

BL O/0039/26

TRADE MARKS ACT 1994

**IN THE MATTER OF CONSOLIDATED CANCELLATION ACTION NUMBERS
CA 00506579 AND CA000506559 IN THE NAME OF RAZVAN RADU**

**WITH RESPECT TO TRADE MARK REGISTRATION NUMBERS UK 905341301
AND WO 923726 IN THE NAME OF APPLE, INC**

DECISION ON COSTS

1. In paragraphs [80] to [83] of my decision on the substantive appeal dated 26 August 2025 (O-0801-25) directions were given with respect to the determination of the issue of the costs of the appeal. In this connection it is to be noted that there was no challenge by Mr Radu to the order for costs made by the Hearing Officer below which was for Mr Radu to pay the sum of £19,389 to Apple.
2. In accordance with those directions on 9 September 2025 Apple filed submission on the appropriate order for the costs of the appeal. In those submissions Apple made an application for Mr Radu to pay to Apple off scale costs in the sum of £13,803. To support that sum Apple filed a Schedule of Costs. In the alternative Apple sought an amount as deemed appropriate by me. In that context Apple indicated that it considered that the appropriate figure having regard to the scale costs set out in TPN1/2023 was £3,150.
3. In accordance with my directions Mr Radu was due to file in response by 23 October 2025. Mr Radu did not do so. On 30 September 2025 a default notice was issued. Mr Radu ultimately filed submissions dated 2 October 2025.
4. Apple requested an extension of time to file evidence strictly in reply. An extension was granted and submissions were filed on behalf of Apple on 16 October 2025.
5. Neither party requested a hearing by 23 October 2025, and I have therefore determined the question of costs on the basis of the papers that are before me.
6. As Mr Radu's appeal failed the starting point as indicated in paragraph [81] of my decision is that in the normal course Apple is entitled to a contribution towards its costs of the appeal.
7. It is also the long-established practice in Registry proceedings to require a contribution to the costs of a successful party, with the amount of the contribution being determined by reference to published scale figures. The scale figures are treated as norms to be applied or departed from with greater or lesser willingness according to the nature and circumstances of the case. The Appointed Persons normally draw

upon this approach when awarding costs in relation to appeals brought under section 76 of the 1994 Act.

8. It is however open to the decision taker to depart from the published scale figures in the exercise of the power to award such costs as (s)he may consider reasonable under rule 67 of the Trade Mark Rules 2008.
9. Moreover, when considering the award of costs I have kept in mind that: (1) it is not the purpose of an order for costs to impose a financial penalty on the losing party; and (2) any award should reflect the effort and expenditure to which it relates.
10. In support of its application for off scale costs Apple relied, in summary, upon the following points:
 - (1) The points raised before the Hearing Officer in support of Apple's successful application for off scale costs of the proceedings below.
 - (2) The manner in which Mr Radu conducted the appeal which was said to be unclear and ambiguous including by cross reference to the findings made on this appeal.
 - (3) That the appeal raised a number of objectively unsupportable ground including alleged non-impartiality of the Hearing Officer and an allegation of procedural impropriety by the UKIPO including by cross reference to the findings made on this appeal.
11. In response Mr Radu did not directly address any of the points made on behalf of Apple but instead made allegations that the Decision of the Hearing Officer had been based on '*fraud*' by Apple on the basis that one of the marks that was the subject of the application for invalidity namely WO 923726 had been limited in 2011 by '*telephones and mobile phones*' from Class 9 of the specification.
12. In its submissions in Reply Apple responded, in summary, to the points raised by Mr Radu as follows:
 - (1) The submissions filed by Mr Radu were directed to only one of the two applications for invalidity.
 - (2) '*[Refuted] categorically the claims made by Mr Radu as to dishonesty and fraud*'. In this connection, material was filed before me that indicated that the class 9 specification of WO 923726 included '*telephones and mobile phones*' at the UKIPO until after the Decision of the Hearing Officer and my Decision on appeal. It was only on 4 September 2025 as a result of information provided by Mr Radu in other proceedings that the UKIPO became aware of the error with regard to the specification of WO 923726. That this was an error on the part of the UKIPO was recognised in a letter sent on behalf of the UKIPO on 29 September 2025 together with confirmation that the Register had been updated to show the amended goods in Class 9 for WO 923726. It

was maintained on behalf of Apple and its representatives that prior to 4 September 2025 they were unaware that their own records were inaccurate in this regard reflecting instead the position as recorded at the UKIPO prior to that date.

- (3) That the Decision of the Hearing Officer was not premised on the inclusion of '*telephones and mobile phones*' in the specification and the outcome would have been the same whether or not the cessation of effect had been recorded at the appropriate time.
13. It is of concern to me that (a) the UKIPO had '*overlooked*' the ceasing of effect that was issued with respect to '*telephones and mobile phones*' in Class 9 for WO 923726; and (b) neither Apple or its representatives had become aware of this error before it was brought to their attention by it would appear Mr Radu in the context of other proceedings.
14. I have sympathy with Mr Radu who brought this issue to my attention (and indeed to the attention of Apple and the UKIPO). However, I do not accept on the basis of the materials before me that Apple or its representatives have been dishonest or have acted fraudulently. That is particularly the case given the UKIPO register included '*telephones and mobile phones*' in Class 9 for WO 923726.
15. The true position, as is accepted by Apple is that WO 923726, did not at any relevant time for the purposes of these proceedings include '*telephones and mobile phones*' in Class 9. That meant that part of the specification was not one which could have been the subject of an application for invalidity.
16. Both the decision by the Hearing Officer and my substantive Decision had been issued in final form before this issue was raised and therefore it does not seem to me that either of them can be revisited at this stage.
17. However, even if I am wrong in that view, it does not seem to me that the absence of '*telephones and mobile phones*' in Class 9 for WO 923726 makes any or any material difference to the Decision that the Hearing Officer (that was the subject of the appeal) made or to the costs that were incurred by the parties. First, the application for invalidity of WO 923726 was consolidated with the application for invalidity of UK 905341301 which did and continues to include '*telephones and mobile phones*' in Class 9 and therefore all issues relating to that part of the specification were matters that were before the Hearing Officer and on appeal. Secondly, the claim for invalidity with respect to both registrations was not simply directed to '*telephones and mobile phones*' in Class 9 but to all the goods covered by the registrations and there is no suggestion by Mr Radu that his approach to the applications for invalidity whether before the Registrar or on appeal would have been different had the correct specification for WO 923726 been appreciated.

18. Against that background, as already indicated, my view is that Apple is entitled to a contribution towards its costs of the appeal. Having carefully considered all the papers before me, I have concluded that in the exercise of my discretion that the appropriate figure is the sum of £8,000.

19. I therefore order that Mr Radu pay to Apple, Inc the total sum of £27,389 (being the sum of £19,389 ordered by the Hearing Officer with respect to the costs at first instance and £8000 ordered with respect to the costs on appeal). The sum of £27,389 is to be paid by Razvan Radu to Apple, Inc on or before 4pm on 10 February 2026.

Emma Himsworth KC
Appointed Person
20 January 2026