

O-261-16

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 3096209
BY HARRISON CLARK RICKERBYS LIMITED
TO REGISTER THE TRADE MARK
WORCESTER ROYAL PORCELAIN WORKS
IN CLASSES 8, 21 & 24
AND**

**IN THE MATTER OF OPPOSITION
THERE TO UNDER Nos. 404662 BY
PORTMEIRION GROUP UK LIMITED**

BACKGROUND

1) On 25 February 2015, Harrison Clark Rickerbys Ltd (hereinafter the applicant) applied to register the trade mark WORCESTER ROYAL PORCELAIN WORKS in respect of the following goods:

Class 8: Cutlery; cutlery being tableware; serving utensils; parts and/or fittings for all the aforesaid goods.

Class 21: Small domestic utensils and containers; household or kitchen utensils and containers; Coffee, tea and mocha services of china, earthenware, stoneware, porcelain, pottery and/or ceramics; dinner services of china, earthenware, stoneware, porcelain, pottery and/or ceramics; figurines of porcelain; statues of porcelain and glazed stoneware; vases, bowls, tins, drinking glasses, including of glass; wall plates and wall pictures of porcelain and ceramic; household and kitchen utensils of porcelain, glass, ceramic, precious metals; non-electric cooking utensils; figurines, models, statuettes, ornaments made of china, earthenware, stoneware, porcelain, pottery and/or ceramics; crockery; tableware; glassware; ovenware; cooking utensils; containers for food and beverages; basins; bowls; jugs; non-metallic trays; coasters; gloves and mitts for household use; glassware; crockery; tableware; glassware; ovenware made of stone, glass, ceramics, majolica, porcelain or plastic; crystal; crockery tableware; glassware; ovenware made of glass, china, earthenware, porcelain or of plastics; household or kitchen utensils and containers (not of precious metal or coated therewith); unworked or semi-worked glass; porcelain; earthenware; pottery; china; chinaware; vases, candle sticks and candle holders; brushes and combs; glassware; crystal; household and domestic utensils and containers or ornaments all made from china, porcelain or earthenware; ovenware, sauce boats, dishes, soap bowls, vases, egg cups, jugs, goblets, cruets, candle sticks, candle holders, basins, bottles, bowls, dish covers, moulds, coffee sets, tea sets, colanders, cups, dinner services, dish stands, drinking vessels, flasks, pot holders, plates, saucers, sieves, sifters, strainers, tea pots, coffee pots, trays, coasters, perfume sprayers, shaving pots, soap containers, plastic cups; napkin rings not of precious metal, oven mitts, oven gloves, votives, jars and soup bowls; bathroom utensils and containers; soap dishes; toothbrush holders; toilet utensils; ovenware, kitchenware, paper plates; trays, oven gloves; parts and/or fittings for all the aforesaid goods

Class 24: Tablemats; tea towels; table cloths; table napkins; shower curtains; curtains; bed linen; bedding; duvet covers; sheets; pillow cases; cushion covers and curtains, all made from textile materials; table linen, articles of household linen; towels; face cloths; handkerchiefs; furnishing fabrics, upholstery fabrics; napkins, tablecloths, tea towels, quilted table mats; traced cloth for embroidery; placemats, not of paper; parts and/or fittings for all the aforesaid goods.

2) The application was examined and accepted, and subsequently published for opposition purposes on 3 April 2015 in Trade Marks Journal No.2015/014.

3) On 3 July 2015 Portmeirion Group UK Ltd (hereinafter the opponent) filed a notice of opposition. The opponent is the proprietor of the following trade marks:

Mark	Number	Date of filing and registration	Class	Specification
ROYAL WORCESTER	53977	21.05.1886 21.05.1886	21	Household and domestic utensils and containers; ornaments; all made from china, porcelain or earthenware.
ROYAL WORCESTER	CTM 8489239	13.08. 2009 03.05. 2010 Seniority date: 21.05.1886 Seniority country: United Kingdom Seniority No: 53977	8	Cutlery; cutlery being tableware; serving utensils; parts and/or fittings for all the aforesaid goods.
			20	Furniture; mirrors; picture frames; waste bins; hooks for curtains and/or shower curtains; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother of pearl, meerschaum and substitutes for all these materials, or of plastics; trinket boxes; parts and/or fittings for all the aforesaid goods.
			21	Small domestic utensils and containers; household or kitchen utensils and containers; articles of china, earthenware, stoneware, porcelain, pottery and/or ceramics; crockery; tableware; glassware; ovenware; cooking utensils; containers for food and beverages; basins; bowls; jugs; non-metallic trays; coasters; gloves and mitts for household use; glassware; crystal; household or kitchen utensils and containers (not of precious metal or coated therewith); unworked or semi-worked glass; porcelain; earthenware; pottery; articles of terracotta; china; chinaware; objects d'art; ornaments; figurines; vases, candle sticks and candle holders; brushes and combs; glassware; crystal; household and domestic utensils and containers or ornaments all made from china, porcelain or earthenware; bathroom utensils and containers; soap dishes; toothbrush holders; toilet utensils; oven mitts; parts and/or fittings for all the aforesaid goods.
			24	Tablemats; tea towels; table cloths; table napkins; textile goods; shower curtains; curtains; bed linen; duvet covers; sheets; pillow cases; towels;

				napkins, tablecloths, tea towels, quilted table mats; traced cloth for embroidery; placemats, not of paper; parts and/or fittings for all the aforesaid goods.
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- a) The opponent contends that its marks and the mark applied for are similar. It also contends that the goods for which its marks are registered are identical and/or similar to the goods applied for. It contends that it has acquired reputation in its marks and that use of the mark in suit, without due cause, would take unfair advantage of or be detrimental to the distinctive character or the repute of its earlier marks. The application therefore offends against Section 5(2)(b) & 5(3) of the Trade Marks Act 1994 (hereinafter The Act).
- b) The sign ROYAL WORCESTER has been used in the UK since 1886 and has acquired reputation and goodwill in the goods for which it is registered. Use of the mark in suit would amount to misrepresentation which would damage the reputation and goodwill of the opponent. The mark in suit therefore offends against Section 5(4)(a) of the Act.

4) On 7 October 2015 the applicant filed a counterstatement, basically denying that the marks are similar. They did not put the opponent to proof of use. The applicant accepts that the goods of the two parties are similar.

5) Only the opponent filed evidence. Both parties seek an award of costs in their favour. Neither side wished to be heard. Both sides provided written submissions which I shall refer to as and when necessary in my decision.

OPPONENT'S EVIDENCE

6) The opponent filed a witness statement, dated 22 December 2015, by Brett Warwick James Phillips the Managing Director of the opponent company, a position he has held since March 2013, having been a director or Secretary of the company since 1988. He provides a brief history of the company which was founded in 1751 and which has used the mark ROYAL WORCESTER on porcelain since 1789. The opponent acquired the marks relied upon on 23 April 2009 and states that since this date it has used the marks upon all the goods for which they are registered throughout the UK. He provides the following sales figures for goods sold under the ROYAL WORCESTER mark in the UK:

2010	£974,889
2011	£1,656,818
2012	£2,149,441
2013	£1,788,454
2014	£2,575,942

7) The opponent owns eleven shops in the UK which sell its products directly to consumers and it also sells via the internet and to retailers throughout the UK. He states that the mark has been advertised via magazines over the years, and is also the subject of displays in large retailers such as John Lewis and House of Fraser. His company also annually attend the Spring Fair trade show in Birmingham. He states that the use of a public relations company has also led to numerous stories in newspapers and magazines such as, *inter alia*, *Metro*, *The Sun*, *Daily Mirror*, *The Lady*, *Homes and Antiques* and *Country and Townhouse*. He provides the following exhibits:

- BWJP4: Photographs of goods showing that the mark ROYAL WORCESTER is prominent on the goods and packaging. The goods shown include spoons, a china trinket box, cups, mugs, saucers and plates, undated.
- BWJP6: Photographs of the opponent's shops under the Portmeirion name which includes shots of the inside where shelves labelled Royal Worcester, Spode etc. can be seen, undated.
- BWJP7: screenshots from the opponent's website which show various items of china being sold under the Royal Worcester mark. These pages are dated 3 December 2015, after the relevant date.
- BWJP8: Samples of product guides dated January 2011, Spring 2012, Summer 2012, January 2013, Spring 2013, Summer 2013, January 2014, Spring 2014, Summer 2014, which show chinaware, aprons, tea cosies, oven gloves, tea towels, placemats, cutlery, trays, glassware, vases, bowls and pots offered under the Royal Worcester mark.
- BWJP9: Copies of price lists for Royal Worcester products dated February 2012, January 2013 & June 2014. These include chinaware, aprons, tea cosies, oven gloves, tea towels, placemats, cutlery, trays, glassware, vases, bowls and pots.
- BWJP10: A sample of an order form, dated January 2013, which shows a range of goods such as chinaware and cutlery available under the Royal Worcester mark. Also included are invoices dated 20 April 2014, 10 October 2014 and 28 November 2014 for approximately £126,000 worth of chinaware and cutlery.
- BWJP11: A sample of advertisements from various magazines dated 2011-2014 which show Royal Worcester being promoted with regard to chinaware.
- BWJP12: Evidence of the opponent exhibiting at the Spring Fair in Birmingham in 2012 and showing a variety of goods under the Royal Worcester trade mark.
- BWJP13: Examples of press coverage of Royal Worcester products from February 2013- August 2013. The goods include glassware, chinaware, melamine, chinaware of all descriptions including trinkets.

8) That concludes my summary of the evidence filed, insofar as I consider it necessary.

DECISION

9) The first ground of opposition is under section 5(2)(b) which reads:

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

(a)

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

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

10) An “earlier trade mark” is defined in section 6, the relevant part of which states:

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

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

11) The opponent is relying upon its trade marks listed in paragraph 3 above. Given the interplay between the date that the opponent’s mark was registered and the date that the applicant’s mark was published, the opponent’s marks are subject to proof of use, but the opponent chose not to put the opponent to proof of use.

12) When considering the issue under section 5(2)(b) I take into account the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

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

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

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

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

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

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

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

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

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

The average consumer and the nature of the purchasing decision

13) As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

14) The goods of the two parties are as the applicant acknowledges similar. They consist of various household goods such as, *inter alia*, cutlery, china (including cookware), ornaments, containers and holders and textile items for the home. Such items will be purchased by the general public, including businesses. These items will be self-selected from shelves in stores, or maybe ordered via a catalogue or on-line. The initial selection will be visual. Higher end items of china, glassware and object d'art maybe kept behind the counter and so I must also take into account the aural considerations of speaking to sales staff, word of mouth recommendations or telephone ordering. Many of the items will be of low cost and some will be purchased with only a low level of attention, whilst if one were purchasing a full set of china then this could be expensive (if of decent quality) and is likely to be a very considered purchase. **I therefore regard the average consumer would pay a low to medium degree of attention to the selection of the goods offered.**

Comparison of goods

15) In the judgment of the Court of Justice of the European Union (CJEU) in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, *inter alia*, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

16) The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services;
- c) The respective trade channels through which the goods or services reach the market;
- d) In the case of self serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- e) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

17) The goods of the two parties are set out in paragraphs 1 and 3 above. In carrying out the comparison I have relied upon the specification for CTM 8489239 solely.

18) Clearly, the wording of both specifications in Class 8 are identical.

19) The following terms appear in both parties' class 21 specifications and are therefore identical:

“Small domestic utensils and containers; household or kitchen utensils and containers; vases; bowls; crockery; tableware; glassware; crystal; basins; jugs; non-metallic trays; coasters; gloves and mitts for household use; unworked or semi-worked glass; candle sticks and candle holders; brushes and combs; soap dishes, toothbrush holders; toilet utensils; ovenware; oven mitts; parts and/or fittings for all the aforesaid goods.”

20) In the table below I have set out the balance of the applicant's class 21 goods and the level of similarity to the opponent's goods identified.

Applicant's Goods	Opponent's goods	Level of similarity
Coffee, tea and mocha services of china, earthenware, stoneware, porcelain, pottery and/or ceramics; dinner services of china, earthenware, stoneware, porcelain, pottery and/or ceramics; wall plates and wall pictures of porcelain and ceramic; statues of porcelain and glazed stoneware; figurines of porcelain; figurines, models, statuettes, ornaments made of china, earthenware, stoneware, porcelain, pottery and/or ceramics; porcelain; earthenware; pottery; china; chinaware;	Articles of china, earthenware, stoneware, porcelain, pottery and/or ceramics; figurines	All identical

Ovenware made of stone, glass, ceramics, majolica, porcelain or plastic; ovenware made of glass, china, earthenware, porcelain or of plastics;	Ovenware; Glassware; articles of china, earthenware, stoneware, porcelain, pottery and/or ceramics	All Identical
Household and kitchen utensils of porcelain, glass, ceramic, precious metals; tins, drinking glasses, including of glass; containers for food and beverages; household or kitchen utensils and containers (not of precious metal or coated therewith); household and domestic utensils and containers or ornaments all made from china, porcelain or earthenware; bathroom utensils and containers; cooking utensils; non-electric cooking utensils;	Small domestic utensils and containers; household or kitchen utensils and containers; glassware; articles of porcelain, and/or ceramics;	All identical
Trays; oven gloves;	Oven mitts; non-metallic trays; gloves and mitts for household use	All identical
Kitchenware; Sauce boats, dishes, egg cups, dish covers, coffee sets, tea sets, cups, dinner services, plates, saucers, tea pots, coffee pots, soup bowls; cruettes; sieves; sifters; strainers; goblets; bottles; moulds; colanders; dish stands; drinking vessels; flasks; pot holders; perfume sprayers; napkin rings not of precious metal; jars;	Household or kitchen utensils and containers; articles of china, earthenware, stoneware, porcelain, pottery and/or ceramics; crockery; tableware; glassware; ovenware;	All identical
Soap bowls; shaving pots; soap containers;	Soap dishes	Very similar
Paper plates; plastic cups;	Crockery; tableware;	Very similar
Votives	Candle sticks and candle holders	Similar

21) In respect of the goods in class 24 the following terms appear in both parties' specifications and must therefore be regarded as identical: "Tablemats; tea towels; table cloths; table napkins; shower curtains; curtains; bed linen; duvet covers; sheets; pillow cases; towels; napkins, tablecloths, tea towels, quilted table mats; traced cloth for embroidery; placemats, not of paper; parts and/or fittings for all the aforesaid goods."

22) To my mind the following terms in the applicant's class 24 specification are identical to the opponent's goods identified.

Applicant's goods	Opponent's goods
Bedding	Bed linen; duvet covers; sheets; pillow cases
Cushion covers and curtains, all made from textile materials	Curtains; textile goods
Table linen, articles of household linen	Tablemats; table cloths; table napkins; quilted table mats

Face cloths	Towels;
Handkerchiefs	Textile goods
Furnishing fabrics, upholstery fabrics	Textile goods

23) Therefore all of the goods applied for in Class 24 are identical to the opponent's Class 24 goods.

Comparison of trade marks

24) It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

25) It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by them. The trade marks to be compared are:

Opponents' trade mark	Applicant's trade mark
ROYAL WORCESTER	WORCESTER ROYAL PORCELAIN WORKS

26) Obviously the marks both contain as their first two words “ROYAL” and “WORCESTER” although they are reversed in the applicant's mark. The applicant's mark also contains the words “PORCELAIN WORKS”. Overall the marks **have at least a medium degree of visual and aural similarity.**

27) Conceptually both marks would be seen as referring to goods from the city of Worcester, and to have been granted a Royal warrant. The additional words in the applicant's mark would simply be seen as identifying the nature of the business i.e. the manufacture of porcelain. **There is a medium to high degree of conceptual similarity between the marks.**

28) **Given the above findings I come to the conclusion that the similarities far outweigh any differences in the marks, such that there is, overall, at least a medium degree of similarity.**

Distinctive character of the earlier trade mark

29) In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-

108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

30) As the opponent’s mark has no meaning linked to the goods it offers it must be regarded as a **having at least a medium degree of inherent distinctiveness. Whilst the opponent has provided evidence of use, its sales figures, given the range of goods, are at best average and in my view it cannot benefit from enhanced distinctiveness as the opponent has not shown that it has a significant reputation in the UK.**

Likelihood of confusion

31) In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is also necessary for me to keep in mind the distinctive character of the opponent’s trade mark as the more distinctive this trade mark is, the greater the likelihood of confusion. I must also keep in mind the average consumer for the goods, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has retained in his mind. Earlier in this decision, I concluded that:

- the average consumer is a member of the general public (including businesses), who will select the goods by predominantly visual means, although not discounting aural considerations and that the degree of care and attention they pay will vary but they are likely to pay a low to medium degree of attention to the selection of such goods.
- the goods of the two parties in classes 8 & 24 are identical. The goods of the two parties in class 21 are also identical with the exception of “soap bowls; shaving pots; soap containers; paper plates; plastic cups” which are very similar to the class 21 goods of the opponent and “votives” which are similar to the opponent’s “candle sticks” and “candle holders”.
- the marks of the two parties are similar to at least a medium degree.
- the opponent’s mark has a medium level of inherent distinctiveness but cannot benefit from an enhanced distinctiveness through use.

32) The applicant contended that as all goods sold under its mark would be sold exclusively by ceramics businesses operating under the Royal Porcelain Works Ltd regeneration project’s initiative in Worcester there would be no confusion as to the origin of the goods. Firstly the applicant’s mark was not subject to a geographical restriction and it is unclear how it could, given that sales will

presumably also be made on-line. Further, even if such a limitation had been made it would not have overcome the issue of consumers believing that the businesses were linked.

33) In view of all the above, and allowing for the concept of imperfect recollection, there is a likelihood of consumers being confused into believing that the goods applied for under the mark in suit, even where they are merely similar, and provided by the applicants are those of the opponent or provided by some undertaking linked to him. 34) **The opposition under Section 5(2) (b) therefore succeeds in full.**

34) **Given this finding I decline to consider the remaining grounds of opposition under sections 5(3) & 5(4)(a).**

CONCLUSION

35) The opposition under Section 5(2)(b) succeeds in full.

COSTS

36) As the opponent has succeeded in full it is entitled to a contribution towards its costs.

Expenses	£200
Preparing a statement and considering the other side's statement	£300
Preparing evidence	£800
Preparing submissions	£600
TOTAL	£1,900

37) I order Harrison Clark Rickerby's Ltd to pay Portmeirion Group UK Ltd the sum of £1,900. This sum to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 24th day of May 2016

**George W Salthouse
For the Registrar,
the Comptroller-General**