

O/243/12

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO 2554106  
TO REGISTER THE TRADE MARK**



**IN CLASS 43**

**AND  
APPLICATION NO 2556900 TO REGISTER THE TRADE MARK**

**FLAMING  
GRILL  
PUB CO.**

**BY SPIRIT PUB COMPANY (SERVICES) LIMITED**

**AND**

**THE CONSOLIDATED OPPOSITIONS THERETO  
UNDER NOS 101280 AND 101524**

**BY  
FLAMIN GRILL LIMITED**

## BACKGROUND AND PLEADINGS

1. Punch Pub Company Limited, now named Spirit Pub Company (Services) Limited (“the applicant”), applied to register the following trade mark on 26 July 2010, under number 2554106:



2. On 25 August 2010, the applicant made another trade mark application, under number 2556900, for the mark:



3. The specifications for both applications are (following amendment):

“Services for the provision of food and drink in a public house; bar services”, in Class 43.

4. Applications 2554106 (“mark (i)”) and 2556900 (“mark (ii)”) were published in the *Trade Marks Journal* on 10 September 2010 and 8 October 2010, respectively. Both applications were opposed by Flamin Grill Limited (“the opponent”) under section 5(4)(a) of the Trade Marks Act 1994 (“the Act”). Section 5(4)(a) of the Act states:

“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”

5. In its notice of opposition against mark (i) the opponent claims that the following sign was first used in the UK in Middlesex in 2003 in relation to restaurant and take-

away services serving only non-alcoholic drinks, Arabic style food made from Halal meat, and dips:



In its notice of opposition against mark (ii), an identical claim is made, but the sign relied upon is represented as the words on one line in red.

6. The opponent also relies upon the following two signs (for identical claims as above) in respect of both applications:



and



The second of these signs is shown in black and white on the notice of application for mark (i) and in the colour version (as above) on the notice of opposition for mark (ii).

7. The opponent goes on to say that it has traded in the UK since 2003 in relation to the above-mentioned goods and services and, as a consequence of this use, has established an extensive reputation and goodwill in relation to these goods and services. The use by the applicant of the applied-for marks, which the opponent states is visually and phonetically substantially identical to the opponent's trade mark, would constitute a misrepresentation, cause confusion with and damage to the opponent's signs. The opponent claims that use of the applied-for marks is likely to be prevented by the law of passing-off; registration of the applications would be contrary to section 5(4)(a) of the Act.

8. The applicant filed identically worded counterstatements in which it denies that the marks applied for offend section 5(4)(a), denies misrepresentation and puts the opponent to proof of its claims.

9. Both sides filed evidence and written submissions. Neither wished to be heard, choosing instead for this decision to be made on the basis of the papers they had filed. The oppositions were consolidated, hence this single decision covers both sets of proceedings.

### **Evidence**

10. The requirements to succeed in a passing off action are well established and are summarised in *Halbury's Laws of England* 4th Ed. as being that:

- i) the claimant's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- ii) there is a misrepresentation by the defendant (whether or not intentional) which is likely to deceive the public into believing that the defendant's goods or services are those of the claimant; and
- iii) the claimant has suffered or is likely to suffer damage as a result of the erroneous belief created by the defendant's misrepresentation.

11. The date of application is the relevant date in relation to section 5(4)(a)<sup>1</sup>. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made. If the applicant was not passing off when it commenced trading under the sign, a continuation of the same trade under the same sign will not amount to passing off at the relevant date. The applicant could show evidence which could establish that it was the senior user and that the existing position should not be disturbed and so its use would not be liable to be prevented by the law of passing-off<sup>2</sup>. In this case, the applicant has not claimed it has used its marks prior to their application dates which are 26 July 2010 and 25 August 2010, so these are the relevant dates in these consolidated proceedings.

#### The opponent's evidence

12. Yassir A Mukhtar, who has been a director of the opponent since 2004, has filed two witness statements (dated 22 July 2011 and 1 February 2012) and supporting exhibits. In his first witness statement, Mr Mukhtar states that the opponent has used its mark as shown below<sup>3</sup>:

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<sup>1</sup> See the comments of Mr Daniel Alexander QC, sitting as the Appointed Person in *MULTISYS* BL O/410/11. BL-prefixed decisions are available for viewing on the website of the Intellectual Property Office.

<sup>2</sup> See, for instance: *Croom's Trade Mark Application* [2005] RPC 2 and *Daimlerchrysler AG v Javid Alavi (T/A Merc)* [2001] RPC 42.

<sup>3</sup> Exhibit YM1



since 2004 in relation to restaurant and café services providing takeaway food using halal meat and providing non-alcoholic drinks and the preparations thereof. Mr Mukhtar also states that the opponent has used the mark on the preparation of takeaway food using halal meat and the preparation of non-alcoholic drinks, on beef burgers, lamb burgers, shawarma, kebabs, cooked chicken, chips, onion rings, humus, falafel, salads and samosas. The opponent's turnover figures are:

Calendar year to 30 April	Turnover (£)
2005	90,272
2006	84,561
2007	116,321
2008	175,519
2009	156,286
2010	159,645

13. Mr Mukhtar states that the opponent has sold 40-50,000 menu items per year in recent years at an average menu item price of between £3 and £4 each. Advertising expenditure ranges was £1434 in 2005, £865 in 2006, £3000 in 2007 and 2008 and £12,000 in 2009 and 2010. Mr Mukhtar states that advertising has taken place in London borough directories and local London borough newspapers, citing, for example, Richmond and Twickenham Yellow Pages 2005/2006, Thompson Directories 2004, Hounslow Police Station Crime Prevention Folder 2005, Richmond and Twickenham Times 2004, Hounslow Guardian 2004. Exhibit YM4 is said to show examples of this advertising, but it consists only of an undated flyer showing the mildly stylised words Flamin Grill, and a proforma from Yell.com for the purposes of checking the advertisement before it was published in the 2005 edition of its Richmond and Twickenham directory. The advertisement is shown below:



Mr Mukhtar states that publicity activity has been carried out mainly via leaflet distribution since 2006. In 2007 and 2008, about 75,000 leaflets were distributed each year and since then about 300,000 (i.e. in 2009 and 2010). Exhibit YM5 is said to be an example of such a leaflet:



14. Mr Mukhtar exhibits a photograph of the opponent's shop front<sup>4</sup> from Google maps © 2011, printed on 18 July 2011:

<sup>4</sup> Exhibit YM2.



and what is said to be an example<sup>5</sup> of the opponent's restaurant and takeaway menu leaflet:



Mr Mukhtar also refers to use of the sign on the opponent's website, [flamin-grill.co.uk](http://flamin-grill.co.uk), but does not provide any exhibits showing such use.

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<sup>5</sup> Exhibit YM3.



15. Mr Mukhtar states that the opponent's premises are on the Great West Road close to Heathrow Airport which means that the opponent's business is known and used by customers from a wide geographical area, including customers travelling into and out of London as well as customers living in the following locations in which the opponent's leaflets have been distributed: Hounslow, Heston, Isleworth, Chiswick, Richmond, Twickenham, Slough and surrounding Farnham Common areas. Mr Mukhtar states that these locations have a population of over 700,000 (presumably each location). Mr Mukhtar says that the opponent's products are Halal and have a wide appeal among the Asian and Arabic community in these geographical areas and also beyond through family connections and recommendations. As support for this statement, Mr Mukhtar exhibits a print<sup>6</sup> from a website called londononline.co.uk, dated 18 July 2011, showing five out of a total of nine reviews for 'Flamin Grill':

Now showing reviews 1-5 of 9

[View all 9 reviews »](#)

- ✦ **Excellent food and service!!!! by Sarah**  
Flamin Grill is a wicked place to eat fresh grilled chicken with the choice of the salads just tops ... [More »](#)
- ✦ **Flaming chicken ... by Tina**  
Went to flaming grill 2 in the morning and they had a bit of a queue but their food is wicked.... ch... [More »](#)
- ✦ **Boom boom by Aki**  
Yo people serious man. Im a regular at flaming grills and nothing beats their food. its fresh,clean a... [More »](#)
- ✦ **Grilled chicken better than Nando's!! by Saurus**  
Omg, seriously, if you like grilled chicken, this beats any other place. Just tell them that you wan... [More »](#)
- ✦ **KEBAB KEBAB KEBAB by KebabLover**  
The Flamin' Grill's lamb doner kebab in pita is the best kebab in the world. It has the perfect amo... [More »](#)

16. By way of his second witness statement, Mr Mukhtar exhibits sample till receipts from 10 July 2004, 10 February 2008 and 29 August 2009<sup>7</sup>, and copies of invoices from 16 March 2004, 19 March 2004 and 30 August 2006<sup>8</sup>, showing the opponent's purchase of Halal meat products. The till receipts show a variety of takeaway style food items, although the till receipts seem to be more in the nature of cashing-up receipts (with a some of the largest hourly takings being between midnight and 4am, perhaps explained by the inclusion on one of the receipts of "police offer"). Mr Mukhtar states that Exhibit YM9 is a copy of comments posted on the opponent's Facebook page, although, in fact it is a repetition of the feedback left on Londononline and exhibits YM10 and 11 give statistics about the numbers, demographics, and locations of people who "like [the opponent's] Facebook page" (these are Mr Mukhtar's words; it is not clear if they 'like' the opponent or they 'like'

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<sup>6</sup> Exhibit YM6.

<sup>7</sup> Exhibit YM7.

<sup>8</sup> Exhibit YM8.

its Facebook page). Mr Mukhtar says that these people are spread throughout the UK, and some are even abroad. These details are all from the latter months of 2011, so are well after the relevant date for consideration in these proceedings.

### The applicant's evidence

17. The applicant has filed evidence from its trade mark attorney, Alice Davies (at the firm of Murgitroyd and Company). Ms Davies states that on 8 September 2011 she conducted a short Google search on Google maps and Google Street View search using keywords including FLAMING, GRILL and HALAL in area in and surrounding the postcode TW3 in West London. Her results are shown in exhibit AD1. She says that these results show a sufficiently large number of establishments that provide Halal food in a fast food style within and immediately surrounding London TW3 such that a consumer would not be prepared, nor have any need, to travel long distances to buy a product priced between £3 and £4. It is unnecessary to describe the exhibits save to note that they are pictures of the outside of fast food outlets, e.g. "Hounslow Kebab House" and "Isleworth Kebabs".

### **Decision**

#### Goodwill

18. The first hurdle is for the opponent to prove that it has goodwill in the signs relied upon, in relation to the goods and services it lists in its notices of opposition, in the mind of the purchasing public. The concept of goodwill was explained in *Inland Revenue Commissioners v Muller & Co's Margerine Ltd* [1901] AC 217 at 223:

"What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

19. Whether the opponent has the requisite goodwill has to be deduced from the evidence which it has filed. In *Reef Trade Mark* [2002] RPC 19, Pumfrey J said:

"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."

and

“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. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

20. In *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat), Floyd J, building upon Pumfrey J’s observations, said:

“8 Those observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

21. The turnover is relatively modest but shows a growing business at the relevant date; the food and drink sold is inexpensive and represents the takings of a single outlet<sup>9</sup>. Although the opponent relies upon the use of four earlier signs in its notice of opposition, Mr Mukhtar only refers to the use of one of these in his witness statement:



Consequently, the opponent’s case is restricted to a consideration on the basis of this sign only. Mr Mukhtar has made a clear statement that this sign has been used and it is a statement on which the applicant has not asked to cross-examine Mr Mukhtar. Even so, I must still evaluate the evidence critically: it is still necessary to

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<sup>9</sup> Relatively modest levels of goodwill can be protectable, as per *Teleworks v Telework Group* [2002] RPC 27.

decide whether the evidence shows goodwill which is related to the sign relied upon and, if there is goodwill, to evaluate the nature and extent of it.

22. As the authorities show, there is no magic evidential formula by which goodwill is established. The shop front photograph is dated after the relevant date; having said that, it is common in proceedings before this Tribunal that it is only when a dispute such as the present case arises that parties take photographs of the fronts of their retail premises to include in their evidence. There are gaps in the opponent's evidence which could have been filled<sup>10</sup> e.g. more recent invoices, accounts and stock lists, invoices from printers for leaflets and menus. These all help to build up a picture of trade: trade is custom and goodwill is associated with custom as it is the attractive force which brings it in. Having said that, the turnover figures are consistent and show a business which steadily grew over a number of years, supported by increased advertising efforts, which are reflected in the increasing amounts spent on publicity. Mr Mukhtar has given what he calls 'examples' of the leaflets.

23. The evidence in relation to turnover shows till receipts for items of small value, often bought in the small hours of the morning. The feedback comments refer to visits at 2am and queues. The conclusion drawn from the level of turnover, the physical nature of the menu leaflets, the time of main business activity and the type of food sold, is that the opponent's goodwill, attached to the sign referred to above, relates to a single-outlet takeaway business, not a restaurant business. The opponent's premises are in a prime location for a takeaway. It is on a main West London trunk road, close to Heathrow airport. This is an area of dense population and, as Mr Mukhtar says, the opponent's Halal food, drink and premises are of appeal to Asian and Arabian customers of whom there are large communities west of central London. Having said that, although customer loyalty might be a large part of the opponent's custom, its evidence in that respect is thin (and after the relevant dates) and there is also some force in Ms Davies' submission that people will not need to travel long distances to this sort of outlet for this sort of food. However, in order to generate a modest level of goodwill in such a densely populated area and an area of major passing trade, the opponent would not, presumably, need to rely on customers venturing from too far afield. The opponent's custom is based, in part, upon the halal nature of its food, drink and associated services. Halal is of considerable religious importance to those who seek it out, but some of the opponent's customers may simply stop there anyway as it is a convenient place to get a burger or kebab (it is open throughout the night).

24. The opponent sells 40-50,000 items a year, which is under 1000 items a week. Assuming customers buy at least two items at a time (e.g. a kebab and chips, or a

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<sup>10</sup> In the *Club Sail* case [2010] RPC 32, Mr Geoffrey Hobbs QC, sitting as the appointed person, cited the following words of Lord Bingham of Cornhill in *Fairchild v. Glenhaven Funeral Services Ltd*:

"... I think it is salutary to bear in mind Lord Mansfield's aphorism in *Blatch v. Archer* (1774) 1 Cowp 63 at 65, 98 ER 969 at 970 quoted with approval by the Supreme Court of Canada in *Snell v. Farrell*:

'It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted.'

kebab and a drink), that is about 500 customers a week: less than 100 a day. The opponent's takeaway business is a small fish in a very large pond. Taking the evidence in the round, I am prepared to say that the opponent has established a modest level of goodwill in the circular sign shown above, at the relevant date, in one locality<sup>11</sup>, for halal takeaway food and drink and takeaway services.

### Misrepresentation

25. The applicant has limited its specification of services to those which are provided in public houses and bars in an attempt to distance itself from the opponent's field of activity, which the applicant states is different as it is in the nature of halal, which would not be provided in the environment of pubs and bars where alcohol is served (alcohol is non-halal). The opponent has demonstrated that it has goodwill in providing takeaway food using halal meat, beef burgers, lamb burgers, shawarma, kebabs, cooked chicken, and also chips, onion rings, humus, falafel, salads and samosas and providing takeaway non-alcoholic drinks. A common field of activity is not the same thing as similarity between goods and services. Both parties provide food and drink<sup>12</sup>, but one does so in the context of a halal-oriented takeaway business (no alcohol) and the other does so or seeks to do so in the context of a pub/bar. Although this is all the provision of food and drink, it is in different commercial contexts, providing quite different dining experiences.

26. There are similarities between applicant's marks and the opponent's sign: they all have a common "Flaming Grill" element. Although the opponent's sign contains flames in place of letters, it is the natural inclination of the human brain to substitute letters where the flames are positioned in order to make sense of the words: in the context in which the opponent's sign is encountered (food services), the sign will be interpreted as Flaming Grill. Flaming Grill is suggestive of a type of food: food cooked on a flaming grill. In *Teleworks v Telework Group* [2002] RPC 27, Christopher Floyd Q.C., sitting as a Deputy judge of the High Court, said of the plaintiff's sign (footnote omitted):

"60 As Mr Mellor rightly accepted, the name is far from being a *Chicago Pizza* or an Office Cleaning Service. There is nevertheless a strong descriptive element in the name which seems to me to indicate that a customer would not be surprised to learn that there were two companies both using the name if their title or to brand their goods. I regard it as a factor to be taken into account and given appropriate weight in the assessment of the likelihood of confusion. If the claimant and defendant were operating in identical fields in "off the shelf" products, I have no doubt that this factor alone would be inadequate to prevent confusion. But where as here there is a significant difference between the activities of the parties and the products are bought in circumstances which are not conducive to source confusion, the descriptive nature of the name plays some part in further reducing the risk of confusion."

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<sup>11</sup> The application seeks a national right, which would include the opponent's locality.

<sup>12</sup> As there is no evidence of actual use from the applicant, this is a *quia timet* action based on the notional use of the services covered in its applications.

27. There are also differences between the marks (apart from the flame devices): the applications contain a clear reference to 'Pub Company' in the marks, putting the customer on notice that the goods and services on offer are those common to public houses (which is what the specifications reflect). As in the judgment cited above, the descriptive nature of the opponent's sign, whilst not completely descriptive in view of the stylised flame devices, also plays a part in reducing the risk of confusion. Customers, alert for differences, may be unsurprised that there are two companies with marks/signs containing Flamin(g) Grill elements, suggestive of the businesses carried on under those marks/signs; i.e. providing food cooked on a flaming grill, particularly when the one is provided in a takeaway environment (which is to where the opponent's evidence points) and the other in a pub environment (the restriction to the applicant's specifications and the references to pubs in the marks).

28. In putting these factors together to consider misrepresentation, I bear in mind the following extract from *Phones 4u Ltd v Phone4u.co.uk. Internet Ltd* [2007] RPC 5, Court of Appeal, in which Jacob LJ said:

"16 The next point of passing off law to consider is misrepresentation. Sometimes a distinction is drawn between "mere confusion" which is not enough, and "deception," which is. I described the difference as "elusive" in *Reed Executive Plc v Reed Business Information Ltd* [2004] R.P.C. 40. I said this, [111]:

"Once the position strays into misleading a substantial number of people (going from 'I wonder if there is a connection' to 'I assume there is a connection') there will be passing off, whether the use is as a business name or a trade mark on goods."

17 This of course is a question of degree—there will be some mere wonderers and some assumers—there will normally (see below) be passing off if there is a substantial number of the latter even if there is also a substantial number of the former.

18 The current (2005) edition of *Kerly* contains a discussion of the distinction at paras 15–043 to 15–045. It is suggested that:

"The real distinction between mere confusion and deception lies in their causative effects. Mere confusion has no causative effect (other than to confuse lawyers and their clients) whereas, if in answer to the question: 'what moves the public to buy?', the insignia complained of is identified, then it is a case of deception."

19 Although correct as far as it goes, I do not endorse that as a complete statement of the position. Clearly if the public are induced to buy by mistaking the insignia of B for that which they know to be that of A, there is deception. But there are other cases too—for instance those in the *Buttercup* case. A more complete test would be whether what is said to be deception rather than mere confusion is really likely to be damaging to the claimant's goodwill or divert trade from him. I emphasise the word "really."

29. In deciding whether a substantial number of the opponent's customers (and potential customers)<sup>13</sup> will merely wonder if there is a connection between the parties, or whether they will assume that there is a connection and thereby be deceived, the following factors from Halsbury's Laws, cited in *WILD CHILD* [1998] RPC 455 by Geoffrey Hobbs QC, sitting as the Appointed Person, are helpful:

"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."

30. In *MULTISYS Trade Mark*, BL O/410/11, Daniel Alexander QC, sitting as the Appointed Person, also cited this list and went on to say:

"28. The more limited the reputation on the part of the undertaking asserting the potential claim in passing off under s.5(4)(a), the less likely that it will be able to show that a misrepresentation would be made by the use of a similar mark by a third party. Moreover, it has been repeatedly stated that passing off requires that a substantial number of members of the relevant public are likely to be deceived by the use complained of. In *Reckitt & Colman Products Ltd. v. Borden Inc. (Jif Lemon)* [1990] RPC 341 at 407, Lord Oliver said that the question on the issue of confusion was:

"...is it on the balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents' product?"

31. I have come to the conclusion that there is no misrepresentation. The test is whether the applicant would be liable to be prevented from use of the trade marks under the law of passing-off. Owing to the nature of the opponent's goodwill and the specification of the applications, the differences between the signs/marks and the descriptive/strongly allusive nature of the common elements between them, the opponent would not be able to prevent the use of the trade marks for the services of the applications. I consider that the case falls on the side of 'I wonder if there is a connection', if it even gets that far, rather than "I assume there is a connection". Without misrepresentation, there will be no damage; certainly there is no misrepresentation "really likely to be damaging to the claimant's goodwill or divert trade from him" (*Phones 4u Ltd v Phone4u.co.uk. Internet Ltd*, cited above).

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<sup>13</sup> *Neutrogena Corporation and Anr. V Golden Limited and Anr.* [1196] RPC 473.

**32. The oppositions fail against both of the applicant's marks. The applications are to be registered.**

**Costs**

33. The applicant has been successful and is entitled to an award of costs on the following basis<sup>14</sup>, factoring in the consolidation:

Considering the oppositions and filing the counterstatements	£300
Considering the opponent's evidence and filing evidence and submissions	£500
Written submissions	£300
<b>Total:</b>	<b>£1100</b>

34. I order Flamin Grill Limited to pay Spirit Pub Company (Services) Limited the sum of £1100. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 22<sup>nd</sup> day of June 2012**

**Judi Pike  
For the Registrar,  
the Comptroller-General**

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<sup>14</sup> As per the scale in Tribunal Practice Notice 4/2007.