

O-500-14

**IN THE MATTER OF THE TRADE MARKS ACT 1994**

**-and-**

**IN THE MATTER OF APPLICATION No. 2643772**

**in the name of MAROC ORGANICS LIMITED**

**TO REGISTER THE MARK**

**HARLEQUIN SHELLAC**

**in class 30**

**-and-**

**IN THE MATTER OF OPPOSITION No. 400028**

**BY CREATIVE NAIL DESIGN INC.**

**APPEAL TO THE APPOINTED PERSON FROM THE DECISION OF MS ANN  
CORBETT, HEARING OFFICER, ACTING ON BEHALF OF THE REGISTRAR OF  
TRADE MARKS DATED 29 JANUARY 2014**

**DECISION**

**Background**

1. The Applicant, Maroc Organics Limited, applied to register the word mark **HARLEQUIN SHELLAC** on 20 November 2012 ('the Application Date').
2. The Application was made in classes 3 and 11, respectively for:
  - (i) Class 3: *'Bleaching preparations and other substances for laundry use; cleaning polishing, scouring and abrasive preparations; soaps; perfumery; essential oils; cosmetics; hair lotions; dentifrices.'*
  - (ii) Class 11: *'Ultraviolet ray lamps, not for medical purposes.'*

3. The Applications are opposed by Creative Nail Design Inc ('the Opponent'), a Californian company. It served a Notice of Opposition and Statement of Grounds on 27 March 2013 opposing the application based on its earlier registered marks (s5(2) and (3) of the Trade Marks Act 1994) and on its rights in passing off (s5(4)(a) of the Act).
4. So far as s5(2) and (3) are concerned, the Opponents rely on three UK registered trade marks. One of these (2582298) is for the word mark **CND SHELLAC**. This was registered as of 24 May 2011, in respect of precisely the same goods in precisely the same classes as the mark applied for. The other two trade marks relied on are device marks which present the words CND SHELLAC in conjunction with a 'c' device and (in one case) the word 'color'. In the device marks the letters CND are give more prominence than the word SHELLAC.
5. So far as s5(4)(a) is concerned, the Opponent claimed in its Statement of Grounds that it is has established considerable goodwill in the United Kingdom associated with the use of the marks SHELLAC and/or CND SHELLAC (including in its device forms) in relation to nail products, nail varnishes, nail care products, nail polish removers, ultra-violet lamps and cosmetics. In relation to both the signs SHELLAC and CND SHELLAC, it stated as follows:

*"The Opponent owns considerable goodwill in [the mark] in the UK. The mark has been consistently used in advertising and promotional material since its launch. The Opponent has invested considerable sums in brand support and promotional activities..."*

*The Opponent's product has enjoyed considerable success since launch and is offered in literally thousands of nail salons the length and breadth of the UK. The mark is widely recognised by salon professionals and by end users alike. The mark has received extensive media coverage in*

*numerous consumer magazines and also newspapers such as Hello!, OK, the Mail on Sunday, The Daily Mail, Vogue, Elle Zest, Good Housekeeping and others.*

*As a result of its business activities under the mark including its substantial investment in bringing products to market under the mark, the Opponent has acquired a considerable goodwill in the mark and a substantial reputation among relevant consumers.'*

As a result of this goodwill, it alleged that the use by the Applicant of the mark HARLEQUIN SHELLAC would cause substantial confusion amongst customers and would therefore constitute passing off.

6. The Applicant filed a Counterstatement. Much of this was concerned with pointing out that the actual products being sold by the Applicant were different from those sold by the Opponent, both technically (a one coat system, in contrast to the Opponent's three coat system) and in terms of colour range. Furthermore, it said that the Applicant's products were aimed at the retail market, as opposed to the Opponent's products which were aimed at salons. Such distinctions are of course (as the Hearing Officer pointed out) entirely irrelevant, because the question in this Opposition is not concerned with how the Applicant is actually now using its mark. It is concerned with whether any 'normal and fair' use of the mark HARLEQUIN SHELLAC in relation to the goods of the registration would be likely to cause confusion with the Opponent's registered marks or would amount to passing off. It was not suggested that use of HARLEQUIN SHELLAC in relation to a three coat nail varnish, sold to salons in the same colours as the Opponent's CND SHELLAC, would not be 'normal and fair' use.
7. Aside from the point about actual use, the Counterstatement simply stated as follows:

*'We deny that the mark HARLEQUIN SHELLAC is visually and conceptually similar to the opponents and the respective goods are not identical....*

*Our choice of mark, Harlequin Shellac, was based upon Harlequin meaning bright colours and SHELLAC meaning a thin hard varnish traditionally used on wood.*

*The mark HARLEQUIN SHELLAC will not mislead the public.'*

8. I note in passing that the statement '*the respective goods are not identical*' seems to have been based on the same misapprehension as to the law to which I have referred above. Clearly the goods are identical, since the specifications are the same.
9. It may be noted that the Applicant did not in its Counterstatement make any challenge to the assertions of reputation and goodwill in the United Kingdom made by the Opponent in its Statement of Grounds. I will return to this point later.
10. The Applicant filed no evidence to supplement its Counterstatement, nor did it file any submissions before the Hearing Officer.
11. The Opponent filed three witness statements, including exhibits, together with written submissions. The witness statements were detailed and thorough. They included a statement from a Mr Samuel Sweet, the Managing Director of 'Sweet Squared', the exclusive distributor in the UK of CND Shellac products. These products represent some 80% of Sweet Squared's business. Mr Sweet's evidence included a statement that CND's SHELLAC product has a '*45% - 65% market share in the professional gel polish market in the UK. It has the largest share of the relevant marketplace in the UK.*' Of some 50,000 nail professionals (including beauticians) in the UK, Mr

Sweet's company has supplied 20,000 since the SHELLAC launch in April 2010. Turnover in CND's SHELLAC products has increased from £700,000 in 2010 to £4M in 2011 and £5M in 2012. He considers on the basis of the number of applications per bottle that there must have been several million customer applications of CND SHELLAC since launch. Advertising in the UK has been between £300,000 and £400,000 per annum since launch. Mr Sweet gives a number of examples of the advertising and promotion of the SHELLAC brand in the UK, and some of the many awards which the product has won in the UK. The advertising shows the packaging used for the product, which clearly displays the mark CND and the mark SHELLAC. As well as the evidence of Mr Sweet, the Opponent filed a witness statement from its inhouse trade mark counsel, Mr Rovira. This tended to give more global evidence, but noted that in his experience *'consumers and retailers routinely use the word SHELLAC as a reference to our products. When consumers and trade professionals talk about a 'SHELLAC manicure' they are almost invariably referring to CND's SHELLAC product and nailcare system.'* This is borne out by a number of documents in the exhibits, including the Virgin Atlantic website which refers to the Opponent's nail polish system which they provide at their Heathrow and Gatwick Spas simply by the name 'SHELLAC'. It is also borne out by a large number of social media references which are attached to the witness statement of Jane Nelson.

12. The Applicant did not file any evidence in answer to this. It did not seek to cross examine any of these witnesses. Indeed it did not seek an oral hearing at all. The matter came before the Hearing Officer to decide on paper.

#### The decision of the Hearing Officer

13. The Hearing Officer first of all considered the objection under s5(2). She approached the matter by adopting the standard form guidance

on making the necessary assessment of likelihood of confusion, using the version given by Arnold J in Och-Ziff Management Europe Limited v. Och Capital LLP [2010] EWCH 2599.

14. The Hearing Officer summarized her conclusions on the key points arising from the Och-Ziff guidance in paragraph 46 of her Judgment:

*I concluded that:*

- *The respective goods are identical*
- *The respective marks have an obvious point of visual, aural and conceptual similarity due to the second word in each mark being identical*
- *The word SHELLAC is descriptive for certain goods but is distinctive for others*
- *The average consumer will be members of the general public as well as professionals*
- *The earlier mark has an average degree of inherent distinctive character'*

15. Some explanation is necessary in relation to the third bullet point.

16. The Hearing Officer rightly considered that the descriptiveness of the word SHELLAC was a key issue in the case. It will be recalled that the Opponent had alleged that Shellac was the name of a *'thin hard varnish traditionally used on wood.'* Following some research of her own, the Hearing Officer determined that the word was defined in the Collins English Dictionary as follows:

*'1: a yellowish resin secreted by the lac insect, especially a commercial preparation of this used in varnishes, polishes and leather dressings.*

*2: also called 'shellac varnish'. A varnish made by dissolving shellac in ethanol or a similar solvent.'*

She also found a definition in the Merriam-Webster Dictionary:

*'noun: a clear liquid that dries to a hard coating and that is put on a surface to protect it.'*

17. The Hearing Officer reasoned as follows from this:

*'Shellac is used to produce a hard, glossy, protective surface...The word SHELLAC is not distinctive for goods, such as polish or coatings, which may either be made from shellac or provide a shellac-like result. This will include 'polishing preparations' and 'cosmetics' (the latter of which will include nail polish, varnish or coatings) as are included within the specification of goods. In respect of these goods, the letters CND form the dominant and distinctive element within the mark.'*

18. This finding ultimately formed the crux of her Decision. Because the word SHELLAC was descriptive and therefore not distinctive in relation to 'polishing preparations' and 'cosmetics', there was no likelihood of confusion between the marks in relation to those goods within class 3. In relation to all the other goods, where the word SHELLAC was inherently distinctive, there was a likelihood of confusion. So the Opposition succeeded under s5(2) in relation to all goods save 'polishing preparations' and 'cosmetics'.

19. The Hearing Officer went on to reject the opposition under s5(3) and s5(4)(a) on the basis that no reputation sufficient for s5(3) or goodwill sufficient to maintain a passing off action had been established by the Opponent in relation any of its marks as of the Application Date.

## The Appeal under s5(2) in relation to 'cosmetics'

### Introduction

20. The opponent's main concern in this opposition was of course to prevent the registration of HARLEQUIN SHELLAC in relation to the products in which it has a commercial interest, namely nail varnishes. The oddity about this case is that the opponent had not actually registered any of its marks for 'nail varnish', 'nail polish' or 'nail care preparations' even though these are all categories of goods available under the Nice Classification in class 3. The opponent has contended before me that its products fall within the general definition of 'cosmetics', so no such limitation is necessary. This appears to be correct both as a matter of language and as a matter of registry practice. It is the 'cosmetics' application which is therefore of most concern to the opponent and I shall proceed to examine the appeal in relation to 'cosmetics' first.
21. It seems to me that the Hearing Officer's decision in relation to the cosmetics application was wrong or procedurally flawed in at least four respects, as follows.

### Error no. 1. The scope of the term 'cosmetics'

22. As I have explained, the Decision was based on the fact that the word SHELLAC was descriptive of certain polishing preparations, and therefore non-distinctive in relation to nail polish and varnish. Even if this were correct (as to which see below), it would not have justified the acceptance of the Application in relation to the overall category of 'cosmetics'. On any view, 'cosmetics' includes within its scope a range of products which have nothing to do with 'polishing' at all (mascara, foundation etc.). On the Hearing Officer's own analysis, there is therefore a risk of confusion between normal and fair uses of the mark

applied for and the mark as registered (if both were being used for, say, eye shadow).

23. However, the caveat to this is that the Hearing Officer would, if she had followed my analysis, have been obliged to offer the Applicant the opportunity to amend down to 'nail varnish, nail polish and nail preparations', which she would (following her own logic) then have permitted to proceed to grant. This point is therefore of no real assistance to the Opponent, since these are the products with which it is commercially concerned.

*Error no. 2. Lack of any evidence as to the understanding of the average consumer of the word SHELLAC*

24. It will be recalled that it was never actually alleged by either party that the word SHELLAC would be understood by the average consumer in a descriptive sense. The Counterstatement alleged that the word 'meant' a *'thin hard varnish traditionally used on wood'*, but of course there are plenty of technical words which are entirely unknown to the average consumer. If the technical meaning of a word is unknown to the average consumer, then it cannot be relevant to the assessment of the likelihood of confusion.
25. The Hearing Officer consulted two dictionaries, set out the definitions given in those dictionaries and concluded that the word was therefore not distinctive for goods *'such as polish or coatings which may either be made from shellac or provide a shellac-like result.'* Her analysis therefore missed out the step which was vital to a finding that the term was not a distinctive element within either mark, namely whether it would be recognised in its descriptive sense by the average consumer. If it would not, then the mere fact that it appeared in dictionaries was entirely irrelevant.

26. In the absence of any pleaded assertion or any evidence from which the Hearing Officer could have concluded that the technical meaning of SHELLAC was known to the average consumer, it was clearly not open to her to proceed on the assumption that it was. It seems to me that this error fatally undermines the reasoning used by the Hearing Officer to allow the Application in relation to those categories of goods which included varnishes.

*Error No. 3. The use by the Hearing Officer of dictionary definitions*

27. Thirdly, I am concerned by the Hearing Officer's use of dictionaries at all in the present case. In many cases, where it is self-evident that a word is in common use and bears a particular meaning, the Hearing Officer may take what is called 'judicial notice' of its meaning without extrinsic evidence. This does not require the use of dictionaries, although I see no problem if a Hearing Officer wishes to use them simply to provide a precise definition of a word whose general sense and meaning is not in dispute.
28. However, this was a very different case. The word is relatively obscure, as is its meaning. I was not personally aware of the meaning of the word, and it seems likely that the Hearing Officer was not either. Neither party had advanced evidence on the point. In those circumstances, by consulting dictionaries to discover the meaning of the word, the Hearing Officer was taking it upon herself to provide key evidence in the case. In a recent decision, East of England Ambulance Service NHS Trust v. Sanders [2014] UKEAT 0217 14 1710, an employment tribunal had taken it on itself to conduct some medical research using Wikipedia, and put the results of that research to the parties in the course of the hearing. The Employment Appeal Tribunal, whilst recognizing the need to be sensitive to the more informal and inclusive nature of employment tribunals (compared with, say, the High Court), unhesitatingly confirmed that the acquisition of evidence

went far beyond the permitted role of a tribunal under the legal system of England and Wales, namely as an adjudicating body. It is neither permissible nor desirable for such a tribunal to act as an investigating agency. It is simply there to decide between the submissions of the parties based on the evidence which they have advanced – see paragraph 32:

*'it is not the role of the Employment Tribunal to find evidence to support one party's case or the other. Adjudicating upon the evidence put before it is not producing the evidence for it to consider.'*

This must in my view apply equally to the Hearing Officer in a trade mark opposition.

29. The EAT went on to note that the irregularity involved when the tribunal finds its own evidence could potentially be retrieved by informing the parties about the point and giving them full opportunity to deal with it by evidence and submissions (see paragraph 35). In that case, however, although the employment tribunal had told the parties about the research, its subsequent behaviour indicated that it continued to place too much reliance on what was essentially unreliable evidence. In the present case, the Hearing Officer did not mention the dictionary evidence to the parties at all in advance of the Decision.
30. The necessary conclusion from this analysis is that the Hearing Officer's use of the two dictionaries to provide evidence about the meaning of the word SHELLAC was not permissible and amounted to a procedural irregularity. If the Hearing Officer wished to be addressed on the meaning of word SHELLAC, and/or on whether this was something of which the average consumer was aware, she should have asked the parties to provide her with evidence on the point, not sought to find the evidence herself. Furthermore, having found the

word in a dictionary, she should certainly not have made use of this in her Decision without informing the parties in advance and asking for their submissions.

31. It may be worth summarizing the position as I see it on the use of dictionaries by Hearing Officers in trade mark oppositions and other inter partes proceedings:

(a) If a question arises as to whether a word has a meaning and what that meaning is, a dictionary or dictionaries (along with other authoritative texts) may be referred to by the parties and the evidence of such a dictionary will be admissible. Dictionary evidence will also be admissible on other matters such as the use to which a thing may be put. See for example Lord Russell in The Coca Cola Co. of Canada v Pepsi Cola of Canada Ltd (1942) 59 RPC 127 at 133.

(b) Dictionaries cannot be assumed to be reliable, particularly in relation to technical terms, because the tribunal can have no knowledge as to the source of information on which the dictionary compiler relied. Expert evidence will normally be more reliable.

(c) The presence of a word in a dictionary does not mean that the word would be known or recognised by the average consumer. A large number of words in dictionaries are completely unknown save to a tiny number of specialists or to Scrabble experts. Similarly, where a word has a number of definitions, it cannot be assumed that all such definitions are equally well-known.

(d) It must not be forgotten that an entry in a dictionary is evidence and must be treated in the same way as other evidence. Since it is not the role of Hearing Officers in an adversarial system to act as inquisitors, they should not seek out any entries in any

dictionaries other than those advanced by the parties. To do so is likely to amount to a procedural irregularity (as with the use of Wikipedia in East of England Ambulance Service NHS Trust v. Sanders [2014] UKEAT 0217 14 1710).

- (e) If a Hearing Officer has consulted a dictionary which is not in evidence and intends to place any reliance on its contents, he or she should inform the parties and invite submissions accordingly. This might in some cases save the day so far as procedural irregularity is concerned, but the fact that this is so should not be regarded as any encouragement to hunt out the dictionary in the first place (see East of England at paragraph 35).
- (f) If a point as to the meaning of a word has been squarely raised in proceedings, and the Hearing Officer genuinely believes that he or she may be assisted by dictionary definitions (bearing in mind (b) and (c) above), it may be acceptable, without stepping outside the limits of the role of a tribunal (particularly with litigants in person), to mention this to the parties. It is then for the parties themselves to decide whether to seek to put such definitions in evidence.
- (g) There is no difficulty in a Hearing Officer using a dictionary simply for assistance in formulating a precise definition of a word which represents the meaning and sense which the parties accept it has in ordinary use.

*Error no. 4. Lack of evidence as to the understanding of the average consumer of the term SHELLAC in the particular context of nail varnish*

- 32. Finally, even if it was right that some members of the public might understand the actual technical meaning of SHELLAC as the resinous extract of the lac beetle and/or a varnish made from such a substance,

it did not follow that the public would assume that the term was descriptive when used in relation to nail varnish. The definitions referred to by the Hearing Officer are entirely consistent with the use of the substance for (say) industrial varnishes only. There is no reason, even based on the dictionaries, to assume that the average consumer would ever have come across the term used in cosmetics or indeed in any domestic context at all.

Conclusion on the 'cosmetics' application under s5(2)

33. I conclude that the decision of the Hearing Officer cannot be sustained. There was no evidence or reason to believe that the public would recognize the word SHELLAC as having any descriptive meaning at all. There was certainly no evidence or reason to believe that they would recognize the word SHELLAC as having a descriptive meaning connected with cosmetics (including nail varnish), particularly when it was not suggested that anyone had ever used lac beetle resin in the manufacture of such products. The only actual evidence before the Hearing Officer was that the word was understood by the public to indicate the products of the Applicant.
34. I therefore will allow the Appeal and reject the application under s5(2) in relation to 'cosmetics'.

The Appeal under s5(2) in relation to polishing preparations

35. As I have explained, nail varnishes and the like are treated for the purpose of classification as falling within the general definition of 'cosmetics'. The term 'polishing preparations' is treated as covering polishes for application to inanimate objects or surfaces, rather than the human body.

36. It seems to me that all the reasons I have allowed the appeal in relation to cosmetics apply also to polishing preparations save for the final one (*Error no. 4. Lack of evidence as to the understanding of the average consumer of the term SHELLAC in the context of nail varnish*). I will therefore allow the appeal and reject the application under s5(2) in relation to polishing preparations as well.

The appeal under s5(3) and s5(4)(a)

37. Having allowed the appeal and rejected the application under s5(2) in respect of the two categories of goods for which it had been allowed by the Hearing Officer, it is strictly unnecessary for me to consider the appeals in relation to s5(3) and s5(4)(a). However, because those appeals were also argued, I will deal with them briefly.
38. The Hearing Officer rejected the s5(3) opposition in its entirety because she held that it had not been shown that any of the marks had the necessary 'reputation' to sustain such an objection. Similarly she rejected the s5(4)(a) opposition in its entirety on the basis that the Opponent had not proved any goodwill in the United Kingdom at the date of the application in relation to any of the goods in question.
39. It will be recalled that the Statement of Grounds had set out a detailed case that the Opponent had obtained a substantial reputation and goodwill in the United Kingdom associated with the marks CND SHELLAC and SHELLAC itself at the date of the application. In its Counterstatement, the Applicant had not denied this nor even put the Opponent to proof, despite it being made clear in the rubric immediately above the relevant box in the TM8 Form that:

*'The purpose of the counterstatement is to admit (agree), deny (disagree) or request proof of any of the grounds set out by the other party in their statement of grounds'.*

40. It is of course correct to say that pleadings and evidence produced by unrepresented litigants should be treated with some latitude. However, the failure to take issue with one of the fundamental points made by the Opponent is a matter of some significance. It is fair to assume that if the Applicant had intended to challenge or even require proof of the repeated claims made by the Opponent in its Statement of Grounds that it had a strong and significant market presence under the marks in the United Kingdom at the relevant date, it would have said so. Furthermore, reading the Counterstatement as a whole, it tends to confirm that Applicant did not intend to take issue with the assertions of the Opponent in this respect. It contains a number of references to the particular colours, technical system and method of distribution used by the Opponent, and denies that these are used by the Applicant. It is implicit that the Applicant (at least) was perfectly familiar with the Opponent and its business.
41. In these circumstances, and having not received any submissions or evidence from the Applicant which contradicted the approach taken in the Counterstatement, in my view the Hearing Officer should have treated the question of reputation and goodwill as not in issue. Instead, she embarked on a lengthy analysis of the evidence as if it had all been minutely challenged, and concluded that it *'does not establish the level of any use that has been made of any of the marks or rights relied upon nor does it establish that there is any reputation accruing from such use.'*
42. On the face of it, this is a remarkable finding. The unchallenged evidence is as I have set it out in paragraph 11 above. It established a very substantial trade in the United Kingdom (indeed what appears to be almost market dominance in a particular sector, namely the professional gel polish market), dating from well before the application date. The advertising was very substantial and the

turnover figures very large. Without challenge, there was no reason to go behind any of this evidence or treat it as mere assertion. See Pan World Brands v Tripp (Extreme Trade Mark) [2008] RPC 2 at [35] to [37].

43. The point which appears to have concerned the Hearing Officer was that the evidence did not tend to distinguish between the turnover, advertising and market penetration achieved by the various marks in which reputation and goodwill was claimed. Thus in paragraph 19 she states: *'None of the evidence filed establishes the size of the relevant market or the percentage share of the market that accrues to any one of the marks relied on in these proceedings'* [my emphasis]. Similarly in paragraph 56 she states: *'Whilst turnover figures generated from the sale and distribution of the opponent's products are given by Mr Sweet, the figures have not been separated in any way which allows me to determine to which particular mark(s) or in respect of which particular goods they may have accrued.'* The same point is made elsewhere.
44. In my view, this was a highly technical point to take in the present case. The Hearing Officer points out in paragraph 18 that reputation and goodwill were alleged in relation to *'seven trade marks'*. She lists them in paragraph 2 of the Decision. However, six of these are simply CND SHELLAC either as a word mark or in the form of a fairly unstylised logo. There is no reason to believe that their use could sensibly be separated in terms of the generation of goodwill or reputation. The seventh was SHELLAC, but all the evidence showed that this was used in conjunction with CND SHELLAC. All the bottles and packaging shown in the evidence contained SHELLAC and CND SHELLAC. Again, it is hard to see how the Opponent could have separated out the turnover or the advertising as the Hearing Officer seemed to be suggesting it should have done, or that the goodwill or reputation in SHELLAC could sensibly be separated from that in CND SHELLAC.

45. In all the circumstances, it seems to me that the Opponent had more than satisfied any burden which was on it to prove goodwill both for the purposes of passing off and reputation for the purpose of s5(3) in relation both to CND SHELLAC and SHELLAC itself. It is not necessary for me to decide the question, but I would have determined both the s5(3) and s5(4)(a) objections in favour of the Opponent.

### Conclusion

46. I shall allow the appeal and direct that Application no. 2643772 be refused in its entirety.
47. The Hearing Officer refused the Opponent its costs in relation to its evidence (which primarily went to the issue of reputation and goodwill) on the basis that it was not '*well directed*'. It will be apparent that I disagree with that characterization. I am however sympathetic to the position of the Applicant who had not challenged the Opponent's assertions of reputation and goodwill. I shall therefore make a limited adjustment to the costs order below to include provision for a further £300 in respect of the evidence. The Opponent is entitled to its costs of this Appeal in the further sum of £800. I shall therefore direct that the total further amount to be paid by the Applicant to the Opponent is £1100.

**IAIN PURVIS QC**  
**THE APPOINTED PERSON**

**21 NOVEMBER 2014**

**IN THE MATTER OF THE TRADE MARKS ACT 1994**

**-and-**

**IN THE MATTER OF APPLICATION NO. 2643772 in the name of  
MAROC ORGANICS LIMITED**

**-and-**

**IN THE MATTER OF OPPOSITION NO. 400028  
BY CREATIVE NAIL DESIGN INC.**

**THE APPOINTED PERSON, HAVING HEARD THE APPEAL  
AGAINST THE DECISION OF THE HEARING OFFICER, MS ANN  
CORBETT DATED 29 JANUARY 2014**

**DO HEREBY ORDER AND DECLARE THAT:**

- (1) The appeal is allowed and the decision under appeal is set aside;
- (2) Trade Mark Application No. 2643772 shall be refused;
- (3) The Applicant, Maroc Organics Limited, shall pay the further sum (in addition to that ordered by the Hearing Officer) of £1100 towards the costs of the Opponent, Creative Nail Design Inc., such payment to be made within 28 days.



**IAIN PURVIS QC  
THE APPOINTED PERSON**

**21 November 2014**