

O-078-13

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 2576390
IN THE NAME OF MEDICAL ASSURANCE BUREAU (MIDLANDS) LTD

AND

OPPOSITION THERETO UNDER NO 102456 BY
MORTGAGE ADVICE BUREAU (HOLDINGS) LTD

Background

1. Application No 2576390 has a filing date of 1 April 2011 and stands in the name of Medical Assurance Bureau (Midlands) Ltd (“Medical”). Registration is sought for the following trade mark:



2. Registration is sought for the following services in Class 36:

Advisory services related to financial planning and investment planning. Independent financial advice, financial advice, financial advisory services, financial consultancy, financial planning, financial planning services.

3. Following publication in the *Trade Marks Journal* on 1 July 2011, notice of opposition was filed by Mortgage Advice Bureau (Holdings) Ltd (“Mortgage”). Mortgage relies on the following grounds of opposition:

- Under section 3(3)(b) of the Act. Mortgage claims the mark is of a nature to deceive the public as the services covered by the application extend well beyond medical assurance. This objection extends to all services except “any relating exclusively to medical assurance”;
- Under Section 5(2)(b) of the Act. Mortgage relies under this ground on its registration 2489324; and,
- Under Section 5(4)(a) of the Act. Mortgage claims it has used the sign MAB in the UK since 1992 “within the general field of financial planning and financial advice services and in particular, financial services and advice relating to mortgages and insurance”.

4. Medical filed a counterstatement in which, essentially, it denies each of the claims made.

5. Both parties filed evidence in the form of witness statements. Each of them contains largely submission which is not evidence of fact and, for this reason, I do not intend to summarise it but will refer to it as necessary in this decision. Both parties also filed written submissions in lieu of a hearing. I have considered all of this material in reaching my decision.

Preliminary issue

6. During the course of these proceedings, Medical sought leave to file evidence which resulted in the appointment of a case management conference (“CMC”). That CMC was brief and took place before me by telephone on 24 September 2012. I granted Medical leave to file a witness statement of Mr Robert Savage dated 13 July 2012 and exhibits RS1-3 and admitted them into the proceedings. In granting leave

and admitting Mr Savage's evidence into the proceedings, I relied on the general powers available to me under rule 62 of the Trade Marks Rules 2008, acknowledged that Medical had not been professionally represented and considered that the evidence it sought to file may have been of assistance in reaching the substantive decision in these proceedings, particularly in respect of the nature of the respective services and bearing in mind that it was possible that Medical could have chosen to seek to amend its specification of services. I did not consider that the inclusion of Medical's evidence would lead to any significant delay or additional costs in these proceedings. I also considered that Mortgage would not be prejudiced by the inclusion of this material and would, in any event, have the right to reply to it if it considered it necessary. I allowed Mortgage a period of one month from the date of the CMC to file any evidence in reply that it considered necessary. It filed no evidence in reply.

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

7. Section 3(3)(b) of the Act states:

“3.-(3) A trade mark shall not be registered if it is –

(a) ...

(b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service)”.

8. Mortgage puts its claim under this ground in this way:

“The trade mark refers to MEDICAL ASSURANCE. The services covered by the application are a wide range of financial services, extending well beyond “medical assurance”. Consequently, the trade mark is of a nature as to deceive the public, for instance as to the nature of the service.”

9. The objection is raised in respect of all services of the application with the exception of “any relating exclusively to medical assurance”.

10. Section 3(3)(b) of the Act derives directly from Article 3(1)(g) of Directive 2008/95/EC of the European Parliament and of the Council of Europe of 22 October 2008 (“the Directive”). In *Elizabeth Florence Emanuel v Continental Shelf 128 Ltd* Case C-259/04, the Court of Justice of the European Union (“CJEU”) stated:

“47 Nevertheless, the circumstances for refusing registration referred to in Article 3(1)(g) of Directive 89/104 presuppose the existence of actual deceit or a sufficiently serious risk that the consumer will be deceived (Case C-87/97 *Consorzio per la tutela del formaggio Gorgonzola* [1999] ECR I-1301, paragraph 41).”

11. In respect of ‘actual deceit’ no mention of it is made in its written submissions and Mortgage's evidence is silent on the point. Consequently, there is no evidence of the existence of actual deceit.

12. As to whether there is a “sufficiently serious risk that the consumer will be deceived”, I find that there is not. The term “Medical Assurance” is easily understood but, in my view and absent any evidence to the contrary, it will not lead the relevant consumer to believe that Medical provide its services only in relation to medical assurance. Rather, it is likely that the relevant consumer will think that the company’s origins were based in or provided to or by a company or person in that particular profession. In my experience, this is not an unusual situation in the insurance field as companies expand from their initial roots. Even if there were some initial question in the relevant consumer’s mind as to the extent of the services Medical might provide, that would be quickly dispelled as the services for which it seeks to register its mark are such as are likely to involve a fair degree of discussion or research before such services are provided.

13. The objection brought under Section 3(3)(b) of the Act fails.

The objection under Section 5(2)(b) of the Act

14. Section 5(2)(b) of the Act states:

“5. -2 A trade mark shall not be registered if because-

(a) ...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

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

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

(a) a registered trade mark, international trade mark (UK) or Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(b)

(c)

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

16. Given the filing dates of the respective marks, the registration relied upon by Mortgage is an earlier mark within the meaning of the Act. As it had not been registered for five years at the date of publication of Medical's application, Mortgage is not required to prove the use which has been made of it.

17. Much is made, in both parties' evidence and submissions, of the marks used and services provided by both companies in the course of their businesses. Whatever marks may be used by them and whatever services they may have provided, this decision is restricted to a consideration of the position involving the mark as applied for by Medical (2576390) and that relied on by Mortgage in this opposition (2489324) in light of the respective specifications of services as applied for or registered and I shall proceed on that basis.

18. In his decision in *La Chemise Lacoste SA v Baker Street Clothing Ltd* - BL O/330/10 (approved by Arnold J in *Och-Ziff Management Europe Ltd v Och Capital LLP* [2011] FSR 11), the Appointed Person, Mr Geoffrey Hobbs QC, expressed the test under this section (by reference to the CJEU cases mentioned) on the basis indicated below:

The CJEU cases

Sabel BV v Puma AG [1998] RPC 199; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77; *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723; *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market* (Trade Marks and Designs) (OHIM), Case T-6/01; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH* C-120/04; *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market* (Trade Marks and Designs) (OHIM) C-334/05 P.

The principles

“(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;


(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks causes the public to wrongly believe That the respective goods [or services] come from the same or economically-linked undertakings, there is a likelihood of confusion.”

For ease of reference, details of the respective marks are as follows:

Mortgage's earlier mark	Medical's application
MAB mab	

Comparison of the respective marks

19. In making a comparison between the marks, I must consider the respective marks' visual, aural and conceptual similarities with reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components, but without engaging in an artificial dissection of the marks, because the average consumer normally perceives a mark as a whole and does not analyse its details. In addition, he rarely has the chance to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them he has kept in his mind.

20. The case of *Medion AG v Thomson multimedia Sales Germany & Austria GmbH* [2006] ETMR 13, makes it clear that the overall impression given by marks must have regards to their dominant and distinctive elements.

21. Mortgage's earlier mark is for a series of two marks, each consisting of the letters MAB, with the first in the series presented in plain block capital letters and the second in lower case. I shall refer to them in this decision as a single mark. As far as I am aware, MAB is not a word though it is easily pronounced as one. The mark has no dominant element(s): its distinctiveness rests in the whole.

22. Medical's mark consists of the words MEDICAL ASSURANCE BUREAU presented in plain block capitals, the whole placed between two continuous, parallel, horizontal lines of equal length which extend slightly beyond the words. The words hang together. Above this is a roundel device which, on careful inspection is made up of the letters MAB with the letters M and B somewhat distorted by "leaning inwards" towards the central letter A.

23. There is a general principle that words in trade marks "speak louder" than devices which, whilst not a rule of law, is an important factor to be kept in mind. In this case, the roundel device is much smaller as a proportion of the mark than the words MEDICAL ASSURANCE BUREAU, words which are of relatively low distinctive character.

24. Even if an element is of low distinctive character and considered a weak element of a mark, this does not mean it cannot be a dominant element. As the GC stated in *NEC Display Solutions Europe GmbH v Office for Harmonization in the Internal Market (Trade Marks and Designs)(OHIM) Case T-501/08*:

35 That conclusion cannot be called into question by the applicant's assertion that the word 'more' has no distinctive character. It should be borne in mind, that weak distinctive character of an element of a compound mark does not necessarily imply that that element cannot constitute a dominant element where –owing, in particular, to its position in the sign or its size- it may make an impression on consumers and be remembered by them (Case T 153/03 *Inex v OHIM –Wiseman (representation of a cowhide)* [2006] ECR II 1677, paragraph 32 and Case T 7/04 *Shaker v OHIM –Limaña y Botella (Limoncello della Costiera Amalfitana shaker)* [2008] ECR II 3085, paragraph 44)."

25. I consider the element MEDICAL ASSURANCE BUREAU to be an independent and distinctive as well as the dominant element of Medical's mark.

26. To the extent that each mark includes or consists of an element made up of the letters MAB there is a degree of similarity between them from the visual perspective but there are also clear visual differences given the respective style of presentation of those letters. Whilst the letter A appearing in Medical's mark is easily made out, the letters M and B are not quite so easy to identify. There are also the words MEDICAL ASSURANCE BUREAU which only appear in Medical's mark. When considered as wholes, the respective marks are visually similar to a very low degree.

27. Mortgage's mark is likely to be pronounced as three single letters although it is possible that some may pronounce it as a word. Medical's mark is likely to be referred to as Medical Assurance Bureau as these words are easily identifiable within the mark and are everyday words. In this case, the respective marks will be aurally dissimilar. It is possible (I put it no higher than that) that some may also pronounce the letters MAB within Medical's mark but this is highly unlikely. For those who do, there will be a degree of aural similarity between the respective marks but one that is very low.

28. The letters MAB, as the evidence shows, are used as an acronym of Mortgage's trading name, however, the average consumer will be unaware of this meaning unless he has been educated specifically about it. For most, it is likely to be seen as three letters with no particular conceptual image being brought to mind. Given the words within it, Medical's mark is likely to bring to mind an office or agency involved in assurance and having its origins in the medical field. The respective marks have no conceptual similarity.

Comparison of the respective services

29. For ease of reference, the services to be compared are as follows:

Mortgage's earlier mark	Medical's application
Mortgage advice and broking; pension and life insurance services, including insurance of buildings and contents and insurance against accident, sickness and redundancy	Advisory services related to financial planning and investment planning. Independent financial advice, financial advice, financial advisory services, financial consultancy, financial planning, financial planning services

30. In his witness statement, Mr Savage, on behalf of Medical, states that the Financial Services Authority ("FSA") is a regulatory body which authorises practitioners in various parts of the financial field. He states that Mortgage does not have the requisite authority from the FSA to provide advice in certain areas.

31. Statutory licensing or regulatory approval is a feature of many areas of business. Whether or not Mortgage has the required regulatory authority to allow it to provide advice in particular areas is a matter between it and the relevant authority. The FSA's approval (or lack of it) is not a factor which I can take into account. As indicated earlier, I have to take into account the specification of services for which it is registered.

32. In comparing the respective services, I take account of the comments of Jacob J in *Avnet Incorporated v Isoact Ltd* [1998] FSR 16, where he stated:

"In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meaning attributable to the rather general phrase."

33. In *British Sugar Plc v James Robertson & Sons Limited* [1996] RPC 28, Jacob J gave advice as to how similarity should be assessed. He identified the following factors to be taken into account:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.”

34. Subsequently, in *Canon Kabushiki Kaisha v MGM Inc* the CJEU stated:

“23. In assessing the similarity of the goods or services concerned.....all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, *inter alia*, their nature, intended purpose and their method of use and whether they are in competition with each other or are complementary.”

35. In *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM) Case T-325/06 the General Court (GC) stated:

“82 It is true that goods are complementary if there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking (see, to that effect, Case T-169/03 *Sergio Rossi v OHIM- Sissi Rossi (SISSI ROSSI)* [2005] ECR II-685, paragraph 60, upheld on appeal in Case C-214/05P *Rossi v OHIM* [2006] ECR I-7057; Case T-364/05, *Saint-Gobain Pam v OHIM –Promamsa (PAM PLUVIAL)* [2007] ECR II-757, paragraph 94; and Case T-443/05 *El Corte Inglés v OHIM –Bolaños Sabri (PiraÑam diseño original Juan Bolaños)* [2007] ECR-1-0000, paragraph 48).”

36. Finally, in *Gérard Meric v OHIM*, Case T-133/05, the GC said:

“29 In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category,

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

37. Whilst some of the extracts I have set out above refer only to ‘goods’, the findings apply equally to ‘services’.

38. All of Medical’s services are financial planning, advice and consultancy services (including investment planning). Such services will include the provision of advice about mortgages as is included within the specification of Mortgage’s earlier mark (a mortgage being one of the largest financial investments many people make in their lifetimes). These are therefore identical services. The provision of advice about and planning of a particular financial or investment product is a service which is complementary to the provision of that product and, on that basis, each of Medical’s services are complementary to the pension and insurance services as are included within Mortgage’s earlier mark.

Average consumer and the nature of the purchasing process

39. The respective services are such as will be bought by members of the public. They are not everyday purchases but instead are services bought on an intermittent or irregular basis. They are services which will be provided by specialists and which are likely to involve significant detailed discussion about e.g. personal circumstances and finances and/or the completion of detailed paperwork or contracts which means that both the visual and aural aspects of the respective marks are likely to be of equal importance. The costs of such services are likely to vary from the relatively low to the relatively high and may be charged on either a fixed fee or a commission basis depending on such factors as the value of the resultant product recommended or nature of the advice provided but whatever the cost it is likely to be of some significance to the purchaser’s individual circumstances.

The distinctive character of the earlier mark

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

41. Mr David Preece, Operations Director of Mortgage, has provided two witness statements dated 27th February 2012 and 23 October 2012. Mr Preece refers to Mortgage's use of the earlier mark relied upon in these proceedings along with others of its marks such as Mortgage Advice Bureau and marks incorporating a device. He refers to them as one brand. Whilst each of the marks he refers to may be part of his company's branding, each of them is a separate and distinctly different mark. He gives no evidence of when the earlier mark relied upon was first used (though he confirms that registration was applied for in 2008). Whilst he provides some details of the value of mortgages applied for through the company, no evidence is given of the number of mortgages involved and no details are given of e.g. turnover under the earlier mark relied upon or the cost or extent of any advertising under that mark.

42. Attached to Mr Preece's evidence are a number of exhibits:

DP2: This consists of copies of 4 emails or letters all of which are dated December 2008 and which Mr Preece says were "obtained from third parties in 2008 in relation to showing what the MAB brand meant to them at that time and earlier". Some of this correspondence appears to have been redacted but each indicates the writers' companies have been accepting mortgage applications from Mortgage for "over ten years";

DP4: This consists of a recruitment advert and stationery used by Mortgage in the course of its business. They bear no dates but Mr Preece states they are from 2010. He refers to the mark being shown on each of the documents but in each case the mark he refers to is not the mark relied on in these proceedings but a distinctly different mark;

DP5: This consists of an advertisement and stationery used by Mortgage in the course of its business and which are said to date from 2009-2011. Again, the mark referred to by Mr Preece as being shown on this documentation is not the one relied on in these proceedings but is that shown in Exhibit DP4;

DP6: A news article which Mr Preece says was published on 31 January 2011. In fact, the extract shows it to have a publication date of "Jan 31, 2012" which is after the relevant date in these proceedings;

DP8: An extract which Mr Preece describes as "press commentary". Whilst the source of the article is not given, it shows a publication date of 19 October 2012 and so is from after the relevant date in these proceedings.

43. In short, no evidence has been provided which enables me to find that the distinctive character of the earlier mark relied upon in these proceedings has been enhanced through its use. That said, MAB has no meaning in relation to the services for which is registered but as a mark made up of three letters, a not uncommon practice, it is a mark with an average level of inherent distinctive character.

The likelihood of confusion

44. In determining whether there is a likelihood of confusion, a number of factors have to be borne in mind. The first is the interdependency principle whereby a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective services and vice versa. I also have to factor in the distinctive character of the earlier marks as the more distinctive they are the greater the likelihood of confusion. I must also keep in mind the average consumer for the services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them he has retained in his mind.

45. Earlier in this decision I found the respective marks to:

- be visually similar to a very low degree;
- be aurally dissimilar except, in the unlikely event that the letters in the roundel within Medical's mark are pronounced, in which case there would be a very low degree of aural similarity;
- have no conceptual similarity.

I also found:

- that identical and complementary services are involved;
- that the purchase of the services is a very careful one with them being bought on an intermittent or irregular basis at a cost of some significance after detailed discussion and/or completion of paperwork;
- the earlier mark has an average level of distinctive character that has not been shown to have been enhanced through its use.

46. Taking all matters into account, I find that the differences in the respective marks are such that there is no likelihood of either direct or indirect confusion between them even where identical services are involved especially so given the careful nature of the purchase of those services. The opposition founded on section 5(2)(b) of the Act fails in its entirety.

The objection under section 5(4)(a) of the Act

47. Section 5(4)(a) of the Act states:

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

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

(b)

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

48. I do not consider that Mortgage can be in any stronger position under this ground than it was under section 5(2)(b) of the Act and I decline to deal with it. Even if I had, Mortgage claims it has used the sign MAB in the UK since 1992 “within the general field of financial planning and financial advice services and in particular financial services and advice relating to mortgages and insurance” but the evidence that it has filed is wholly insufficient to show this and I would have been unable to find that, at the relevant date, it had the requisite goodwill in the mark MAB in relation to either the general or specific services on which it claims the mark has been used and thus the objection under this ground would have failed.

Summary

49. The opposition has failed on all grounds.

Costs

50. Medical has successfully defended its application and is entitled to an award of costs in its favour. The Registrar usually operates on a published scale of costs, however, since Medical has not been professionally represented during the proceedings, an award made from the published scale might be larger than its actual expenditure. In BL O/160/08 *South Beck*, Mr Richard Arnold QC, sitting as the appointed person, stated:

“32. Secondly, counsel for the opponent submitted that, if CPR r. 48.6 was applicable, the hearing officer had misapplied it. In support of this submission he pointed out that CPR r. 48.6(4) provides:

The amount of costs to be allowed to the litigant in person for any item of work claimed shall be

(a) where the litigant can prove financial loss, the amount that he can prove he has lost for time reasonably spent on doing the work; or

(b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in the practice direction.

The Part 48 Practice Direction provides at paragraph 52.4 that the amount which may be allowed to a litigant in person under rule 46.8(4) is £9.25 per hour. Counsel submitted that the hearing officer appeared to have awarded the applicant two-thirds of the scale figure which he would have awarded a represented party, and that this could not be justified since the opponent had not proved any financial loss and was very unlikely to have spent over 160 hours on the matter.....

36. In my judgment the approach which should be adopted when the Registrar is asked to make an award of costs in favour of a litigant in person is as follows. The hearing officer should direct the litigant in person pursuant to r. 57 of the 2000 Rules to file a brief schedule or statement setting out (i) any disbursements which the litigant claimed he has incurred, (ii) any other financial losses claimed by the litigant and (iii) a statement of the time spent by the litigant in dealing with the proceedings. The hearing officer should then make an assessment of the costs to be awarded applying by analogy the principles applicable under r. 48.6, but with a fairly broad brush. The objective should be to ensure that litigants in person are neither disadvantaged nor overcompensated by comparison with professionally represented litigants.”

Under the current practice direction, the amount allowed to a litigant in person is £18 per hour.

51. Consequently, Medical should produce an estimate of its costs, including the number of hours spent on these proceedings, broken down by category of activity, e.g. reviewing the notice of opposition, completing its counterstatement, reviewing Mortgage’s evidence and preparing its own. **This estimate should be filed within 21 days of the date of this decision and should be copied to Mortgage who will have 14 days from receipt of the estimate to provide its written submissions on them.** I will then issue a supplementary decision covering the costs of these proceedings.

52. The period for any appeal against this decision will run concurrently with the appeal period for the supplementary decision on costs and so will begin when that latter decision is issued.

Dated this 20th day of February 2013

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