



[2006] CAT 16

IN THE COMPETITION

Case No. 1068/2/1/06

APPEAL TRIBUNAL

Victoria House
Bloomsbury Place
London WC1A.2EB

13th July 2006

Before:
MARION SIMMONS QC
(Chairman)
PETER CLAYTON
DAVID SUMMERS

Sitting as a Tribunal in England and Wales

BETWEEN:

CASTING BOOK LIMITED (IN ADMINISTRATION)
(TRADING AS INDEPENDENT POSTERS)

Appellant

and

OFFICE OF FAIR TRADING

Respondent

Mr. Raymond Assirati appeared for the Appellant.

Mr. Meredith Pickford (instructed by the Solicitor to the Office of Fair Trading) appeared for the Respondent.

Transcribed from the Shorthand notes of
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RULING: RULE 8

1 THE CHAIRMAN: This is an application to consider whether or not the notice of appeal was
2 received within the requisite time set out in Rule 8 of our Rules. This Rule would require Mr.
3 Assirati to have received notification of the OFT letter, dated 20th February 2006, on or after
4 28th February 2006.

5 Mr. Assirati has given evidence to us today. He has told us that he lives at Berners Hall [“the
6 Hall”] which is adjacent to Berners Hall Farm [“the Farm”]. He has lived there since October
7 2005. He told us that there have been difficulties with receiving post delivered by Royal Mail
8 and that at the relevant time such post was regularly delivered to the Farm address, which had
9 the same postcode as the Hall, and that there was then a delay before the Farm redelivered it or
10 he, or someone on his behalf, collected it from the Farm.

11 Mr. Assirati also told us that he was semi-retired, that his business interests were mainly in
12 property and that he was a bachelor and somewhat of a recluse living in the Hall, and one day
13 merged into others. He explained that it was for this reason that he was so vague on the date.
14 He told us that Mr. Talbot, who helped him in his business activities, came to the Hall four
15 days a week from Monday to Thursday. He told us that part of the Hall was set aside as his
16 office, and that he (Mr. Assirati) would normally arrive at his office at about 11 a.m. from
17 Tuesday to Thursday. On Mondays he did not appear until the afternoon. He described
18 Mondays as “a slow day” for him, and that if the letter had arrived on the Monday he was
19 more likely to remember because reading mail in the afternoon would have been a more
20 memorable event.

21 He told us that when he appeared in his office he would be handed the post already opened by
22 Mr. Talbot, and Mr. Talbot would then leave the room. He remembers reading the OFT letter
23 of 20th February, muttering annoyance to himself, and being very disappointed. He told us
24 that he did tell Mr. Talbot about the content of the letter, and that at some point later on –
25 possibly not on the same day, he could not say when – either he was telephoned by, or he
26 telephoned, the two other complainants. He could not identify when those telephone
27 conversations took place.

28 The letter was sent by the OFT by second class post. The evidence of Mr. Ray, the principal
29 case officer who led the team dealing with this complaint, was that it was placed in the OFT’s
30 internal post system early in the afternoon of 20th February 2006. Mr. Ray described the
31 normal procedure being the letters from the internal system would be taken to the OFT’s post
32 room where they would be franked and dispatched by second class post and that at
33 approximately 6 p.m. every day the Royal Mail collected all that day’s letters by van. Mr. Ray
34 therefore believes that this letter was collected by the Royal Mail on 20th February 2006.

1 On the basis of the evidence before us and having regard to the fact that it was second class
2 mail, and having regard to our understanding which is that usually second class mail is
3 delivered by the Royal Mail within three days, on a balance of probabilities delivery of this
4 letter probably did not take place before Friday, 24th February.

5 We accept the evidence of Mr. Assirati that delivery would have been to the Farm and not to
6 the Hall, and that there normally would then be a delay in re-delivery or collection from the
7 Farm. We also accept Mr. Assirati's evidence that it is unlikely that he read the letter on the
8 Monday, both for the reason that had he done so he would be more likely to have remembered,
9 and also because of the delay in receipt of post delivered to the Farm. On that basis, on the
10 evidence before us today, on a balance of probabilities we are satisfied that Mr. Assirati was
11 notified by the letter of 20th February on or after Tuesday, 28th February; we do not need to
12 decide the precise date because notification on or after 28th February means that the notice of
13 appeal was lodged within time.
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