

O/138/20

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3336180 BY
SAFESOURCE IT LIMITED
TO REGISTER:**

SAFESOURCE IT

AS A TRADE MARK IN CLASSES 35, 41 & 42

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 414750 BY
VALVE CORPORATION**

BACKGROUND AND PLEADINGS

1. SAFESOURCE IT LIMITED applied to register **SAFESOURCE IT** as a trade mark in the United Kingdom on 5 September 2018. It was accepted and published in the Trade Marks Journal on 14 September 2018 in respect of goods and services in Classes 9, 35, 41 and 42. The application was amended on 31 July 2019 and the specification now stands as follows:

Class 35

Advertising; advertising services provided via the internet, television and radio; production of internet, television and radio advertisements; trade fairs; opinion polling; design of advertising logos; design of advertising brochures and flyers; brand creation services; search engine optimisation services; pay per click advertising; advertising and marketing services provided by means of social media and blogging; advertising, marketing and promotional services; production of video and sound recordings for marketing and advertising purposes; creating advertising material; website traffic optimisation.

Class 41

Education; providing of training; training consultation services; education information, all provided online from a computer database or the internet; publication of electronic books and journals on-line; providing digital music (not downloadable from the internet); electronic publishing services; animation production services; special effects animation services for film, multimedia, video and games; music production services; post production editing services in the field of music, videos, film, multimedia; production video and audio recordings; multimedia production; interpretation and translation services.

Class 42

Design and development of computer hardware and software; computer programming; installation, maintenance and repair of computer software and hardware; computer consultancy services; design, drawing and commissioned writing for the compilation of web sites; creating, maintaining and hosting the web sites of others; design services; consultancy in the field of computer hardware

and software; data conversion; rental of web servers, webserver space, computer hardware and computer software; hosting software as a service; computer systems analysis; outsource service providers in information technology and multimedia; information technology security; information technology support; system monitoring; electronic data storage; graphic design services; development of computer based networks; consultancy services relating to computer networks; animation design for others; programming of computer animations; computer programming of computer games; design of logos for corporate identity; programming of multimedia applications; packaging design services; brand design services.

2. The application was opposed by Valve Corporation (“the opponent”) on 12 December 2018. The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and concerns all the services of the application. The opponent is relying on the following earlier marks:

a) EU Trade Mark No. 4310603 (“the 603 mark”)

SOURCE

Filing date: 25 February 2005

Registration date: 13 September 2006

Registered for goods and services in Classes 9, 28 and 41.

The opponent is relying on the following goods and services in this opposition:

Class 9

Apparatus for recording, transmission or reproduction of sound, at the exclusion of musical sound, or images; magnetic data carriers, recording discs; data processing equipment and computers; computer software used to create three dimensional graphical environments, including capabilities for animation, artificial intelligence, sound, simulation and networking.

Class 28

Games and playthings.

Class 41

Entertainment, namely providing online computer and electronic games; providing on-line computer games for others over global and local area computer networks; providing interactive online computer games via the World Wide Web; providing single player and multiplayer interactive online computer and video games via the World Wide Web.

b) EU Trade Mark No. 3154713 (“the 713 mark”)

VALVE SOURCE

Filing date: 6 May 2003

Registration date: 4 August 2004

Registered for the following goods, all of which the opponent is relying on:

Class 9

Computer software used to create three dimensional graphical environments, including capabilities for animation, artificial intelligence, sound, simulation and networking.

3. The opponent claims that the contested mark is similar to its earlier marks, and that the applicant’s services are identical or similar to the opponent’s goods and/or services, and that, as a result of this similarity, there is a likelihood of confusion, including a likelihood of association.

4. The applicant filed a defence and counterstatement, denying the grounds and requesting proof of use for the earlier marks.

5. Both parties filed evidence in these proceedings. This will be summarised to the extent I consider necessary. Both parties also made written submissions in their witness statements.

6. Neither party requested a hearing. Both parties filed written submissions in lieu of a hearing on 3 December 2019. These will not be summarised but will be referred to as and where appropriate during this decision, which I have taken following a careful consideration of the papers.

7. In these proceedings, the opponent is represented by Jeffrey Parker & Company and the applicant is self-represented.

EVIDENCE

Opponent's evidence

8. The opponent's evidence comes from Mr Jeffrey Parker, the opponent's representative. He states that the facts and matters in his witness statement come from his own personal knowledge or were obtained from the opponent's lawyers. The evidence is dated 10 June 2019.

9. Mr Parker states that the opponent has used the 603 mark in the UK during the five years before the contested application was made. He says in paragraph 2:

“Source is a 3D game engine developed by the Opponent for making its own video games, and is then licensed to third parties for their games. The Opponent makes revenue from its own games containing the Source engine, from the third-party licenses, and also from the sale of third-party games on Steam, which is the Opponent's online gaming platform. In the UK, an example of a prominent Source licensee is Facepunch Studios Ltd ... whose game Garry's Mod has been a big hit in the UK over many years.”

10. According to Mr Parker, the opponent also makes available in the UK a video animation tool using the Source engine, called Source Film Maker. He continues:

“Source Film Maker is used by enthusiasts to make videos in support of Valve games and to create original works. Valve does not charge for use

of Source Film Maker, but the products of the tool promote sales of Valve games and further Source engine licenses.”¹

11. Five exhibits are attached to the witness statement. Three of these are entries from Wikipedia:

- Exhibit B is the entry for “Source (game engine)”. This states that Source was first released in 2004 and contains a list of the games developed by the opponent and third parties using the game engine. The entry does not indicate where the third parties are located. It was last edited on 10 July 2019.
- Exhibit C is the entry for “Game engine”, which is defined as “a software-development environment designed for people to build video games”. The page was last edited on 11 July 2019.
- Exhibit E is the entry for “Source Film Maker”, which, it states, was first released for free to the gaming community on 27 June 2012. The entry was last edited on 17 June 2019.

12. Exhibit A consists of a screenshot from the website for the Valve Developer Community and the page was last modified on 22 June 2015. “Source” is used on its own, as part of the phrases “Source SDK” and “Source Engine”, and as part of a figurative sign.

13. Exhibit D contains a screenshot from the website www.sourcefilmmaker.com. It shows links to a collection of articles about the “Saxxy Awards” from 21 August 2015 to 15 March 2018, which are for videos created using Source Film Maker. It is not possible to see from this exhibit where the creators are located.

¹ Paragraph 3.

Applicant's evidence

14. The applicant's evidence comes from Craig Sawyer, the owner of the SAFESOURCE IT, a company he describes as providing software development services and related business and consultancy services. It is dated 5 August 2019.

15. The bulk of the witness statement contains submissions and the thirty-nine exhibits are directed towards supporting the applicant's criticisms of the opponent's evidence and submissions. They consist of Wikipedia entries, definitions and screenshots. I briefly summarise the exhibits I consider to be relevant to the question of use:

- Exhibit CS1 is an extract from the *Trade Marks Manual*, explaining the classification of *Computer software downloaded from the internet* (Class 9) and *Computer software supplied from the internet* (Class 41). This exhibit is adduced in support of the applicant's submission that the services offered by the parties are different.
- Exhibits CS4-CS12 and CS14 are definitions and Wikipedia entries adduced to show that "source" is a common word in the IT industry, including in the following phrases "source code", "source file", "source program", "source control", "open-source software" and "source-available software".
- Exhibits CS13 and CS15 are lists of open-source and source-available video games respectively, obtained from Wikipedia. The latter is over 60 pages long and is adduced to show that there are many source-available games.
- Exhibits CS16-CS21 are screenshots highlighting open-source game engines: jMonkeyEngine, Torque 3D, Torque 2D, Irrlicht and Xenko.
- Exhibit CS22 is a screenshot from the website www.sourcefilmmaker.com and is the same as the first page of the opponent's Exhibit D. It is adduced to show

that Source Film Maker is a free product, that must be downloaded from Steam. It was taken on 19 July 2019.

- Exhibits CS24 and CS25 are screenshots from the Valve Developer Community website, both taken on 19 July 2019, which give instructions on how to install Source SDK (the software development kit).
- Exhibits CS28-CS31 contain information and discussions on licensing costs. Exhibit CS28 is a screenshot from the Steam platform taken on 22 July 2019. It contains information on how to sell Source Engine games on Steam. It appears that most costs are individually negotiated, but an entity called Havok must be paid \$25,000 for a “physics engine”.
- Exhibits CS34-CS36 are screenshots of the opponent’s web page menus that provide links to technical aspects of coding the source engine. Mr Sawyer says that these show that coding is complex and that the opponent’s software licences will be purchased by specialist consumers.
- Exhibits CS37 and CS38 show the results of searches in the *Oxford Dictionary of English* and the *Cambridge Dictionary* for “SAFESOURCE”. Neither produced a match.
- Exhibit CS39 is a screenshot of FAQ (Frequently Asked Questions) from www.sourcefilmmaker.com taken on 5 August 2019. It has been adduced to show that this software is free.

DECISION

Proof of Use

16. Section 6A of the Act states that:

“(2) In opposition proceedings, the register shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the period of five years ending with the date of publication of the application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non-use.

(4) For these purposes –

(a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Community.

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

17. The 603 and 713 marks completed their registration procedures on 13 September 2006 and 4 August 2004 respectively so the above provisions apply to them. The applicant has requested that the opponent provide proof of use of these marks for all the goods and services relied upon. The relevant period in which use must be shown is the five years ending with the date of publication of the application: 15 September 2013 to 14 September 2018.²

18. Section 100 of the Act states that:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

19. In *Walton International Ltd & Anor v Verweij Fashion BV* [2016] EWHC 1608 (Ch), Arnold J (as he then was) summarised the law relating to genuine use as follows:

“114. ... The CJEU has considered what amounts to ‘genuine use’ of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundersvereinigung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2013:592], [2014] ETMR, Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

² The proceedings began before the amendments made by The Trade Marks Regulations 2018 (SI 2018/825) took effect and so the relevant period ends on the publication date, rather than the application date.

115. The principle established by these cases may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37], *Verein* at [14] and [22]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71]; *Reber* at [29].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

20. As the marks are EUTMs, I bear in mind the decision of the Court of Justice of the European Union (CJEU) in *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, where it noted that:

“36. It should, however, be observed that..... the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase ‘in the Community’ is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.”

And

“50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as ‘genuine use’, it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark.”

And

“55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the

national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77).”

21. The court held that:

“Article 15(1) of Regulation No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to ‘genuine use in the Community’ within the meaning of that provision.

A Community trade mark is put to ‘genuine use’ within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market share within the European Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the main proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the market concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity.”

22. The applicant submits that the opponent’s evidence does not demonstrate genuine use of the earlier marks for the goods and services on which the opponent seeks to rely. In particular, it notes the absence of any financial information.

23. In *Awareness Limited v Plymouth City Council (PLYMOUTH LIFE CENTRE)*, BL O/236/13, Mr Daniel Alexander QC, sitting as the Appointed Person, stated that:

“The burden lies on the registered proprietor to prove use ... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a

tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”³

24. In *Dosenbach-Ochsner AG Schuhe und Sport v Continental Shelf 128 Ltd (CATWALK)*, BL O/404/13, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, said that:

“When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of the trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not ‘*show*’ (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use.”⁴

25. As I have already noted, in his witness statement Mr Parker says that the opponent has used the trade mark SOURCE in the United Kingdom during the five years up to the date of application, and gives the name of one licensee who produces a game that is an unquantified “big hit”. The opponent must satisfy me that its use of the earlier marks is at a level that is justified in the market sector concerned for the purpose of

³ Paragraph 22.

⁴ Paragraph 22.

creating and maintaining a market share for the relevant goods and services within the territory of the EU during the five years before the publication of the contested mark.

26. I must consider the evidence as a whole. The Wikipedia entries do not, to my mind, assist in showing use of the earlier marks. Even in the entry for “Source (game engine)”, there is no information on the scale of the use.

27. Exhibits A and D consist of screenshots from the websites associated with the opponent. The game engine and other tools are available via the internet. In *Warner Music UK Ltd v TuneIn Inc.* [2019] EWHC 2923 (Ch), Birss J summarised the case law relating to the accessibility of intellectual property on websites and whether this counts as use of the IP in the UK (and, by analogy, the EU):

“16. The legal principles are:

i) The mere existence of a website and its accessibility by local consumers is never enough to establish a territorial link, see Kitchin LJ in *Merck v Merck* [2017] EWCA 1834 para 168 and *L’Oréal v eBay* para 64.

ii) The issue of targeting is to be considered from the perspective of the public in the relevant state (i.e. the UK), see *Merck v Merck* para 169 and *L’Oréal v eBay* para 65 ...

iii) The test is objective in the sense that a party’s subjective intention cannot turn a website or page which is objectively not targeted at the UK into one which is (*Argos v Argos* [2018] EWCA Civ 2211 para. 51). However that does not mean evidence of intention is irrelevant. On the contrary such evidence is relevant and possibly determinative in an appropriate case (*Merck v Merck* paras 169-170 and *Argos v Argos* para 51).

iv) The court must carry out an evaluation of all the relevant circumstances, see *Merck v Merck* para 169 and *L’Oréal v eBay* para 65.

v) It may be appropriate to treat a website as a whole, but in another case it may be appropriate to conduct a more finely grained analysis. Depending on how a website is organised, not all pages are necessarily targeted at the same place(s), see *Argos v Argos* para 51 ...

17. The following is a non-exhaustive summary of factors which may be considered, the weight they bear necessarily varying from case to case:

i) The appearance of the web pages themselves, which can include explicit statements of an intention to provide goods or services to the public in the UK and the highlighting of the UK in lists or maps.

ii) Other aspects of the web pages such as language(s), currency(ies), telephone numbers, and the use of national top level domain names.

iii) The nature and size of the provider's business, the characteristics of the goods or services offered and provided, and the number of visits made by the public from the UK."

28. Here, the webpages are in English, but there is no statement of any intention to provide goods or services in the EU and the top-level domains are the generic .com. No further information is provided.

29. Looking at the evidence as a whole, I come to the conclusion that the opponent has not shown genuine use of the earlier marks. As both of the marks on which it sought to rely were subject to the proof of use requirements, it follows that the opposition fails.

CONCLUSION

30. The opposition has failed. The application by SAFESOURCE IT LIMITED may proceed to registration for all the services listed in the specification and set out in paragraph 1 of this decision.

COSTS

31. The applicant has been successful and is entitled to a contribution towards its costs. As the applicant was unrepresented, the Registry sent it a proforma to complete with the time spent on the proceedings and informing the applicant that The Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour.

32. The applicant returned the proforma completed as follows:

Completing notice of defence: 8 hours 30 minutes.

Considering forms filed by the other party: 4 hours.

Preparation of evidence and submissions: 122 hours 30 minutes

Preparation of final submissions and pro forma: 8 hours

TOTAL: 143 hours

33. In its written submissions of 5 August 2019 the applicant requested that the Tribunal take into account his allegations that the opponent has slowed up the process, resulting in his delaying the launch of his business, and the brevity of the opponent's statement of case. The applicant states that he would have liked to dispute the Registry's preliminary view to grant the extension of time requested by the opponent for filing its evidence, but did not wish to prolong the proceedings any further. The appropriate point to register these objections would have been at the time of the granting of the extension. The decision was one for the applicant to make at the time, balancing all relevant concerns.

34. In considering the applicant's assessment of the costs incurred, I am guided by section 5.2 of *The Trade Marks Manual*:

"Any cost awards made in favour of an unrepresented party will include the full cost of any official fees, but will only cover 50% of the amount from the

published scale. This ensures that the unrepresented party is not overcompensated for the cost of the proceedings.”⁵

35. The applicant has stated that he spent 12 hours 30 minutes considering the opponent’s statement and completing his counter-statement. It seems to me that this is a reasonable estimate. The applicant will have needed to research issues of trade mark law and the paucity of information in the opponent’s statement will have given him little guidance. Consequently, I award £237.50 as a contribution to the costs of this first stage of the proceedings.

36. The estimate of time taken in preparing the evidence and submissions, on the other hand, appears to be very high. I accept that the applicant will have needed to carry out research on trade mark law. Even so, there is a significant amount of repetition in the evidence and the relevance of some of the exhibits (for example, long lists of games) was not made clear to me. Furthermore, making an award based on 122 hours and 30 minutes for the evidence round would result in an amount that would be higher than the published scale for represented parties. I will therefore base my award on a third of the estimated time, which works out at just over 40 hours, and adjust this to take account of the unnecessary evidence. I make an award for the evidence round of £500.

37. I accept the estimate of 8 hours for the preparation of written submissions in lieu of a hearing, resulting in an award of £152.

38. The applicant has also sought reimbursement of postal charges of £6.60. TPN 2/2016 states that Expenses includes the following items:

“(a) Official fees arising from the action and paid by the successful party (other than fees for the extension of time).

(b) The reasonable travel and accommodation expenses for any witnesses of the successful party required to attend a hearing for cross examination.”

⁵ The published scale may be found in TPN 2/2016.

39. Postal charges are not included, and so I decline to make an award for them. The total award is made up as follows:

Preparing a statement and considering the other side's statement: £237.50

Preparing evidence and considering and commenting on the other side's evidence: £500

Preparation of submissions: £152

TOTAL: £889.50

40. I therefore order Valve Corporation to pay SAFESOURCE IT LIMITED the sum of £889.50. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 5th day of March 2020

Clare Boucher

For the Registrar,

Comptroller-General