

O-560-15

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 3047813

IN THE NAME OF MAGPIE LTD

AND

OPPOSITION THERETO UNDER NO 402944

BY McARTHUR/GLEN EUROPE HOLDINGS LIMITED LLC

Background

1. Application No 3047813 was filed on 20 March 2014 and stands in the name of Magpie Ltd (“the applicant”). It seeks registration of the trade mark **Designer Village** in respect of the following services:

Class 35

Online and internet retail services in relation to jewellery, clothing, footwear, rucksacks, hand bags, cosmetic bags, work bags, wheeled bags, beach bags, leather bags, gym bags, clutch bags, casual bags, shoulder bags, luggage bags, travel bags, make up bags, belts, briefcases, umbrellas, watches, sunglasses, optical frames, hats, wallets, fragrances, cosmetics, gloves, scarves, ball point pens, fountain pens and ink pens.

2. Following publication of the application in *Trade Marks Journal* 2014/027 on 27 June 2014, notice of opposition was filed by McArthur/Glen Europe Holdings Limited LLC (“the opponent”). The opposition was originally brought on grounds under section 3(1)(b)(c) and (d) of the Trade Marks Act 1994 (“the Act”), alleging the mark is devoid of distinctive character, describes a characteristic of the services and is in customary use in the current language and bona fide and established practices of the trade. The opponent later sought, and was allowed, to add an additional ground of opposition under the provisions of section 3(3)(b) of the Act on the basis that the mark is of such a nature as to deceive the public.

3. The applicant filed a counterstatement, later amended, denying each of the grounds of opposition. Both parties filed evidence with the applicant also filing written submissions. The matter came before me for a hearing on 10 November 2015 when the applicant was represented by Mr Maxwell Keay of Counsel instructed by Acumen Business Law. The opponent was represented by Mr Jonathan Day of Carpmaels & Ransford (Trade Mark) LLP.

4. I do not intend to summarise the evidence here but will refer to it as necessary in this decision. It consists of the following:

Opponent’s evidence

A witness statement of Giles Millerchip dated 19 May 2015 with exhibits GM1-GM15. Mr Millerchip is Head of Legal at McArthurGlen UK Limited (“MGUK”), a position he has held since 2010, having worked within the company’s legal team since 2000. Mr Millerchip states that MGUK is part of the same group of companies as the opponent.

Applicant’s evidence

A witness statement of Marc Sutton dated 21 July 2015 with exhibits MS1- MS2. Mr Sutton is the sole Director and Shareholder of the applicant company.

Decision

5. Section 3(1) of the Act states:

“3(1) The following shall not be registered –

- (a) signs which do not satisfy the requirements of section 1(1),
- (b) trade marks which are devoid of any distinctive character,
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,
- (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the *bona fide* and established practices of the trade:

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

6. The applicant has not filed any evidence of use of its mark and so cannot avail itself of the proviso in relation to acquired distinctive character.

The objection under section 3(1)(c) of the Act

7. The case law under section 3(1)(c) was summarised by Arnold J. in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch):

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40 , p. 1), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94 , see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18 , paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461 , paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94 . Each of the grounds for refusal listed

in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia , *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44 , paragraph 45, and *Lego Juris v OHIM* (C-48/09 P) , paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley* , paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie* , paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in Article 3 of Directive 89/104, *Koninklijke KPN Nederland* , paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in

that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94, the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56)."

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97]."

8. Both parties refer to other trade mark registrations both before this office and OHIM, however, I have no evidence of how these marks became registered or whether they are used in the market place and, if so, on what goods or services they are used. This "state of the register" material does not assist either party.

9. In its notice of opposition, the opponent submits:

“The word Designer is, undeniably, wholly descriptive in relation to the services covered by the application. Words such as “VILLAGE” (and “OUTLET” and “CENTRE”, for example) either always were, or have become, the customary way to name and describe retail centres where a number of designers’ brands are grouped together under one roof (either in a “bricks and mortar” location or online or both). Such words are often used in combination with the word DESIGNER and/or other descriptive words...Most, if not all of these centres have websites which advertise what is available for sale in their corresponding “bricks and mortar” locations and also sometimes sell goods online”.

10. In its counterstatement, the applicant denies the claims made and, in summary, submits:

- The word “Designer” is not wholly descriptive. It has a number of meanings. It submits that “Whilst the word “Designer” could be interpreted to describe the quality of the goods and services being provided, any descriptive element only applies to the word “Designer” in isolation”;
- The word Village “does not form the subject matter of the goods, nor is it a word used in the relevant market to describe the provision of the goods and services”. Accepting that “Among other interpretations, the word “Village” can be interpreted to mean a community, such as a community of houses or shops” the applicant claims that the mark is not descriptive because its services are provided by one seller not a community;
- “The juxtaposition of the words “Designer” and “Village” work together to create a unique phrase which does not describe the goods and services for which it is to be registered. The use of the word “Village” after the word “Designer” gives the Trade Mark an element of distinctiveness...the combination of the words “Designer Village” do not describe the goods and services and does not consist exclusively of signs or indications which may serve in trade to designate the kind, quality, intended purpose, value, geographical origin, the time of production of goods or rendering (sic) of serves (sic) in trade to designate the type and intended purpose of the services”;
- “The phrase “Designer Village” can have a number of interpretations, and a collection of factory outlet stores is one interpretation. As the goods and services the [applicant] is providing are online retail services from one supplier and not the sale of goods through multiple retail or factory outlets” it is not descriptive;
- The goods and services of the application relate solely to retail services provided online and will not be provided in physical shops, outlet stores or shopping malls.

11. In his evidence Mr Millerchip states that the opponent’s group of companies owns, develops and manages retail centres known as designer outlets, having

opened the first such premises in the UK, and indeed Europe, in 1995. At GM1, he exhibits an article published in the *Telegraph* on 9 May 2013, which confirms this. The article refers variously to the introduction and growth of “designer outlets” and “outlet village(s)” which are said to be shopping centres which offer “an avenue to offload unwanted out-of-season stock, while attracting new customers to a brand”.

12. Mr Millerchip states that the word “designer” has, in respect of retailing, a very clear meaning whilst the word “village” is used to describe a retail environment. At GM2 he exhibits internet printouts downloaded on 10 April 2014 and which were originally produced by the trade mark examiner as part of the official application file. The printouts refer to the “Cheshire Oaks Designer Village” in Ellesmere Port and the “Great Western Designer Village” in Swindon. There is also an article published in *Verdict View* and dated 23 July 2013. It is entitled “Croydon challenges Bicester with outlet plans” and refers to the opening of Croydon’s “new village outlet [which poses] a threat to major competitor Bicester Village” and which is “a new discount retail village and food hall” which will “house a variety of UK high street brands as well as international designer outlets”. It describes how “brands are becoming far more savvy and knowledgeable about the fact that discounted stores and websites can allow them to target a much larger customer base...”. The article refers variously to the “outlet village”, the “new village outlet” and “discount retail village”. The exhibit also includes a number of other internet printouts relating to the Bicester Village, described as a factory outlet and an out of town designer outlet centre and the Kilver Court Designer Village, described as a “fresh outlet shopping experience in the heart of Somerset”. At GM7 is a printout downloaded on 30 April 2014 from the visitlondon website. It refers to “The Village at Westfield” described as the “best in designer fashion and lifestyle” and “a stylish shopping experience”. At GM8 and GM9 are similar printouts downloaded the same day referring to the Wilton Shopping Village near Salisbury (taken from wiltonshoppingvillage.co.uk), the Trentham Shopping Village near Stoke-on-Trent and Rutland Village, a rural retail park near Oakham.

13. Mr Millerchip states that the descriptive use of the word “village” is so widespread that it is used across Europe and such use has extended as far as China. At GM4 and GM5 he exhibits a number of prints to support his claim. GM4 refers to a company called Value Retail and its retail villages in London and mainland Europe as well as China whilst GM5 consists of printouts from the websites of the various shopping villages. With the exception of the first page of GM5, which refers to the Alpenrhein Village Outlet Shopping in Landquart (Switzerland), all of the pages are in English so do not show how the places would be referred to in the language of the particular countries.

14. Mr Millerchip submits that the words “Designer Village” in combination have a descriptive meaning in respect of bricks and mortar retailing, with the words being interchangeable with others such as “designer store” or “designer outlet”. Repeating what the applicant said in its counterstatement, at GM2 he exhibits a copy of a letter sent to the trade mark examiner, wherein the applicant accepts that one interpretation of the mark is a collection of factory outlet stores.

15. At GM6 he exhibits a printout, downloaded on 29 April 2015, of a Wikipedia entry for “Furniture Village”, described as a British furniture retailer, along with pages from that company’s own website. Mr Millerchip states that the company is a major retailer

with 40 stores across the UK. It is not, he states, “a factory outlet operator [but] simply gathers together furniture products from a range of manufacturers and sells them in a regular store.” He states this shows the word VILLAGE is used “in a broader sense and simply to describe a place where goods are brought together to be purchased”.

16. The applicant’s evidence takes the form of a witness statement of Marc Sutton, its sole director and shareholder, a position he has held since the incorporation of the company in 2009. Mr Sutton states that the applicant has two distinct operations 1) a wholesale and trading company of general consumer merchandise supplied to wholesalers, retailers and bulk buyers and 2) an ecommerce business which sells directly to consumers. He states the mark applied for is used only in relation to the second of these operations.

17. Mr Sutton submits:

“the words “designer” and “village” each have more than one meaning and the phrase “designer village” does not have a single meaning”.

He repeats what is said in the counterstatement and adds that the word village:

“can also be used as a euphemism for community, such as a community of sellers, or a cluster”.

He submits:

“The phrase “designer village” consists of two words each with more than one meaning and does not itself have a single meaning. Taken literally, the phrase could mean a village consisting of houses and associated buildings which has been planned by a designer, or it could mean a village consisting of houses and associated buildings which are considered fashionable. However, the juxtaposition of the two words given the variety of meanings of each can produce a multitude of different meanings.”

Mr Sutton states:

“Large out of town shopping centres which contain restaurants and possibly forms of entertainment such as cinemas in addition to discount outlets, may sometimes be referred to as “villages” as opposed to “outlets”, since they are reminiscent of traditional villages and are not exclusively outlets. However, they are not themselves retailers, but instead landlords of commercial space which is let to individual retailers and managers of the shopping malls. Their websites provide information for visitors to the village, such as opening hours, directions, parking information and information about the facilities, retailers and entertainment available, but they do not sell goods from the website”.

18. At MS1 he exhibits screen prints from the Bicester Village and Kildare Village websites. The pages show a number of services are available at these locations but the pages are largely pictorial and there is no text which gives any further information.

19. In its written submissions, the applicant again denies that its mark is descriptive of the goods or services provided by it (I note the application covers services only). It submits that the mark is “not descriptive of an out of town shopping centre and, even if it were, the Applicant is not an owner or operator of such an out of town shopping centre who lets space to individual retailers and manages the shopping centre but is instead a sole retailer selling exclusively online direct to consumers”.

20. Both parties have made reference to various goods and services with the applicant also referring to the actual business interests of the opponent. I remind myself that an objection under section 3 is an absolute objection which does not require consideration of the opponent’s business as such but will be determined on the basis of the mark and specification for which registration is applied. The applicant seeks registration for *online and internet retail services* in relation to a number of general consumer goods. The mark for which registration is applied consists of a combination of two words: the word Designer and the word Village. Both are ordinary dictionary words used in common parlance.

21. In the context of retail services, the word DESIGNER will be understood to mean either “made by or having the expensive sophistication of a famous and prestigious fashion designer” or “upscale and fashionable” (see *Oxford Online Dictionary*). I have set out above evidence filed by the opponent which, in my view, shows that the word VILLAGE is commonly used to describe a location or venue for the retailing of goods or services.

22. In my view, combining the two words does not change the meaning of those words: Designer Village has a clear and immediate meaning of a location or place where designer goods are brought together and may be purchased. Whilst it is true, as the applicant submits, that the services as sought to be registered are specified as being “online and internet retail services”, I see no reason to suppose that retail services differ fundamentally depending on whether they are supplied in a virtual or “bricks and mortar” marketplace. I am aware the internet is sometimes referred to as the “global village”, the virtual environment is now a well-established alternative to the physical shopping place and many retailers, as the opponent’s evidence goes some way to show, have a presence in both.

23. The applicant submits that it is “a single retailer selling directly to the public” and cannot therefore be said to be a “village”. In support of this, and referring to the opponent’s evidence at GM6, Mr Sutton submitted at the hearing that his position was that as “Furniture Village” had been registered for retail services, so should Designer Village be registered. I do not know the circumstances in which the Furniture Village mark proceeded to registration but the submission that the applicant intends its services to be supplied through the ecommerce side of its business, with the resultant goods therefore being supplied by a single supplier, does not alter my view that the mark is descriptive: it describes a place where designer goods are brought together and made available to purchase. Furthermore, whatever the applicant’s current intentions, the specification of services is not so limited and the fact remains that the applicant could change its plans at any time or could licence, sell or otherwise dispose of its mark to another business with its own, very different, plans.

24. In my view, and for the reasons given above, the mark Designer Village consists exclusively of a sign or indication which may serve, in trade, to designate a characteristic of the services and the opposition based upon grounds under section 3(1)(c) of the Act succeeds.

The objection under section 3(1)(b) of the Act

25. The principles to be applied under article 7(1)(b) of the CTM Regulation (the equivalent of article 3(1)(b) of the Trade Marks Directive and section 3(1)(b) of the Act) were summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG* (C-265/09P) thus:

“29...the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 32).

30. Under that provision, marks which are devoid of any distinctive character are not to be registered.

31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (*Henkel v OHIM*, paragraph 34. Case C-304/06; P *Eurohypo v OHIM* [2008] ECR I-3297, paragraph 66; and Case C-398/08 P *Audi v OHIM* [2010] ECR I-0000, paragraph 33).”

26. A trade mark with a descriptive character for the services at issue is necessarily devoid of any distinctive character for the purposes of section 3(1)(b). Therefore, the opposition on this ground also succeeds.

The objection under section 3(1)(d) of the Act

27. In *Telefon & Buch Verlagsgesellschaft mbH v OHIM*, Case T-322/03, the General Court (“GC”) summarised the case-law of the Court of Justice of the European Union (“CJEU”) under the equivalent of section 3(1)(d) of the Act as follows:

“49. Article 7(1)(d) of Regulation No 40/94 must be interpreted as precluding registration of a trade mark only where the signs or indications of which the mark is exclusively composed have become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services in respect of which registration of that mark is sought (see, by analogy, Case C-517/99 *Merz & Krell* [2001] ECR I-6959, paragraph 31, and Case T-237/01 *Alcon v OHIM –Dr Robert Winzer Pharma* (BSS) ECR II-411, paragraph 37. Accordingly, whether a mark is customary can only be assessed, firstly, by reference to the goods or services in respect of which registration is sought, even though the provision in question does not

explicitly refer to those goods or services, and, secondly, on the basis of the target public's perception of the mark (*BSS*, paragraph 37).

50. With regard to the target public, the question whether a sign is customary must be assessed by taking account of the expectations which the average consumer, who is deemed to be reasonably well informed and reasonably observant and circumspect, is presumed to have in respect of the type of goods in question (*BSS*, paragraph 38.)

51. Furthermore, although there is a clear overlap between the scope of Article 7(1)(c) and Article 7(1)(d) of Regulation No 40/94, marks covered by Article 7(1)(d) are excluded from registration not on the basis that they are descriptive but on the basis of current usage in trade sectors covering trade in the goods or services for which the marks are sought to be registered (see, by analogy, *Merz & Krell*, paragraph 35, and *BSS*, paragraph 39).

52. Finally, signs or indications constituting a trade mark which have become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services covered by that mark are not capable of distinguishing the goods or services of one undertaking from those of other undertakings and do not therefore fulfil the essential function of a trade mark (see, by analogy, *Merz & Krell*, paragraph 37, and *BSS*, paragraph 40)."

28. At GM2 are a number of printouts downloaded from a variety of website on 10 April 2014, very shortly after the relevant date. At page 36 is a printout taken from a travel company website it refers to "Cheshire Oaks Designer Village" but gives no further details. At page 38, a printout taken from the shopping-time.co.uk website, bears an address given as Great Western Designer Village in Swindon which is described as a shopping centre. At page 39, is a copy of an article which was published on the verdictretail.com site on 23 July 2013. Entitled "Croydon challenges Bicester with outlet plans" it refers to a new shopping centre and the growing popularity of "designer village outlets" in the UK. At page 41 is a review which was uploaded to the Tripadvisor website on 18 January 2014, two months before the relevant date, where "John P" reviews the Bicester Village shopping centre and which he entitles "Designer Village". At page 44 is a printout from the iessex.com website which refers to the Freeport Braintree Designer Village and, at page 46, is a printout which refers to Kilver Court Designer Village which is described as "a fresh outlet shopping experience in the heart of Somerset". The opponent claims that the word "village" is interchangeable with the words "outlet" or "centre", however, again, my decision is made only in respect of the words as appear in the mark for which registration is applied. In my view the evidence shows that the term DESIGNER VILLAGE was "customary in the current language or in the bona fide and established practices of the trade" from the view of the relevant public at the relevant date. Consequently, I find the ground of opposition based on section 3(1)(d) of the Act succeeds.

The objection under section 3(3)(b) of the Act

29. In view of my findings in relation to the objections under sections 3(1)(b)(c) and (d) of the Act, I decline to deal with this ground of opposition.

Summary

30. The opposition succeeds on grounds under section 3(1)(b) (c) and (d) of the Act. Subject to any successful appeal against my decision, the application will be refused registration.

Costs

31. The opponent, having succeeded, is entitled to an award of costs in its favour. I take note that both parties filed evidence and that a hearing took place. I make the award on the following basis:

For the preparation of a statement and considering that of the applicant:	£300
Fee:	£200
For the preparation of evidence and considering that of the applicant:	£400
For preparation for and attendance at the hearing:	£600
Total:	£1500

32. I order Magpie Ltd to pay McArthur/Glen Europe Holdings Limited LLC the sum of £1,500. 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 1st day of December 2015

**Ann Corbett
For the Registrar
The Comptroller-General**