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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.

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HEARING

1 THE CHAIRMAN: Good morning.

2 MR. ASSIRATI: Good morning.

3 THE CHAIRMAN: Can I just start by introducing us so that you know who we are? You will
4 realise that I am Marion Simmons. Peter Clayton is on my left and David Summers is on my
5 right.

6 The first matter we need to deal with is that it was said in the correspondence that this was
7 being heard in private. For our part we see no reason for it to be done in private and therefore
8 it ought to be public, and that will mean that the transcript can go on the internet. Is there any
9 objection to that? If this went further – if we allowed it in and it was a decision, etc. – the fact
10 that it is public will not affect any inquiries because you have already done your s.26 Notices,
11 is that right?

12 MR. PICKFORD: Thank you, madam; I do not believe there is any objection from the OFT in
13 relation to this hearing being public.

14 MR. ASSIRATI: No, I have no objection.

15 THE CHAIRMAN: So it is in public. Our procedure is that we read all the materials beforehand, all
16 right? So we have all read both your letters and the submissions of the OFT.

17 MR. ASSIRATI: Yes.

18 THE CHAIRMAN: So, having done that, I am going to make a few remarks which, hopefully will
19 help to focus what we are doing this morning. Is that all right?

20 MR. ASSIRATI: Because I received the skeleton arguments from the other side I thought it would
21 be good housekeeping if I were to make a witness statement accordingly.

22 THE CHAIRMAN: That is very helpful. I think if you hear what we are going to say that will
23 actually lead on because that will be very helpful. You have made a witness statement?

24 MR. ASSIRATI: Yes, and I have documented everything so as to make it easier for everybody.

25 THE CHAIRMAN: Have you shown that to ---

26 MR. ASSIRATI: No, because that was literally done this morning, because I did not get the skeleton
27 arguments until - so I have not given it to the other side yet.

28 THE CHAIRMAN: Let me say what I was going to say, and then we may probably adjourn for 10
29 minutes and we can all read it. That might be the way to do it.

30 MR. ASSIRATI: Certainly, yes.

31 THE CHAIRMAN: You will know whether your witness statement then deals with what I am going
32 to say.

33 MR. ASSIRATI: Yes.

34 THE CHAIRMAN: Rule 8 provides that an appeal must be made by sending a notice of appeal to
35 the Tribunal which must be received within two months of the date when the appellant was

1 notified of the disputed decision or the date of publication of the decision, whichever is the
2 earlier.

3 As we understand it there was no publication of this decision because, of course, the OFT say
4 there is no decision, so what we are talking about here is the date when it was notified to you,
5 that is the important date. We do not actually know at the moment what that date was – it may
6 be that you are now going to tell us but we do not know what that date was. The OFT believes,
7 I think, it was sent by second class post on 20th February, but they have no proof that they sent
8 it on the 20th, so it might have been overnight and on the 21st, possibly, but they think that it
9 was on the 20th?

10 MR. PICKFORD: We have no written documentary proof; I mean we have the evidence of Mr.
11 Edward Ray.

12 THE CHAIRMAN: That he put it in for posting on the 20th?

13 MR. PICKFORD: Indeed, yes.

14 THE CHAIRMAN: And you say you received it in early March. Because the OFT at the moment do
15 not accept it is early March, because they say it was 20th, interestingly I think the Post Office
16 say that a second class post is “usually delivered” – whatever that means – within three days,
17 but that does not help because of the other circumstances in relation to this. So the issue really
18 is when did you receive – actually get – the notification? I think what you are saying is that
19 you have now made a witness statement that explains that?

20 MR. ASSIRATI: That is correct, yes.

21 THE CHAIRMAN: All right, well Mr. Pickford, do you think the best thing to do is that we all look
22 at this witness statement?

23 MR. PICKFORD: I do, madam, yes.

24 THE CHAIRMAN: And would you prefer that we adjourned and did it outside so that you can
25 discuss it?

26 MR. PICKFORD: I would prefer that, thank you.

27 THE CHAIRMAN: Yes, all right. Have you copies for everybody?

28 MR. ASSIRATI: Yes, I have. (Documents handed)

29 THE CHAIRMAN: We will go out for five minutes or a little longer.

30 MR. PICKFORD: Yes, madam, I have not had an opportunity obviously to see how long the witness
31 statement is, we may need a little while to discuss it.

32 THE CHAIRMAN: Well you will let me know, but we are talking about five or ten minutes.

33 MR. PICKFORD: Indeed.

34 (The hearing adjourned at 10.40 a.m. and resumed at 10.50 a.m.)

35 THE CHAIRMAN: Thank you very much. Mr. Pickford?

1 MR. PICKFORD: Thank you, madam. Mr. Assirati has very helpfully produced that statement and,
2 in any respects it does answer some of the questions that the OFT had. I would just make three
3 points in relation to it.

4 First, stepping aside for one moment from the issue of the timing of the letter, Mr. Assirati
5 deals with some housekeeping matters raised in my skeleton. I should make clear that the OFT
6 was not challenging his authority; we simply felt it was appropriate that for good housekeeping
7 these matters should be dealt with clearly. We reserve our position as to whether they have
8 been dealt with clearly in the witness statement but that is not a matter that we need to go into
9 today.

10 In relation to the timing issue, the matter is very much a question of fact to be determined by
11 the Tribunal. There are two questions for our part which I think still remain in Mr. Assirati's
12 evidence, but we do not push either one particularly, but in order to assist the Tribunal the two
13 issues that remain somewhat unclear are whether the letter that was sent by the OFT was one
14 of the letters that was misdirected through Berners Hall Farm. That does not appear to be
15 totally clear from Mr. Assirati's evidence. The second question is why Mr. Assirati is clear
16 that this letter was after 1st March because he was surprised by it rather than at the end of
17 February because he was surprised by it? We simply raise those as two questions that the
18 Tribunal may wish to consider.

19 THE CHAIRMAN: Would the appropriate way forward be for Mr. Assirati to give oral evidence
20 and we can ask questions and you also can ask questions?

21 MR. PICKFORD: We are quite acceptable to that.

22 THE CHAIRMAN: Is that all right, Mr. Assirati?

23 MR. ASSIRATI: Yes.

24 Mr. RAYMOND DANIEL ASSIRATI, Sworn

25 Questioned by The TRIBUNAL

26 THE CHAIRMAN: Thank you. If you could give your name – your address is on **here**, is it not?

27 A. Yes.

28 Q If you can give your name? A. Raymond Daniel Assirati

29 Q And you have provided a witness statement, which is before you? A. That is correct.

30 Q And that is dated 13th July? A. That is correct.

31 Q It is your signature on p.3? A. That is correct.

32 Q And the content of that witness statement you wish to stand as your evidence today?

33 A. Yes.

34 Q Is there anything else I need to do ---

1 MR. PICKFORD: No, I do not believe so, madam. Before I begin asking a couple of questions I
2 should make clear that we are not really seeking to cross-examine Mr. Assirati. We are not
3 strictly resisting his application, we are simply ensuring, for the benefit of the Tribunal that this
4 is a matter that it properly has jurisdiction over.

5 THE CHAIRMAN: Would you prefer if we asked the questions?

6 MR. PICKFORD: I am happy to ask them but it may be more appropriate if the Tribunal at least
7 first asked its own questions.

8 THE CHAIRMAN: We will do it. I think it makes it very clear that you are not really challenging it
9 but we have to be satisfied

10 MR. PICKFORD: Yes, thank you.

11 THE CHAIRMAN: (To the witness) Can you just deal with really the two matters that have been
12 highlighted? The first was that this particular letter was clearly a letter that was received by
13 the other address and delivered to this address by – is it Mr. Watson? A. Yes.

14 Q Do you know that of your own knowledge? A. What I know is the procedures that we were
15 having to take because of the redirected mail, and it would be that we would call at the office
16 as frequently as possible, but often the office was unmanned. If there was someone in the
17 office then we would collect the mail from there. If there was no one in the office then the
18 firm would then deliver it when somebody discovered the mail and decided to deliver it to us.

19 Q Well let us then look at this from a different direction? A. Yes.

20 Q You say in para.11 that you cannot give us the exact date when you received the letter, that you
21 remember the occasion? A. Yes.

22 Q Because Mr. Talbot gave you the letter and you were surprised as to its contents?
23 A. Correct.

24 Q You say you were surprised as to its contents, but had you not received a draft earlier?
25 A. There was an earlier letter saying that they were considering closing the case, and I
26 understood that some of the other complainants were going to put their arguments forward as
27 to why it should not be closed and when I finally read the final letter, yes, I was surprised and
28 disappointed.

29 Q So you recollect being surprised and disappointed? A. Yes.

30 Q Where were you when you made that recollection? A. I was in my office in Berners' Hall.

31 Q Do you remember the time of day? A. It was probably, I don't remember the exact time of
32 day but it was in the morning I remember that. I am a late riser and I generally arrive into the
33 office part of Berners' Hall at around about 11-ish and I generally look at the post that Roger
34 has opened between 11 and 12. That is the normal routine, so it would have been about that,
35 you know, between 11 and 12.

1 Q And was anybody else in the room? A. No.

2 Q So Roger was not in the room? A. Well Roger was in the room to give me the post, and then

3 I read it, then he went out and then I read the post.

4 Q So you arrived in the room, Roger hands you the post? A. Yes.

5 Q And he then goes out of the room and you look at the post? A. Yes.

6 Q So you did not know what he was handing you? A. No, he was handing me the post, full

7 stop.

8 Q So there were other matters --- A. Yes, there would be other post; it was all of the post for

9 me.

10 Q Do you remember at what point of you looking at the bundle of post you found that letter?

11 A. Do I remember it?

12 Q Was it on the top? Do you remember other things in that postal bundle? A. No, to be

13 honest, I am not certain of the order that I read the letters.

14 Q Having read **this** letter, what did you then do? A. Can I swear? I said "Oh shit", and I was

15 very angry.

16 Q But there was nobody in the room, so you were saying that to yourself? A. I was saying it to

17 myself, yes.

18 Q And did you do anything else? A. No, I put it down and, yes, and then reflected on it.

19 Q Do you remember what else you did that day? A. No, I don't.

20 Q Have you got any recollection of the day of the week that that happened? A. Well it

21 would've been somewhere between, it would be Monday to Thursday, because they're the

22 days that Roger works, he doesn't come in on Fridays, so it would've been Monday to

23 Thursday and I have a feeling that it was not the Monday morning, because it just feels that it

24 wasn't Monday morning, but I cannot be absolutely certain.

25 Q Monday was 27th, was it not?

26 MR. CLAYTON: Monday was the 27th, that is correct. A. My reason for feeling it wasn't

27 Monday morning is because that I'm semi-retired and after the weekend, you know, Monday is

28 a very, very slow day and so that is why I feel that it wasn't the Monday, and because I

29 would've been looking at the post probably in the afternoon if it was on Monday. I just have

30 that feeling, it is only a feeling, I am not absolutely certain.

31 THE CHAIRMAN: You say you do not remember what else you did that day. You read the letter,

32 you were disappointed? A. Yes.

33 Q Did you communicate with anybody else about the content of the letter, or that you had

34 received it? A. No, because reading the letter I assume that that was the end of the road,

35 because the letter made clear that it was the end and, as I mentioned, previously in

1 correspondence, there was no mention of an appeal or any other process to go through, it was
2 the end of the road.

3 Q But you were doing this on behalf of other people, so did you have any communication with
4 anybody else about the content of the letter? A. Eventually, yes, a few days' later.

5 Q Who did you communicate with? A. I spoke with Slow Dazzle and I spoke with Global
6 Merchandising. We discussed it and we were all bitterly disappointed that it had come to an
7 end.

8 Q Did you all meet together or did you have separate ---- A. No, this was over the telephone.
9 Global Merchandising are based down in Devon, and Slow Dazzle are in Hammersmith,
10 Shepherd's Bush, London area.

11 Q So you phoned them up, or they phoned you? A. Either I phoned them or they phoned me,
12 we certainly spoke on the telephone.

13 Q You say you did that a few days' later? A. That was a few days' later, yes.

14 Q And Mr. Talbot was in the office, he had opened the post – you did not have any
15 communication with him? A. Well I would've told him of the decision that the content of
16 the letter during that day, not as I opened it, not as I read it, because, as I say, he wasn't there, I
17 don't recall him being there.

18 MR. CLAYTON: Who actually opened the post? A. Roger Talbot opened the post.

19 Q He actually opened the post ---- A. Yes, he opens the post.

20 Q -- and put it on your tray? A. Yes, he puts the bundle of ----

21 Q -- opened post? A. Open post on the desk and when I surface then I read the post over
22 coffee and not croissant – sorry.

23 Q So he would have seen that it was from the OFT? A. He would've seen, yes. Whether he
24 read it or not, I don't know, whether he looked at the title or not, or whether he just opened the
25 post and just put it there, I just don't know. I don't know whether he would've read it or not.

26 THE CHAIRMAN: Right, you say that he is not in the office on a Friday? A. Correct.

27 Q So you would discount having opened this on the 24th because he is not in the office?
28 A. Correct.

29 Q It was sent on the 20th, which is the Monday? A. Yes.

30 Q So there is a possibility on that basis that you could have opened it on the Thursday, 23rd?
31 A. It is a very, very, very remote possibility.

32 Q Well why do you say it is a very remote possibility? A. My understanding with second class
33 post – second class post is a lottery at the best of times, and certainly in rural areas. Knowing
34 the problems that we were having with the post at the time and the farm being closed, and we

1 were tearing our hair out at the time because post was delayed so much, I cannot imagine that
2 it would be on the 23rd, I just cannot imagine it.

3 (The Tribunal confer)

4 THE CHAIRMAN: You were saying that you could not imagine it was the 23rd, the Thursday, how
5 do you know that **this** letter was the letter which was delivered to the other address and not one
6 that had been delivered properly to this address? A. I know that because the only mail that
7 was getting through at that time directly to the address was any mail that came by a courier or
8 that required a signature. The general mail was going to the farm.

9 Q Did you take that matter up with the Post Office? A. On many, many, many occasions and
10 the delivery drivers, the Post Office drivers, and there were varying different drivers, and we
11 took it up on many, many occasions, and they could not get it right. It is still persisting, but it
12 is nowhere near as bad as it was at that time. But yes, we took it up many times, and each time
13 the Post Office assured us "We will get it right". We gave them a list of all of the names on
14 the envelopes that were likely to be relating to our building as opposed to the farm building.
15 We gave that list to them, to ask them to put that in their sorting office but that was still to no
16 avail.

17 Q Do you have anything to do with the farm? A. No, no.

18 Q Did you ever have anything to do with the farm? A. No.

19 Q So it is completely separate? A. It is completely separate.

20 Q So you say it is unlikely it was on the Thursday because having regard to second class post and
21 delivery from the farm it is unlikely to have got there on the Thursday? A. Yes, if – how
22 can I put this – if there was some significant happening on that day, as you asked, that would
23 have triggered my memory to actually nail it down to a day then had I thought of that I would
24 have said that, but unfortunately there was no significant thing that happened on that day that
25 jogs my memory. The very fact, as I see it, as a layman, we have the OFT saying that they
26 posted it by second class post but they cannot absolutely for certain say that it went into that
27 post box on the 20th; and I equally cannot say that it arrived on 1st or 2nd of March, we have
28 that problem.

29 The way I look at this now is that what is most likely to have happened to prove one way or
30 t'other? I am of the firm belief that knowing the disruptions in the post and all of our post as a
31 whole was between seven and fourteen days late, that was general across the board, we
32 accepted that. So knowing that, acceptance of that and the fact that it was second class post
33 that backs up my judgment further that it was after this, around the time that I'm stating it to
34 be.

1 Q But if you say it was seven to ten days late it would not have even been 1st March? A. It
2 could have been well into March, it could have been the 7th March, I just don't know.

3 Q Have you made inquiries of the two people that you had the telephone conversations with as to
4 the date of the telephone conversations with them? A. No, I didn't think to do that, and had
5 I thought of that, that was a good idea. No, I hadn't thought of that, because that would yes,
6 narrow it down.

7 Q Did you speak to them about anything else but this letter in those telephone conversations?
8 A. The conversation would have been just generally this, yes, apart from pleasantries – "how
9 are you?" and the by-the-bys ----

10 Q It would have been this? A. It would have been this yes, because it was that important.

11 Q So why did you not phone them immediately that you got the letter, why did you wait a few
12 days? A. Because I assumed that it was all over. It wasn't until you know, until I took some
13 legal advice that they said "You have the right to appeal".

14 Q Did you take legal advice between the time that you received the letter and the time you
15 phoned them? A. No, no, no.

16 Q I am sorry, I misunderstood what you said? A. I can't remember whether I phoned them or
17 they phoned me, but on those telephone conversations at that point I had not taken legal
18 advice. It was at that point I was under the impression it was over, Slow Dazzle and Global
19 Merchandising were of the same view, and we commiserated, and swore generally that how
20 unfair this all is, etc. and we were just – forgive the phrase – we were gutted and it was
21 commiserations and then that was the end of the phone call. Then it was afterwards, thinking
22 this is wrong that this should all come to an end like this, because there is a whole business that
23 has been destroyed, I have lost a lot of money as a result of it as an investor into that company.
24 I have been in the poster business for 35 issues and the issue of copyright posters was very
25 dear to my heart, it was legitimate, and it was just being forced out. So this was nagging on
26 my mind – although they say it is the end – "surely there must be something else that I can
27 do?" I started going through the civil route against these people to see if I could find
28 somebody who would be interested in taking us up on the civil route, and it was searching in
29 those conversations that I then came across a lawyer who then explained to me that there is the
30 right of appeal. Then I immediately addressed ----

31 Q Do you know the date when that happened? A. No, I don't know precisely the date, I do not
32 know precisely the date.

33 (The Tribunal confer)

1 MR. CLAYTON: The only question I have, I think, Mr. Assirati, I am surprised that you do not
2 have any recollection of the date when you opened this letter. You were so surprised, you
3 were shocked ---- A. Yes.

4 Q When you read the letter from the OFT there is no other reference to the date, if one is
5 surprised by something normally you remember something else happening at the same time on
6 the same date that acts as a reference to that event? A. Yes, and if I could – as I mentioned
7 to your colleague – if there was something significant on that day then yes, I would have said
8 so because that would have then narrowed it down to the date. I would be a very happy man if
9 I could think of that, but there was nothing significant.

10 If I can explain my life, because this actually might help: I am semi-retired, apart from
11 advising Independent Posters my main business property investment where I collect the rents. I
12 suppose you could call me a “bit of a recluse” – I live on a farm in the middle of nowhere. I
13 am a confirmed bachelor, the only contact I have with the outside world is my secretary and
14 my accountant who come into the office and one day rolls into another. Berners Hall is in the
15 middle of a farm, and there are about 10 or 15 acres surrounding the Hall and I spend my time
16 as a country recluse. So one day rolls into another and if it wasn’t for Roger coming in on
17 those certain days I wouldn’t be able to tell Saturday from Thursday. Does that make some
18 sort of sense? Hopefully it does.

19 Q There was nothing on the radio on that date that you could refer to again to give you some
20 reference? A. The only thing on the radio is will be Mozart because I have Capital Radio on
21 very faintly in the background if I am working in the office.

22 Q There was no news event ---- A. If there was it didn’t register. I received the letter, I’m
23 gutted, I put it down, I reflect that it is all over, some time after that and it would’ve been many
24 days after that I speak with the other parties who are also gutted, so you bury it.

25 Q Did you have any conversation with Mr. Talbot about it, after you read the letter? A. I
26 undoubtedly said some expletives, you know, expression of my disappointment.

27 Q He was not in the room when you read the letter? A. He wasn’t in the room when I read the
28 letter, but what I would’ve done afterwards is mention it. It is inconceivable that I wouldn’t
29 have mentioned it to him, because I was disappointed.

30 Q He would not have remembered the date – or would he have remembered the date? A. No,
31 because if he did he would have said something, because I was discussing, when I asked him to
32 provide that letter for me with regard to the post, he wanted to know why and I explained to
33 him why we needed, you know, I wanted some evidence to corroborate what I was saying – is
34 “corroborated” the right word?

1 Q Mmm. A. Yes, what I was saying, and I explained the situation to him, and if had known
2 the date he would have said something but he did not. He is 60-odd years of age and time is
3 drifting by for him as well. It was not important to him, it was my baby, it is not his baby.

4 MR. CLAYTON: Thank you. A. Sorry, there was one thing that I do not know if this is the right
5 time to bring this up, but something was pointed out to me that under the Rules a document
6 should only be served first class post, not second class post?

7 THE CHAIRMAN: I think that is our Rules. Are you looking at our Rules? A. Well I was given
8 this, may I pass this up?

9 Q Yes. (Document handed to the Tribunal) A. I was given this by the lawyer this morning,
10 who said that under the rules ----

11 Q This looks like it is the CPR Rules. A. CPR, that is the one.

12 Q That is nothing to do with here. A. Okay, right, sorry.

13 Q It is true that court documents are by first class post. This Tribunal has specific rules which
14 also require first class post. We will hear from Mr. Pickford about what the position is with
15 the OFT if that becomes relevant. A. Okay, sorry.

16 Q But our Rule in relation to this is when it is notified you have to receive it so it does not matter
17 what sort of post it is. A. All right, okay, fine, okay, yes.

18 MR. SUMMERS: Mr. Assirati, your evidence is that all your post was being delivered to the farm,
19 is that correct? A. Yes.

20 Q All unless it was required to be signed for, or was registered? A. Yes, all the post from the
21 Post Office, the little van that comes around was being delivered to the farm.

22 Q Yes, and this had been going on effectively since you moved to the property? A. Yes, which
23 was in about October.

24 Q So what can you tell us about the letter that the OFT sent to you in January which was the
25 draft, was that similarly affected? A. Yes, undoubtedly.

26 Q "Undoubtedly"? A. Yes, because all the mail was – if they sent it to me at Berners Hall it
27 would have gone via that route, via the farm.

28 Q Did you reply to the OFT by post to that letter? A. No.

29 Q When you received (eventually as you would say) the letter that was sent to you, or dated 20th
30 February, and that arrived at your home, again are you telling us that there was only one
31 delivery of post that day and it was not made by the postman, it was simply made by Mr.
32 Watson from the farm who brought it up? Or was the post sorted by Mr. Talbot who received
33 firstly a delivery by the post office and then later on up comes Mr. Watson with a letter?
34 A. No, if we get post, if post arrives directly, it would have been either from Mr. Watson or
35 someone from the farm – probably not Mr. Watson, one of the farmhands – would bring the

1 post over. Or alternatively it would be either Roger Talbot, sometimes myself walking across
2 to the farm and seeing if the farm is open to see if there is any post for us.

3 Q But Mr. Talbot might have been surprised if this letter had come, as it were, via the postman
4 because that would have been highly unusual? A. That would have been highly unusual,
5 yes.

6 Q And therefore memorable? A. Oh yes, yes. In those days yes, because hardly anything, you
7 know, yes, the only things that came by the post was, yes, stuff that needed a signature.

8 Q Right, thank you. Can you tell us to which part of the postal authority you complained about
9 the inadequate delivery service? A. The sorting office in Ongar.

10 Q Which is your local sorting office? A. The local sorting office.

11 Q For the Chelmsford District? A. For this district, yes.

12 Q Do you have any documentary evidence of that? A. No, but they have documentary
13 evidence of the lists of the names, because we have supplied them with a list of all the names
14 at Berners Hall that they should be delivering to.

15 Q So the complaints that you made to them were made by telephone? A. On numerous
16 occasions by telephone and on one occasion going in there and giving them the list.

17 Q And the list was handed to them so somewhere there there is a document from you with a list
18 of the addresses and stating that mail has been misdirected? A. I can remember the list
19 because I typed the list myself. It was mail to be delivered to Berners Hall and it was a list of
20 all the names, and I was an A4 sheet of paper.

21 Q And was that acknowledged by the Post Office? A. No, they just said "Thank you very
22 much" when I gave it to them.

23 Q You asked for assurances, perhaps, that this would not happen? A. Yes, this was on an
24 ongoing thing.

25 Q Because there is a formal complaint mechanism with the postal service which you may not
26 have been aware of? A. I certainly was not, no, I was not aware that there we could
27 complain. The problem as I saw it was that the postcodes were identical and I thought that that
28 was the problem.

29 MR. SUMMERS: Yes, thank you.

30 THE CHAIRMAN: We have no further questions. Do you have any questions arising from that?

31 MR. PICKFORD: Madam, yes, I do just have one question.

32 Questioned by Mr. PICKFORD

33 Q Mr. Assirati, you mentioned that you spoke to some of the other people whom you are acting
34 on behalf of ---- A. Yes.

1 Q -- once you received the letter. Do you recall, did you phone them or did they phone you?
2 A. I cannot remember whether I phoned them or they phoned me, I cannot remember.

3 Q The reason why I ask is because you will presumably be aware that Slow Dazzle and Global
4 Merchandising also received their own letters from the OFT? A. Yes.

5 Q And had they received their letters considerably before you because your post was significantly
6 delayed ---- A. Yes.

7 Q -- presumably the way that you would have found out about the OFT's decision would not
8 have been by reading the letter, it would have been by them phoning you saying "Look, we
9 have received this negative decision from the OFT, isn't it a shame?" A. That is a
10 possibility, but that did not happen. I remember very clearly that the phone calls with them
11 were after I received the letter. But they were probably as gutted as I was that it was all over.
12 The poster business is a very, very laid back business. Just to give you an example of the
13 people that are in this business, Ron Palmer is an ex-hippy based in Devon, very, very laid
14 back type person. Slow Dazzle, yes they are a company but their heart – how shall I put this –
15 their heart was not in it as much as my heart was in it, or Global Merchandising, for example,
16 because they managed to survive the attack by Trap. Their dilution in sales if any – well I
17 can't speak for them because I don't know what their dilution of sales was, was not as
18 significant as ours. They were laid back for a different reason, it was not high on their agenda.
19 Ron Palmer, it was high on his agenda (Global Merchandising) because that was his livelihood
20 selling this product. It was high on my agenda because I had been in the industry for so long.
21 But I definitely do remember that the conversations I had with them were after I had received
22 the letter.

23 MR. PICKFORD: Those are all my questions, thank you.

24 Further questioned by The TRIBUNAL

25 MR. SUMMERS: Mr. Assirati, one final question from me. Can you give us a sense of the volume
26 of post that you receive every week? A. Right, okay – including or excluding junk mail?

27 Q I am thinking of the post that does not have to be signed for or formally received? A. Right,
28 you are probably taking between three and six letters, three, four, five, six letters a day would
29 be the consumption.

30 Q Right, so six days post times, shall we say five – 30 pieces of mail a week are being delivered
31 to the farm, and then redelivered to you every week? A. Yes, that would be, yes, between
32 20 and 30 would be a reasonable assumption, yes.

33 Q And Mr. Watson must, of course, be considerably inconvenienced by this? A. He is a
34 farmer – is he inconvenienced by it?

1 Q And are you aware of them having made separate complaints? A. Oh they have made
2 separate complaints, yes, yes, on several occasions because they – I won't say they are
3 inconvenienced, but they are terribly irritated by having to do it.

4 Q Because it has been for a period of ---- A. Because it just keeps going on and on.

5 Q -- five months? A. Yes, of going on and on and on. It cannot be an inconvenience because
6 they just throw them in the corner, that is not an inconvenience, but there is an irritation there.

7 MR. SUMMERS: Yes, thank you.

8 THE CHAIRMAN: You can stay there, or step down? A. Okay, I'll stay here, as I've now got my
9 water

10 THE CHAIRMAN: Do you want to address us on that, or do you want ----

11 MR. PICKFORD: Madam, yes, I did have some short observations on Mr. Assirati's evidence. The
12 first of those is that notwithstanding the Tribunal's very helpful questions there still does
13 remain something of an issue of doubt as to when Mr. Assirati did actually receive this letter.
14 The only firm point of reference really before the Tribunal at the moment is that the letter was
15 sent on 20th February.

16 THE CHAIRMAN: Even that is not quite firm that it is the 20th. One can see it might have been the
17 21st, I do not think you can say it was not the 21st. It went into the OFT posting on the 20th, in
18 the afternoon.

19 MR. PICKFORD: Indeed, and the post is collected by the Post Office at 6 o'clock or thereabouts of
20 that evening and goes straight off to the Royal Mail sorting office.

21 THE CHAIRMAN: So it should be the 20th.

22 MR. PICKFORD: So therefore in the absence of evidence to the contrary we can say that that date is
23 relatively firm.

24 In terms of the delivery of post to Mr. Assirati's address, there is a degree of inconsistency in
25 terms of the evidence that we have heard on that point, Mr. Assirati says in oral evidence that
26 all of his post from the Royal Mail, some six months after he went to Berners Hall, Berners
27 Hall Farm. The letter of 30th May that Mr. Assirati sent to the Tribunal requesting this hearing
28 said "For several months the Post Office were delivering some of my mail to Berners Hall
29 Farm", so there is a degree of inconsistency there. The item of evidence that it appears to be
30 most inconsistent with is in fact the letter from David Watson, the farm manager, of 11th July
31 and that says that "Almost inevitably we receive post addressed to your ..." presumably
32 missing the word "property" (or something similar) "... from time to time." Now, Mr. Assirati
33 has said that there are some 30 letters a week that they would expect, maybe six letters a day.
34 It is not entirely consistent with that that the post is apparently being misdirected from time to
35 time.

1 Finally, I would observe in relation to Mr. Assirati's recent evidence that he is clear that he
2 first knew the OFT decision when he read the letter, not when he spoke to anyone about it on
3 the phone. That does tend to suggest – unless there were similar difficulties in post being
4 received by Slow Dazzle and Global Merchandising – that he received the letter relatively
5 promptly, because certainly if this was a matter of some keen importance to Slow Dazzle and
6 Mr. Assirati were representing Slow Dazzle one would have thought that if he got the letter
7 considerably later they would have caught him first and they would have had a discussion
8 about it.

9 Those are my only observations on the evidence that we have just heard.

10 THE CHAIRMAN: Do you want to add anything?

11 MR. ASSIRATI: Is it possible on those two points?

12 THE CHAIRMAN: Yes.

13 MR. ASSIRATI: The word “some”, if we look at that letter, we are talking about some mail being
14 the Post Office mail, because mail comes in via, you know, couriers can deliver mail as well.
15 So therefore the “some” – my English was not very good – if I can find the actual letter –
16 there it is, “some of my mail”, it is not “some of the Post Office mail”, it is “some of my
17 mail”, being what comes via the Post Office. It is my bad grammar. It is on p.1 of my letter of
18 30th, third paragraph. (After a pause) This has become a point of issue ----

19 THE CHAIRMAN: Well what you say is: “For several months the Post Office were delivering some
20 of my mail.”

21 MR. ASSIRATI: Yes, it is very bad grammar, yes and that I apologise for.

22 THE CHAIRMAN: It is not what you meant, anyway.

23 MR. ASSIRATI: It is certainly not what I meant, no.

24 THE CHAIRMAN: What I understand you say you meant is that all mail from the Post Office was
25 delivered to this other address?

26 MR. ASSIRATI: That is correct, yes.

27 THE CHAIRMAN: You get courier mail or hand delivery mail, or whatever, that gets delivered to
28 the right place?

29 MR. ASSIRATI: Yes.

30 THE CHAIRMAN: But anything that comes through the Post Office goes wrong?

31 MR. ASSIRATI: Yes, and it was consistently going wrong at that time and, as I explained, it has got
32 better over time it is still not perfect, which brings me to the second point the gentleman said,
33 which was Mr. Watson's letter says “... from time to time.” Now, I asked Mr. Watson to
34 confirm to me what the situation was. I did not lead him, I did not say to him “What happened
35 around, in February of this year?” because that would have been wrong of me to do that and I

1 didn't want to put any words in his mouth. I said could he explain the situation? I said "I've
2 got a problem", and could he explain the situation with regard to the post? This is his words
3 here, and my understanding, reading of this, this is consistent, this truly reflects what has
4 happened because over time, lately the mail is getting through. So when he is saying, his
5 words are ----

6 THE CHAIRMAN: "We receive post addressed to you ..." it must be, "... from time to time."

7 MR. ASSIRATI: Yes, "from you".

8 THE CHAIRMAN: You are saying that is current?

9 MR. ASSIRATI: Yes, he is talking about the current, yes, because it would be wrong of me to say to
10 him, to identify, because he wouldn't remember. But the traffic going to the farm was highly
11 active on all of it in the early days and it is getting less and less and less over the period. On
12 one day they might get it right, but I'll probably have moved out by then.

13 THE CHAIRMAN: Is there anything else you would like to say?

14 MR. ASSIRATI: No, no, it was just those two points which needed further clarification from me.

15 THE CHAIRMAN: We will rise.

16 (The hearing adjourned at 11.40 a.m. and resumed at 12.45 p.m.)

17 [See separate transcript for Tribunal's ruling]

18 Having regard to that decision we do not have to consider extending the time limit for lodging
19 the notice of appeal under Rule 8(2). However, this Tribunal would like to mention a number
20 of points. First, the point raised by Mr. Assirati, which is as to whether the Office of Fair
21 Trading should include in its letters of this kind – and any clear decision letter – that if the
22 recipient wishes to take the matter further, or have the matter reviewed he should take steps
23 promptly, particularly because there are strict time limits imposed by the courts and by the
24 Tribunals. Perhaps Mr. Pickford, you might like to say something about that in a moment.

25 MR. PICKFORD: Indeed.

26 THE CHAIRMAN: The second point we wish to mention is that this hearing has only dealt with the
27 question of whether the notice of appeal has been lodged in time, and not with whether there is
28 a valid ground of appeal, whether or not it is an appealable decision which is a decision on
29 which there can be an appeal within the jurisdiction of this Tribunal.

30 We understand that what the OFT submit is that the letter of 20th February is not such a
31 decision, and that the route for review, if the OFT were correct as to that, would be to the
32 Administrative Court of the High Court. An application for Judicial Review (which is what
33 that route is) must be made promptly and within three months from the time the applicant has
34 notice of the decision and has exhausted all legal remedies. Now, we cannot comment on
35 whether or not the letter of 20th February contains an appealable decision. That is a matter

1 which we will have to decide hereafter. But Mr. Assirati and his colleagues should carefully
2 consider the submission of the OFT as to that. Again, that may be something you may like to
3 mention in a moment.

4 We would also like to comment on the use of second class post, since it is important to know
5 the date when a recipient has been notified of any decision of the OFT, whether that decision
6 is an appealable decision or not, or whether it is a matter as contained in this letter, because of
7 the time limits both here and in the courts. We are a little concerned of the use of second class
8 post rather than first class post for those purposes, particularly because first class post is a
9 recognised form of postal delivery within the Civil Procedure Rules; and so for certainty we
10 are a little concerned that second class post can cause rather a lot of uncertainty.

11 Those are the points that we would like to mention and perhaps we can be addressed on; we
12 will then turn to a timetable.

13 MR. PICKFORD: Thank you, madam. In relation to one of those points I would like very briefly to
14 take instructions – I do not need to leave the court, but if I might take those instructions now?

15 THE CHAIRMAN: Yes.

16 MR. PICKFORD: Thank you. (After a pause) Thank you, madam. As I understand it there are
17 three matters on which the Tribunal would like to be addressed. First, as to whether the OFT
18 should include something in letters such as the one that was sent to Mr. Assirati explaining
19 potential rights of appeal. In our submission that would be entirely wrong for the OFT to do
20 so. In this particular case the OFT did not believe that it had taken an appealable decision.

21 THE CHAIRMAN: Ah, but our point is that even if it is not an appealable decision, and it may well
22 be that you do not want to highlight that, we can understand that, but even for Judicial Review
23 purposes where it is not an appealable decision but there is a possibility of Judicial Review,
24 that matter also has a time limit. So the way that that could be overcome is merely to say that
25 if somebody wishes to have a Review of the decision, or to take the matter further, or is
26 concerned about whatever is in the letter they must act promptly because there are stringent
27 time limits, and be general. I am not formulating words, or anything of that sort, we are
28 putting it forward so that it can be considered as best practice. The OFT is a body which is
29 setting out best practices for other organisations. I can say that in court if you have litigants in
30 person in front of you, you are supposed to tell them about appeals. Now, I take your point, but
31 there may not be an appeal but there may be something else. A number of Government
32 Bodies do it, and that is Judicial Review sometimes. In disciplinary work it is now standard
33 practice, because Ombudsmen have said that one must say what the time limit is, or how they
34 are to go about it, so it is becoming best practice. All we are intimating is that perhaps the
35 OFT ought to consider best practice in that area.

1 MR. PICKFORD: Certainly I am sure that the OFT would consider any remarks that the Tribunal
2 made as to what they consider best practice when formulating their own policies.

3 THE CHAIRMAN: But it is not to do with being an appealable decision, we quite understand that.

4 MR. PICKFORD: Indeed, but if I could briefly address the Tribunal on the broader question of other
5 routes of appeal, all other routes of review such as Judicial Review, whilst it may be the case
6 that there are some public authorities that mention the possibility of Judicial Review in their
7 letters, there are equally many public authorities that do not. There are obviously potentially
8 quite serious administrative implications if one puts at the end of potentially a very wide range
9 of letters that one writes that there may be some avenue of appeal or review of this decision,
10 you may have to act very promptly. Even if it was that broad one could well find that one was
11 wrongly encouraging people to bring potentially appeals or some sort of legal ----

12 THE CHAIRMAN: That was the response from disciplinary bodies and regulatory bodies, non-
13 governmental bodies to the Ombudsmen and, as I understand it, that response has not been
14 accepted and best practice is that one ought to tell them, one is not encouraging them, they
15 ought to be able to take legal advice. If the Body is right and it is not appealable or reviewable
16 either on the merits or in law, the result is that if they take advice it will stop unnecessary
17 applications and therefore one should not be afraid of it.
18 The message, and from what has happened here, the message is consideration ought to be
19 given.

20 MR. PICKFORD: Madam, I hear the Tribunal and certainly I am sure the OFT would do that, but it
21 is important to register that there are potential difficulties, and also that every administrative
22 decision in some senses turns on its particular circumstances, there may be circumstances
23 where it is appropriate to do it. There may be others where it is not.

24 THE CHAIRMAN: But that may have to be considered. It is not done at all at the moment. It is not
25 even done in appealable decisions I do not think?

26 MR. PICKFORD: There are some guidelines, as I understand it, that are followed in relation to
27 certain types of decision. It depends on the view that is taken of the decision.

28 THE CHAIRMAN: Well perhaps one ought to look and see what other Bodies are doing and what
29 best practice is thought to be at the moment in relation to it.

30 MR. PICKFORD: Indeed, I must say, however, obviously I would not wish to commit the OFT to
31 anything here, because they may well take the view that it is not appropriate to change
32 particularly the way they do things in the light of all the circumstances having reviewed them.
33 Turning to the second question that I was asked to address – or certainly one of the questions I
34 was asked to address – which was concerning the use of second class post. In relation to this

1 particular decision letter it was not, as I have said, considered by the OFT to constitute an
2 appealable decision and therefore ---

3 THE CHAIRMAN: But our point is that it is not actually so important in relation to an appealable
4 decision because we have got the word “notified”, and normally an appealable decision is one
5 which is published so that one does not have a problem. But on Judicial Review there is a
6 problem because you do not know when and there is no deeming provision. With second class
7 post there is no way that one can work out or have a starting point, and that is why particularly
8 the use of second class post may be considered inappropriate.

9 MR. PICKFORD: Certainly, madam, the point is well heard and it is something that the OFT can
10 reflect upon, although I would say in common with my submissions on the first point there are
11 obviously some considerations in terms of cost and they need to be borne in mind at the same
12 time.

13 The third point that I was asked to address was the question of whether this particular decision
14 is, in fact, appealable or not?

15 THE CHAIRMAN: Yes, we do not want to go into that, it is a question of exhausting legal remedies
16 really, and by being here and having the question dealt with, whether the issue of whether that
17 is part of exhausting legal remedies so that time has not yet started.

18 MR. PICKFORD: It is not really for us to effectively advise Mr. Assirati on the correct legal route
19 for him to take. What I would say is that if one brings an appeal to the wrong Tribunal, and
20 we say this is the wrong Tribunal, that is not in fact exhausting one’s remedies. They have to
21 be legitimate remedies.

22 THE CHAIRMAN: Well if you start a case in court and you are in the wrong court, so you start it by
23 writ rather than by Judicial Review, now that is an automatic transfer, is it not, so that your
24 time limit does stop – I think.

25 MR. PICKFORD: It is clearly a point that would need to be ----

26 THE CHAIRMAN: It is clearly a difficult point.

27 MR. PICKFORD: -- considered, and principally it would need to be considered by Mr. Assirati.

28 THE CHAIRMAN: Yes, well that indicates Mr. Assirati needs to consider that.

29 MR. ASSIRATI: Yes, I understand.

30 THE CHAIRMAN: And you understand the point that is being made?

31 MR. ASSIRATI: I am assuming I get a copy of your Judgment in due course?

32 THE CHAIRMAN: Yes. It will also be on the website.

33 MR. ASSIRATI: Yes. My understanding is that we have passed today’s hurdle in respect that we are
34 not out of time but all we have done is that we are on track now, but our main hurdle is to find
35 out whether this is appealable or not?

1 THE CHAIRMAN: Whether it is appealable to this Tribunal, whether we have jurisdiction.

2 MR. ASSIRATI: To this Tribunal or some other mechanism.

3 THE CHAIRMAN: Yes, but if you go to the Administrative Court, had you taken the Administrative

4 Court route originally you would have had three months from 20th February.

5 MR. ASSIRATI: Right.

6 THE CHAIRMAN: So that period has now expired, and the question that we are debating, but we

7 cannot give you an answer ----

8 MR. ASSIRATI: Is whether, yes, we have forfeited that period ----

9 THE CHAIRMAN: Absolutely.

10 MR. ASSIRATI: -- as a result of this.

11 THE CHAIRMAN: And what you need to take advice about is to protect your position, as much as

12 you can, if you want to take Judicial Review proceedings ----

13 MR. ASSIRATI: Yes.

14 THE CHAIRMAN: -- either at the same time as this, or advice as to which is the most appropriate

15 way, I am not going to say which because I do not know.

16 MR. ASSIRATI: Quite.

17 THE CHAIRMAN: But you need to take prompt advice.

18 MR. ASSIRATI: Yes.

19 MR. PICKFORD: Madam, for the record, on that particular point I should make it completely

20 unequivocal that the OFT is not expressing any view on whether this decision is one that is

21 properly reviewable on Judicial Review. That is really a matter for Mr. Assirati.

22 THE CHAIRMAN: Right, so we get to the timetable. Can I first say that we need to put a case

23 number to this now that we have let it in. A case number will be allocated and that means that

24 the next stage is – I think it is Rule 15 – publication.

25 MR. PICKFORD: Of a summary of the appeal.

26 THE CHAIRMAN: That indicates “...that any person who considers that he has sufficient interest

27 may apply to intervene.”

28 MR. PICKFORD: Yes.

29 THE CHAIRMAN: That gives them three weeks from publication – whenever publication is going

30 to take place as soon as possible in here, which is usually quite quickly. The next thing is that

31 you will want admissibility to be dealt with as a preliminary point.

32 MR. PICKFORD: Indeed.

33 THE CHAIRMAN: And that is a sensible thing to do. You agree with that?

34 MR. ASSIRATI: Yes.

1 THE CHAIRMAN: Do you want to put in a defence, or do you only want to deal with the
2 admissibility point?

3 MR. PICKFORD: I will just take instructions, I would imagine we would prefer simply to deal with
4 the admissibility point first, but I will take instructions on that. (After a pause) Yes, I am
5 getting wholehearted nods from behind me.

6 THE CHAIRMAN: (After a pause) So probably the first thing is disclosure on admissibility is it?

7 MR. PICKFORD: Yes, I would have thought it is.

8 THE CHAIRMAN: You disclose your material?

9 MR. PICKFORD: Indeed.

10 THE CHAIRMAN: How long do you want for that?

11 MR. PICKFORD: (After a pause) We can certainly do that within two weeks.

12 THE CHAIRMAN: So that takes us to 27th July. Disclosure 27th July of documents relevant to
13 question of admissibility. It has been done sufficient times now to know the sort of things that
14 need to be disclosed.

15 MR. PICKFORD: Yes.

16 THE CHAIRMAN: Then you are going to want to put in some submissions having regard to those
17 documents?

18 MR. PICKFORD: Yes.

19 THE CHAIRMAN: I think possibly the way to do it is for you to put your submissions in, so we will
20 do this like pleadings in a way, then Mr. Assirati and then you?

21 MR. PICKFORD: Yes.

22 THE CHAIRMAN: So you might not have been able to do that by 27th July, or you would have?

23 MR. PICKFORD: I would have thought it would be appropriate to allow a period thereafter for
24 those submissions?

25 THE CHAIRMAN: How long do you want – another 14 days?

26 MR. PICKFORD: Yes, please, madam.

27 THE CHAIRMAN: So 10th August. If I call them “Submissions on admissibility by OFT”?

28 MR. PICKFORD: Yes, thank you.

29 THE CHAIRMAN: Now, Mr. Assirati, you will then have a bundle which will have the documents
30 as to what was going on at the time, the contemporaneous documents, which the OFT will say
31 will show that they have not made a decision.

32 MR. ASSIRATI: Yes.

33 THE CHAIRMAN: And which you will have to look at and see whether you agree with them or not?

34 MR. ASSIRATI: Yes.

1 THE CHAIRMAN: And they will give you their submissions which explain why they say that by
2 10th August.

3 MR. ASSIRATI: By 10th August, yes.

4 THE CHAIRMAN: I would have thought the best way to do it is to follow the usual procedure and
5 put in your written submissions ----

6 MR. ASSIRATI: Yes,

7 THE CHAIRMAN: -- having gone through that bundle and what the OFT say as to why, if you do,
8 why you say they are wrong.

9 MR. ASSIRATI: Yes, I understand.

10 THE CHAIRMAN: Now how long do you want to do that?

11 MR. ASSIRATI: Obviously as long as possible to give me time to put everything together, but
12 without taking liberties and holding the whole thing up. What would you suggest?

13 THE CHAIRMAN: The thing is this, are you going on holiday in August, that is the first question?

14 MR. ASSIRATI: No, I don't do holidays.

15 THE CHAIRMAN: You do not do holidays, right.

16 MR. ASSIRATI: No.

17 THE CHAIRMAN: You do not need holidays if you are a recluse.

18 MR. ASSIRATI: No, I don't need holidays

19 THE CHAIRMAN: So are you being helped on this?

20 MR. ASSIRATI: Yes, I have had some guidance, but now we are able to go on to the next stage, I
21 have to get some real help on this because otherwise it is not fair on everybody else if I am a
22 layman.

23 THE CHAIRMAN: All right. (After a pause) I am sorry, there is very serious conversation going
24 on there, does it affect us?

25 MR. PICKFORD: Madam, my apologies, we were simply discussing whether it was in fact
26 appropriate in the circumstances to put in a defence ----

27 THE CHAIRMAN: I had that concern as well.

28 MR. PICKFORD: -- given the potentially somewhat circuitous route that we were otherwise going to
29 follow. Certainly the OFT ----

30 THE CHAIRMAN: Do you want to put in a defence?

31 MR. PICKFORD: Certainly the OFT could put in a defence, it may be preferable if we adopted the
32 normal course.

33 THE CHAIRMAN: Yes, the same was going through all our minds, that it might be that the defence
34 assists putting it into context.

35 MR. PICKFORD: Indeed.

1 THE CHAIRMAN: All right, when do you want to put in a defence by? 10th August.

2 MR. PICKFORD: 10th August would probably be appropriate. The difficulty with 10th August is that

3 in fact both myself and one of those instructing me are on holiday ---

4 THE CHAIRMAN: When are you going on holiday?

5 MR. PICKFORD: For my part at the beginning of August, and my instructing solicitor from 6th to

6 12th.

7 THE CHAIRMAN: Oh right, so shall we move this all up a bit? Have you any reason for this to be

8 urgent?

9 MR. ASSIRATI: No, no.

10 THE CHAIRMAN: Have you got any reason for this to be urgent?

11 MR. PICKFORD: No.

12 THE CHAIRMAN: Normally this Tribunal is very expeditious and we do very short timetables.

13 MR. PICKFORD: Ordinarily we would have six weeks from receipt of the notice of appeal, and until

14 today it was not strictly clear whether there was a notice of appeal or not.

15 THE CHAIRMAN: So if you had six weeks from today and did this all from six weeks, and then we

16 would know if there are any interveners. I do not know if it is likely there will be any

17 interveners.

18 MR. PICKFORD: That would certainly I think assist in regularising the proceedings if we did

19 approach it on that basis.

20 THE CHAIRMAN: Shall we do that then? So six weeks would be 24th August. If we had defence,

21 disclosure and submissions on admissibility on 24th August, that gives everybody ample time

22 to do everything.

23 MR. PICKFORD: Indeed.

24 THE CHAIRMAN: And then we have ----

25 MR. ASSIRATI: My submission?

26 THE CHAIRMAN: Yes, that may assist you because you would then know what their defence on the

27 main case was.

28 MR. ASSIRATI: Yes, that would be extremely helpful.

29 THE CHAIRMAN: Then your submissions and any reply – you may want to put in a reply, I do not

30 know, but we will give you leave to do it. They are having six weeks, do you want ----

31 MR. ASSIRATI: I think that I fair enough, equal time.

32 THE CHAIRMAN: Normally I would not do that.

33 MR. PICKFORD: Madam, I have no particular desire to impose an onerous timetable on Mr.

34 Assirati, but it is somewhat dragging things out if there is a further six weeks thereafter.

1 THE CHAIRMAN: One of the difficulties is that if I am going to sit as Chairman on this I cannot do
2 it before middle to end of October. Now, we could change Chairman, or we can get a date
3 now, if you see what I mean. So it is a question of whether, if we did it on six weeks, then that
4 would work out just right. If we did it earlier we would not be able to hear it before the
5 beginning of October, so does it really make any difference? I do not know what other
6 people's timetables are, whether you would get a hearing date earlier anyway. (After a pause)
7 It looks as if none of us can do it in September effectively, so we would have to change the
8 whole Tribunal. So by the time you have changed the whole Tribunal ----

9 MR. PICKFORD: It would appear to be sensible to arrange matters so that we can have the present
10 Tribunal.

11 THE CHAIRMAN: Yes, so it makes no difference – that is why I said “is it urgent?” because if
12 anybody thought it was urgent ----

13 MR. PICKFORD: There is no particular urgency on our part.

14 THE CHAIRMAN: Right, so what is six weeks from 24th August – 5th October, that works out quite
15 nicely, does it not? You may want to put submissions in in reply?

16 MR. PICKFORD: Possibly, yes.

17 THE CHAIRMAN: So if you did that by, say, 19th October. We are just going to get the diary. Are
18 there any dates to avoid after 19th October?

19 MR. PICKFORD: I am afraid I do not actually have my court diary.

20 THE CHAIRMAN: We do not normally do it in accordance with everybody's convenience, but it
21 should be all right, should it not?

22 MR. PICKFORD: I would have thought so. I could certainly endeavour to contact the Tribunal
23 immediately this afternoon if there were any serious difficulties.

24 THE CHAIRMAN: Well let us see what dates we can do, because there is quite a lot of us to try and
25 arrange – do you have any dates?

26 MR. ASSIRATI: No.

27 THE CHAIRMAN: Well let us just wait a minute and we will get a date. Is there anything else that
28 we need to deal with?

29 MR. PICKFORD: The only other matters, madam, are the housekeeping points that I included at the
30 beginning of my skeleton relating to precisely who the appellant is and his authority to act on
31 behalf of ----

32 THE CHAIRMAN: And in your witness statement I think you said you are “authorised”, but I think
33 you need to provide your authority.

34 MR. ASSIRATI: Yes, from the administrator a document saying ----

35 THE CHAIRMAN: Absolutely, saying you are authorised.

1 MR. ASSIRATI: No, that is fine.

2 THE CHAIRMAN: And does that regularise it then?

3 MR. PICKFORD: And also if Mr. Assirati is acting on behalf of others, he needs the equivalent

4 documents from them authorising ----

5 MR. ASSIRATI: So documents from all?

6 THE CHAIRMAN: We could regularise that if they intervened and then took no further part.

7 MR. PICKFORD: Well that would deal with one aspect of it. I am not sure if they merely intervened

8 without making it clear that they were happy to effectively be represented by Mr. Assirati

9 thereafter, that would not necessarily assist.

10 THE CHAIRMAN: Well it needs regularising.

11 MR. ASSIRATI: I understand, yes.

12 THE CHAIRMAN: You need to consider, but if you are having some legal advice you will be able

13 to get legal advice to make sure that the right people are informed.

14 MR. ASSIRATI: No, I fully understand because as this thing progresses the others may not want me

15 to be the lead man.

16 THE CHAIRMAN: I think you need to regularise that.

17 MR. ASSIRATI: I understand that fully.

18 MR. PICKFORD: It also needs to be regularised the precise name of the appellant, because currently

19 as I understand it the appeal is brought in the name of Independent Posters. That is a trading

20 name, as I understand it, on behalf of another limited company and, as I understand it, it is the

21 limited company that is in administration.

22 MR. ASSIRATI: Yes, it is Casting Book Limited trading as Independent Posters.

23 THE CHAIRMAN: Well that is the name, we need to get that name properly dealt with so that on

24 the website we have the right appellant?

25 MR. ASSIRATI: Yes. It is definitely Casting Book Limited trading as Independent Posters.

26 (The Tribunal confer)

27 MR. PICKFORD: Madam, I was just going to beg the indulgence of the Tribunal if I could turn on

28 my mobile phone and just check ----

29 THE CHAIRMAN: Yes, go and do that.

30 MR. PICKFORD: Thank you.

31 THE CHAIRMAN: Mr. Assirati, if the administrator is going to authorise I do not know who is

32 going to appear in future, whether it is going to be a lawyer, or whether it is going to be you.

33 MR. ASSIRATI: Do you need to know that today?

34 THE CHAIRMAN: No, but I think we would like to know exactly what authority is being give to

35 you if it is you – do you see what I mean?

1 MR. ASSIRATI: Yes.

2 THE CHAIRMAN: By whom?

3 MR. ASSIRATI: Yes, all right. That is understandable.

4 THE CHAIRMAN: (After a pause) The date that we could all do is Tuesday, 24th.

5 MR. PICKFORD: Tuesday, 24th October?

6 THE CHAIRMAN: Yes.

7 MR. PICKFORD: That is also ----

8 THE CHAIRMAN: Clear for you, right. Tuesday 24th October for admissibility.

9 MR. ASSIRATI: For?

10 THE CHAIRMAN: Admissibility.

11 MR. ASSIRATI: That is in place of 19th October? 19th was a reply by the OFT, wasn't it?

12 THE CHAIRMAN: That is their written submissions in reply to yours.

13 MR. ASSIRATI: Yes.

14 THE CHAIRMAN: And then the hearing will be at 10.30 on 24th October.

15 MR. ASSIRATI: Right, excellent.

16 THE CHAIRMAN: And that will just be admissibility, or do we want to do the whole lot if we find

17 it admissible, if you are putting in your defence?

18 MR. PICKFORD: If it were possible I think the approach that we would like to adopt is at this stage

19 for that hearing merely to be dealing with admissibility and if it appears on review of the case

20 and in development of the defence, that it would be appropriate to deal with the whole case

21 then, then we will write to the Tribunal.

22 THE CHAIRMAN: Yes, if it is complicated then we would not want to do it but if it is simple then,

23 if it is going to take more than a day then we can just deal with admissibility, but if it turns out

24 to be simple then it might be worth doing the whole thing, I do not know.

25 MR. PICKFORD: And the OFT would adopt the same approach which is why, certainly, if it appears

26 that there is not very much more ----

27 THE CHAIRMAN: A bit like permission to appeal and the appeal at the same time.

28 MR. PICKFORD: Indeed, we would be more than happy to deal with it all at the same time.

29 THE CHAIRMAN: It would not prejudice us if we decide it is not admissible then it is not

30 admissible.

31 MR. PICKFORD: Indeed.

32 THE CHAIRMAN: The question is if it adds a lot of work then one does not want to do it, because it

33 is adding to the cost, but if it is not going to add to the cost ----

34 MR. PICKFORD: Certainly at the stage at which we submit our defence we can also indicate to the

35 Tribunal then ----

1 THE CHAIRMAN: And then we can re-timetable it if necessary for that purpose.
2 MR. PICKFORD: Yes, whether it appears to be appropriate.
3 MR. ASSIRATI: That is fine.
4 THE CHAIRMAN: You understand?
5 MR. ASSIRATI: Oh I understand fully that, yes, and that makes sense.
6 THE CHAIRMAN: Normally one would not do it, but it depends how clear it is.
7 MR. ASSIRATI: Yes, I fully understand.
8 THE CHAIRMAN: Is there anything else?
9 MR. PICKFORD: Not on our part, thank you.
10 THE CHAIRMAN: And of course if the OFT indicate that they would like it all dealt with at the
11 same time you can indicate to us that you would not like it dealt with at the same time.
12 MR. ASSIRATI: And vice versa?
13 THE CHAIRMAN: Absolutely.
14 MR. ASSIRATI: I understand.
15 THE CHAIRMAN: So that if there is more disclosure or it is more complicated, or there is a lot of
16 law, then we would not want to deal with it at the same time.
17 MR. ASSIRATI: No, quite, but it is a possibility if we can do it; it gets it out of the way.
18 THE CHAIRMAN: If there is a possibility we can do it all, yes.
19 MR. ASSIRATI: I am totally in agreement.
20 THE CHAIRMAN: Depending what the points are. If there is only one point, yes. Anything else?
21 Thank you very much.
22 MR. ASSIRATI: Thank you very much indeed.
23 (The hearing concluded at 1.35 p.m.)