



TRADE MARKS ACT 1955

DECISION OF A DELEGATE OF THE REGISTRAR OF TRADE MARKS WITH REASONS

Re: Opposition by HOWE LABORATORIES, INC. to registration of trade mark application number 599721 in the name of JAMES ARTHUR DAEMAR

Background

As set down in the transitional provisions of Part 22 of the *Trade Marks Act 1995*, the provisions of the *Trade Marks Act 1955* continue to govern this application. Accordingly, unless otherwise specified, the authority I refer to is the 1955 Act.

Application number 599721 was lodged, on 5 April 1993, in the name of JAMES ARTHUR DAEMAR (the applicant). The application was for registration of the word mark, DURALUBE, for a statement of services subsequently amended to read, "Treatment of common metals and their alloys, motors and engines", in Class 40. The mark was advertised as accepted in the *Official Journal* of 8 September 1994.

Notice of opposition to the mark's registration was lodged, on 8 December 1994, by HOWE LABORATORIES, INC. (the opponent). The main grounds of the opposition, as outlined in the notice of opposition and later pursued at the hearing, were based on s.33 of the *Trade Marks Act 1955*, that the mark so closely resembled a registered trade mark in respect of goods which were closely related to the applicant's services; s.40, that the applicant was not the proprietor of the mark; s.28(d), that the mark was not entitled to protection in a court of justice; and that, at the time of making the application, the applicant did not use, or propose to use the mark in respect of the relevant services.

The evidence

The service and lodgment of the opponent's evidence in support and the applicant's evidence in answer was completed in accordance with the regulations. That evidence comprised:

Evidence in support

- * Statutory declaration by Sonny Howard dated 7 September 1995 and exhibits A and B

Evidence in answer

- * Statutory declaration by James Arthur Daemar dated 19 January 1996
- * Affidavit by James Arthur Daemar dated 22 January 1996 and exhibits JAD 1 to 3

In the declaration forming evidence in support, Mr Howard, acting president of the opponent, exhibited a copy of a purchase order for goods manufactured by the opponent to be sent to an address in Australia and also advertising literature concerning those goods distributed by the opponent.

Part of the applicant's evidence in answer comprised the declaration by James Arthur Daemar. In his declaration, Mr Daemar, disputed the various grounds raised in the notice of opposition and gave details of business arrangements between the parties. Mr Daemar, in his affidavit which completed the evidence in answer, exhibited copies of letters from Performance World Trading Ltd which concerned marketing and sales rights of the opponent's product called DURALUBE in Australia.

The matter was set down before me, as the Registrar's delegate, for hearing in Canberra on 24 July 1996. The opponent was represented at the hearing by Ms Anne Makrigiorgos of

Griffith Hack & Co, Melbourne. The applicant represented himself at the hearing on the telephone.

Submissions

Ms Makrigiorgos made extensive submissions on the grounds raised in the notice of opposition. I will attempt here to briefly summarise her main arguments put forward with respect to those grounds.

In relation to the opposition as it was based on s.33 of the 1955 Act, Ms Makrigiorgos said that the present mark was substantially identical to, or deceptively similar to, a prior registration, number 361245 for the mark DARALUBE, which was registered by W.R.GRACE & CO, for goods that were closely related to the applicant's services. She referred me to the tests laid out in *Shell Co of Australia v Esso Standard Oil (Australia) Ltd*, (1963) 109 CLR 407 to determine whether marks were substantially identical. These involved a comparison of the marks side by side. She said that the marks DURALUBE and DARALUBE were substantially identical. In the alternative, she argued that the marks were at least deceptively similar where the test involved not side by side comparison but an impression based on imperfect recollection - *Rysta Ltd's App'n* (1943) 60 RPC 87. She said that any visual or aural comparison of the marks would leave a general impression of deceptive similarity. She then compared the two marks with other instances where marks with only slight differences had been found to be either substantially identical or deceptively similar. These included, *Bull S.A. v Micro Controls Ltd* (1990) 19 IPR 299 (MICROL and MICRAL) and *Kendall Company v Mulsyn Paint and Chemicals* 109 CLR 300 (POLYKIN and POLYKEN).

With respect to the comparison of the sets of goods of marks in dispute, Ms Makrigiorgos said that the factors to be considered were as adopted by the High Court in *Southern Cross Refrigerating Co v Toowoomba Foundry Pty Ltd* (1954) 91 CLR 592. These had been previously classified by Romer J. in *Jellinek's App'n* (1946) 63 RPC 59 into three heads - the nature of the goods, the uses thereof and the trade channels through which they

are bought and sold. She said that, in relation to whether the applicant's services were closely related to the goods covered by the prior registration, there was no judicial interpretation available. She pointed to a speech by the then Registrar, Mr F.J. Smith, reported in (1979) 53 ALJ 118 where he said that any such relationship would have to be close, with the services performed, inter alia, by means of certain goods. Ms Makrigiorgos further referred me to the Office decision in *Re Aussat Pty Ltd* (1993) 27 IPR 309, where the Hearing Officer held that these tests should include whether the services were performed directly upon or by means of the goods, and whether those goods and services were generally regarded by the ordinary consumer as originating in, or being part of, the one industry or trade, or a closely related trade or industry. She said that the goods covered by registration number 361245, inter alia, "lubricants" were closely related to the present applicant's services if one took into account that the opponent's product could be described as a lubricant as well as a metal conditioner. She said that, if lubricants could be used to treat common metals, motors and engines, then the present services were indeed closely related. She further referred me to the cases of *Caterpillar Loader Hire (Holdings) Pty Ltd v Caterpillar Tractor Co* (1983) 1 IPR 265 and *Rowntree PLC v Rollbits Pty Ltd* (1988) 10 IPR 539 for support in this line of argument. Given the foregoing, Ms Makrigiorgos submitted that the present application for registration should be denied under s.33

In relation to the opponent's case under s40, that the applicant was not the proprietor of the subject mark, Ms Makrigiorgos said that the first to use or to make a bona fide application in Australia was the proprietor of the mark for the "same kind of goods". She referred to Justice Holroyd's words in *Hick's* case (1897) 22 VLR 636 at 640 for support here. Ms Makrigiorgos said that a claim to proprietorship could only be defeated by use of an identical or almost identical trade mark - *Tavefar Pty Ltd v Life Savers (A'asia)* (1988)12 IPR 159 and others. She said that all of the evidence showed that the applicant had been the sole distributor of the opponent's DURALUBE product in Australia. However, such rights did not accord the applicant the status of the proprietor of the mark in this country. The date that the opponent had given the distribution rights to the applicant was before the

priority date of the present application. Ms Makrigiorgos then discussed some case law pertaining to the rights of a distributor, as opposed to those of the manufacturer of the product being distributed. These included: *Northshore Toy Co v Charles Stevenson Ltd* (1973) 1 NZLR 562, *Hai-O Enterprise Bhd v Nguang Chan and Ors* (1992) 21 IPR 527 and *Estex Clothing Manufacturers Pty Limited v Ellis & Goldstein Limited* (1967) 116 CLR 254. She discussed the proposition that an importer of goods does not acquire proprietary rights over a manufacturer's mark merely by being a conduit pipe from the manufacturer to the ultimate consumer. She maintained that this was the case in the present instance, with the applicant being given exclusive rights for distribution of the opponent's goods in Australia and New Zealand. However, she said that this did not include proprietorship rights of the mark, or the rights to apply for its registration. She referred me to the case of *Moorgate Tobacco Co Ltd v Philip Morris Ltd* (1984) 156 CLR 414 where slight use in Australia by an overseas trader was found to be sufficient to overturn a claim of proprietorship by a local distributor. She said that here, the evidence clearly showed that the opponent had used the mark first in this country on goods which were "the same kind of thing" as the services claimed by the applicant and was thus the rightful proprietor.

Ms Makrigiorgos then referred to the ground of opposition under s.28(d) of the Act, submitting that a mark may be otherwise unentitled to protection in a court of justice if, on equitable grounds such as unclean hands, a court would refuse registration - *Casson's trade mark* (1910) 21 RPC 65. She said that the Registrar should be competent to decide the question as to whether the applicant had engaged in such conduct as "bad faith", referring for support to *Mark Kaiser v Crooks Michell Peacock Stewart Pty Ltd* (1994) AIPC ¶¶91-075. She said that, where a serious doubt was raised by an opponent regarding such behaviour by an applicant, then the onus shifted to the applicant to convince the Registrar that such was not the case. In the present instance, the evidence clearly showed that the applicant was fully aware that he was only the distributor of the opponent's goods in this country. She said that he therefore had no right to assert proprietorship in the mark and to apply for its registration. She said further that the applicant had misappropriated the

opponent's property in the face of the distributorship agreement between the parties and that such conduct amounted to having "unclean hands" in the matter - the *Gynomin* trade mark (1961) RPC 408. This meant that the mark, as applied for, was not entitled to protection in a court of justice - the *Northshore Toy Co v Charles Stevenson Ltd* case, supra, at 557 and thus failed to qualify for registration under S.28(d) of the Act.

Ms Makrigiorgos further alleged that the applicant did not use, or intend to use, the trade mark DURALUBE as a trade mark in respect of the services included in the specification. She said that use was to be understood in the context of s.(6)1 of the Act. Lord Hanworth M.R. had commented, in *Ducker's* trade mark (1928) 45 RPC 397, that there had to be a bona fide intention to use a mark for it to qualify it for registration. She said that the evidence showed that the applicant had only ever been a distributor of the opponent's goods in Australia and New Zealand. She submitted that the applicant clearly did not intend himself to use the trade mark. He was merely distributing products, which already had the trade mark applied, on behalf of the opponent. She said that the applicant's evidence only concerned the marketing and sale of the product DURALUBE, and there was nothing to indicate whether he used, or intended to use the mark on the services of this application, viz., "Treatment of common metals and their alloys, motors and engines".

She concluded her submissions by seeking costs in the matter in favour of the opponent.

In his submissions in reply, Mr Daemar said that he was relying upon the facts in the matter. He asserted that he had exclusive rights to the mark in Australia and not the opponent, and that he came to the case with clean hands. He said that he provided the services of distributing the products in his own name and that, if the opponent sought to "go over" the rights granted to him, then they would be in breach of their contractual obligations. He submitted that the opponent did not manufacture its goods in Australia and therefore any suggested rights in the mark did not apply. It also could not rely upon any registrations of trade marks overseas to support its case in this matter. Similarly, any decisions made in

overseas' courts were not binding on Australian courts and relied on different circumstances, in any event.

Mr Daemar continued that the opponent's claim that it had used the mark first in Australia was untrue. This was because he had been the one who had first sold goods in this country under the mark. He had done this before he had applied for the mark and he still had goods bearing the mark in his possession to sell. He also said that he was using the mark on the services contained in the present specification. He said that the product being sold was not just a lubricant but was also a metal conditioner. This conditioner was added to oil in a crankcase and which then attached to metal components. He said that this was how it had been advertised in "infomercials" in America and other countries overseas (presumably by the opponent).

He said that the matter of any possible conflict of the prior registered mark DARALUBE and his own mark DURALUBE had already been considered by the Office and his own mark had been accepted. He said that, accordingly, the present opposition should fail.

Discussion

Section 40 - Proprietorship

The provisions of s.40, so far as is relevant here, are that:

A person who claims to be the proprietor of a trade mark may make application to the Registrar for registration of that trade mark...

On that subject, McGarvie J said in the case of *Settef S.p.A. v Riv-Oland Marble Co (Vic) Pty Ltd* 10 IPR 402:

The basic common law principle is that the first person who uses a trade mark of an appropriate type within a country becomes the proprietor of the mark there: *Re Registered Trade Mark YANX; Ex parte Amalgamated Tobacco Corp Ltd* (1951) 82 CLR 199 at 203; *Thunderbird Products Corp v Thunderbird Marine*

Products Pty Ltd (1974) 131 CLR 592 at 603; *Moorgate Tobacco Co Ltd v Philip Morris Ltd (No 2)* 59 ALJR 77 at 83.

...

In considering who, within s.40(1) of the Act, was at the time of Settef's application for registration the proprietor of the trade mark, one considers who at common law was the proprietor in Australia: *The Shell Co of Australia Ltd v Rohm & Haas* (1949) 78 CLR 601 at 625 and 627.

In other words, the first user of the mark in Australia - for the relevant goods or services and prior to the date of application - becomes the proprietor at common law. As to the use of the mark by a distributor who sells the goods of an overseas manufacturer exporting to Australia, Windeyer J. observed in the *Estex* case (*supra*) at 271:

When an overseas manufacturer projects into the course of trade in this country, by means of sales to Australian retail houses, goods bearing his mark and the goods, bearing his mark are displayed or offered for sale or sold in this country, the use of the mark is that of the manufacturer.

In the present instance, it is obvious that the mark applied for by the applicant and that used by the opponent on its product are one and the same. It is common ground that the applicant was the distributor of the opponent's goods in Australia under an agreement made between the parties. Therefore, given the foregoing, if the present application had been made to cover those goods, then I would have had no hesitation in finding that the opponent was the proprietor of the mark for those goods. As Mr Shanahan says at p.41 of his book, *Australian Law of Trade Marks and Passing Off* (Second Edition) by D.R. Shanahan,

...the owner of a trade mark is simply the trader whose connection with the product is indicated by the use of the mark".

I think that the evidence clearly shows that the opponent is connected with the product, whereas there is nothing to indicate that the applicant was anything more than a distributor of those goods on behalf of the manufacturer. The declaration by Mr Sonny Howard shows that a case of the opponent's product was forwarded through Performance World Trading Ltd to the applicant's address for apparent re-sale, on 27 April 1993, prior to the present application for registration. In his submissions, Mr Daemar made much of his appointment

to sole distributor status which predated the arrival of that shipment. However, as Shanahan observes further at p.41 of his book:

A manufacturer who has applied a mark to goods to indicate that he or she is the 'origin' of the goods is most unlikely to be denied proprietorship because of the activities of some dealer in those goods. The evidence in these cases will generally show that in the hands of the dealer, the mark has retained its initial significance as an indication of the manufacturing source of the product.

Further, Barwick C.J. explained in *Bayer Pharma Pty Ltd v Farbenfabriken Bayer A.G.* (1965) 120 CLR 285 at 323:

It may be that, in some circumstances, what begins as a foreign manufacturer's mark may in time end as the registrable mark of the local distributor of that manufacturer's products or, for that matter, of the distributor's own manufactured goods. But in such cases, at least there must be a clear dissociation from the initial significance of the mark so as to warrant the conclusion that the mark has become exclusively indicative in Australia of the local distributor's goods.

However, this application for registration of the mark DURALUBE has been made to cover the services, "Treatment of common metals and their alloys, motors and engines." The parties seem agreed that the goods produced by the opponent and sold by the applicant in this country comprise a conditioning additive for motor oil which improves the lubrication of the engine. Proprietorship, however, is limited to "the same kind of thing", as per Holroyd J in *Hick's* trade mark, supra. Any small amount of use will suffice, but the effect of the act relied on to constitute use must be the creation, in the minds of those concerned, of an impression that goods or services of a particular trader are being offered for sale in Australia. This has been affirmed in later cases such as in *Seven Up Co v O.T. Ltd* (1947) 75 CLR 203. Whilst I agree with Ms Makrigiorgos that the opponent is the rightful proprietor of the mark for the goods in question in this country, I cannot agree that the present services and those goods are the "same kind of thing" as contemplated by Justice Holroyd. I do not think that a lubricant which is a conditioning agent is closely related to the present services of this application, the "treatment" of motors and engines. The explanatory notes to the 6th Edition of the Nice Classification of Goods and Services says that Class 40:

"...includes mainly services not included in other classes, rendered by the mechanical or chemical processing or transformation of objects or inorganic or organic

substances. For the purposes of classification, the mark is considered a service mark only in cases where processing or transformation is effected for the account of another person. A mark is considered a trade mark in all cases where the substance or object is marketed by the person who processed or transformed it. [It] Includes, in particular services relating to transformation of an object or substance and any process involving a change in its essential properties (for example, dyeing a garment); consequently, a maintenance service, although usually in class 37, is included in Class 40 if it entails such a change (for example, the chroming of motor vehicle bumpers) services of material treatment which may be present during the production of any substance or object other than a building; for example, services which involve cutting, shaping, polishing by abrasion or metal coating. (It) Does not include, in particular: repair services (Cl 37).

Despite the claims made by both parties, the good in question appears merely to be an additive to engine oil which achieves a temporary change in engine performance. It does not, in my opinion, mechanically or chemically process or transform objects or inorganic or organic substances as contemplated in the Nice classification. Any services carried out using the additive would, I believe more properly fall in Class 37.

For the foregoing reasons I find that, despite the opponent being the rightful proprietor for the product being distributed by the applicant, the services covered by the present application are not those which could be considered of the same kind as that good. Therefore the opposition, as it is based on this ground, must fail.

Section 33 - Substantially identical or deceptively similar

Sub-section 33(1) reads:

Subject to this Act, a trade mark is not capable of registration by a person in respect of goods if it is substantially identical with or deceptively similar to a trade mark which is registered, or is the subject of an application for registration, by another person in respect of the same goods, of goods of the same description as those goods, or of services that are closely related to those goods, unless the date of registration of the first-mentioned trade mark is, or will be, earlier than the date of registration of the second-mentioned trade mark.

In considering the question of whether the present mark DURALUBE is caught by the provisions of s.33, I must firstly determine whether it is substantially identical with, or

deceptively similar to, the prior registration number 361245, for the mark DARALUBE, for goods which are closely related to the applicant's services.

To judge whether the subject mark is substantially identical to the mark covered by the prior registration, it is necessary to carry out a straight comparison of the two marks. The pertinent tests are as outlined by Windeyer J. in the case of *Shell Co (Aust) Ltd v Esso Standard Oil (Aust) Ltd*, supra. These are:

In considering whether marks are substantially identical they should, I think, be compared side by side, their similarities and differences noted and the importance of these assessed having regard to the essential features of the registered mark and the total impression of resemblance or similarity that emerges from the comparison ...

When the marks in question here are compared side by side, they have a distinct difference which is readily observed. Although the marks are very similar, the second letter of each is different - A and U, respectively. Thus the marks look and sound differently. Having applied the test of Justice Windeyer, I therefore find that the marks are not substantially identical and move on to decide if the marks are deceptively similar.

Sub-section 6(3) defines a mark as deceptively similar if it is likely to deceive or cause confusion. Here, the marks should not be placed side by side but consideration should be given to any common net impression inferred from the two marks. I refer here to the judgment in *Australian Woollen Mills Ltd v F.S. Walton & Co Ltd* (1937) 58 CLR 641, where Dixon and McTiernan JJ. said:

In deciding this question, the marks ought not, of course, to be compared side by side. An attempt should be made to estimate the effect or impression produced on the mind of potential customers by the mark or device for which the protection of an injunction is sought. The impression or recollection which is carried away and retained is necessarily the basis of any mistaken belief that the challenged mark or device is the same. The effect of spoken description must be considered. If a mark is in fact or from its nature likely to be the source of some name or verbal description by which buyers will express their desire to have the goods, their similarities both of sound and of meaning may play an important part. The usual manner in which ordinary people behave must be the test of what confusion or deception may be expected. Potential buyers of goods are not to be credited with any high perception or habitual caution. On the other hand, exceptional carelessness or stupidity may be disregarded. The course of business and the way in which the particular class of goods are sold gives, it may be said, the setting, and the habits and observation of men considered in the mass affords the standard. Evidence of actual cases of deception, if forthcoming, is of great weight.

In the present case, there has been no evidence adduced of instances of actual confusion and so I will have to consider the matter from a theoretical viewpoint. The marks in question are very similar. I agree with Ms Makrigiorgos that, given the “imperfect recollection” of the marks, both aurally and visually, as contemplated in *Rysta Ltd's App'n*, supra, then the marks DARALUBE and DURALUBE are deceptively similar. However, whether the goods covered by the former, and the services included in the specification of the latter are closely related is another matter.

Ms Makrigiorgos said that the opponent's additive product could also be described as a lubricant. She drew my attention to the accompanying advertising literature, where it was also referred to as a “metal conditioner”. The statement of goods of registration number 361245 also contained “lubricants”. She said that, therefore, if a good described as lubricant could be used as a conditioner for the treatment of common metals, motors and engines, then the Class 40 service of treating these items, the subject of this application, was a service closely related to the goods, “lubricants” covered by registration number 361245. I think that this is drawing a fairly long bow and I cannot agree with Ms Makrigiorgos' line of reasoning. I believe that, as with the opponent's additive, any lubricant only achieves a

short-lived change in engine performance. As I have previously said, the effect of any lubricating additive is of a temporary nature and is not related to the type of services included in Class 40 - that of the mechanical or chemical processing or transforming of objects or inorganic or organic substances.

Therefore, whilst I agree that the marks DURALUBE and DARALUBE might be considered deceptively similar for goods and services which are closely related, the goods covered by registration number 361245 and the services of the present application cannot be so described. Therefore, the opposition, as it is based on this ground, must fail.

Section 28(d) - mark not entitled to protection in a court of justice

The provisions of section 28 of the Act read as follows - with the appropriate sub-section highlighted:

A mark -

- (a) the use of which would be likely to deceive or cause confusion;
- (b) the use of which would be contrary to law;
- (c) which comprises or contains scandalous matter; or
- (d) which would otherwise be not entitled to protection in a court of justice,**
shall not be registered as a trade mark.

In considering the opposition to the mark's registration, as it is based on this sub-section of the Act, I have considered the submissions and evidence of both parties to the dispute.

Ms Makrigiorgos argued that, although the lodgment of an application was prima facie proof of intention, the onus shifted to the applicant where a serious doubt was raised by the opponent, "...to dispel the doubt and convince the Registrar that he had clean hands." She said that the applicant had been appointed the distributor of the DURALUBE product by the opponent. Such an appointment was inconsistent with him then wishing to use the mark independently of the opponent by choosing to lodge an application for the registration of the mark in class 40.

On his part, the applicant has asserted that he came to the matter “with clean hands” and that the services applied for under the present application were provided in his own name. He relied, as a defence to this leg of the opposition, on the fact that the present mark had been accepted first (before the opponent’s own application) and asserting that, “in these circumstances the Applicant would be entitled to the protection in a court of justice”. This is incorrect. It is open to an opponent to allege whether such protection is warranted during opposition proceedings and also to an applicant to rebut such a charge. In the *GE* case, [1973] RPC 297 at 329, Lord Justice Diplock, examining development through the British legislation, stated his view that the original intentions of the equivalent section to s.28(d) of the British Act, was:

clearly designed to prevent the proprietor obtaining by registration protection for a mark of such a character that a court of equity would have exercised its discretion to refuse to grant to its proprietor an injunction to restrain its being infringed by a usurper.

This view was taken up in respect of the 1905 Australian Act and section 114 per *Radio Corporation Pty Ltd v Disney and others*, (1937) 57 CLR 448 at 459 per Mr Justice Dixon.

If the circumstances are such that its adoption will give the applicants no right to protection by injunction or other remedy under the general law, then it should be kept off the register.

Mr Shanahan goes on to mention, at p.147 of his book that, in relation to honest adoption, a plea of unclean hands connected with, for example, fraud or dishonesty can succeed under paragraph 28(d). This was seen, in *Casson’s* trade mark, supra, where it was found that a lack of good faith on the part of a partner or employee will operate to disqualify a trade mark from the protection of the courts. In considering the public interest inherent in section 28 and the provisions of sub-section 50(2), I believe I should be able to take into account the effect of these wider issues.

I have considered the free admission by Mr Daemar in his declarations and in his submissions that he was appointed the sole distributor of the opponent’s product in Australia by Performance World Trading Ltd, acting on behalf of the opponent. As a distributor, any

sales made would be, prima facie, in the name of the manufacturer - the *Estex* case, supra. I would think then, that a party who only had distribution rights for another's products and who then applied for the registration of a trade mark in some way related to that product, was acting in less than good faith. In my opinion, such an action would be, unless shown to be otherwise, conduct which would render the mark not entitled to protection in a court of justice. I believe that the applicant now bears the onus to show that this is not so. He has not, to my satisfaction, discharged the onus. I therefore find that the opponent is successful in relation to this ground of the opposition.

Intention to use

I do not intend to pursue this ground of opposition other than to make the following observation. Although the applicant said, in his application for registration and at the hearing, that he had used the mark on the services specified, no evidence as to this was put forward. However, he did make several references to his marketing and selling activities involving the opponent's product. It would therefore appear that this was the use to which the applicant put the mark, not the "treatment" services envisaged in class 40. It is therefore possible that this application was one which covered unintended services. However, I will not record a finding on this ground, given my finding under s.28(d) in favour of the opponent.

Decision

I have found that the opponent has been successful on the ground of s.28(d) that the mark is one which is not entitled to protection in a court of justice. It follows that the opposition as a whole is successful. I therefore refuse to register the application. Ms Makrigiorgos sought costs in the matter for the opponent and, as there is no reason for me to direct otherwise, I so award them.

Ian Forno
Hearing Officer

30 September 1996