

O-044-10

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No 2473470
BY LAFARGE ROOFING LIMITED TO REGISTER THE TRADE MARK**

OLD HOLLOW

IN CLASS 19

**AND IN THE MATTER OF OPPOSITION
THERE TO UNDER NO 97244
BY SANDTOFT ROOF TILES LTD**

TRADE MARKS ACT 1994

**IN THE MATTER OF application No. 2473470
by Lafarge Roofing Limited to register the trade mark:**

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**IN THE MATTER OF Opposition thereto under No. 97244
By Santoft Roof Tiles Ltd**

BACKGROUND

1) On 28 November 2007, Lafarge Roofing Limited (“Lafarge”), of Regent House, Station Approach, Dorking, Surrey, RH4 1TG applied under the Trade Marks Act 1994 (“the Act”) for registration of the mark OLD HOLLOW in respect of *roof tiles* in Class 19.

2) On 29 May 2008, Sandtoft Roof Tiles Ltd. (“Sandtoft”) of Belton Road, Sandtoft, Doncaster, South Yorkshire, DN8 5SY filed notice of opposition to the application.

3) The grounds of opposition are based upon Section 3(1) (c) and Section 3(1) (d) of the Trade Marks Act 1994 (“the Act”) because the mark consists exclusively of a sign that designates the kind, appearance and properties of a type of tile and which is used descriptively in the current language and in the bona fide and established practices of trade.

4) The applicant subsequently filed a counterstatement denying the opponent’s claims and requesting that Sandtoft prove its claims.

5) Both sides filed evidence in these proceedings and both sides ask for an award of costs. Neither side requested a hearing, but both filed written submissions in lieu of such. After careful consideration of the papers, I give my decision.

Sandtoft’s Evidence

6) This takes the form of a witness statement dated 12 November 2008 by Roger Grimshaw, trade mark attorney with Mewburn Ellis LLP, Sandtoft’s representatives in these proceedings.

7) He states that the term “hollow” is widely used to describe a type of roof tile. To support this, at Exhibit RSG1, he provides a number of exhibits. The first of these, provided by his client, is a brochure from a company named Wienerberger and he understands that it was published in 2005, however, there is no indication in the brochure itself. A second brochure, obtained from Wienerberger’s website on the 11th or 12th November 2008 and dated September 2007, is also provided. Both of these brochures are promoting one of Wienerberger’s clay roof tiles called “Old Hollow Tile 451” under its mark “Koramic”. There is a statement on the front page of both brochures that “Koramic is the clay roofing tile brand of the Wienerberger Group”. They both identify “Old Hollow Tile 451” as being the model name and it is described in the following way:

“The authentic weathered look of the pressed Old Hollow 451 clay pantiles results from the specialist treatment of tiles. This produces the typical patina of centuries-old roof tiles. ...”

8) Further, under the heading “Victorian Braised Blue Pantile”, the following text also appears:

“The shades of the old hollow tiles are blended from a subtle collection of grey, black with lighter weathered patches.”

9) Exhibit RSG2 is a copy of brochure obtained from the website www.melskamp.de and includes the indication “last revised 08/2008”. This English language brochure illustrates a number of concrete and clay roofing tiles produced in Germany and sold under the mark “Nelskamp”. A number of clay roofing tiles are illustrated on the last page of the brochure where the following types are shown: hollow tiles, flat roof tiles, hollow interlocking tiles, reform tiles, twin trough gutter tiles, large tiles, flat tiles and plain clay tiles. Whilst the brochure is in English, there is no indication that it is intended for the UK market.

10) Exhibit RSG3 is an English language promotional leaflet obtained from www.meyer-holsen.de. This leaflet provides promotional data for “Valley systems” and there is an illustration of such a system “using a hollow tile”.

11) Exhibit RSG4 is an extract, dated 10 November 2008, from the website www.export.koramic.com. This relates to the same “Koramic” products referred to in Exhibit RSG1. The page is headed with the question “(w)hat are the different types of roof tiles?”. The answer to this question is expressed in the following way:

“Roof tiles are classified according to their profiles

There is a wide range of roof tiles, in different colours, sizes and shapes. Roof tiles can be classified according to their profiles:

Hollow tile:

Tile with curved drainage part. This type of tile is suitable for roof pitches down to 25°.

Hollow interlocking tile

Tile with curved drainage part and head interlocking. ...”

[descriptions of slightly curved interlocking tiles, flat tiles with interlocking, flat interlocking tiles and plain tiles are also included]

12) At Exhibit RSG5 are extracts from the website www.ubbink.co.uk, obtained on 11 November 2008. This provides information on “UB12 HOLLOW TILES ROOFING VENTILATING TILES”. The information provided includes the following:

“The Ubbink UB12 Hollow Tiles provide: ...”

and

“The Hollow Tile provides its 6500mm free vent area via the body of the tile...”

13) In addition, there are also extracts from “The Latest News” section of this website. The last page of this is produced below and shows further information about “Hollow Tiles (UB12):

Hollow Tiles (UB12)

Hollow Tiles are in-plane roof vents available in a selection of the popular profiles available in the UK market. Ventilation is provided between to the two layers of the Hollow Tile without any surface air inlets or grilles. Therefore, Hollow Tiles totally maintain the aesthetics of the roof causing no interruptions to the lines of the tile profiling.

UB12	
Function:	Roof ventilation - pitched roofs
Material:	PVC-u
Free Vent Area:	6500mm ²
Roof Finish:	Profile tiles.
Colour:	Anthracite, Red, Sepia, Terracotta. Special colour finishes to order.
Features:	Ventilation tile with no surface air inlets or grilles. Where a roof ventilating tile is required with a felt penetration sleeve - this version of the hollow tile is coded UB18 Matching terminal available coded UB42.
Pack Information:	Please Select a UB Type: <input type="text"/>

14) Exhibit RSG6 consists of an extract from the website www.ventspecialists.co.uk. Once again, this was obtained on 11 or 12 November

2008. This consists of a “Roofing & Building Product Catalogue” for Ubbink products, that is, the same trader whose website was referred to in the previous exhibit. I note that on its second page there is an illustration of an “UB60 Trimline Hollow Tile” and on the tenth page (marked as page 8) product information is provided on a number of roof ventilating tiles, including the “Trimline Hollow Tile UB60 & UB18”.

15) Exhibit RSG7 consists of extracts taken from the website www.ravenroofingsupplies.co.uk and obtained on the 11 November 2008. An illustration and brief description is provided for each of a long list of clay tiles for pitched roofing. I note that a tile called “Vendeene” is described as “[i]nherited from the Romans, its hollow shape truly embodies tradition...”. I also note that many, but not all, have descriptions that allude to the various tiles having traditional, vintage or antique designs.

16) Exhibit RSG8 consists of copies of UK patent application 2317947 and European patent application 0870884 filed in 1998 and 1996 respectively. The first of these relates to a roof ventilator, the second to a roofing tile. The UK application is made by RBB Research & Development Limited, located in a building named Redland House in Reigate. This application includes a number of references to the ventilator being a “hollow tile-shaped unit”.

17) In the European application, the applicant is recorded as Redland Dakprodukten B.V. of the Netherlands and under the headings “description” and “claims”, the following text appears:

“... the invention relates to a roofing tile without end and side interlock, in particular of the “old hollow pan tile” type ...”

18) Finally, at Exhibit RSG9, Sandtoft provides extracts, all dated 12 November 2008, from the websites www.dreadnought-tiles.co.uk, www.insightmag.co.uk, www.sandtoft.com, www.staceroofing.co.uk, www.towerbrickandtile.co.uk, www.clayroof.co.uk and www.kempischebouwmaterialen.be. The first of these contains a narrative explaining Dreadnought’s re-roofing services including re-roofing with tiles in the original style of the roof concerned. The second extract provides information about a company called Keymer and its new restoration range of roof tiles that, it claims, provides a solution for those looking for (and presumably failing to find) second hand tiles to maintain the aesthetic appearance of heritage buildings. The third extract appears to be from Sandtoft’s own website and provides information on a natural clay plain tile called “The Village” “that creates the appearance of an aged roof from new”. Most of the other extracts all illustrate this same point, namely that new tiles are available to create the look of an aged roof and can be used to build a new roof or to repair or refurbish an old roof.

19) One further extract that I will detail specifically is that obtained from www.kempischebouwmaterialen.be/uk/tiles/old-Tiles.html. Here “Old Roof Tiles” are featured. Under this heading, the following text appears:

“You can call us for every kind of tile: reclaimed tiles, new “old” tiles and every kind/brand of traditional tiles On this website only the real “old” tiles are mentioned. ...”

There then follows a list and illustration of tiles available, including “Old VH tile (improved hollow tile)”

Lafarge’s Evidence

20) This is in the form of a witness statement by Alison Cole, trade mark attorney for Graham Watt & Co. LLP, Lafarge’s representatives in these proceedings. She provides a number of exhibits, the first of which is Exhibit AJC1 and consists of extracts from the website www.monier.co.uk/about-us/monier-group.html, dated 14 May 2009. Ms Cole states that this exhibit shows the relationship between Lafarge and Monier Group and Redland. Lafarge is identified as holding a minority shareholding of 35% in Monier Group. The fourth and final page of this extract is entitled “Monier Redland: Monier Group”.

21) Exhibit AJC2 is a copy of the first page of results obtained from a Google Internet search for the words OLD HOLLOW, undertaken on 15 May 2009 and limited to pages from the UK. Ms Cole draws attention to the fact that the only reference to roof tiles is by “the applicant’s parent company Monier”. The reference states “Redland Old Hollow Clay Pantile is a traditional overlapping single clay pantile, giving the appearance of reclaimed roofing” and is found at www.monier.co.uk.

22) Exhibit AJC3 is a printout, dated 11 May 2009, from Wienerberger’s website and is a news item dated 11 January 2008 recounts how it has taken a 74% stake in Sandtoft. The extract also shows that the brand Wienerberger uses for its tiles is KORAMIC.

23) Exhibit AJC4 is a copy of a further Google search also conducted on the 15 May 2009. This relates to a search of UK pages only, for the words OLD HOLLOW and “roof tiles”/“roof tile”. Ms Cole draws attention to the fact that use of OLD HOLLOW is almost exclusively made by the applicant’s group of companies, namely Monier and Redland or use by members (or brand) of the opponent’s group of companies, namely Sandtoft, Wienerberger and Koramic. In fact, of the ten hits for each search that are exhibited, only one appears not to relate to the applicant’s or opponent’s group of companies. The fourth hit is for Smithbrook Building Products Limited. The relevant part of this extract for this hit reads “For special glazed colours see our “Glazed Clay Roof Tile” page. ... Model 451, Old Hollow Tile.” I note that this is the same model number that appears in

other hits in the same search and appears to relate to a Koramic product. The majority of these hits relate to the same “Model 451” roof tile and in all but one hit, the words OLD HOLLOW appear with the first letter of each word in capitals. Examples of the term appearing in this exhibit include “Old Hollow Tile 451 Victorian”, Old Hollow Clay Pantile with capped...”, Old Hollow Clay Pantile” and “...pantile, tempest, romane tile, actua, vautan, old hollow tiles, slates...”.

24) Finally, at Exhibit AJC5, Ms Cole provides copies of pages obtained from www.rooflineroofingservices.com on 14 May 2009 showing its range of tile products that includes the tiles of Redland, Sandtoft and Koramic, and I note includes Koramic’s OLD HOLLOW tile. This appears in an illustrated list of many different types of roof tiles, the names of some of which are registered trade marks whilst others appear to be purely descriptive, such as “plain tile” and “double pantile”. This exhibit also includes printouts of some of the trade mark registrations relating to names used in this list.

DECISION

25) The relevant part of the statute reads as follows:

“3.-(1) The following shall not be registered -

(a) ...

(b) ...

(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.”

26) The above provisions mirror Article 3(1) (c) and (d) of First Council Directive 89/104/EEC of 21 December 1988 (recoded and replaced by Directive 2008/95/EC on 22 October 2008).

27) I find it convenient to firstly consider the ground based upon Section 3(1) (c) of the Act. The European Court of Justice (“the ECJ”) has emphasised the need to interpret the grounds for refusal of registration listed in Article 3(1) and Article 7(1) (the equivalent provision in Council Regulation 40/94 on the Community Trade Mark) in the light of the general interest underlying each of them (Case C-37/03P, *Bio ID v OHIM*, paragraph 59 and the case law cited there and Case C-273/05P *Celltech R&D Ltd v OHIM*). This general interest is that descriptive signs or indications may be freely used by all (*Wm Wrigley Jr & Company v OHIM*, Case 191/01P (*Doublemint*) paragraph 31)

28) There are a number of judgments from the ECJ which deal with the scope of Article 3(1) (c) of the Directive and Article 7(1) (c) of the Council Regulation (equivalent to Section 3(1) (c) of the Act). I derive the following main guiding principles from the cases noted below:

- subject to any claim in relation to acquired distinctive character, signs and indications which may serve in trade to designate the characteristics of goods or services are deemed incapable of fulfilling the indication of origin function of a trade mark – *Doublemint* paragraph 30;
- it is not necessary that such a sign be in use at the time of application in a way that is descriptive of the goods or services in question. It is sufficient that it could be used for such purposes – *Doublemint*, paragraph 32;
- a sign must be refused registration if at least one of its possible meanings designates a characteristic of the goods or services concerned – *Doublemint* paragraph 32;
- it is irrelevant whether there are other, more usual signs or indications designating the same characteristics of the goods or services. The word ‘exclusively’ in paragraph (c) is not to be interpreted as meaning that the sign or indication should be the only way of designating the characteristic(s) in question – *Koninklijke KPN Nederland NV and Benelux-Merkenbureau*, Case C-363/99 (*Postkantoor*), paragraph 57;
- there must be a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of the category of goods and services in question or one of their characteristics – *Ford Motor Co v OHIM*, Case T-67/07;
- a sign’s descriptiveness may only be assessed, first, in relation to the goods or services concerned and, secondly, in relation to the perception of the target public, which is composed of the consumers of those goods or services – *Ford Motor Co v OHIM*;

- As a general rule, mere combinations of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, itself remains descriptive of those characteristics unless it creates an impression which is sufficiently far removed from that produced by the simple combination of those elements - *Postkantoor*.

29) The question to answer is whether the words OLD HOLLOW could be used for the purpose of describing a characteristic of the goods sought, namely "roof tiles". Sandtoft has filed evidence in an attempt to illustrate that OLD HOLLOW is a known phrase relating to a roof tile of a hollow construction and in a finish that is intended to give the tile an aged appearance. It also argues, in its written submissions, that the roof tiles are bought by traders, architects and builders and are reasonably well informed and would therefore appreciate the descriptive meaning of the word "hollow" when used in relation to roof tiles. I concur that the relevant consumer of tiles is, indeed, someone who will need to have a reasonable level of knowledge of such goods. It is necessary to have knowledge of the technical characteristics and design of tiles in order to be able to purchase the correct type for the job being undertaken.

30) Accepting that the relevant consumer for roof tiles is reasonably well informed, the next part of my considerations is to ask if the terms "old" and "hollow" may describe characteristics of roof tiles. The term "old" means "made a long time ago"¹. This meaning could apply literally to tiles in that it describes tiles that were made a long time ago (and the evidence illustrates at least one instance of trading in such old tiles). However, in the context of new tiles that have the appearance of being old and weathered, the word "old" would be understood as describing the appearance of the tiles. Sandtoft provides numerous Internet extracts illustrating that there is a market for tiles that are aged in appearance for use in repairing old roofs or for constructing roofs in an old style. These extracts were obtained nearly a year after the filing date of the contested application and in one example, has been obtained from Sandtoft's own website. Neither of these potential shortcomings render this evidence useless. Whilst the extracts were obtained nearly a year after the filing date of Lafarge's mark, it is nonetheless indicative of the roof tile market as at the time of filing. Innovation and customer taste may lead to a change in the range of tiles on offer over time, however, I do not believe that it is such a fast moving market that old-style tiles have only become vogue since the filing date. On the contrary, there is likely to have been a longstanding demand for such tiles. This is supported by the European Patent application, exhibited by Sandtoft, that utilizes the term "old" in this way and dates from 1996. As regards the fact that one of these extracts originates from Sandtoft's own website, this too retains some value. Descriptive use is relevant, regardless of who is using the descriptor. Therefore, unless doubt is cast on the motives behind such use (and it has not been here), descriptive use by Sandtoft can be considered in the normal way.

¹ "old adj." *The Concise Oxford English Dictionary*, Twelfth edition . Ed. Catherine Soanes and Angus Stevenson. Oxford University Press, 2008. *Oxford Reference Online*. Oxford University Press. Intellectual Property Office. 26 January 2010 <<http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t23.e39226>>

31) Taking all of this into account, it is clear that there is a market in old-style roof tiles. Further, evidence such as Wienerberger describing its KORAMIC clay roofing tiles as “old hollow tiles” provides yet further support for this. In summary, I find that the word “old” designates tiles in a finish that is intended to give the tile an aged appearance.

32) The word “hollow” means “having a hole or empty space inside”². Sandtoft provides brochures obtained from two websites, with the country indicator being “de”, suggesting that they are German in origin. Nevertheless, both brochures are in the English language. The Nelskamp brochure includes the indication “last revised 08/2008” but the Mayer-Holsen extract is undated. Both extracts use the term “hollow tile” to indicate a particular design of tile, with the Nelskamp brochure including such a tile within a descriptive list of other tile designs. Sandtoft also provide an exhibit obtained nearly a year after the filing date from Wienerberger’s KORAMIC website, where a “hollow tile” is one of six types of tile described. A further exhibit obtained from the website of a company called Ubbink provides information on “The Ubbink UB12 Hollow Tile”. This is inconclusive as capital letters are used to begin both the words “hollow” and “tile” and as such, the consumer may perceive such use as referring to a trade mark. There are various references to the tile in this way, but there is also one reference to “this version of the hollow tile is coded UB18”. This appears to be clearly a descriptive use of the term “hollow tile”. Finally, Sandtoft provides one further, but inconclusive exhibit. This is a catalogue for Ubbink products and including an illustration of a “UB60 Trimline Hollow Tile”. Once again, the use of capital letters makes it unclear as to whether such use will be perceived as descriptive or trade mark use.

33) This evidence is not overwhelming, with some exhibits relating to a period after the filing date of the contested application and others illustrating references to “hollow tiles” using the capital letters “H” and “T”, casting some doubt over the nature of the use. However, other examples, such as the text of the European patent application and of the KORAMIC brochure, do show what appears to be descriptive use of the term. There is also the evidence obtained from the two German based websites illustrating the existence of roof tiles described as “hollow tiles”. Whilst being in English, there is obviously some doubt regarding the applicability of these to the situation in the UK. That said, the inter-relationship between the various companies linked to both Lafarge and Sandtoft, as detailed in the evidence suggests that the market in roof tiles is pan-European. This, and the fact that the exhibits obtained from the German websites are in English, suggests that they do carry some weight in these proceedings. Taking all of the above into account, on balance the evidence does show that

² “hollow adj.” The Concise Oxford English Dictionary, Twelfth edition . Ed. Catherine Soanes and Angus Stevenson. Oxford University Press, 2008. Oxford Reference Online. Oxford University Press. Intellectual Property Office. 3 February 2010 <<http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t23.e26435>>

there is a design of tile that is described as “hollow” and that this is known by the target public in the UK.

34) Having established that the terms “old” and “hollow” are terms that may describe characteristics of roof tiles, I must go on and consider if the terms, when used together, as in Lafarge’s mark, constitute a term that too will be understood by the relevant consumer as being descriptive in nature. Sandtoft, in its written submissions contends that the term OLD HOLLOW cannot be said to be an unusual construction and thus, applying *Postkantoor*, is descriptive. Taking account of the ordinary dictionary meanings of the words “old” and “hollow”, the goods at issue and the perception of the target public, I concur with this assertion. The term OLD HOLLOW will be understood as describing tiles of a hollow construction and in a weathered and old style.

35) Whilst it is not necessary that a sign be, in use in a way that is descriptive, at the time of application (*Doublemint*), the evidence does, nonetheless, provide some support for these findings. Some of the exhibits, that Sandtoft purports demonstrates descriptive use, are inconclusive as they use capital letters or show a list containing both descriptive terms and trade marks. An example of this is the extract from Wienerberger’s own brochure that refers to an “original clay pantile” called “Old Hollow Tile 451” (my emphasis). Here, the use of capital letters casts some doubt as to whether the term will be perceived as a secondary mark (to KORAMIC) or as a pure description of the tile. However, there is a further reference in the same brochure that discusses the “shades of the old hollow tiles”. Also, as I have already mentioned earlier, the European patent application exhibited by Sandtoft relates particularly to the “old hollow pantile” type” of tile. These provide support for my finding that the term OLD HOLLOW may be used to describe tiles of a hollow construction that are in a weathered and old style. In regard to the list that contains both descriptive terms and trade marks, Lafarge contend that this shows that the term OLD HOLLOW is used as a mark. I do not accept this. The exhibit in question does no more than illustrate that marks and descriptive terms can be used side-by-side.

36) Taking all of this into account, whilst some exhibits are inconclusive, I find that, on balance, the evidence supports a finding that the term OLD HOLLOW may describe both the appearance and style of roof tiles. Further, there is some evidence that a trade exists in reclaimed, old tiles and I recognize that the term may also describe these. Of course, as the guidance provided by the ECJ in *Doublemint* makes it clear that if at least one of its possible meanings designates a characteristic of the goods, then the mark must be refused.

37) In light of these findings, it follows that the opposition is successful in respect of the grounds based upon Section 3(1) (c) of the Act.

38) I do note however that Sandtoft, in its written submissions addresses Section 3(1) (b) as well as Section 3(1) (c). However, Section 3(1) (b) was not pleaded in

its statement of grounds. I have determined the case based upon my findings in respect of Section 3(1) (c), therefore, there is no need for me to explore this anomaly further, or for that matter, the merits of the Section 3(1) (d) objection. However, I will comment briefly on this last point.

39) I have found that the term OLD HOLLOW *may* be used in trade to designate characteristics of roof tiles. However, the analysis required to determine the existence of an objection under Section 3(1) (d) of the Act requires consideration of the nature of use in the market place and a finding that the sign has become customary in the current language or in the *bona fide* and established practices of the trade.

40) It is established that reference, in Section 3(1) (d) of the Act, to being “customary in the current language” does not relate to use by the relevant trade but to the perception of the relevant public (see *Merz & Krell GmbH & Co.* [2001] ECR I-6959, paragraph 41, and the comments of Professor Ruth Annand, sitting as the Appointed Person in *STASH* BL O-281-04, paragraph 30). In the current proceedings, there is no evidence whatsoever on how the relevant consumer views the term OLD HOLLOW and as such, the opposition under Section 3(1) (d) cannot succeed on this basis.

41) The second limb of Section 3(1) (d) is that the term has become customary “in the bona fide and established practices of the trade”. In this respect, there is evidence of Sandtoft and linked companies Wienerberger/Koramic, and for that matter, Lafarge and linked companies Monier and Redland all using the mark in a possibly descriptive manner. None of the exhibits, obtained from the websites of companies unrelated to the parties, illustrate descriptive use of the term OLD HOLLOW. As such, the only possible descriptive use demonstrated is either by one of the parties, or one of their related companies. In effect therefore, possible descriptive use is shown only by two trading groups. Use by such a small representation of companies, in the field of roof tiles, is insufficient for me to conclude that the term OLD HOLLOW has become customary in the trade. As such, the opposition based upon Section 3(1) (d) must fail.

42) In summary, Sandtoft is successful in its opposition to Lafarge’s mark in that it falls foul of Section 3(1) (c) in respect of *roof tiles*. However, it is unsuccessful in respect to its grounds based upon Section 3(1) (d).

COSTS

43) Sandtoft has been successful and is entitled to a contribution towards its costs. Lafarge has stated, in its written submissions, that Sandtoft’s evidence was repeated and irrelevant and that it “is minded to request additional costs because of having to sift through dross”. Lafarge has been unsuccessful in these proceedings, but the evidential burden placed upon Lafarge was relatively light, and I do not intend to reduce Sandtoft’s award as would be appropriate if I

agreed with Lafarge's criticism. In making the award, I do take account of the fact that the decision has been reached without a hearing taking place, though with written submissions having been prepared.

44) I award costs on the following basis:

Opposition fee	£200
Preparing statement & considering the counterstatement	£300
Preparing and filing evidence	£800
Filing written submissions	£300
TOTAL	£1600

45) I order Lafarge Roofing Limited to pay Sandtoft Roof Tiles Ltd the sum of £1600. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 05 day of February 2010

**Mark Bryant
For the Registrar,
the Comptroller-General**