

O-578-17

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3220806 BY
FONERIC TECHNOLOGY CO., LTD
TO REGISTER:**



AS A TRADE MARK IN CLASS 9

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 60000660 BY
MAGIX SOFTWARE GMBH**

Background & pleadings

1. On 24 March 2017, Fonerix Technology Co., Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision for the goods shown in paragraph 12 below. The application was published for opposition purposes on 7 April 2017.

2. On 5 June 2017, the application was opposed in full under the fast track opposition procedure by Magix Software GmbH (“the opponent”). The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) with the opponent relying upon European Union Trade Mark (“EUTM”) registration no. 15598311 for the trade mark **MAGIX** which has an application date of 30 June 2016 and registration date of 10 November 2016. The opponent relies upon all the goods and services for which its trade mark is registered (also shown in paragraph 12 below). The opponent states:

“Except for the acronym dB, the marks are identical. In particular, they share the fancy term “MAGIX”. The goods covered by the opposed application are partly identical, partly similar to those covered by the earlier registration.”

3. The applicant filed a counterstatement in which the basis of the opposition is denied.

4. In these proceedings the opponent has represented itself; the applicant is represented by Trademarkit LLP.

5. Rule 6 of the Trade Marks (Fast Track Opposition)(Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

6. The net effect of these changes is to require parties to seek leave in order to file evidence in fast track oppositions. No leave was sought in respect of these proceedings.

7. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary; neither party elected to file written submissions.

DECISION

8. The opposition is based upon section 5(2)(b) of the Act, which reads as follows:

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

(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.”

9. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

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

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) 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,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

10. The registration upon which the opponent relies qualifies as an earlier trade mark under the above provisions. As this earlier trade mark is not subject to proof of use, the opponent is entitled to rely upon it for all of the goods and services it has identified i.e. all the goods and services for which it stands registered.

Section 5(2)(b) – case law

11 .The following principles are gleaned from the decisions of the courts of the European Union 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.

The principles:

(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 greater 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.

Comparison of goods and services

12. The competing goods and services are as follows:

The opponent's goods and services	The applicant's goods
<p>Class 9 - Software, Including for mobile terminals, In particular in relation to the creation and editing of audio, video and other multimedia files and for the creation and editing of audio, music, video, MIDI and multimedia and metadata; Computer software for sound development, generation and editing; Recorded audio loops; Interfaces (for computers); Apparatus for receiving, recording, transmission, processing, transforming, output and reproduction of data, speech, text, signals, sound and images, including multimedia apparatus; Apparatus, including multimedia apparatus, for connecting and controlling audio, video and telecommunications apparatus and computers, including apparatus with electronic program guides; Software manuals in electronic format.</p> <p>Class 15 - Electronic musical apparatus and instruments; Electronic keyboards [musical instruments]; Electronic synthesizers.</p> <p>Class 38 - Providing access to audio, music, photograph, video and other</p>	<p>Class 9 - Camcorders; Headphones; Baby monitors; Video baby monitors; Monitoring apparatus, electric; Plugs, sockets and other contacts [electric connections]; Electric sensors; Sensors and detectors; Covers for smartphones; Electric door bells; Cabinets for loudspeakers; Audio- and video-receivers; Sound transmitting apparatus.</p>

multimedia files via the internet;
Electronic transmission of news and information, in particular information on music, musical events and concerts.

Class 41 - Audio and video production, and photography; Education services relating to the application of computer software; Providing digital music from the internet; Providing on-line electronic publications, not downloadable; Providing on-line interactive computer games.

Class 42 - Providing of software updates via the internet; Providing information, advice and consultancy services in the field of computer software; Shared website hosting; Computer advisory and consultancy services; Computer software consultancy; Technical support in the field of computer hardware; Technical support in the field of computer software, Technical support in the field of document management; Providing information in relation to computers and computer software via the internet; Hosting services and software as a service and rental of software.

Class 45 - Licensing of intellectual property rights (for others).

13. As I mentioned above, the opponent states that the applicant's goods are partly identical and partly similar to its goods and services. It does not, however, explain which goods it considers to be identical or similar or on what basis it reached those conclusions. In its counterstatement, the applicant states:

"7...The goods and services covered by the opponent's registration are different from the goods covered by the contested application. In particular, the application covers small domestic electrical items. In contrast, the goods and services covered by the opponent's registration are exclusively concerned with music, and the goods in class 9 in particular are music related computer software and audio apparatus which are different from the goods of the contested application. The respective goods and services have different functions and purposes, and different channels of trade."

Comparison of goods and services – case law

14. 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:

"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".

15. 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 enquiry 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.

16. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch), Floyd J. (as he then was) stated:

"... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

17. In *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another*, [2000] F.S.R. 267 (HC), Neuberger J. (as he then was) stated:

"I should add that I see no reason to give the word "cosmetics" and "toilet preparations"... anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context."

18. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criteria capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

19. In *Gérard Meric v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* case T-133/05, the GC stated:

“29 In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by the trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM – Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or when the goods designated by the trade mark application are included in a more general category designated by the earlier mark (Case T-104/01 *Oberhauser v OHIM – Petit Liberto (Fifties)* [2002] ECR II-4359, paragraphs 32 and 33; Case T-110/01 *Vedial v OHIM – France Distribution (HUBERT)* [2002] ECR II-5275, paragraphs 43 and 44; and Case T- 10/03 *Koubi v OHIM – Flabesa (CONFORFLEX)* [2004] ECR II-719, paragraphs 41 and 42).”

20. Although the opponent’s specification in class 9 includes the words “including” and “in particular”, these words have no limiting effect on the specification in which they appear. The opponent’s specification in class 9 includes the following:

Apparatus for receiving, recording, transmission, processing, transforming, output and reproduction of data, speech, text, signals, sound and images, including multimedia apparatus;

21. The above is a broad phrase that will encompass a wide range of goods including, in my view, the following goods in the application: “Camcorders”, “Headphones”, “Baby monitors”, “Video baby monitors”, “Monitoring apparatus, electric”, “Plugs, sockets and other contacts [electric connections]”, “Electric sensors”, “Sensors and detectors”, “Electric door bells”, “Audio- and video-receivers” and “Sound transmitting apparatus”. Such goods are, at the very least, to be regarded as identical on the principle outlined in *Meric*.

22. That leaves “Covers for smartphones” and “Cabinets for loudspeakers” in the applicant’s specification to consider. The phrase in the opponent’s specification I have highlighted above is broad enough to include “smartphones”. As the average consumer will be very familiar with the well-established relationship between “smartphones” and covers specifically designed for them, such goods are complementary and, as a consequence, similar to a fairly high degree. The above phrase in the opponent’s specification is also broad enough to include “loudspeakers”. As the average consumer will also be very familiar with the relationship between loudspeakers and the cabinets in which they are routinely housed, there is, in my view, a complementary relationship between such goods leading, once again, to a fairly high degree of similarity between them.

The average consumer and the nature of the purchasing process

23. As the case law above indicates, it is necessary for me to determine who the average consumer is for those goods I have found to be either identical or similar to a fairly high degree; 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.”

24. The average consumer of the goods at issue in these proceedings is either a member of the general public purchasing on their own behalf or a business user buying on behalf of a commercial undertaking. Speaking as a member of the general public, such goods are, in my experience, most likely to be obtained by self-selection from the shelves of a bricks and mortar retail outlet or from the equivalent pages of a website or catalogue. As a consequence, visual considerations are likely to dominate the selection process. That said, as such goods may also be the subject of, for example, oral requests to sales assistants, aural considerations must not be forgotten. In the absence of evidence or submissions to the contrary, I see no reason why a business user selecting such goods would not do so in much the same way. As to the degree of care the average consumer will display when selecting such goods, the cost of the goods will vary. Contrast, for example, the relatively low complexity and cost of a plug with what is most likely to be the much higher complexity and cost of a camcorder. However, even when selecting those goods likely to be at the lower end of the price spectrum, the average consumer will, in my experience, be alive to factors such as functionality, compatibility with existing items, size, cost etc. I would, as a consequence, expect them to pay at least a normal degree of attention during the selection process. As the cost of the goods rise, so too will the degree of attention paid to their selection. Once again, I see no reason why the same conclusions would not apply to a business user.

Comparison of trade marks

25. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade 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 trade 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*:

“.....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.”

26. It would be wrong, therefore, artificially to 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 they create. The trade marks to be compared are as follows:

The opponent’s trade mark	The applicant’s trade mark
MAGIX	

27. The opponent’s trade mark consists of the word “MAGIX” presented in block capital letters. That is the overall impression it conveys and where its distinctiveness lies.

28. The applicant’s trade mark contains two distinct components. The first component consists of the letters “dB” presented in white in lower and upper case letters respectively within a black circle which acts a background. The second component, presented in capital letters in a bold unremarkable font, is identical to the opponent’s trade mark. . The applicant submits that: “dB within the black circle is the dominant and more distinctive part of the contested mark” (paragraph 3). It further submits:

“4. The word “MAGIX” is phonetically similar to the word “magic”, and is simply a corruption or misspelling of this word. The word “Magic” is a commonplace, laudatory word which lacks inherent distinctiveness. The IPO

Manual of Trade Mark Practice states that the word magic “Colloquially, has the laudatory meaning “brilliant”, excellent”, “super”...In the minds of ordinary consumers the word MAGIX will bring to mind the non-distinctive word “magic” and thus the word “MAGIX” has a low level of distinctiveness...”

29. Although the black circle will contribute to the overall impression the trade mark conveys, as it merely serves as a background, it has very little, if any, distinctive character. As the letters “dB” appear as part of the first component of the applicant’s trade mark they will make an important contribution to the overall impression it conveys. Although the opponent refers to them as an acronym, there is no evidence or submissions to suggest they are anything other than distinctive to a normal degree.

30. Insofar as the word “MAGIX” is concerned, I agree with the applicant that the average consumer will treat this word as a misspelling of the word “magic”. As to the distinctiveness of this misspelling of the word “magic”, as I mentioned above, the opponent describes it as a “fancy term”. Although the applicant refers to guidance published by the IPO in relation to the ex-parte acceptability of trade marks which consist of or contain the word “magic”, in inter partes proceedings, I must reach a conclusion on the basis of my own assessment of the word whilst taking into account the parties’ submissions on this point.

31. While I accept that the word “magic” may have the informal meanings to which the applicant refers, I am satisfied that like me, the average consumer will consider its use in the laudatory context the applicant suggests as outdated. When considered in the context of the goods at issue, the word “magic” is, in my view, possessed of a normal degree of inherent distinctive character. While the substitution of the letter “X” for the letter “C” introduces a further element of originality and increases the level of distinctive character, it does not, in my view, do so to any material extent. Drawing those conclusions together, both components in the applicant’s trade mark are distinctive. As these components do not combine to create a unit, both play an independent role within the trade mark making a roughly equal contribution to the overall impression it conveys.

32. I will now consider the degree of visual, aural and conceptual similarity between the competing trade marks with those conclusions in mind. Although the applicant's trade mark also contains the letters "dB" and circle device as the first component, as the trade marks at issue either consist of contain the identical word i.e. "MAGIX" as a distinct component, it results in at least a medium degree of visual similarity between them.

33. Given its obvious visual similarity to the word "magic" that is how the average consumer is most likely to refer to the opponent's trade mark i.e. as the two syllable word "MAG-IC". As to the applicant's trade mark, this is most likely to be articulated as the four syllable combination "dee BEE MAG-IC". Although the first two syllables will differ, as the word "MAGIX" will be pronounced in an identical fashion, it results, once again, in at least a medium degree of aural similarity between the competing trade marks. Finally, the conceptual comparison. As the letters "dB" are unlikely to convey any concept to the average consumer, the competing trade marks are conceptually identical in that both will evoke the concept of magic.

Distinctive character of the earlier trade mark

34. The distinctive character of a trade mark can be appraised only, first, by reference to the goods in respect of which registration is sought and, secondly, by reference to the way it is perceived by the relevant public – *Rewe Zentral AG v OHIM (LITE)* [2002] ETMR 91. In determining the distinctive character of a trade mark and, accordingly, in assessing whether it is highly distinctive, it is necessary to make an overall assessment of the greater or lesser capacity of the trade mark to identify the goods for which it has been registered as coming from a particular undertaking and thus to distinguish those goods from those of other undertakings - *Windsurfing Chiemsee v Huber and Attenberger* Joined Cases C-108/97 and C-109/97 [1999] ETMR 585.

35. As the opponent has filed no evidence of any use it may have made of the trade mark upon which it relies, I have only its inherent characteristics to consider. I have already considered this aspect of the case in paragraph 31 above, concluding that

absent use, the word “MAGIX” is possessed of, at least, a normal degree of inherent distinctive character.

Likelihood of confusion

36. 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 it 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.

37. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and goods down to the responsible undertakings being the same or related.

38. Earlier in this decision, I concluded that: (i) the goods at issue are either identical or similar to a fairly high degree, (ii) while aural considerations must be taken into account, visual considerations are likely to dominate the selection process and (iii) the average consumer will pay at least a normal degree of attention to the selection of the goods at issue. Having assessed the competing trade marks distinctive and dominant components, I found that (iv) the competing trade marks are visually and aurally similar to at least a medium degree and conceptually identical and (v) the word “MAGIX” has, at least, a normal degree of inherent distinctive character.

39. In *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch), Arnold J. considered the impact of the CJEU’s judgment in *Bimbo*, Case C-591/12P, on the court’s earlier judgment in *Medion v Thomson*. He stated:

“18 The judgment in *Bimbo* confirms that the principle established in *Medion v Thomson* is not confined to the situation where the composite trade mark for which registration is sought contains an element which is identical to an earlier trade mark, but extends to the situation where the composite mark contains an element which is similar to the earlier mark. More importantly for present purposes, it also confirms three other points.

19 The first is that the assessment of likelihood of confusion must be made by considering and comparing the respective marks — visually, aurally and conceptually — as a whole. In *Medion v Thomson* and subsequent case law, the Court of Justice has recognised that there are situations in which the average consumer, while perceiving a composite mark as a whole, will also perceive that it consists of two (or more) signs one (or more) of which has a distinctive significance which is independent of the significance of the whole, and thus may be confused as a result of the identity or similarity of that sign to the earlier mark.

20 The second point is that this principle can only apply in circumstances where the average consumer would perceive the relevant part of the composite mark to have distinctive significance independently of the whole. It does not apply where the average consumer would perceive the composite mark as a unit having a different meaning to the meanings of the separate components. That includes the situation where the meaning of one of the components is qualified by another component, as with a surname and a first name (e.g. BECKER and BARBARA BECKER).

21 The third point is that, even where an element of the composite mark which is identical or similar to the earlier trade mark has an independent distinctive role, it does not automatically follow that there is a likelihood of confusion. It remains necessary for the competent authority to carry out a global assessment taking into account all relevant factors.”

40. Having concluded that the word “MAGIX” plays an independent distinctive role in the applicant’s trade mark and having carried out the global assessment required, I

am satisfied that the presence of the letters “dB” and circle device in the applicant’s trade mark is more likely than not, if the consumer pays a normal degree of attention during the selection of the goods at issue, to be sufficient to avoid direct confusion i.e. the trade marks are unlikely to be mistaken for one another. However, I remind myself that the shared component is identical and distinctive to, at least, a normal degree. In those circumstances, even if the average consumer pays a high (rather than normal) degree of attention to the selection of the identical and highly similar goods at issue (making them less susceptible to the effects of imperfect recollection), I think there is still a likelihood of indirect confusion, as the consumer may erroneously conclude, for example, that the goods at issue come from an undertaking using the “dB” and circle device as a house mark and the word “MAGIX” as a sub-brand. As a consequence of those conclusions, the opposition succeeds.

Conclusion

41. The opposition has succeeded and, subject to any successful appeal, the application will be refused.

Costs

42. Awards of costs in fast track opposition proceedings filed after 1 October 2015 are governed by Tribunal Practice Notice (“TPN”) 2 of 2015. Using that TPN as a guide, I award costs to the opponent on the following basis:

Preparing a statement and considering the applicant’s statement:	£200
Opposition fee:	£100
Total:	£300

43. I order Foner Technology Co., Ltd to pay to Magix Software GmbH the sum of £300. This sum is 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 20th day of November 2017

C J BOWEN

For the Registrar