

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION No 2100790  
BY LIDL STIFTUNG & CO Kg TO REGISTER  
THE TRADE MARK NEVAMED IN CLASS 3**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER No 46148 BY SEBAPHARMA GmbH & CO**

## TRADE MARKS ACT 1994

5 **IN THE MATTER OF Application No 2100790  
by Lidl Stiftung & Co Kg to register the trade  
mark NEVAMED in Class 3**

and

10 **IN THE MATTER OF Opposition thereto under  
No 46148 by Sebapharma GmbH & Co**

15

### DECISION

20 On 23 May 1996 (but claiming an international priority date of 29 November 1995) Lidl  
Stiftung & Co Kg applied to register the mark NEVAMED for "Cosmetics, soaps" in Class 3.  
This application is numbered 2100790.

25 On 20 December 1996 Sebapharma GmbH & Co filed notice of opposition to this application  
saying they are the owners of the following trade marks <sup>1</sup>:

No	Mark	Class	Specification
30 1159611	SEBA MED	5	Pharmaceutical and sanitary substances; disinfectants (other than for laying or absorbing dust); medicated preparations having cleaning properties for the 35 prophylaxis or treatment of diseases or disorders of the skin.

---

<sup>1</sup> I do not intend to take into account the opponents' Community Trade Mark as it was not explicitly referred to in the statement of grounds even though it appears in the evidence as part of a listing of the opponents' marks worldwide. In any case it cannot, in my view, constitute an earlier trade mark as it was filed at a date which is after the applicants' priority date. I regard the latter as still being applicable having regard to the provisions of Section 6 and Section 35(3) no matter what the fate of the German application on which it is based.

1560465

3

SEBAMED

5

5  
10  
15



Skin cleansers; cosmetic preparations for cleansing and care of the skin, the hair, the lips; baby cleansing bars; baby foam baths, bathing preparations for babies, baby skin creams, skin care oil, tissues and wipes impregnated with oil for cleaning purposes, moist tissues and shampoos for children; sun protection and skin care preparations in the form of lotions, creams and gels, after sun skin balm, after sun spray; all included in Class 3.

1560466

5

SEBAMED

5

20



Pharmaceutical preparations for skin diseases; preparations for the treatment of seborrheic conditions and microbial dermatoses; medicated skin care preparations in the form of lotions, creams and gels; all included in Class 5.

25 The grounds of opposition are in summary as follows:-

- 30
- (i) The opponent is the proprietor of trade marks which are "earlier trade marks" within Section 6 of the Trade Marks Act 1994 including, but not limited to, UK trade mark registration Nos 1159611, 1560465 and 1560466 as detailed above. They say that the applicants' mark is similar to these marks and is therefore contrary to the provisions of Sections 5(2), 5(3) and 5(4) of the Act.
- 35
- (ii) The applicants are not the proprietors of the trade mark which is the subject of application No 2100790 and accordingly contravenes the provisions of Sections 3(3), 3(4) and/or 3(6) of the Act.

The applicants filed a counterstatement denying all the above grounds. They admit that the opponent is the proprietor of trade mark registration Nos 1159611, 1560465 and 1560466.

40 Both sides ask for an award of costs in their favour.

Both sides filed evidence. The matter came to be heard on 23 May 2000 when the applicants were represented by Mr A Hume of Fitzpatrick's and the opponents were represented by Mr D Campbell of Counsel instructed by Urquhart-Dykes & Lord.

## Opponents' evidence

The opponents filed an affidavit dated 16 September 1997 by Dr Rüdiger Mittendorff, Vice Chairman of The Board of Directors of Sebapharma GmbH & Co, a position held since 1994.

5 He says he has personal knowledge of the manufacture, import, export and marketing of the goods sold under the SEBAMED marks and of the cosmetic industry generally.

He says that the opponents are the proprietors of a number of SEBAMED registrations in the UK and refers to registration Nos 1159611, 1560465 and 1560466 in particular. Details of  
10 these three registrations are provided at Exhibit A.

He says that the opponents' market is mainly for cosmetic preparations, including such goods which have pharmaceutical effects eg preparations for cleansing and care of the skin, the hair, the lips; products for baby care, skin care oil, oil care tissues, moist tissues and shampoos for  
15 children; sun protection and skin care preparations, skin cleansers in the form of cleansing bars, and in liquid form in the form of lotions, creams and shampoos; bath extracts. He says that the products have a slightly acidic pH value of 5.5 corresponding to the pH value of healthy skin. He says their products are cosmetics but not real soaps because of their pH  
20 value. They are soap free and alkaline free and therefore do not destroy the apathogenic flora of the skin and restore the acid mantle of the skin. However, they are used not only for sensitive and problem skin but also as a soap substitute to keep the skin healthy. He says that their products do not only serve medical purposes and due to their appearance as popular  
cosmetics the goods are considered to be identical to those of the applicants'.

25 He says that in his opinion the "SEBAMED" trade mark is very well known worldwide. Exhibit C gives details of five international registrations of this mark. He says it is used in about 50 countries and details are provided at Exhibit D, which includes details of five International Registrations and one Community Trade Mark application (subsequently registered). Exhibit E is a Certificate from the Chamber of Commerce in Koblenz referring to  
30 the business relationship between the applicants, being the trading company, and Sebamat GmbH, the producer of "SEBAMED" products in whose name some of the above mentioned registrations are listed and who are part of the same group as the applicants.

He says that their products are sold on a large scale in chemists' shops and supermarkets and  
35 the like and that the marks listed at Exhibit A are currently used on cosmetic preparations for cleansing and care of the skin, the hair, the lips, skin cleansers in solid form, in liquid form, in the form of lotions, creams and shampoos for instance cleansing bars, liquid face and body wash, shower fresh, hair repair conditioner, lotion, cream, and spray and roll-on deodorants. The trade mark "SEBAMED" was first used in the UK by Sebamat GmbH (formerly Sebamat-  
40 Chemie GmbH) in 1982 for preparations for cleansing and care of the skin, the hair and the lips in the form of cleansing bars, in liquid form in the form of lotions. The use since then has been continuous and throughout the UK. Current (1997) turnover in goods sold under the SEBAMED marks in the UK is about DM 500,000 per annum at ex-factory prices.

45 Exhibit F1 provides photocopies of product literature and advertising material, extracts of press cuttings from magazines and pharmaceutical journals such as "Pharmacy Today",

"Practice Nurse" (a journal for nurses in general practice), "Marie Claire", local newspapers such as the "Sunderland Star".

5 Exhibit F2 provides sample packaging for the goods and a product information leaflet which is normally enclosed with the goods.

10 Exhibit F3 gives information on research undertaken by the applicants with regard to skin and some of the products it provides and some of the background as to how the company started and who the other companies are in the group.

15 He says that approximate annual turnover in goods sold under the "SEBAMED" marks is currently (1997) DM 100,000,000. Approximate annual turnover figures in goods exported under the marks is currently (1997) DM 25,000,000. I understand these are worldwide figures.

Exhibit G provides representative invoices relating to products sold under the marks to a wide range of outlets in the UK during 1986-1988, 1990-1992, 1994-1997.

20 He says he has been aware of the applicants since 1996. He also says that Sebapharma carried out an investigation in Germany concerning use of "NEVAMED" in June 1997 in chemists shops, supermarkets and in the Register "Lauer Taxe" but could establish no use of the applicants' mark. However, as the applicants have applied for registration in respect of "cosmetics and soaps" he says there is every likelihood that the goods will be stocked in chemists shops, supermarkets etc so that they will be supplying identical or, at least, similar  
25 goods under the mark "NEVAMED" to the same market and customers in the UK and elsewhere and will be sold side by side on shelves in the same retail outlets.

He further says:-

30 "I am not aware that there has been any actual use of the Applicant's mark "NEVAMED" in the UK. However, the marks "NEVAMED" and "SEBAMED" are similar to each other, since the components "E-A-MED" are identical and the consonants "V" or "B" respectively are at least in the German or Romanic languages pronounced in a confusingly similar fashion. The different initial letter "N" in  
35 "NEVAMED" is not sufficient on its own to be distinctive in order to avoid confusion between the Marks. The marks "SEBAMED" and "NEVAMED" appear confusingly similar from the visual, phonetic and ideological aspects."

40 Dr Mittendorff concludes by saying that by virtue of the extensive use of the "SEBAMED" marks by the opponents on the goods listed in his affidavit the trade marks are distinctive of them and no other party, that their reputation extends throughout the UK, Europe and many countries worldwide and that the Registrar should formally refuse application No 2100790 as use of "NEVAMED" would be likely to cause confusion to the public.

45 A further affidavit, also dated 16 September 1997 is filed by Mr Udo Pauli, Financial Manager of Sebapharma GmbH & Co, a position he has held since 1983. He says he has personal knowledge of the import, export and sales of goods sold under the "SEBAMED" marks, that

he has read Dr Mittendorff's affidavit and confirms the information contained therein is to the best of his knowledge and belief a correct presentation of the facts.

Applicants' evidence

5

The applicants filed a declaration by Mr Mark John Hickey, a Director of Castles who represented the applicants in respect of trade mark matters in the UK at the time and who is a trade mark attorney. He says that the information provided in his declaration is from within his own knowledge or is taken from public documents.

10

Mr Hickey says that he conducted a search of their in-house database of pending UK trade mark applications and registered trade marks which include the suffix "-MED" in Classes 3 and 5. Details are provided at Exhibit MJH1. He draws attention to the co-existence of the opponents' marks with numerous registrations which he considers are more similar to the opponents' marks than the applicants' mark. They are:-

15

SEMPERMED (B1267195, lapsed) - pharmaceutical preparations and substances - Class 5

20

SEROMED (1115572) - sanitary preparations and substances; disinfectants, medical and surgical dressings; medical and surgical plasters; material prepared for bandaging - Class 5

25

SECUMED (1207880) - soaps, perfumes; non-medicated toilet preparations; cosmetics; no-medicated preparations for the care of the mouth and teeth; dentifrices - Class 5

30

SVENMED (1355640 lapsed) - pharmaceutical preparations and substances; all included in Class 5 and all in tablet form.

These are detailed in full at Exhibit MJH2.

35

Mr Hickey says that he does not believe that the marks will be pronounced in a similar fashion - the prefix (NEVA) of the applicants' mark is phonetically close to the word 'never'. He draws attention to the number of marks with a suffix "MED" and suggests that greater emphasis will be placed on the difference between the prefixes which are, he says, more generally regarded as the most important element of any mark.

40

He says that it is not likely, as claimed in Dr Mittendorff's affidavit, that the applicants' and the opponents' goods will be sold through the same trade channels since the opponents' goods, being medicated toiletries, are generally segregated. This, he says, further reduces the prospect of customers being confused when purchasing their respective goods.

45

He provides, at Exhibit MJH3 a copy of the Examination Report which shows that no objection was raised by the Registrar on the basis of the opponents' trade marks. He further says that the applicants' mark has co-existed with the opponents' marks in numerous other countries. Exhibit MJH4 provides a copy of the publication notice of the applicants' International Registration (656697).

In view of the above Mr Hickey says that the applicants' trade mark is capable of co-existence in use and on the Register with the opponents' mark without confusion arising.

#### 10 Opponents' evidence in reply

The opponents filed evidence in reply in the form of a further affidavit by Dr Mittendorff, dated 12 November 1998. He emphasises that, as previously stated by him he considers the marks at issue to be visually and phonetically similar and thereby likely to be confused. He also challenges the applicants' argument that, in the context of the applicants' mark the prefix "NEVA" is likely to be pronounced similarly to the dictionary word "NEVER". He reiterates his argument that since the elements "-E-A-MED" are identical and that "V" and "B" are, at least in the German and Romanic languages, pronounced in a confusingly similar way. He says that the different initial letter "N" is not sufficient on its own to distinguish and avoid confusion between the marks and would convey the same impression overall to the customers.

Dr Mittendorff repeats his earlier statements that the opponents' products are primarily cosmetic and cleansing preparations which happen to have a pharmaceutical effect so that the products could be classified into both Class 3 and 5.

He refers to the previously filed promotional material (Exhibit F) and confirms that the products are widely sold on a large scale in chemists' shops and supermarkets as cleansing preparations and cosmetics. He says that it is his experience that, as their Class 3 registration covers the same goods as those proposed to be registered by the applicants, both will be placed side by side and will be sold through the same trade channels.

He also refers to the opponents' Class 5 registrations which, he says, cover primarily cosmetic and cleansing preparations which "happen to have pharmaceutical effects besides". He says that a casual visit to any high street chemist or supermarket will show that shampoos and medicated shampoos or ordinary soaps, liquid soaps and medicated soaps are sold alongside each other.

Dr Mittendorff also refers to Exhibit MJH1 of the applicants' evidence and says that it shows a large number of completely irrelevant marks which do not include the "MED" suffix (as a separate element) or are otherwise likely to be pronounced differently.

He also refers to other marks in the search reports having ending components such as "IMED", "UMED" or "OMED" which, he says, make a significant difference to the look and sound of the word making confusion unlikely.

He further refers to other marks in the applicants' declaration showing identifiable words within the mark eg BLEND-A-MED (blend), CAUSAMED (cause), LICKAMED (lick), GLUTAMED (glutamine), CHLORHEXAMED (chlorhexadine), CLEARAMED (clear).

5 He also refers to marks which, although ending in "AMED" are of a different length (shorter or longer) than the opponents' mark making them sound and look different - HANSAMED, UVAMED, THERAMED, PRIMAMED, KETHAMED etc.

10 Dr Mittendorff also refers to the marks listed at the applicants' Exhibit MJH2 and says that they are not more similar to the opponents' mark for the following reasons:-

"SEROMED, SECUMED - the "OMED", "UMED" endings make the marks different visually and phonetically

15 SEMPERMED, SVENMED - neither have the end component "AMED".

20 He also refers to the applicants' International Registration 656697 (Exhibit MJH4 of the applicants' declaration). He says this was based on German trade mark No 395 48 716 and an opposition had been filed by the opponents against that German home registration which, he says, was successful and so 395 48 716 had been cancelled. He further says that the applicants have appealed that decision but if the cancellation is upheld then the depending International Registration No 656697 for NEVAMED will also be cancelled. He also refers to a Greek trade mark application by the applicants which is being opposed by them.

25 He finally refers to the applicants' declaration not making reference to any use in the UK and says that "the acid test would be for his client to show that it had used the mark without any confusion having occurred in the market place."

That completes my review of the evidence.

30 There are some six grounds of opposition but for reasons which I will explain during the course of this decision I regard the Section 5(2)(b) ground as being at the heart of the case.

35 Three grounds have been raised under Section 3 of the Act which deals with absolute grounds for refusal of registration - these being Section 3(3), 3(4) and 3(6). As will be seen from the summary of grounds no further particularisation of these grounds was offered. Mr Hume did not give up these grounds at the hearing but I think it is fair to say that he did not rely on them as being the mainstay of the opponents' case. Briefly the objections were said to be that under Section 3(3)(b) the applicants' mark is of such a nature as to deceive the public as to the origin  
40 of the goods (origin in the sense of proprietorship); under Section 3(4) on the basis of the position in Germany where it is said the opponents have been successful in an action between the parties; and under Section 3(6) that the applicants should have known that the opponents are a market leader with their SEBAMED mark and are attempting to piggyback on that brand.

I do not propose to consider these grounds in detail and will say straightaway that I see no basis for objections to the mark applied for in absolute ground terms that is to say having regard to the inherent characteristics of the mark. Nor is this a case where proprietorship issues arise to the extent that that may be the basis of the opponents' objections. Rather the  
5 Section 3 grounds appear to be an attempt to raise relative grounds objections by other means. I, therefore, dismiss these grounds.

Section 5(2) is the nub of the case. The Section reads as follows:

10 "5.-(2) A trade mark shall not be registered if because -

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

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

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

20 As identical marks are not involved sub paragraph (b) applies here.

I was referred to and take into account the guidance provided by the European Court of Justice in Sabel BV v Puma AG (1998 RPC 199 at 224), Canon v MGM (1999 RPC 117) and  
25 Lloyd Schufabrik Meyer & Co GmbH v Klijsen Handel BC (1999 ETMR 690 at 698).

It is clear from these cases that:-

- 30 (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer, of the goods/services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make  
35 direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- 40 (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;
- 45 (e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa;

(f) 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.

5 The opponents' position is that their goods, particularly those of the Class 3 registration (No. 1560465), are identical or similar to those of the application in suit and that the likelihood of confusion is increased by virtue of the fact their mark has a highly distinctive character as a result of the use made of it. I have recorded the main arguments deployed by the parties in relation to comparison of the marks in the above evidence summary (strictly much of this material is in the nature of submissions rather than evidence). I will deal with the points raised to the extent I consider necessary in coming to my own view of the matter.

I will comment firstly on the goods themselves. Mr Campbell noted that the opponents' skincare products (soap substitutes, soaps for facial washes, cleansing bars, shampoos, shower gels etc.) are aimed at a relatively sophisticated audience. Dr Mittendorff's affidavits explain the particular attributes of the products. It is said that they are sold or distributed through pharmaceutical companies reflecting their medicinal nature. The fact that the goods are advertised in publications such as Pharmacy Today and Practice Nurse supports that view. Equally there is evidence (in exhibit F1 for instance) that the products also receive publicity in local newspapers and magazines such as Marie Claire. It seems, therefore, that whilst the products sit somewhere between pharmaceuticals and cosmetics they are available through a variety of outlets. Dr Mittendorff puts the matter in the following terms:

25 "Our products do not only serve medical purposes and due to their appearance as popular cosmetics the goods are in my opinion identical to those in respect of which NEVAMED is proposed to be used and registered (namely, cosmetics and soaps)."

I take the view that whilst it may be possible to identify a particular market for the opponents' goods, the general terminology used in the parties' respective specifications is such that very closely similar and probably identical goods are involved. (As a point of classification ordinary facial soap and medicated soap are both in Class 3 of the Nice Classification.)

35 Before going on to compare the marks and consider the composite nature of the test to be applied under Section 5(2)(b) I will consider the opponents' claim that their mark has an enhanced degree of distinctive character as a result of the use made of it. Mr Hume submitted that the opponents were market leaders in the field and pointed to statements made in the corporate brochure at exhibit F3, together with the fact that the mark has been used since 1982 with turnover of approximately DM 500,000 per annum at ex factory prices.

40 Mr Campbell on the other hand pointed to what he considered to be limited substantiation of the use claimed. In particular he noted that it is not clear whether the turnover figure given relates to the year of Dr Mittendorff's affidavit; that there is no breakdown of previous years' figures and no quantification of promotional expenditure. He also suggested that the use shown mainly supported use of the version of the mark with a device element and then only for a more limited range of goods. On the evidence I am inclined to accept some of Mr Campbell's criticisms. There is limited specific information on sales to back up the general claim to a reputation in this country though I accept that the invoices/debit notes (exhibit G) confirm there has been continuity of use. The exhibits show some use of both forms of the

mark (see No. 1560465) but the main form used on packaging etc. is the second mark in the series, that is to say the split form of the word accompanied by a device. Where original packaging as opposed to photocopies of advertisements have been provided it seems that the element SEBA is in pink and MED in green (with the device picking up both colours). I  
5 conclude from this that the opponents' mark is likely to have some increased distinctiveness through use but that any such claim rests on the particular form of presentation of the second mark in the series.

10 The applicants in their evidence have drawn attention to the large number of - MED suffix marks registered or applied for in Classes 3 and 5. Mr Hume quite rightly commented that there was no evidence before me that the marks were in use and by implication there is nothing to indicate how the public reacts to such marks and in particular whether as a result they distinguish between them principally by reference to other elements. Against that the  
15 opponents have disclaimed 'MED' where it appears as a separate element in their registrations and their brochure makes it clear that the goods are for medicinal skincare. It would not I think be altogether surprising, therefore, if the MED element (where it appears as a separate element) conveyed that message to customers. The allusive nature of the suffix may, however, be somewhat less evident where SEBAMED is presented as a single word. I take into account the fact that the first mark of the series is for the word SEBAMED in plain block capitals. I  
20 also take into account Mr Campbell's reference to passages from *The European Limited v The Economist Newspaper Limited*, 1998 FSR 283 though somewhat different considerations apply where a directly descriptive dictionary word is involved as it was in that case.

25 Turning to comparison of the marks I note the exchanges between the parties as to the state of the register but do not find those exchanges to be particularly conclusive and prefer to reach my own view on the matter.

Dr Mittendorff suggests in his evidence that NEVAMED and SEBAMED are confusingly similar from the 'visual, phonetic and ideological aspects'. He points to the structure of the  
30 words, the common elements "E-A-MED" and the similar pronunciation of the letters V and B in the German or Romanic languages. I find these arguments unconvincing. The words are admittedly of similar length and have certain features in common but it has always been the case that marks must be considered as wholes and that the beginning of words tend to be more important than the ending of words (all the more so if the ending is taken as alluding to a  
35 characteristic of the goods). I find that the visual and aural dissimilarities are so marked that I cannot foresee, even allowing for imperfect recollection, that a reasonably circumspect and observant customer would confuse the marks. It may be that in Germany (where the opponents claim success in cancellation proceedings before the German Patent Office) the letters V and B are phonetically rather closer but I need only take a view of the position in the  
40 UK. In my view the argument does not apply with the same force here. Conceptually both marks are likely to be seen as invented words. Mr Campbell contended that not only was MED descriptive/allusive but SEBA also in that it suggests sebum or sebaceous (references to sebaceous glands appear in the corporate brochure at exhibit F3) and would thus have descriptive significance in the context of the goods. That may be so but there is no evidence  
45 that customers recognise the fact. Taking the marks as invented words there is no conceptual similarity between them (other than the fact that they are invented).

In the final analysis the test is a composite one having regard to all of the above factors. I can see no likelihood of confusion on the part of the public if the applied for mark is registered. The opposition fails under Section 5(2)(b).

5 There remain the objections under Sections 5(3) and 5(4). These read:

(3) A trade mark which-

10 (a) is identical with or similar to an earlier trade mark, and

(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected,

15 shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark, in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

20 (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-

25 (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

30 (b) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a) above, in particular by virtue of the law of copyright, design right or registered designs.

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 Mr Hume realistically conceded at the hearing that the Section 5(3) objection only really comes into play if I were to take the view that the respective sets of goods were not similar. Although conceivably the specifications of the opponents' earlier trade marks could include some items which might not be similar to the applicants' cosmetics and soaps, the goods for which a reputation is claimed are either the same or closely similar. In these circumstances the Section 5(3) objection does not get off the ground. Moreover my finding in relation to the marks would be a further obstacle to the opponents succeeding under this head.

40 So far as Section 5(4) is concerned the matter was argued under subparagraph (a) at the hearing. This is a case where the mark as (mainly) used is the same as the mark registered (that is the second mark in the series of No. 1560465). I have already taken into account the

reputation attaching to the opponents' mark (to the extent I feel able) in considering the Section 5(2)(b) ground. In practice I do not think the Section 5(4)(a) ground raises any different issues which might offer the opponents a better chance of success. This ground also fails.

5

As the opposition as a whole has failed the applicants are entitled to a contribution towards their costs. I order the opponents to pay the applicants the sum of £635. 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.

10

**Dated this 28 day of June 2000**

15

**M REYNOLDS  
For the Registrar  
The Comptroller General**