

TRADE MARKS ACT 1994

**IN THE MATTER OF AN APPLICATION UNDER No. 12244
BY GEOFFREY INC
FOR REVOCATION OF TRADE MARK No. 1567081
IN THE NAME OF FELIX TENA COMADRAN**

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in the name of Felix Tena Comadran**

BACKGROUND

1. Trade mark registration number 1567081 is in respect of the mark IMAGINARIUM and is registered in Class 28 for a specification of:

“Games and playthings; all included in Class 28.”

2. The mark was registered on 11 August 1995 with registration effective from 29 March 1994. The registration stands in the name of Felix Tena Comadran.

3. By an application dated 25 January 2001 Geoffrey Inc applied for the registration to be revoked on the following grounds:

(i) Under Section 46(1)(a) of the Trade Marks Act 1994 in that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods for which it is registered, and there are no proper reasons for non-use; or in the alternative -

(ii) Under Section 46(1)(b) of the Act because such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use.

4. The registered proprietor filed a counterstatement denying the grounds of revocation, stating that the mark IMAGINARIUM has been and continues to be used on toys, games and playthings manufactured in the UK and exported throughout the world.

5. Both sides have filed evidence in these proceedings and ask for an award of costs in their favour.

6. The matter came to be heard on 19 September 2002 when the applicant for revocation was represented by Mr Thorley of Her Majesty’s Counsel instructed by Elkington and Fife and the registered proprietor was represented by Mr Speck of Counsel instructed by Bird & Bird.

REGISTERED PROPRIETOR’S EVIDENCE UNDER RULE 31(2)

7. This consists of a declaration made in April 2001 by Felix Tena Comadran who states that he is the Managing Director and main shareholder of Step Two Ltd of Mendez Nunez, 26, 2 izqda, 5003 Zaragoza, Spain. He adds that he has worked in the company as a director since 1992 when it was established.

8. Mr Comadran provides the following information:

(i) his company has trade mark applications and registrations in more than one hundred countries for and including the word IMAGINARIUM and at Exhibit "AFTC-1" to his declaration is a list of these applications and registrations;

(ii) his company owns 166 shops worldwide (although none in the UK) called IMAGINARIUM which sell toys bearing the mark and at Exhibit "AFTC-2" is a photograph of the exterior of one of these shops;

(iii) his company's goods sold under the mark have been promoted and are available on the company's web-site www.imaginarium.es and customers have been able to buy toys over the net since November 2000. A print out from the company's web site is at Exhibit "AFTC-3". Its written contents are in Spanish.

9. In relation to the UK position, Mr Comadran points out that his company has contacts with several UK toy manufacturers who manufacture toys, games and other children's accessories for his company. At Exhibit "AFTC-4" to Mr Comadran's declaration is a list of these UK manufacturers which comprises CYP Limited, Hazel Mill Toys Ltd, House of Marbles, Little Pals - Montpellier Products Limited, Oasis Art and Craft Products Limited, Perrin & Nissen Limited and Snazaroo. Mr Comadran adds that some of the toys and games manufactured by the UK manufacturers bear the mark and that these manufacturers also put the goods into boxes which bear the mark and are then exported. He states that Exhibit "AFTC-5" to his declaration shows examples of boxes/packaging bearing the mark.

10. Next, Mr Comadran goes on to provide details of the annual turnover of the goods sold under the mark in Europe for 1994 to 2000. He adds that the annual cost of toys manufactured in England under the mark for the years 1999 and 2000 are 415,000 and 410,000 respectively. Unfortunately, he does not state which currency these figures relate to - but see paragraph 15 of this decision.

REGISTERED PROPRIETOR'S ADDITIONAL EVIDENCE UNDER RULE 31(8)

11. A second (additional) declaration by Mr Comadran (made in July 2001), in relation to the registered proprietor's claim to use of the mark in the UK was allowed by the Registrar. Mr Comadran states that he is making this further declaration to clarify some of the points raised by his first declaration.

12. Mr Comadran confirms that he is the registered proprietor of the mark in suit but explains that he registered it on behalf of Step Two SA, a company of which he is the managing director, and that he holds the mark in trust for Step Two SA (Step). He goes on to say that he has given permission to Step to use the mark in the course of trade and that this permission includes the right to give sub-licenses to third parties. Mr Comadran declares that Step exercises control over the quality of the goods manufactured by third parties as well as the manner in which the mark is used in relation to them. He adds that, as far as the UK is concerned, these third parties (the toy manufacturers) have only been given permission to use the mark in relation to goods manufactured by them for Step and exported from the UK to

Step in Spain and to use the mark in ancillary ways, for instance on business paper relating to the manufacture and supply of the goods to Step.

13. Next, Mr Comadran draws attention to exhibit "FTC-6" to his current declaration which comprises copies of invoices issued to Step by the UK manufacturer Hazel Mill Toys for the last quarter of 1998 and also 1999 and 2000, which, he states, clearly itemise the toys and games manufactured by this company and to which the mark IMAGINARIUM is affixed and also make it clear that the goods are manufactured in the UK and that goods are referred to by the IMAGINARIUM trade mark. These invoices are addressed to Imaginarium at Steps address in Zaragoza, Spain. Mr Comadran goes on to refer to his Exhibit "FT-7" which comprises colour copies of the packaging of some toys and games itemised by the invoices and he states that the mark can be clearly seen on the packaging. Mr Comadran also draws attention to Exhibits "FT-8 to FT-15" which comprise copies of invoices and packaging, going back to 1998 in the case of Snazaroo, and 1999 for the other UK toy manufacturers, which, he states, clearly demonstrate use of the mark on invoices to describe the goods and also on packaging, by the other UK manufacturers.

14. Mr Comadran explains that the artwork, design and specifications for packaging are supplied to each of the UK manufacturers by Step. He adds that use of "Imaginarium packaging" is specified in the contracts between Step and the UK manufacturers and Exhibit "FT-18" comprises copies of 1999 "agreements" with Hazel Mill Toys Limited, House of Marbles and Little Pals.

15. In relation to the turnover figures supplied in Mr Comadran's first declaration, he explains that these figures are expressed in £ sterling see paragraph 10 of this decision.

APPLICANT'S EVIDENCE UNDER RULE 31(4)

16. This consists of a statutory declaration by Fiona Merle Crawford dated 25 October 2001, amended by her witness statement of 8 April 2002 (filed under Rule 31(8)) to correct a small number of clerical errors in this declaration. Ms Crawford is a registered trade mark attorney and a partner in Elkington and Fife, the applicant's professional advisors in this action.

17. Ms Crawford states that the registered proprietor's evidence does not demonstrate use of the mark in suit. She makes the following comments:

- (i) Exhibit "AFTC-5" to Mr Comadran's first declaration and all those exhibits which refer to packaging in his second declaration show goods whose packaging bears only the mark "IMAGINARIUM and device" rather than the mark of the present registration;
- (ii) The registered proprietor's first declaration does not establish use of the mark during a defined period and the annual turnover of goods sold relates to sales outside the UK;
- (iii) The shops of the registered proprietor lie outside the UK and its web-site is not directed at UK customers;

(iv) The specification for which the mark is registered does not cover goods illustrated in the registered proprietor's exhibits e.g. paint boxes and educational games for use in teaching;

(v) There is no evidence that the mark IMAGINARIUM has been affixed to the goods and of the goods pictured in the exhibits to Mr Comadran's declarations bearing the mark IMAGINARIUM plus device, only limited use is shown in relation to Class 28 goods;

(vi) As the toy manufacturers are merely being paid "to package/repackage their own brand goods in Imaginarium's packaging" and the products are then shipped to Spain, this is not "genuine use" of the mark and merely amounts to outsourcing of production as opposed to the use of a mark for export purposes. Ms Crawford contends that export involves commerce in goods between the exporter and the customer for the goods and not just affixing a mark to meet design specifications.

REGISTERED PROPRIETOR'S EVIDENCE UNDER RULE 31(6)

18. This consists of a statutory declaration by Neil Thomas Jenkins dated 25 January 2002. Mr Jenkins is a partner in the firm Bird & Bird, the solicitors acting for the registered proprietor in these proceedings.

19. Mr Jenkins submits that use of the mark in suit by the registered proprietor as part of a logo on packaging is use for the purposes of Section 46 of the Act but he adds that, in any event, the evidence shows use of the word IMAGINARIUM alone ie. use on invoices during the relevant period as shown by Exhibits FTC-6, FTC-8, FTC-10 and FTC-12 to Mr Comadran's declarations. He states these contain a description of the goods supplied by the various UK manufacturers to Hellman International, the shipping agent for Step Two.

20. Mr Jenkins states that Mr Comadran's declaration and exhibits make it clear that the goods are manufactured in the UK for the registered proprietor, are placed in packaging bearing the mark IMAGINARIUM and then exported to the registered proprietor's company for subsequent distribution and sale.

21. Turning to use of the mark in suit in relation to the goods for which it is registered, Mr Jenkins claims that all the goods shown in the exhibits are proper to Class 28 as they can be described as "playthings". At Exhibit NTJ-2 to his declaration; Mr Jenkins summarises the goods which, he states, Mr Comadran's declaration and exhibits show to have been manufactured in the UK on behalf of the registered proprietor and the packaging of which bears the IMAGINARIUM trade mark. This summary also contains the dates on which the costs of manufacturing these goods were invoiced.

APPLICANT'S EVIDENCE UNDER RULE 31

22. This consists of a further statutory declaration by Fiona Merle Crawford dated 12 April 2002.

23. Ms Crawford disputes Mr Jenkin's comments about use of the mark IMAGINARIUM alone and states that Step Two is not an unrelated third party or customer of the registered proprietor, but a licensee of the IMAGINARIUM mark, and shipment to this company does not amount to use. She re-iterates that the invoices submitted with Mr Comadran's declaration only reflect the cost of goods listed and in some cases packaging/repackaging costs. In Ms Crawford's view the presence of the word IMAGINARIUM on invoices addressed to the holder of a license does not put the mark into genuine use in the UK. She adds that the UK manufacturers are not empowered to use the trade mark IMAGINARIUM in any commercial sense and that the freight carrier Hellman International are not customers or any form of commercial intermediary and the supply of goods to the freight carrier does not qualify as genuine use.

24. Ms Crawford goes on to dispute Mr Jenkin's statements about use of the mark on goods covered by the registration and she maintains that many of the goods mentioned in the invoices are not included within Class 28, and thus do not fall within the ambit of the registration.

25. This concludes my summary of the evidence filed in these proceedings. I now turn to the decision.

DECISION

26. Section 46 of the Act states:

“46.-(1) The registration of a trade mark may be revoked on any of the following grounds -

- (a) that within the period of five years following the date of completion of the registration procedure it has not 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, and there are no proper reasons for non-use;
- (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;
- (c) that, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service for which it is registered;
- (d) that in consequence of the use made of it by the proprietor or with his consent in relation to the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

(2) For the purposes of subsection (1) 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 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.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) An application for revocation may be made by any person, and may be made either to the registrar or to the court, except that -

- (a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and
- (b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from -

- (a) the date of the application for revocation, or
- (b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date.”

27. In addition Section 100 of the Act is relevant. It reads:

“100. 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.”

28. Mr Thorley, in his skeleton argument, accepted that the registered proprietor’s evidence disclosed the following:

“(a) *Mr Comadran holds the trade mark on trust for Step and has given permission to Step to use the mark in the course of trade for the goods of which it is registered. This permission includes the right to give sub-licences to third*

parties (Comadran 2 para 2).

- (b) *Step has purchased from certain UK companies various goods within the relevant periods.*
- (c) *It is accepted that the mark (or a mark in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered) has been affixed to goods or to the packaging of goods in the United Kingdom but only in relation to “Ludo sets; Snakes & Ladders sets; educational card games, other than for teaching purposes; marble games, marbles for playing games and face paints (other than cosmetics)”.*
- (d) *It is accepted that those goods were ordered by Step from UK manufacturers and that the affixing of the mark was at the direction of Step to meet its design specifications.*
- (e) *Consequently it is accepted that the affixing of the mark was with the consent of Step and hence Mr Comadran.*
- (f) *The UK manufacturers were not part of the same group of companies as Step and the transaction between Step and those companies was an arms length transaction.*
- (g) *The goods once packaged and paid for were shipped to Step in Spain either directly or by a transport company called Hellman (Comadran 2 para 10).”*

29. Accordingly, the applicant for revocation’s case is based on the following two arguments:

- (i) that the dealing in the goods admitted to have taken place does not constitute “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”, for the purposes of Section 46(1) of the Act, even after taking into account the deeming provisions relating to export contained in Section 46(2);
- (ii) that if, contrary to the foregoing, the use admitted does constitute such use, the use has taken place in such small quantities and in relation to such a limited specification of goods that it would be inappropriate for the mark to remain on the register for all the goods for which it is presently registered and that, accordingly, grounds exist for the revocation of the mark in respect of all other goods having regard to the provisions of Section 46(5) of the Act.

30. This case raises the issue of the purpose and scope of Section 46(2) of the Act, in particular what is the purpose of the “export exception” to the general requirement for use to be within the jurisdiction for which a trade mark is registered?

31. The section comes directly from the Directive EC/104/89 and in line with the usual approach to the interpretation of European legislation, it is appropriate to adopt a purposive approach.

32. Two different factual situations can be readily identified in relation to Section 46(2). The first is where the trade mark is attached to the goods or their packaging in the country of registration by, or with the consent of, the trade mark proprietor, who then sells the goods, or licenses them to be sold, to an independent third party in a different jurisdiction. This situation can be readily compared to normal use by the proprietor of a trade mark, the only difference being that the purchases of the goods bearing the trade mark is domiciled abroad. In the second situation, the registered proprietor is domiciled abroad and has the goods manufactured for him in the country of registration. The mark is applied to the goods or their packaging with the consent of the registered proprietor. The goods are then shipped abroad normally, as in the case in issue, to the registered proprietor or his agent.

33. The applicant argues that the second situation, which applies to the current case, does not constitute 'export' of goods under the mark because the 'export' is to the registered proprietor abroad rather than by the registered proprietor. Further, the applicant submits that the registered proprietor does not need a registration in the UK because it has no business here, either as a seller into the UK or (as a consequence of their earlier argument) as exporters from the UK. In addition, it is said by the applicant that the movement of goods under the mark (with the proprietors consent in the UK), to the proprietor in Spain, merely amounts to internal or private use of the mark and does not therefore constitute "genuine use". In support of these arguments Mr Thorley drew my attention to the Opinion of Advocate General Colomer given on 2 July 2002 in Case C40/01, *Ansul BV v Ajax Brandbeveiliging BV* in which, although the question of export did not directly arise, the Advocate General considered the notion of "serious/genuine use" and in paragraphs 56 to 58 of his opinion stated the following:

"56. The concept of the trade mark and the characteristic functions of this form of industrial property also require public and external use, directed at the outside world. It is necessary, through its exploitation, for the trade mark to be present on the market for the goods or services which it represents. Consequently, we may speak of genuine use if goods are sold or services are supplied, but also where the mark is used for advertising purposes, in order to introduce the goods or services to the market.

57. On the contrary, private use, which does not extend beyond the proprietor's internal sphere, is irrelevant, in so far as it is not aimed at winning a share of the market. In this way, measures taken in preparation for marketing goods and services or storage and warehousing without leaving the company premises cannot constitute "adequate" and "genuine use". The use consisting of affixing the mark to goods or to their packaging for export purposes is considered relevant only as an exception. This exception is justified by the need to protect firms whose business is concentrated on exports and which, through not exploiting a trade mark on the internal market, run the risk of losing it through disuse.

58. To sum up, we can only speak of genuine use where the trade mark, in the form in which it was registered, is used publicly and with external relevance, to open up a niche in the market for the goods or services which it represents.”

34. In response, Mr Speck on behalf of the registered proprietor argued that the term “export” in Section 46(2) should be given a broad meaning, including “shipping”. He submitted that any use which would constitute an infringement if done without the proprietor’s consent, must count as use of the mark by the proprietor if done with his consent. He added that such use must be considered genuine if it was intended to find a market for the goods and that according to Section 46(2), it does not matter if the market is outside the UK. In addition, the registered proprietor points out the difficulty that would arise if registration were not to be permitted in cases within the second situation described above (paragraph 32) because another party could move to register the mark and close down the registered proprietor’s manufacturing facility in the UK through the threat of infringement proceedings.

35. The parties also submitted other arguments which were based upon a Canadian decision and 1938 Act cases. However, I do not find these submissions to be of assistance in deciding the meaning or purpose of Directive based provision.

36. It seems to me that the registered proprietor must be correct in submitting that any use of a mark which if undertaken by a third party would be an infringement must, if done by the proprietor, be sufficient to constitute use by the proprietor. However, “use” does not necessarily constitute “genuine use”, as pointed out in the Opinion of the Advocate General. For “use” to be “genuine” it must be sufficient in scale, which is a matter of fact. Furthermore, the use must not be private as the use must be intended to find a market.

37. In the present case it is accepted that the use in the UK was ultimately interested to find a market on the continent. It can therefore be contrasted with purely private use which is never intended to find a market anywhere. In my view the use of the mark by the registered proprietor qualifies as genuine use on the basis shown. The mere fact that the first recipient of the goods in Spain was the proprietor should not matter.

38. The issue now turns on whether the use shown can properly be regarded as use of the mark in relation to the goods solely for export purposes. In this connection it is relevant that Section 46(2) defines use in the UK merely in terms of “affixing the trade mark to goods or to the packaging of goods”. There is no dispute that this has occurred.

39. At the hearing Mr Speck drew my attention to Section 10(4) of the Act, which relates to the infringement of registered trade marks and which reads as follows:

“10(4). For the purposes of this section a person uses a sign if, in particular, he -

- (a) affixes it to goods or the packaging thereof;
- (b) offers or exposes goods for sale, puts them on the market or stocks them for those purposes under the sign, or offers or supplies services under the sign;

- (c) imports or exports goods under the sign; or
- (d) uses the sign on business papers or in advertising.”

40. In my view the meaning of “export(s)” must be the same in Section 46(2) and Section 10(4)(c) of the Act. Otherwise, the unfortunate result would be that registered proprietor’s fears about third party registration of the mark and the possible enforced closure of the UK manufacturing facility could come about (paragraph 34 of this decision refers). There is considerable force in the registered proprietor’s claim that any use which if undertaken by a third party would constitute infringement must, if done by the proprietor constitute use for Section 46. Consequently, if the use undertaken in the UK with the proprietor’s consent would, if done without it constitute infringement, the use must be held to be sufficient to support the registration. It seems to me that it can be assumed that this was one of the objectives Section 46(2) was intended to bring about. The fact that the Section requires the mark to be applied to goods or to the packaging of goods in the UK may also point to a desire to protect manufacturers in this country under the mark.

41. In the case of *Waterford Wedgewood Plc v David Naglis Limited* [1998] FSR 92, Sir Richard Scott, the Vice Chancellor, adopted a broad interpretation of “exportation” for the purposes of infringement and held that “exportation” consisted of the removal of goods from the territorial jurisdiction. It follows from my earlier comments that I believe the same broad view must be taken under Section 46(2). The fact that the registered proprietor was also the importer of the goods in Spain is not fatal. If the goods were “exported” under the mark with his consent then, provided the mark was applied in order to find a market abroad, it is sufficient to amount to genuine use. On the evidence in the present case, it seems to me that the registered proprietor’s use has been genuine and falls within the protection afforded by Section 46(2) of the Act.

42. The application for revocation fails on the Section 46(2) ground and I now turn to the applicant’s second ground which is based on Section 46(5) of the Act and relates to partial revocation of the registration.

43. On the correct approach to be taken to Section 46(5), I was referred at the hearing to *Pomeco Ltd v Reed Consumer Books Ltd* (the *Minerva* decision) [2000] FSR 734 where Jacob J noted that:

“The problem is that some of the language for specifications of goods is apt to be extremely wide. Indeed, “printed matter” in this case is extremely wide. I think it is inevitable that at times one would have to “dig deeper”. Even taking the specification considered by Neuberger J for a “domestic container”, one can think of quite different sorts of domestic container: a hat box, a snuff box, a jewellery box, a plastic thing you put inside the fridge. Wide words can cover what are commercially quite different sorts of articles. So if one were to show use for just one of that sort, it would be commercially nonsense to maintain the registration for all goods caused by the wide words.

That is not to say the court will curtail the registration right down to things like red tea

caddies. But if non use in respect of a significant subset of a wide general description is established, then I see no reason why the court should not eliminate that subset from the specification.”

and my intention was also drawn to *Decon Labs v Fred Baker* [2001] RPC 2934, where, Pumfrey J stated (at paragraph 24):

“I think the correct starting point as a matter of principle consists of the list of articles for which the proprietor has in fact used the mark. In arriving at a fair specification having regard to the proprietor’s use, it is also necessary to remember that the effect of Section 10(2) (and of 10(3), in limited circumstances) is to give the proprietor protection outside his specification of goods but in areas where he can demonstrate a likelihood of deception in a side sense, that is, deception as to trade origin leading to association among the relevant public. There is no pressing need, therefore, to confer on the proprietor a wider protection than his use warrants by unduly broadening the specification.”

44. In application of the above to the circumstances of the current case, the registered proprietor’s use of the mark, as admitted by the applicant for revocation in Mr Thorley’s skeleton argument, involves use on “Ludo sets; snakes and ladders sets; educational card games, other than for teaching purposes; marble games, marbles for playing games and face paints (other than cosmetics)”. Furthermore, it seems to me that the evidence, in particular Mr Comadran second declaration and the exhibits attached thereto, suffices to show that the registered proprietor has used the mark in relation to a variety of games, including “What I Do” and “Make a Scene” games, dominoes, jigsaws, jumping beans and 9cm cars and planes.

45. While the specification of goods for which the mark in suit is registered ie (Games and playthings), encompasses a wide range of products, it seems to me that, as a question of degree, the registered proprietor’s use has been on a sufficiently wide range of relevant goods to justify the specification as registered. Accordingly, I find that the applicant’s second ground of revocation, under Section 46(5) of the Act, also fails.

COSTS

46. As the application for revocation has failed the registered proprietor is entitled to a contribution towards his costs.

47. At the hearing Mr Thorley argued that my considerations on costs should take into account the expense, delay and inconvenience which resulted from the registered proprietor having “two bites at the cherry” in submitting its evidence to show use of the mark as, in addition to submitting evidence under Rule 31(2), the registered proprietor submitted evidence relating to the use of the mark under Rule 31(8) by virtue of the Registrar’s discretion. The registered proprietor provided no satisfaction as to why the Rule 31(8) evidence, the contents of which were of considerable impact and significance, was not submitted “up front” under Rule 31(2). I believe Mr Thorley has a point which I have taken into account by reducing the costs awarded from the scale to the registered proprietor.

48. I order the applicant to pay the registered proprietor the sum of £1,600. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 25th day of November 2002

**JOHN MacGILLIVRAY
For the Registrar
the Comptroller-General**