

O-241-07

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 2363749
BY ARKNESS EUROPE LTD TO REGISTER A
TRADE MARK IN CLASSES 16 AND 20**

AND

**IN THE MATTER OF OPPOSITION
THERE TO UNDER NO. 93160 BY TALLON INTERNATIONAL LIMITED**

TRADE MARKS ACT 1994

**IN THE MATTER OF Application no. 2363749
by Arkness Europe Ltd to register a
trade mark in Classes 16 and 20**

and

**IN THE MATTER OF Opposition thereto
under no. 93160 by Tallon International Limited**

BACKGROUND

1. On 20 May 2004, Arkness Europe Ltd applied to register the trade mark shown below:



2. The application was accepted and published for opposition purposes for the following range of goods:

Stationery, all included in Class 16.

Furniture, mirrors, cushions, pillows, picture frames, all included in Class 20.

3. On 4 February 2005, Marks & Clerk (hereafter MC) acting as agents for Tallon International Limited (hereafter Tallon) filed a notice of opposition. The opposition, which is based solely on Section 5(4)(a) of the Act, and which is directed only at the Class 16 element of the application, relies on use since January 1992 on, *inter alia*, stationery of the following marks: ARTBOX (word only), ART BOX (word only) and the ARTBOX device marks.

4. On 16 May 2005, Arkness Europe Ltd (hereafter Arkness) filed a counterstatement in which the grounds of opposition are denied. I note that following their appointment as agents for Arkness, Urquhart Dykes and Lord (hereafter UDL), filed an amended Form TM8 and counterstatement. The amended counterstatement puts Tallon to strict proof of their claim to an earlier right, and in particular, requires them to prove genuine use of each of the marks claimed in respect of stationery products.

5. Both parties filed evidence in these proceedings and both seek an award of costs in their favour. The parties were invited to say whether they wished to be heard; neither indicated a wish to do so. However,

written submissions have been received on behalf of both parties. Acting on behalf of the Registrar I give this decision.

EVIDENCE

Opponent's Evidence

6. This consists of a witness statement, dated 29 July 2005, from Barry Heath. Mr Heath explains that he is the Product Design Manager at Tallon, a position he has held since April 1997. He confirms that he is authorised to speak on Tallon's behalf, adding that the facts in his statement come from his own personal knowledge and from Tallon's records. I note that Tallon is a member of the Giftware Association.

7. Mr Heath states that although documents supporting the use of ART BOX by Tallon in the United Kingdom date from 1992, he is told (although he does not say by whom) that Tallon have been selling goods bearing the ART BOX trade marks since the mid 1980s. Tallon have, he explains, been applying the ART BOX trade marks to a range of products including: paints, paint brushes, colouring sets, coloured pencils, crayons, pens, chalk, artists' paint palettes, artists' oil pastels, painting by numbers sets and pads, sketch pads, poster boards, children's colouring books, activity books, sticker books and dot-to-dot books. Sales of these products are recorded from 1992 (when a computerised system was introduced) and continue to the present day.

8. Mr Heath states that the total wholesale sales of existing products sold under or by reference to the ART BOX trade marks between January 1992 and January 2005 have amounted to some £3.6m. There are, he adds, a number of discontinued products prior to 1992, the total sales of which is estimated to be some £1.8m.

9. Mr Heath explains that "...since prior to 1992..", his company has regularly exhibited at the following: The Spring Fair at the National Exhibition Centre, The Autumn Fair at the National Exhibition Centre (which prior to 1986 was held at Earls Court, London), and the Harrogate Toy and Christmas Fair. Exhibit BH1 is a photograph of Tallon's stand at the NEC Autumn Fair. Although Mr Heath does not say from which year this stand dates, I note that above the words "Calendar Collection" there appears in a roundel device the numerals 20 above what appears to be the numerals 06; I take this to be a reference to 2006 which, as I shall explain later, is after the material date in these proceedings. I also note that the stand bears the words "Artbox" Activity & Craft and an ART BOX device mark.

10. The ART BOX marks have, says Mr Heath, appeared prominently in advertising material. Exhibit BH2 is a copy of two pages from Tallon's product brochure from 1992/93, the second page of which contains the words "Artbox Children's Activity Products" and shows an ART BOX device mark on or in relation to: water colours, an artist's palette, poster paints, a colouring set, a painting by numbers kit and on chalk.

11. Exhibit BH3 consists of pages from Tallon's 1995/96 product brochure which under the heading ARTBOX shows an ART BOX device mark on or in relation to: coloured pencils, paint and crayons, painting sets, artist brushes, chalk, erasers, artists' pads and painting by numbers kits.

12. Exhibit BH4 consists of pages from Tallon's 1998/99 product brochure showing the ART BOX marks (this time presented in a number of different formats) on or in relation to: sketch pads, colouring books, stickers, a dot-to-dot book, an activity book, a range of coloured pencils, glitter glue, paints, crayons and painting by numbers kits.

13. Exhibit BH5 consists of pages from Tallon's 2003/04 product brochures showing the ART BOX marks (once again presented in a number of different formats) on or in relation to: colouring books, sketch pads, paints, crayons, a scrap book, an activity book and modelling clay.

14. In relation to all of these exhibits, I note that the ART BOX marks are often accompanied by the word Tallon, although it is the ART BOX marks which appears to be the dominant of the two elements.

15. Mr Heath explains that Tallon has spent the following amounts promoting its products, with approximately 10% of the amounts shown representing expenditure on the ART BOX marks:

Year	£ (k)
1999	83
2000	98
2001	124
2002	127
2003	151
2004	153

16. Exhibit BH6 (omitted from the original witness statement and provided as an exhibit to the witness statement of Susan de Launte of MC dated 4 October 2006), consists, explains Mr Heath, of four pages of a computer screen printout showing a list of ART BOX electronic artwork files and the dates on which artwork modifications were made to the product packaging; in fact only three pages are provided. The first two pages appear to date from January 1998 and the third from November 1997. Mr Heath adds that Tallon distributes goods under or by reference to the ART BOX trade marks in all areas of the United Kingdom as well as to Greece, Malta, Spain (Alicante, Costa Brava, Costa Blanca) and Africa (Nigeria, Ghana and Uganda).

Applicant's evidence

17. This consists of a witness statement, dated 6 February 2006, by Leif Andersson. Mr Andersson explains that he is a Director of Arkness a position he has held since 2002. He confirms that he authorised to speak on Arkness' behalf, adding that the facts in his statement come from his own personal knowledge and from Arkness' records.

18. Mr Andersson explains that goods sold under the ARTBOX mark were first introduced by Arkness at a trade show in London in February 2004. At that time, Arkness launched a range of bags, mainly wholesale, to the retail clothing and accessories markets. The launch was, he says, very successful, with sales in the first year amounting to some £100k. At this point customers for ARTBOX goods included, *inter alia*, House of Fraser, Selfridges, High Jinks, Cult Clothing and Ark Clothing.

19. By May 2004, Arkness had extended the range of goods to include, *inter alia*, stationery, soft toys, cups and mugs and they exhibited at the Pulse show in London, where they were able to sign up more customers for their ARTBOX products.

20. By October 2004 (after the date of application) the repute of the ARTBOX products was such, says Mr Andersson, that Arkness were asked by Top Shop to start a small concession on the ground floor of their flagship store at Oxford Circus in London. By January 2005, Arkness had their own fixture in Top Shop and had opened concessions in Manchester and Glasgow. In July 2005, Arkness opened a stand alone shop under the Artbox name in Covent Garden, London.

21. Turnover for the year October 2004 to September 2005 was approximately £253k of which £200k was generated by sales from the ARTBOX brand. Of these figures, Mr Andersson estimates that 10% related to stationery products such as A4 folders, pencil cases, postcards and note books. Exhibit LTA1 consists of print outs (printed on 2 February 2006) from Arkness' on-line shop and from the on-line shop at www.urbanindustry.co.uk showing the Artbox mark in use in relation to folders, pouches, tissues, pencil cases and note books.

22. Arkness has, explains Mr Andersson, spent some £6k on public relations, with exhibit LTA2 consisting of examples of advertising which appeared in: Bitesize – WGSN in September 2004, in GAT also in September 2004 and in connection with the To Be Confirmed exhibition held in London in August 2004. Exhibit LTA3 consists of a printout taken from the Market and Business Development website, which indicates that in 2004 the market for stationery products was worth some £1126m.

23. Mr Andersson explains that when Arkness adopted the ARTBOX mark, they carried out several trade mark searches and found no evidence of use of the mark either in the United Kingdom databases, or on the Internet, other than a registration (No. E153312) by a Spanish company in different classes, and trade mark registration No.2357759 for which Arkness is the address for service for the Korean proprietor. They also, he says, carried out some “foot research” in the high street and found no instances of ARTBOX being used as a trade mark.

24. Mr Andersson concludes his statement in the following terms:

“Not once since the day we adopted the mark has there ever been a single instance of confusion to my knowledge between the respective marks. Not one of my customers has claimed to confused our products with Tallon’s products. The first time I ever heard of Tallon and their supposed use of the ARTBOX mark was when I received a copy of their Opposition in the post.”

Opponent’s evidence-in-reply

25. This consists of a further witness statement, dated 11 May 2006, from the same Barry Heath mentioned above. As one would expect, this statement responds to that of Mr Andersson and as such I do not feel it either necessary or appropriate to summarise it here; I will of course bear its contents in mind when reaching a decision. That said, Mr Heath does make a number of points which perhaps I ought to record. Exhibit BH7 consists of an enlarged representation of the pink Artbox pencil case which appeared on the Urban Industry website at exhibit LTA1. Mr Heath notes that the small text on the products reads:

“Produced and designed by artbox”. Artbox in this context would, says Mr Heath, appear to refer to the Korean manufacturer of the goods (and the owner of registration no. 2357759) Artbox Co Ltd, and in his view does not constitute trade mark use. He adds that the trade mark the subject of that registration is identical to the trade mark the subject of these proceedings, and concludes that Arkness are the United Kingdom distributor for Artbox Co Ltd; he queries whether Arkness are the owners of the trade mark the subject of the application and are entitled to file an application for registration.

26. By reference to exhibit BH9 and page 2 of the Urban Industry website mentioned above, Mr Heath notes that in relation to the Drink Note Book, that the only mention of Artbox on the product is the copyright notice identifying ARTBOX as the copyright owner; this is, in his view, a reference to the Korean company and does not constitute trade mark use. He adds that as there is no indication on the Urban Industry website whether the mark is being used by the Korean company or by Arkness, this evidence cannot support use of the ARTBOX mark by Arkness.

27. That concludes my summary of the evidence filed insofar as I consider it necessary.

Tallon’s written submissions

28. The main point arising from these written submissions are, in my view, as follows:

- that the device element present in Arkness’ mark could be mistaken for a splodge of ink or paint;
- that Tallon have used the trade mark ART BOX since 1992 in relation to a variety of stationery goods including: paints, paint brushes, colouring sets, coloured pencils, crayons, pens, chalk, artists’ paint palettes, artists’ oil pastels, painting by numbers sets and pads, sketch pads, poster boards, children’s colouring books, activity books, sticker books and dot-to-dot books;
- that the word element of Arkness’ mark is visually, phonetically and conceptually identical to Tallon’s mark, and the goods for which registration is sought encompasses the goods sold under the ART BOX trade mark;
- that registration of Arkness’ mark in relation to stationery will lead to a likelihood of confusion in the mind of the purchasing public and a likelihood of damage to Tallon;
- that Tallon distributes goods under or by reference to the ART BOX trade mark to all areas of the United Kingdom;
- that Tallon exhibited regularly at three major exhibitions, each of which is held annually;
- that exhibit BH6 shows a date of 22 January 1998 when artwork modifications were made to the product packaging of Tallon’s ART BOX half pencils;
- that the evidence establishes that Tallon enjoys goodwill and reputation in its ART BOX trade mark by virtue of its extensive use since 1992 on a variety of goods in Class 16 all of which would be encompassed by the broad term stationery;

- that the term stationery is defined in the Shorter Oxford English Dictionary (Fifth Edition) as: “The articles sold by a stationer, writing materials etc”, and this broad specification has the potential to encompass a wide variety of goods and does include all of the goods on which Tallon has been using its ART BOX trade mark;
- that Arkness has filed no evidence showing use of its trade mark on writing materials of any description and has given no indication of the specific items of stationery on which it intends to use its ART BOX and device trade mark.

Arkness’ written submissions

29. The main point arising from these written submissions are, in my view, as follows:

- that in determining a ground based on the law of passing off, one should be guided by the decisions of: (i) the Appointed Person Mr Geoffrey Hobbs QC in Wild Child trade mark [1998] RPC 455, and (ii) the High Court in South Cone Incorporated v Jack Bessant and Others [2002] RPC 19;
- that the evidence provided by Tallon is insufficient to satisfy the tests established in these cases;
- that Tallon claims use of the ART BOX mark since the mid 1980s but no evidence has been provided to substantiate use between this date and 1992;
- that the list of goods provided by Tallon on which the ART BOX mark has been used fall under the Class 16 heading of artists’ materials and not stationery;
- that the turnover figure provided by Tallon from January 1992 to January 2005 go beyond the date of application and as such a portion of the figure should be discounted. In addition, this figure is not broken down in any way nor have invoices or other documents been provided to substantiate the figures claimed;
- that it is not stated whether this turnover figure relates solely to the United Kingdom or if it includes goods sold elsewhere. In addition, no evidence is provided as to whether the goods have been sold throughout the United Kingdom or to a more limited area within the United Kingdom;
- that no evidence has been provided regarding the size of the stationery or artists’ materials markets in the United Kingdom, nor has any evidence been provided of Tallon’s market share;
- that in relation to the exhibitions Tallon claim to have attended, no indication is given as to exactly when these exhibitions took place nor is there any evidence of promotion of ART BOX or any similar mark at these exhibitions;
- that the date of the exhibition in which Tallon’s stand shown in exhibit BH1 appeared is unsubstantiated;

- that the exhibits at BH2, 3, 4 and 5 show the ART BOX mark used not on stationery products but on artists' materials and that in addition no evidence has been provided as to how, where or the number of brochures that were distributed;
- that approximately £74k has been spent on promoting the ART BOX mark but Tallon do not indicate whether this figure relates solely to the United Kingdom. In addition, no evidence has been provided of how and where this promotion took place nor are any example of promotional use provided;
- that given the date of the application, the promotional figures (which extend to the end of 2004) should be partially discounted;
- that no evidence from the trade has been provided to substantiate any of Tallon's claims to reputation in the ART BOX mark;
- that no evidence from the public has been provided to support Tallon's claims to being well known by the general public;
- that Tallon have failed to establish (i) that it enjoys goodwill or reputation in it's ART BOX mark in the United Kingdom for relevant goods;
- that (ii) the consumers of the respective goods of Arkness and Tallon would be the same or that the goods would be supplied through the same trade channels;
- that no misrepresentation leading to deception or confusion has been proved as either having occurred or as being likely to occur;
- that Tallon have failed to prove any actual or likely damage.

DECISION

30. The sole ground of opposition is based on Section 5(4)(a) of the Trade Marks Act 1994 (as amended). That Section reads as follows:

“5.-(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) ...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark.”

31. In their written submissions, UDL say that in relation to a claim to passing off, the decision of Mr Geoffrey Hobbs QC acting as the Appointed Person in *Wild Child* Trade Mark [1998] RPC 455, together with the decision of Mr Justice Pumfrey in *Reef* Trade Mark [2002] RPC 19 should be kept in mind. I agree. However, I would add to these Authorities the decision of Professor Ruth Annand, acting as the Appointed Person in *Loaded* Trade Mark [0/191/02].

32. A helpful summary of the elements of an action for passing off can be found in *Halsbury's Laws of England* (4th Edition) Vol. 48 (1995 reissue) at paragraph 165. The guidance given with reference to the speeches in the House of Lords in *Reckitt & Colman Products Ltd v Borden Inc* [1990] RPC 341 and *Erven Warnink BV v J Townend & Sons (Hull) Ltd* [1979] A.C. 731 is (with footnotes omitted) as follows:

"The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

(1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;

(2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the defendant are goods or services of the plaintiff;

and

(3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.

The restatement of the elements of passing off in the form of this classical trinity has been preferred as providing greater assistance in analysis and decision than the formulation of the elements of the action previously expressed by the House. This latest statement, like the House's previous statement, should not, however, be treated as akin to a statutory definition or as if the words used by the House constitute an exhaustive, literal, definition of 'passing off', and in particular should not be used to exclude from the ambit of the tort recognised forms of the action for passing off which were not under consideration on the facts before the House."

33. Further guidance is given in paragraphs 184 to 188 of the same volume with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

"To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

- (a) the nature and extent of the reputation relied upon;
- (b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;
- (c) the similarity of the mark, name etc used by the defendant to that of the plaintiff;
- (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action."

34. In *Reef* Trade Mark Pumfrey J. in considering an appeal from a decision of the Registrar to reject an opposition under Section 5(4)(a) said:

"27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* [1946] 63 R.P.C. 97 as qualified by *BALI Trade Mark* [1969] R.P.C. 472). Thus, the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date.”

35. In my view, the *Reef* test ought not to be interpreted in too prescriptive a fashion. There will be occasions when the evidence provided does not fall within the above parameters but still establishes goodwill for passing off purposes; the comments of the Appointed Person in the *Loaded* decision mentioned above refers.

36. The date at which the matter must be judged is not entirely clear from Section 5(4)(a) of the Act. This provision is clearly intended to implement Article 4(4)(b) of Directive 89/104/EEC. It is now well settled that it is appropriate to look to the wording of the Directive in order to settle matters of doubt arising from the wording of equivalent provisions of the Act. The relevant date may therefore be either the date of the application for the mark in suit (although not later), or the date at which the acts complained of first commenced, as per the comments in *Cadbury Schweppes Pty Ltd v The Pub Squash Co Pty Ltd* [1981] RPC 429. In his evidence, Mr Andersson explains that Arkness first used the ARTBOX mark in relation to bags at a trade show in February 2004, adding that by May 2004 the range of goods had been extended to include, *inter alia*, stationery. In light of these comments, and as the application for registration was filed on 20 May 2004, it is the date of the application for registration that I propose to use to determine Tallon’s claim to passing off.

37. In my view this case turns on whether Tallon’s evidence establishes that at the material date in these proceedings, they had a protectable goodwill in relation to the goods for which they claim to have used their ART BOX trade marks, for if they can establish this, given the closeness of the respective parties’ trade marks, misrepresentation and damage are, in my view, likely to follow.

38. In his evidence, Mr Heath explains that sales under the ART BOX marks amounted to some £3.6m in the period January 1992 to January 2005, and approximately £74k was spent promoting the marks in the period 1999-2004. Although estimates of promotional spend are provided on a yearly basis, no such breakdown is provided in relation to sales achieved under the marks. UDL comment that no evidence has been provided of when and how the promotion took place nor are any examples of promotional use provided (see below for my comments on this submission). In his evidence Mr Heath explains that Tallon distributes goods sold under the ART BOX marks to all areas of the United Kingdom and to Greece, Malta, Spain and Africa.

39. In relation to the goods on which Tallon have used their ART BOX marks, UDL say that these goods are artists’ materials and not stationery products. By contrast, MC provide a dictionary definition which defines stationery as: “The articles sold by a stationer, writing materials etc” and argue that all of the goods sold by Tallon would fall within the term stationery. What should and should not be categorised as stationery may be difficult to define. However, from the evidence provided, one can see that Tallon have used their ART BOX marks on a range of goods aimed, in my view, primarily at those interested in drawing and painting. Some of the goods on which Tallon have used their ART BOX marks, for example, pencils, crayons, chalk and erasers, are, in my view, clearly items of stationery. Other goods, for example, paints, paint brushes etc are the type of goods that would traditionally be found in a stationery store, and in my view fall within the term stationery.

40. Finally, I note UDL's comments to the effect that no evidence has been provided of: (i) exactly when Tallon attended the various exhibitions mentioned, (ii) the size of the stationery market in the United Kingdom or Tallon's share of it, and (iii) that no evidence from the trade or public has been provided to support Tallon's reputation in the ART BOX marks.

41. In my view, the evidence provided by Tallon establishes that they have used their ART BOX trade marks since 1992 in relation to a range of goods falling within Class 16. In use, their ART BOX marks appear in a number of different formats and are often accompanied by the word Tallon. However, regardless of the format in which it is used, it is always, in my view, clearly recognisable as the word or words ART BOX; when it is used with the word Tallon, it is, in my view, the word ARTBOX which is the dominant feature.

42. However, a number of UDL's criticism of Tallon's evidence are well founded. For example, no indication is given as to what percentage of the sales and promotional figures provided relate to sales and promotion in the United Kingdom as opposed to overseas; this is, in my view, an important omission given that Mr Heath explains that Tallon also use the ART BOX marks in a number of other territories. In relation to the promotional figures, these are, in my view, likely to refer to the preparation of the product brochures and to the attendance at the various exhibitions. However, as UDL point out, there is no indication of exactly when these exhibitions took place nor is any indication given as to who, where, or the number of product brochures that were distributed. It is also true that the sales and promotional figures provided extend a little beyond the material date in these proceedings and will need to be partially discounted. Finally, while I accept UDL's submissions to the effect that Tallon have not provided any independent evidence from the trade or public to support their claims, given the comments of Professor Annand in *Loaded* mentioned above, this is not in my view fatal to Tallon's case.

43. How then should I proceed in light of these competing factors? Taking the best view that I can of the matter on the evidence provided by Tallon, and keeping firmly in mind the words of Pumfrey J in *Reef* Trade Mark reproduced above, I have, albeit with some hesitation, come to the conclusion that at the material date in these proceedings, Tallon have failed to provide sufficient cogent evidence for me to conclude that they possessed goodwill or reputation in their ART BOX marks sufficient for the first leg of the test for passing off to be satisfied. Having failed the first of the three part test, the remaining elements of misrepresentation and damage do not come into play, and the Opposition which is based solely on Section 5(4)(a) of the Act must be dismissed accordingly.

44. The Opposition having failed, the Applicant is entitled to a contribution towards its costs. I order the Opponent to pay to the Applicant the sum of £1000. This sum 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 22nd Day of August 2007

**C J BOWEN
For the Registrar
The Comptroller-General**