

O/092/12

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION NO 2531064
IN THE NAME OF KEITH ADRIAN ROE T/A ARISTOWAX PRODUCTS OF
NORWICH
IN RESPECT OF THE TRADE MARK:**

INVISIBLE GLASS

IN CLASS 3

AND

**AN APPLICATION FOR DECLARATION OF INVALIDITY THERETO
UNDER NO 83882
BY STONER, INC.**

BACKGROUND

1) Keith Adrian Roe trading as Aristowax Products of Norwich is the proprietor of registered mark 2531064 for the mark INVISIBLE GLASS and in respect of the following goods in Class 3:

Bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations.

2) It was applied for on 6 November 2009 and it completed its registration procedure on 12 February 2010.

3) On 19 October 2010, Stoner, Inc (“Stoner”) applied for the above registration to be declared invalid. Stoner’s claim is that Mr Roe’s mark offends against Section 5(4)(a) of the Trade Marks Act 1994 (“the Act”) on the ground that it has used the mark INVISIBLE GLASS in respect of a range of goods, including:

Aerosol sprays for de-icing windshields; synthetic resins for repairing chips in windshields; rain repellent fluids to be applied to windshields; glass cleaners; washing fluids for windshields and headlights; windshield wiper blades; tools for cleaning windshields and windows; a tool for cleaning windshields and windows comprised of a pivoting triangular head with a variety of cloths; eyeglass cleaning cloths; parts and fittings for all the aforesaid goods

4) It claims that such use has taken place in the UK since as early as October 2005 and as a result Stoner has established a significant goodwill associated with the use of the mark INVISIBLE GLASS. On the basis of this goodwill it claims that Mr Roe’s mark should not have been registered, in respect to all the goods claimed, because use of his mark would amount to a misrepresentation of Stoner’s goods resulting in Stoner suffering damage.

5) Mr Roe filed a counterstatement stating that he has been marketing a glass cleaner under the mark ARISTOWAX INVISIBLE GLASS in the UK since at least January 2002. He therefore claims to have the earlier common law rights in the mark INVISIBLE GLASS.

6) Both parties filed evidence and both also seek an award of costs. The matter came to be heard on 24 November 2011 when Stoner was represented by Lee Curtis for Harrison Goddard Foote and Mr Roe represented himself.

EVIDENCE

Stoner’s Evidence

7) This takes the form of two witness statements. The first of these is by Ronald Linn and dated 15 April 2011. Mr Linn is a sole trader who conducts business under the

name "Motor Geek". His business has been operated principally through the website www.motorgeek.co.uk since March 2005.

8) He explains that his business is an online retailer of automotive and automotive related products selling to customers across the UK. His business has sold a glass cleaner under the mark INVISIBLE GLASS, produced by Stoner, continuously since July 2005. At Exhibit RL1, Mr Linn provides an extract, dated 13 April 2011, from his website entitled "Stoner Invisible Glass" indicating a selling price of £10.38. The text that follows includes:

"Professional detailers swear by Invisible Glass. [...] After all, it removes dirt, dust, fingerprints, haze, oil, grease and sap easily from glass"

"[...] like all quality Stoner car care products, its been formulated for ease of use and to work quickly [...]"

"Invisible Glass is used to improve visibility for professional drivers and racers [...] if the pro's who drive under extreme conditions put that much stock in a single product, you can see how invaluable it would be under everyday driving conditions."

9) Mr Linn also states that he has also sold a glass cleaner containing a rain repellent under the mark INVISIBLE GLASS since March 2009 and he has sold it continuously since. At Exhibit RL2 he states that he provides a representation of this product. The exhibit consists of a further extract from his website dated 13 April 2011. Whilst a representation of the product is included, it is too small to ascertain any detail. In addition, the extract includes a promotional text about the product that is similar to the previous extract. However, it additionally states that "[n]ow the windscreen will stay 'invisible' and clean through rain showers."

10) Mr Linn states that he has sold approximately 1000 units of the two INVISIBLE GLASS products, the "vast majority of these being the glass cleaner product sold since July 2005."

11) The second witness statement is by Robert Marchalonis, Chief Executive Officer of Stoner. He states that Stoner is located in Pennsylvania in the USA and was founded over sixty years ago. Stoner manufactures specialised cleaners, lubricants and coatings and, in the USA, it is a leader in its field and "serves over six thousand manufacturers, service businesses, government agencies and universities." Stoner supplies its products across the globe, including to customers and distributors in the UK.

12) Several exhibits are provided to support Stoner's market position in the UK. At Exhibit RM3, Mr Marchalonis provides an extract from Stoner's website www.invisibleglass.com illustrating INVISIBLE GLASS products. Containers are visible bearing the mark INVISIBLE GLASS, two of which appear to contain a cleaning solution, the third containing "wipes".

13) Mr Marchalonis states that Stoner launched a glass cleaning product under the mark INVISIBLE GLASS in the USA in 1997 and in 2007 the product range was extended to include a window cleaning tool and moistened window cleaning cloths. He states that Stoner also sells a glass cleaner with a rain repellent under the mark INVISIBLE GLASS.

14) Mr Marchalonis states that INVISIBLE GLASS glass cleaners have been sold in the UK since October 2005 and the sign has been continuously used since then. At Exhibit RM7, Mr Marchalonis provides a copy of an invoice dated 28 October 2005 to a UK company called Drexpayre Ltd in Rochdale. It includes a quantity of ten "Invisible Glass Trigger 6 PK" and includes the text "Free samples – Value is for Customs purposes only".

15) At Exhibit RM8, Mr Marchalonis also provides copies of web pages from www.motorgeek.co.uk obtained from the WayBackMachine online archive and dating between 31 August 2006 and 22 May 2009. This shows that there are twelve "captures" in the date range. All show the same or virtually the same web pages exhibited by Mr Linn and detailed in paragraph 7 above.

16) Exhibit RM9 is a copy of a page from the website www.cleanyourcar.co.uk entitled "Stoner – Invisible Glass". The page carries a picture of a spray bottle bearing the mark INVISIBLE GLASS together with promotional text about the product. Customer reviews are also on the page with dates ranging from 28 April 2008 to 2 October 2010.

17) Exhibit RM10 is a copy of a page from the websites www.performancemotorcare.co.uk and www.shinearama.co.uk. The first shows similar details to those in Exhibit RM9 but the customer reviews are undated. The second carries a copyright notice dated 2011 and is an advertisement for INVISIBLE GLASS glass cleaner for the price of £9.95.

18) Exhibit RM11 is a copy of a page from the website www.performancemotorcare.com, dated 11 April 2011. Under the heading "Top Rated Products", INVISIBLE GLASS cleaner is one of twenty products featured.

19) Further Internet extracts are provided at Exhibit RM12 that relate to advertisements for "Stoner Invisible Glass with Rain Repellent". Extracts are from www.performancemotorcare.com, carrying a copyright notice of 2008 and www.amazon.co.uk, with the only date indication being the date the pages were printed, namely 21 February 2011.

20) Mr Marchalonis provides global turnover figures of glass cleaning products for the thirteen years up to and including 2009. These show increasing sales, for example, rising by \$1 million a year between 2006 to 2009 with turnover of \$7 million in 2006 and \$10 million in 2009.

21) Exhibit RM13 consists of copies of online customer reviews and discussion forums, many of which appear on UK websites, namely www.seat-forum.co.uk, www.detailingworld.co.uk, www.motorgeek.co.uk and www.cleanyourcar.co.uk. These

reviews or discussions are variously dated between December 2005 and May 2010, most of which appear on the second of these websites and at least make a passing reference to INVISIBLE GLASS cleaner in respect to cleaning car windscreens.

22) Mr Marchalonis states that magazine advertisements carrying the INVISIBLE GLASS mark have not appeared in the UK but that it has been promoted in a number of US magazines that are distributed in the UK.

Mr Roe's evidence

23) This is in the form of a witness statement by Mr Roe himself. He states that he is the proprietor of Aristowax Products that commenced trading in 1983 and commenced marketing "Aristowax Invisible Glass" in the UK in January 2002. At Exhibit AM2, Mr Roe provides a "sales promoter" advertisement for the product carrying a copyright notice dated 2002. Exhibit AM3 is a photocopy of a letter dated 11 March 2002 addressed to Aristowax Products where the writer is enquiring where they can obtain the Aristowax Invisible Glass product. Exhibit AM4 consists of a copy of an invoice dated 24 January 2002. It is an invoice from "Aritowax Products of Norwich" to "J R B Enterprises Ltd and is includes a quantity of 50 dozen ARISTOWAX INVISIBLE GLASS with a recorded "absolute amount" of £460.50. Mr Roe explains that this invoice relates to the first shipment of the INVISIBLE GLASS product for onward sale to individual hardware accounts.

24) Aristowax Products are based in Norwich where a number of major double glazing companies such as Anglian Windows and Bowater Zenith are also based. Mr Roe states that he has supplied his INVISIBLE GLASS product to both of these. At Exhibit AM5, a copy of the packaging used by Anglian Windows is shown. It carries the Anglian Windows mark but not the INVISIBLE GLASS mark, however, the back of the packaging includes the text "a product made by Aristowax of Norwich".

25) To counter Mr Marchalonis' claim that STONERS INVISIBLE GLASS is "widely known in the United Kingdom and is strongly associated with glass cleaning products", Mr Roe exhibits at Exhibit AM6, a copy of the results of an omnibus survey commissioned by him and conducted by Aurora Market Research Ltd. No details are provided on how the survey was conducted or how the respondents were selected. The survey was conducted between 26 May and 1 June 2011. The results do show that there were 1008 respondents and that none of them mentioned STONERS INVISIBLE GLASS when asked "Would you please tell us which brands of household and automotive glass cleaners you have ever seen or heard of?" STONERS INVISIBLE GLASS was listed as one of six brands when respondents were asked "And now thinking about automotive glass cleaner brands only, please tell us which, if any, of the following automotive glass cleaner brands have you ever seen or heard of?" Sixteen respondents indicated that they had seen or heard of it. Ten of these were in London or the South East.

Stoner's Evidence-in-Reply

26) This is in the form of a further witness statement, dated 24 August 2011, by Mr Marchalonis. He exhibits at Exhibit IV1, the results of searches conducted on 11 August 2011 on the Internet search engines Google, Yahoo and MSN for the term "Invisible Glass 'Aristowax'" and illustrates that no references were brought back except those relating to Mr Roe's trade mark applications or registrations.

27) Mr Marchalonis states that Aristowax does have an Internet presence as exemplified by the Internet extracts produced at Exhibit IV2 illustrating Mr Roe's ARISTOWAX WOOD SILK FURNITURE POLISH being available from numerous online retailers such as *ebay*, *dooyoo* and *ciao*.

28) At Exhibit IV4, Mr Marchalonis provides copies of adverts for STONERS INVISIBLE GLASS that appear in well known US motoring magazines and dated 1998 and 1999. The cover price on these magazines is expressed in US and Canadian dollars and in pounds sterling. The adverts only carry a dollar price.

DECISION

Preliminary Point/Additional evidence from Mr Roe

29) Mr Roe's submissions of 18 November 2011 included a number of statements of fact and were supported by a number of exhibits. Mr Curtis sought clarification as to whether Mr Roe was seeking leave to submit this evidence into the proceedings and argued that if he was, it should not be permitted as it did not meet the requirements as outlined in *Ladd v Marshall* [1954] 1 WLR and *Hunt Wesson (Swiss Miss)* [1996] RPC 233.

30) I permitted Mr Roe leave to submit this evidence in regularised form in light of its potential significance and because, following the High Court decision in *William Evans and Susan Mary Evans (a partnership trading together as Firecraft) v Focal Point Fires Plc* [2009] EWHC 2784, there is an increased importance in invalidation actions, such as this, to ensure that all relevant facts are before the tribunal.

31) Mr Roe submitted this evidence on 5 December 2011. This consisted of a witness statement by Jonathan Green, Managing Director of J.L. Reed Ltd, who stated that his company and its predecessor in business had continuously sold the range of ARISTOWAX products that included "Aristowax 'Invisible Glass' Trigger pack 750ml ..." up to 13 May 2008 and that the product is currently still available in some retail stores. Copies of two invoices dated 21 September 2006 and 11 December 2006 respectively are attached, but are not regularised in the correct manner. They appear to show the sale of ARISTOWAX INVISIBLE GLASS in quantities of 25 dozen and 40 dozen and corresponding to sales of £265.50 and £414 and respectively.

32) Mr Curtis responded to the filing of this evidence by letter of 19 December 2011. He criticised the evidence because a witness statement by Mr Green is outwith of what I gave leave to submit and because the invoices provided were not regularised. Both of these criticisms are valid. Nevertheless, under the general powers afforded to me by Rule 62 of the Trade Marks Rules 2008, I allow this evidence into the proceedings in the knowledge that Mr Roe's best case, insofar as he has been able to muster, is now before me, allowing me to make the most informed decision in the circumstances.

The legislation

33) The case has proceeded to final determination on the basis of Section 5(4)(a) of the Act, with such grounds being relevant in invalidation proceedings in view of the provisions of Section 47(2) of the Act. The relevant parts of Section 47 of the Act read as follows:

“47. - (2) The registration of a trade mark may be declared invalid on the ground-

(a) [...]

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.”

34) The rights identified under Section 5(4)(a) are:

“5. – [...]

(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [...]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

35) The requirements for this ground have been restated many times and can be found in the decision of Mr Geoffrey Hobbs QC, sitting as the Appointed Person, in *WILD CHILD Trade Mark* [1998] R.P.C. 455. Adapted to an invalidation action, the three elements that must be present can be summarised as follows:

(1) that the applicant for invalidation's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;

(2) that there is a misrepresentation by the proprietor (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the proprietor are goods or services of the applicant; and

(3) that the applicant has suffered or are likely to suffer damage as a result of the erroneous belief engendered by the proprietor's misrepresentation.

36) First I must determine the date at which Stoner's claim is to be assessed; this is known as the material date. In this regard, I note the judgment of the General Court (GC) in *Last Minute Network Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM) Joined Cases T-114/07 and T-115/07. In that judgment the GC said:

"50 First, there was goodwill or reputation attached to the services offered by LMN in the mind of the relevant public by association with their get-up. In an action for passing off, that reputation must be established at the date on which the defendant began to offer his goods or services (*Cadbury Schweppes v Pub Squash* (1981) R.P.C. 429).

51 However, according to Article 8(4) of Regulation No 40/94 the relevant date is not that date, but the date on which the application for a Community trade mark was filed, since it requires that an applicant seeking a declaration of invalidity has acquired rights over its non registered national mark before the date of filing, in this case 11 March 2000."

37) With this guidance in mind, the material date in the current proceedings is the date Mr Roe filed his application, namely 6 November 2009.

Goodwill

38) Mr Roe claims to have first used his mark in January 2002. This use must be taken into account as it could, for example, establish that he is the senior user, or that there had been common law acquiescence, or that the status quo should not be disturbed; any of which could mean that the Mr Roe's use would not be liable to be prevented by the law of passing-off (the comments in *Croom's Trade Mark Application* [2005] RPC 2 and *Daimlerchrysler AG v Javid Alavi (T/A Merc)* [2001] RPC 42 refer).

39) Stoner, in its statement of case, claims that it first used its mark in "October 2005, if not earlier" and Mr Marchalonis, in his witness statement, claims that it has been used in the UK since October 2005. However, in his witness statement, Mr Linn states that he has continuously stocked Stoner's INVISIBLE GLASS product since July 2005. Whilst there is some possible tension here, particularly between Mr Marchalonis' and Mr Linn's statements, the precise date of first use in the UK, whether it be in July or October

2005, is not critical in the determination of these proceedings. It is not necessary for me to comment further on this issue.

40) The law of passing off does not protect businesses with insubstantial goodwill (see, for example, *Hart v Relentless Records* [2003] FSR 36).

41) In order to make an assessment of the extent of Stoner's goodwill in its business conducted under the INVISIBLE GLASS mark, I must be possessed of sufficient information to reach an informed conclusion (See *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19) and the evidence should show that the goodwill extends to the goods claimed as of the material date (see *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat)).

42) Mr Curtis submitted that Stoner had goodwill as of the material date. He conceded that the use was small, with the evidence only demonstrating that a thousand units were sold in the UK, but argues that it is not trivial. I concur with this view. Stoner's goodwill is indeed small, but the sales referred to by Mr Curtis are supported in the evidence by a number of online customer reviews over a period of time from 2005 up to and beyond the material date. Further, a third party trader (Mr Linn) states that (in addition to selling a thousand units of INVISIBLE GLASS since 2005) he has been selling it continuously since March 2005 and this is supported by extracts from his company's website showing that, on twelve different dates between 31 August 2006 and 22 May 2009, Stoner's product was promoted on the website. Taking all of this together, I conclude that Stoner has an established, if small, goodwill as identified by its mark INVISIBLE GLASS as used in respect of its vehicle glass cleaning product, both with and without rain repellent properties. This activity was not commercially insignificant in the way that the claimant's business was in *Hart v Relentless Records*. Accordingly, I find that Stoner's goodwill extends to the following goods from the claimed range reproduced in paragraph 3 above:

Rain repellent fluids to be applied to windshields; glass cleaners

43) There is no evidence before me that the mark has been used in respect of any other goods relied upon by Stoner (detailed in paragraph 3 above). Whilst there is a statement by Mr Marchalonis that his company also produced a moistened window cleaning cloth, the evidence fails to support a finding that this product was available in the UK. The one Internet extract showing this product, bearing the name INVISIBLE GLASS, gives no indication of its provenance and is dated after the material date.

44) This finding is not disturbed by the survey commissioned by Mr Roe. The survey in question does not adhere to the criteria set out by Mr Justice Whitford in *Imperial Group Plc v Phillip Morris Ltd* [1984] RPC 293. In particular, no details are provided regarding how the survey was conducted or how the respondents were selected. It is not possible to ascertain how statistically relevant the survey is, and whether it can be considered representative of the UK population. Further, and as Mr Curtis pointed out, its findings

support Stoner rather than Mr Roe because about 1.6% of respondents, when presented with six automotive glass cleaning brands, identified STONER'S INVISIBLE GLASS, despite there being no indication that the survey was targeted at the specialist sector that Stoner's product is sold. However, for the reasons above, I find that I cannot draw any reliable information from it.

45) Having established that Stoner has the requisite goodwill, I must also consider Mr Roe's competing claim that he too has a goodwill identified by the same mark, and that this goodwill predates Stoner's goodwill. Oliver L.J. said in *Habib Bank Ltd v Habib Bank AG Zurich* [1982] RPC 1 at 24:

"Where you find that two traders have been concurrently using in the United Kingdom the same or similar names for their goods or businesses, you may well find a situation in which neither of them can be said to be guilty of any misrepresentation. Each represents nothing but the truth, that a particular name or mark is associated with his goods or business."

46) I must consider if that is the case here. Mr Curtis submits that Mr Roe's use amounts to no more than the sale of twenty units a month and he contends that this low level of sales, combined with an absence of advertising in the UK indicates that such use is trivial.

47) Even taking account of the use demonstrated in Mr Green's late filed witness statement (and invoices), his statement that his company had "continuously sold the same range of Aristowax Products (that includes "Aristowax 'Invisible Glass' Trigger pack 750ml")" and that, since this company was dissolved on 13 May 2008, many of its "original customers have continued to stock Aristowax 'Invisible Glass'", this is not corroborated by the supporting evidence.

48) Mr Roe exhibits an invoice from January 2002 for 50 dozen ARISTOWAX INVISIBLE GLASS totalling £460.50 and an advertisement from the same period. Mr Roe explains that the invoice related to the first shipment of INVISIBLE GLASS, but with the exception of the two further invoices from September and December 2006 respectively and in respect of quantities of 25 dozen and 40 dozen and totalling £265.50 and £414 respectively, there is no corroborative evidence that there has been an ongoing trade in the product. Such evidence of isolated sales combined with the fact that there is no corroborative evidence demonstrating use in the three year period leading up to the material date, fails to substantiate a claim to goodwill at that date.

49) There is evidence that Mr Roe supplied a similar, or even the same product, to Anglian Windows, but the packaging exhibited illustrates that it did not carry the INVISIBLE GLASS mark but rather Anglian Window's own mark. Mr Roe also exhibits a letter from March 2002, from a potential customer enquiring where they can obtain his product. Whilst this does not categorically demonstrate that Mr Roe's product was no longer on sale, as Mr Marchalonis submits, it nonetheless fails to advance Mr Roe's

case as it merely reinforces that the product was placed on sale earlier that year, as demonstrated by the invoice relating to that time.

50) The onus to demonstrate the existence of a concurrent goodwill sits firmly with Mr Roe, but he has been unable to demonstrate anything other than a small number of isolated sales, four years apart, and no sales in the three years leading up to the material date. Taking all of this into account, whilst I do not doubt that Mr Roe has indeed traded in a glass cleaning product bearing the mark INVISIBLE GLASS, the evidence is insufficient for me to conclude that the goodwill identified by the mark is anything other than trivial.

Misrepresentation and damage

51) Having established that Stoner has the requisite goodwill identified by its mark INVISIBLE GLASS and that Mr Roe does not have a relevant competing goodwill, I am required to move on to consider whether there is misrepresentation of, and damage to, Stoner's goodwill. The respective marks are identical. Insofar as the specification of goods, listed in Mr Roe's registration, covers glass cleaning products, the respective goods are also identical. Stoner's products are marketed as a cleaner for vehicle windows and Mr Roe's as a household window cleaner. I do not believe that such a distinction is sufficient to distance the respective products from each other and they may easily be used in each other's respective markets. Even if I am wrong on this point, consumers of Stoner's products, upon seeing the same mark used in respect of a household glass cleaner will naturally assume that it is merely a product extension and they will associate the mark with the same goodwill as identified by the vehicle glass cleaning product of Stoner.

52) Taking all of the above into account, it is likely that a substantial number of Stoner's customers or potential customers would be misled into purchasing Mr Roe's *cleaning...preparations* insofar as they are glass cleaning preparations, believing them to be Stoner's goods. A combination of identical marks together with the identical nature of the goods will lead to misrepresentation and damage. Use by Mr Roe, of his mark, is likely to result in business being diverted from Stoner's products.

53) Consideration is required as to whether or not Mr Roe should be able to retain any cleaning products in his specification in light of this finding. It is my view that Stoner's customers, upon seeing INVISIBLE GLASS in respect of cleaning preparations that are for use in respect of materials other than glass, will not be misled into believing the products to be those of Stoner.

54) Whilst Mr Curtis conceded that *bleaching preparations [...] for laundry use* are probably dissimilar, he submitted that the remaining goods, listed in Mr Roe's specification, are similar. In respect of *polishing preparations*, he submitted that they include polishing preparations for vehicles and that such goods are closely associated to its goods and they share the same trade channels. I agree with this analysis. The term *polishing preparations* includes vehicle valeting products and these are likely to be

closely associated with vehicle windscreen cleaning products, with both goods often sold together in vehicle valet packs. It is not obvious to me that the same applies to *scouring and abrasive preparations*. By their very nature, they are likely to be harmful to a vehicle and consequently, these terms are unlikely to include goods specifically adapted for use with vehicles.

55) Taking account of these findings, I am of the view that misrepresentation leading to damage is only likely to occur in respect of *cleaning preparations* insofar as they relate to cleaning glass and also *polishing preparations* insofar as they are for the polishing of vehicles. In light of this, Mr Roe's registration survives in respect of all the goods listed in his specification of goods but with the following exclusions (in bold):

*Bleaching preparations and other substances for laundry use, scouring and abrasive preparations; cleaning preparations, **but not including preparations for the cleaning of glass**; polishing preparations, **but not including preparations for polishing vehicles**.*

Costs

56) The invalidation action has been partially successful and many of the goods listed in Mr Roe's registration have survived. Consequently, I view the proceedings as resulting in a "score draw" and that each party should bear its own costs.

Dated this 1st day of March 2012

**Mark Bryant
For the Registrar
The Comptroller-General**