

O/0103/26

TRADE MARKS ACT 1994

COSTS DECISION

IN THE MATTER OF APPLICATION NO. UK00004125211
IN THE NAME BROWNSTONE COMMUNICATIONS LTD
TO REGISTER THE FOLLOWING TRADE MARK:

Brownstone EDI Guru

IN CLASS 35

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. OP000452816
BY O2 WORLDWIDE LIMITED

Background and pleadings

1. On **15 November 2024**, **Brownstone Communications Ltd** (“the Applicant”) applied to register the trade mark shown on the cover page of this decision in the UK. The application was accepted and published in the Trade Marks Journal on **29 November 2024** in respect of services in class 35. The Applicant represents themselves.
2. On **27 February 2025**, **O2 Worldwide Limited** (“the Opponent”) opposed the application under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the Applicant’s services in the application. The Opponent is represented by Stobbs.
3. On 23 May 2025, the Applicant filed its defence and counterstatement via Form TM8,¹ however this was deemed inadmissible. On 22 June 2025 the Applicant filed an amended TM8, but this was again deemed insufficient and required further amendment. On 21 July 2025 the Applicant submitted an acceptable TM8 form. Subsequently, the Registry set a deadline of 01 October 2025 for the filing of evidence/submissions.
4. On 27 August 2025 the Opponent wrote to the Registry to withdraw the opposition, with no evidence or submissions having been filed.
5. On 28 August 2025 the Applicant contacted the Registry seeking off scale costs. On 6 September 2025 the Registry subsequently confirmed that the opposition had been withdrawn and invited the Applicant to complete and return a costs pro-forma in relation their cost request.
6. On 21 September 2025 the Applicant returned the cost pro-forma seeking a total of £14,850 ². On 01 October 2025 the Opponent wrote to the Registry to contest the Applicant’s cost award request. Further on 01 October 2025, the Applicant responded to the Opponent’s submissions with additional arguments,

¹ Two TM8 forms were originally filed though they were identical.

² A copy of the completed cost pro-forma is provided at Annex 1 to this decision.

as well as including copies of previous email chains between itself and the Opponent.

7. On 20 October 2025 the Registry confirmed that it had considered the Applicant's request for costs as outlined in its pro-forma and issued a preliminary view that a cost award of £190 in the Applicant's favour was appropriate.
8. On 26 October 2025 the Applicant requested a hearing.

Hearing Discussion

9. The hearing took place before me via telephone link on 01 December 2025. In attendance at the hearing was Barbara Phillips who is the Director of the Applicant, and Blake Robinson, Jed Fagan and Isabella Jackson, all of Stobbs, representing the Opponent. Mr Robinson made submissions on behalf of the Opponent, with the other two attendees present in a purely observational capacity.
10. Prior to the hearing taking place I received skeleton arguments from both the Applicant and the Opponent.
11. I began the hearing by providing the parties with a summary of the case so far and then invited Ms. Phillips to make her submissions in relation to the preliminary view to award costs in the Applicant's favour of £190.
12. Ms. Phillips began her submissions by stating that she is not legally trained and had utilised Chat GPT and Google to aid her in understanding the situation at hand. She also stated that by attending the hearing she was losing money by not attending to her business and that she did not get paid for this task.
13. Ms Phillips provided a chronological summary of the events that took place, including providing general information about the amount of email correspondence between the two parties in the time between the filing of the

Notice of Threatened Opposition (TM7A) (29 January 2025) and the formal opposition (TM7) being filed (27 February 2025). Ms. Phillips stated that the email exchanges that took place before the TM7 form was filed amounted to in excess of 10 hours of work during business hours.

14. Next, Ms. Phillips stated that following the notification of the formal opposition she sought free legal advice and conducted further online research to enable the submission of the form TM8 and Counterstatement. She stated that due to her inexperience in dealing with such proceedings it took time for her to understand the legal jargon and to complete the form. This inexperience also contributed to unacceptable forms being submitted and the requests for further clarification on particular issues, including why the Opponent didn't need to provide proof of use of the marks they were intending to rely on in the opposition. Ms. Phillips stated that she had provided the acceptable TM8 form within the time limits set by the Tribunal, but that it had taken four attempts due to her lack of experience in dealing with such complex legal issues.

15. Finally, Ms. Phillips reiterated her submissions regarding the work required by her to tend to the opposition proceedings, as well as including a revised costs award request totalling £9250. She stated that the following work was required:
 - Researching legal and evidential framework as a litigant in person.
 - Preparing and submitting evidence and written submission.
 - Responding to 6 lengthy legal emails (roughly 2,500 words of legalese) from the Opponent's solicitor beginning February 2025.
 - Preparing, reviewing and resubmitting IPO forms, including four TM8 filings prompted by the Opponents procedural position. Including two emails of over 600 words to try and obtain clarity and understanding.

- The diversion of 74 hours (9.25 working days, just over one day per month, during business hours) from income-generating activity (running her business as a self-employed consultant) to litigation resulted in lost earnings of £9,250 based on a £1,000 daily income rate. This is a direct causal consequence of the delay created by the Opponent.
 - Time wasted by the Opponent:
 - The delay of over six months between February and August 2025, during which the Opponent asserted that evidence was forthcoming but provided none which prevented the commercial launch of her product and caused disruption to marketing momentum.
16. I thanked Ms. Phillips for her submissions and invited Mr Robinson for his comments on behalf of the Opponent.
17. Mr Robinson began by stating that he relies on all of the submissions contained within his skeleton argument dated 27 November 2025 which I will summarise below. In addition to this, Mr Robinson submitted that the Registry's preliminary view to award costs of £190 in favour of the Applicant was generous and that the Opponent submits that no cost award should be issued. Further he stated that the Applicant's costs award request primarily relies on time spent on dealing with tasks, as well as loss of potential revenue, rather than actual tangible costs incurred.
18. Mr Robinson's skeleton argument contained the following submissions:
1. Time spent by the Applicant was overstated.
 - The Applicant claimed excessive time for preparing and submitting TM8 forms (including 40 hours for four submissions).

- Two of the TM8s were identical and submitted minutes apart, showing the time claimed is inflated.
- The Opponent argues it should not bear costs arising from the Applicant's own filing errors.

2. Many claimed costs are factually incorrect.

- The Applicant claimed £3,000 for TM8 filings, despite no official fee being payable for a TM8 and Counterstatement.
- The Applicant also claimed 18 hours for reviewing evidence, despite neither party having submitted any.
- "Other expenses," including "loss of earnings" and "loss of potential revenue," amounting to 74 hours (£9,250), are not permitted because costs must reflect actual expenditure, not hypothetical revenue loss.

3. Tribunal cost principles not followed.

- The Applicant attempted to claim compensatory costs, contrary to the Tribunal's "contribution-not-compensation" approach.
- Without-prejudice correspondence submitted by the Applicant is inadmissible and cannot support their cost claims.

4. Request for costs to be revised

- The Opponent argues the previously awarded £190 should be reduced to £0 because the Applicant is unrepresented and incurred no actual expenses.

- The Applicant's conduct (repeatedly seeking compensatory costs and requesting a Hearing they did not need to attend) caused the Opponent to incur unnecessary costs.

5. Opponent seeks on-scale costs

- Due to time wasted and unnecessary hearing preparation, the Opponent asks the Tribunal to award them costs on scale.

19. I concluded the hearing and thanked both parties for their submissions. I stated that I would take time to consider the submissions made and, having now done so, I issue the following decision.

DECISION

Legislation and guidance

20. Section 68 of the Act reads as follows:

“(1) Provision may be made by rules empowering the registrar, in any proceedings before him under this Act –

(a) to award any party such costs as he may consider reasonable,
and

(b) to direct how and by what parties they are to be paid. [...].”

21. This is confirmed under Rule 67 of the Trade Marks Rules 2008 which provides:

“The registrar may, in any proceedings under the Act or these Rules, by order award to any party such costs as the registrar may consider reasonable, and direct how and what parties they are to be paid.”

22. As these proceedings were commenced after 1 February 2023, any costs award made is to be on the basis of the scale set out in Tribunal Practice Notice (“TPN”) 1/2023. As discussed above, typically, costs are to be awarded on a contributory rather than compensatory basis, meaning that they provide a contribution to the winning parties overall costs rather than fully covering them. It should be noted that a person who represents themselves, which is commonly referred to as a litigant in person, is entitled to a standard rate of £19 per hour in line with part 46 of the Civil Procedure Rules³ for time reasonably spent on recoverable activities. Further, insofar as it is relevant, paragraphs 5.2 of the Tribunal Section in the Manual reads as follows:

“5.2 Unrepresented parties

Unrepresented parties generally incur lower costs because they do not have to pay legal or other professional fees. If the scale of costs were applied to unrepresented parties, they might receive costs in excess of what they may reasonably have incurred, which would undermine the contribution-not compensation approach and the indemnity principle. Therefore, unless a Hearing Officer directs otherwise, unrepresented parties will be sent a proforma at the end of proceedings inviting them to set out the number of hours spent on the various steps of the proceedings.

If an award is to be made in favour of an unrepresented party, Hearing Officers will consider the information provided when determining the sum to be awarded. The number of hours claimed will not, however, be binding on Hearing Officers, who will continue to assess whether the time spent was reasonable in the circumstances of the case and who will retain a residual discretion in any event.

The sum to be awarded per hour will be analogous to that set out in the Civil Procedure Rules, Part 46, which is currently £19 per hour. The total

³ Rule 46.5(4)(b), Practice Direction 46.5 paragraph (3.4).

amount awarded should, though, not exceed the maximum amount payable on the scale of costs (unless off-scale costs are sought). If the unrepresented party does not complete and return the proforma, no costs award will be made save in relation to official fees (except fees for extensions of time).

23. TPN 1/2023, at Annex A, sets out the scale of costs applicable for tasks that are recoverable for legal representatives. It should be observed that whilst this is aimed at amounts for legal representatives, the amount awarded to a litigant in person should not usually exceed that of the scale set out in Annex A which is replicated below:

Annex A

Scale of costs in proceedings commenced on or after 1 February 2023

Task	Costs
Preparing a statement and considering the other side's statement	From £250 to £750 depending on the nature of the statements, for example their complexity and relevance
Preparing evidence and considering and commenting on the other side's evidence	From £600 if the evidence is light to £2600 if the evidence is substantial. The award could go above this range in exceptionally large cases but will be cut down if the successful party had filed a significant amount of unnecessary evidence
Preparing for and attending a hearing (including procedural hearings) or submissions-in-lieu	Up to £1900 per day of hearing, capped at £3900 for the full hearing unless one side has behaved unreasonably. From £350 to £650 for preparation of submissions, depending on their substance, if there is no oral hearing
Expenses	(a) Official fees arising from the action and paid by the successful party (other than fees for extensions of time) (b) The reasonable travel and accommodation expenses for any witnesses of the successful party required to attend a hearing for cross examination

24. I note that when an application is filed, part of the process before registration is that it is open to opposition. The application in question is no exception and whilst I understand the Applicant's frustration in having to defend its application and the time it has taken to do so, I do not consider that it suffered any unfair treatment. In addition, during the opposition proceedings, the Opponent is entitled to withdraw the opposition at any stage. Therefore, it is my view that the Opponent has not behaved unreasonably or attempted to delay the proceedings intentionally to warrant anything other than on scale costs for the Applicant.
25. Having concluded that there is nothing to suggest that an off-scale award of costs is appropriate, I am guided in this decision by the scale of costs set out in TPN 1/2023, as shown earlier in this decision.
26. First and foremost, I will remind myself that the Tribunal awards costs on a contributory rather than a compensatory basis. I take into account Mr Hobbs QC's (as he then was) comments in *Amaro*, O/257/18:
- “17. [...] an award of costs is required to reflect the effort and expenditure to which it relates without inflation for the purpose of imposing a financial penalty by way of punishment on the paying party. The determination of a 'reasonable' amount to award must depend on the nature and circumstances of the case at hand.
27. With regard to the Applicant's costs pro-forma, whilst I have no reason to doubt the amount of work undertaken for the proceedings at hand, it appears to me that the total (revised) sum of £9250 requested by the Applicant is disproportionately high for the tasks undertaken. The Applicant has claimed 74 hours in total time spent on addressing the opposition. As shown in the cost pro-forma at Annex 1 to this decision, this is calculated as follows:
- Filing of the notice of defence (TM8) – **40 hours** (TM8 submitted 4 times)

- Considering forms filed by the other party – **16 hours**
- Researching legal O2 organisation to establish legal position as self-represented – **8 hours**
- Finding examples to submit as evidence – **2 hours**
- Reading and responding to 8 lengthy legal emails from J Fagan of Stobbs solicitors starting February 2025 – **8 hours**

28. Whilst I appreciate that costs for some of these activities are recoverable on the usual scale, others are not. Costs incurred for activities such as filing of the notice of defence and consideration of the forms filed by the other party are recoverable, and therefore a contribution to the Applicant’s costs is appropriate. However, activities such as research into the O2 organisation, as well as reading and responding to emails are not costs that would be recoverable on the usual scale, as such no award can be made for these. Further, whilst preparing examples to submit as evidence would usually be a recoverable activity, the Applicant did not file any such evidence in these proceedings and therefore no award can be made for this activity.
29. The Applicant has also claimed that it has incurred £3000 in official fees (£750x4) stemming from the filing of four TM8 Forms. However, as the Opponent correctly points out, the TM8 Form has no official fee attached to it and therefore no actual costs were incurred in the filing of each of the Applicant’s TM8 forms.
29. Finally, moving onto the “Other Expenses” listed by the Applicant on the costs proforma, this includes the following description:

Loss of earnings as self employed. Off scale costs. The opposition didn’t offer any new evidence between Feb-Aug. I offered to settle at that point. Instead I was blocked from launching my product and lost marketing momentum and potential revenue.

30. TPN 1/2023 again makes it clear that any claim for costs approaching full compensation or for “extra costs” will need to be supported by a bill itemizing the actual costs incurred. The Applicant has submitted that it suffered from loss of potential revenue, but this is clearly not an actual cost incurred in defending its application. If the Tribunal were to award costs in the Applicant’s favour for these ‘other expenses’ it would undermine the contribution-not compensation approach and the indemnity principle. Consequently, whilst I appreciate the Applicant may have paused its commercial activities, the potential loss of revenue is not a cost that is recoverable.

Conclusion

31. Following from the facts, submissions and considerations above, I uphold the preliminary view that the cost award of £190 in favour of the Applicant is appropriate and reasonable.
32. For clarity, this award is calculated as follows:

Forms

33. I accept that the Applicant, as a litigant in person, has spent time familiarising herself with the relevant law and issues of the case prior to filing the TM8 and counterstatement to defend its case. Additionally, I accept that an unrepresented party would take longer to prepare and consider documents than a solicitor or trade mark attorney. That said, turning to the Form TM7, I do not consider the nature of the notice of opposition to be overly complex, however it does rely on two grounds, sections 5(2)(b) and 5(3), as well as two earlier marks. In this context, I consider the 4 hours attributed to considering the notice of opposition in the preliminary view to be reasonable.
34. As for the filing of the TM8 Form and Counterstatement, again I appreciate that the Applicant, with no experience, has had to complete and return an acceptable form TM8. Additionally, I acknowledge that the form needed to be resubmitted a further two times before it was considered acceptable by the

Tribunal. Notwithstanding this, the Applicant's claim of 40 hours for this task (10 hours per TM8) is disproportionately high, especially considering that it would not be starting from 'scratch' each time. In the circumstances I find that the 6 hours attributed to the filing of the Form TM8 and Counterstatement is again reasonable, even accounting for the additional two forms that were required.

35. In relation to the hours expended, I note that The Litigants in Person (Costs and Expenses) Act 1975 (as amended) and the Civil Procedure Rules, Part 46, set out the level of compensation for litigants in person in court proceedings at £19 per hour. I therefore award costs to the Applicant on the following basis:

Considering the Form TM7 (4 hours x £19)	£76
Preparing and filing the Form TM8 and counterstatement (6 hours x 19)	£114
Total	£190

36. I hereby order **O2 WORLDWIDE LIMITED** to pay **BROWNSTONE COMMUNICATIONS LTD** the sum of £190. This sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 9th day of February 2026

Oliver Rose'Meyer
For the Registrar

Annex 1



**Intellectual
Property
Office**

Tribunal Cost Pro Forma	
Form types	Time spent in hours/minutes
Notice of Opposition	
Notice of Cancellation	
Notice of Defence	40 hours (TM8 submitted 4 times)
Considering forms filed by the other party	16 hours
TOTAL	56 hours
Official fees for the above forms	
TOTAL	£750 x 4 =£3,000.00
Preparing evidence/written submissions and considering and commenting on the other side's evidence/written submissions	
Description of activity	Time spent in hours/minutes
Researching legal organisation to establish my legal position as self represented	8 hours
Finding examples to submit as evidence	2 hours
Reading and responding to 8 lengthy legal emails for J. Fegan Stobbs Solicitors starting in February 2025.	8 Hours
Researching and understanding IPO classifications	
TOTAL	18 Hours £2,600
Preparing for a hearing	
Description of activity	Time spent in hours/minutes
TOTAL	
Other Expenses	
Description of activity	Time spent in hours/minutes
Loss of earnings as self-employed .Off scale costs. The opposition didn't offer any new evidence between Feb- Aug. I offered to settle at that point. Instead I was blocked from launching my product and lost marketing momentum and potential revenue.	56 hours + 18 hours =74 hours ÷ 8 (1 working day) =9.25 x £1,000 per day = £ 9,250.00
TOTAL £5,600 + 9,250 = £14,850.00	