks, 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; *Shaker di L. Laudato & Co. Sas* (C-334/05), paragraph 42;

(f) an element of a mark may play an independent distinctive role within it without necessarily constituting the dominant element; *Medion AG V Thomson multimedia Sales Germany & Austria GmbH*, paragraph 30;

(g) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 17;

(h) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v. Puma AG*, paragraph 24;

(i) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v. Puma AG*, paragraph 26;

(j) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v. Adidas AG + Adidas Benelux BV*, paragraph 41;

(k) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc*, paragraph 29.

The average consumer and the nature of the purchasing process

14. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' services. I must then determine the manner in which these services are likely to be selected by the average consumer in the course of trade. The services at issue in these proceedings are (broadly speaking) those associated with the provision of food and drink. The evidence provided by Ms Westbury (as exhibits LW9 and LW10) indicates that the average consumer of the parties' services will be both members of the general public and businesses looking for a contractor to provide the services at issue in, for example, their premises; they then are the average consumer of such services.

15. As to how the services at issue will be selected by the average consumer, my own experience as a member of the general public suggests that visual considerations (having encountered the trade mark on, for example, signage in the high street, in advertisements in magazines, on posters and on the Internet) are most likely to dominate the selection process. That said, I accept that, for example, caterers and restaurants are often recommended by word of mouth; consequently, oral/aural considerations will also play a part in the selection process. The level of attention paid by the average consumer to the selection of, for example, a catering service is likely, in my experience, to vary depending on the nature of the occasion for which the catering service is being selected and is likely to range from minimal (for, for example, an informal lunchtime event catering for a small number of people) to reasonably high (in relation to, for example, a wedding celebration). As the cost and importance of the event increases, so will the degree of care displayed by the average consumer when selecting the services. When considered in the context of a business selecting a contractor to provide the services, given the potential cost and range of issues that would need to be explored before agreement was reached (e.g. the size of the venue, the cost of providing the infrastructure, menus, length of contract etc.), one would expect the average consumer to pay quite a high degree of attention.

Comparison of services

16. For the sake of convenience the services to be compared are as follows:

Mr Fahn's services	OCS's services
Contract catering services; café service; provision and operation of bars and restaurants; services for the provision of food and drink	Services for providing food and drink; café, restaurant, bar and catering services.

17. As all of the services in OCS's application find counterpoints in the specification of Mr Fahn's registration (see below), the respective services are identical i.e.

"Services for the provision of food and drink" in Mr Fahn's registration are identical to "services for providing food and drink" in OCS's application;

"Café service" in Mr Fahn's registration are identical to "cafe services" in OCS's application;

"Provision and operation of bars and restaurants" in Mr Fahn's registration are identical to "restaurant and bar services" in OCS's application;

"Contract catering services" in Mr Fahn's registration are, given the comments of the General Court in *Gérard Meric v OHIM*, Case T-133/05, identical to "catering services" in OCS's application.

Comparison of trade marks

18. For the sake of convenience, the trade marks to be compared are as follows:

Mr Fahn's trade mark	OCS's trade mark
	

19. 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, he/she rarely has the chance to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he/she has kept in his/her 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 then go on and compare the respective trade marks from the visual, aural and conceptual perspectives.

Distinctive and dominant components

20. Both parties' trade marks consist of a number of elements. Mr Fahn's trade mark consists of the words CULTURE and CAFE presented in upper case on one line with the word CULTURE appearing in a bolder type face than the word CAFE; five devices in differing colours (red, yellow, blue, green and purple) appear above the word CULTURE.

21. OCS's application consists of a series of two trade marks. Both trade marks contain the words CULTURE and CAFÉ presented in upper case with the letters C enlarged, and with the word CULTURE above the word CAFÉ; both trade marks are accompanied (by what OCS describe as a "spiral device") to the right of the words. The first trade mark in the series is in a range of colours (magenta, green, purple and yellow); the second is in grey tones. Although applied for as a series of two, in their written submissions OCS do not distinguish between the two trade marks in the series. In my view that is a sensible approach; the difference in colour between the two trade marks in the series, and between the competing trade marks, is unlikely to be conclusive.

22. There can, I think, given their relative size and position be little argument that it is the words CULTURE CAFE which dominate both parties' trade marks. However, both parties' trade marks also contain additional elements. There is nothing in either parties' submissions which suggest that the other elements of the competing trade marks are anything other than distinctive. Although that may be true of the "spiral device" appearing in OCS's trade mark and for the majority of the device elements appearing in Mr Fahn's trade mark, it is not, I would suggest, true given the services for which Mr Fahn's trade mark stands registered, of the device of a mug. In their written submissions OCS say:

"13. However, even though the marks as a whole are distinctive, it is clear that the word element possesses little or no individual distinctive character for the services for which they are either registered or for which registration is sought.

14. This has been established by the evidence of Ms Westbury. LW1 proves a number of points, e.g. that the term Culture Café/Cafe is commonly used, as is the reverse formulation of Cafe/Café Culture. The most divergent usage appears to be with a double "f" as in Caffé Culture. Yet, there were over a quarter of a million hits from the UK alone when searching for "culture café". Clearly, the term is widely used in the UK.

15. Moreover, there is clear evidence of the term "Culture Café" being used in relation to cafes, for example [OCS refers to exhibits LW2 to LW8]. This represents a wide geographical spread of the term in relation to cafés throughout the length and breadth of the UK."

23. I have commented on exhibit LW1 to Ms Westbury's statement above. In my view, a large number of the hits revealed by her search are not relevant; a view which Ms

Westbury appears to share given that she has only chosen to provide the tribunal with more detailed information on a small number of the hits retrieved by her search. In addition, I note that Ms Westbury's review of the internet was conducted on either 18 May or 10 June 2010 i.e. over 10 months after the material date in these proceedings. Turning to the exhibits provided I would comment as follows:

Exhibit LW2 – although the article bears a copyright date of 2008, the manner in which the Rose Theatre uses the words Culture Café means the words are just as likely to be seen as a trade mark;

Exhibit LW3 - is undated, and appears to refer to foreign language related events in London and not to the services at issue in these proceedings;

Exhibit LW4 – is undated, and as Ms Westbury explains, relates to a programme on BBC Radio Scotland and not to the services at issue in these proceedings;

Exhibit LW5 - is undated. While it does refer to a “refreshment area”, the words “Culture Cafe” are, in my view, just as likely to be seen as a trade mark;

Exhibit LW6 – is undated. While it does refer to the provision of food and drink, the text of the article indicates, in my view, that it is meant to be read as a café relating to Northern Irish and Ulster-Scots culture;

Exhibit LW7 – is dated October 17 2007 i.e. before the material date. However, it is far from clear (to me at least) that the words are being used in the context of a service relating to the provision of food and drink;

Exhibit LW8 – is dated 16 July 2009 i.e. after the material date, although it does refer to a Culture Café which is likely to have served food prior to the material date in these proceedings. Once again, this is likely, in my view, to be construed as trade mark use.

24. In summary, OCS argue that the words Culture Café appearing in the respective trade marks have, in relation the services at issue, “little or no individual distinctive character.” However, the evidence filed by them falls a long way short of supporting that conclusion. It is either undated or after the material date in these proceedings (exhibits LW 3, 4, 5, 6 and 8), does not appear to relate to the services at issue (exhibits LW 3 and 4), is ambiguous (exhibits LW 6 and 7) or could just as easily be construed as using the words Culture Café in a trade mark sense (exhibits LW 2, 5 and 8). Insofar as the latter is concerned, I bear in mind the following comments of Floyd J in *Nude Brands Limited v Stella McCartney Limited and others* [2009] EWHC 2154 (Ch):

“29. Whilst the use by other traders of the brand name NUDE in relation to perfume may give those traders relative rights to invalidate the mark, it does not give those rights to any defendant. I am not at this stage persuaded that this evidence has a bearing on any absolute ground of invalidity. It certainly does not go as far as establishing ground 7(1)(d) - customary indication in trade. Ground

7(1)(b) is concerned with the inherent character of the mark, not with what other traders have done with it. The traders in question are plainly using the mark as a brand name: so I do not see how this use can help to establish that the mark consists exclusively of signs or indications which may serve to indicate the kind or quality or other characteristics of the goods, and thus support an attack under 7(1)(c)".

25. Having reached the conclusions outlined above, and notwithstanding OCS's written submissions to the contrary, it follows that I consider the words Culture Café to constitute both a distinctive and dominant element of both parties' trade marks. I shall approach the comparison of the respective trade marks with that conclusion in mind.

Visual/aural similarity

26. I have described the competing trade marks above and identified what I consider to be their distinctive and dominant components. While the device elements present in the respective trade marks share no similarity, the presence of the identical words Culture and Café appearing in both trade marks results, in my view, in the competing trade marks sharing a high degree of visual similarity. The fact that the device elements present in each trade mark are unlikely to be articulated by the average consumer, results, in my view, in aural identity between the word elements present in each parties' trade mark.

Conceptual similarity

27. The device elements present in the competing trade marks are, when considered as totalities, unlikely, in my view, to create any conceptual image in the mind of the average consumer. While the words Culture and Café are well known dictionary words in their own right, there is insufficient evidence to conclude that the combination will create any conceptual picture in the mind of the average consumer. If they do, it is clear that as they constitute the dominant element of both parties' trade marks, the conceptual message both trade marks convey is likely to be the same.

Distinctive character of Mr Fahn's earlier trade mark

28. I must now assess the distinctive character of Mr Fahn's trade mark. The distinctive character of a trade mark must be appraised first by reference to the services in respect of which it has been registered and, second, by reference to the way it is perceived by the relevant public – *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 services for which it has been registered as coming from a particular undertaking and thus to distinguish those services from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

29. In his written submissions Mr Fahn refers to the use he has made of his trade mark since early 2008, explaining, inter alia, that it appears on invoices, letterheads, forms, posters and display boards and that some radio advertising has taken place (albeit after the material date in these proceedings). However, as none of this information has been provided in the appropriate evidential format it cannot be taken into account for the purposes of these proceedings. In effect, I have only the inherent characteristics of Mr Fahn's trade mark to consider. Nonetheless, given the conclusions I have reached earlier in this decision, Mr Fahn's trade mark is, in my view, possessed of a reasonable degree of inherent distinctive character.

Likelihood of confusion

30. In determining whether there is a likelihood of confusion, I need to bear a number of factors in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. It is also necessary for me to consider the distinctive character of Mr Fahn's trade mark, as the more distinctive this trade mark is the greater the likelihood of confusion. I must also keep in mind the average consumer for the services, the nature of the purchasing process and that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he/she has retained in his/her mind.

31. I have concluded that the services are identical, there is a high degree of visual similarity and that in use the competing marks are likely to be aurally identical. I have also concluded that if the words Culture Café send any conceptual message, the message conveyed is likely to be the same. In those circumstances, and in the absence of persuasive evidence to the contrary, I have concluded that the presence of the words Culture Café in both parties' trade marks is likely to lead to direct confusion i.e. that the average consumer will assume the services of OCS are those of Mr Fahn. In reaching that conclusion I have not overlooked the fact that both trade marks contain differing device elements and are presented in differing colours. However, these differences fall a long way short of offsetting the high degree of similarity between what are, in my view, the distinctive and dominant elements of the competing trade marks i.e. the words Culture Café; the opposition under section 5(2)(b) succeeds accordingly.

Costs

32. As Mr Fahn has been successful he is entitled to a contribution towards his costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 4 of 2007. Using that TPN as a guide and bearing in mind the registrar's practice to award costs at half the rate that would have been awarded where a party had legal representation, I award costs to Mr Fahn on the following basis:

Preparing a statement and considering the other side's statement:	£100
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Official fee:	£200
Considering the other side's evidence:	£200
Total:	£500

33. I order OCS Group UK Limited to pay to Adam Fahn the sum of **£500**. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 01 day of March 2011

C J BOWEN
For the Registrar
The Comptroller-General