

O-042-20

SUPPLEMENTARY DECISION ON COSTS

**CONSOLIDATED PROCEEDINGS UNDER THE TRADE MARKS ACT 1994
CONCERNING:**

1) AN APPLICATION (No. 501828) TO CANCEL TRADE MARK No. 3129760:



OWNED BY ANGLO ATLANTIC MEDIA LIMITED

AND

2) OPPOSITION (No. 411250) AGAINST TRADE MARK No. 3263958:

BONZO DOG DOO DAH BAND

APPLIED FOR BY:

**ROGER SPEAR, NEIL INNES (NOW DECEASED), LARRY SMITH, RODNEY
SLATER, VERNON DUDLEY BOHAY NOWELL & MARTIN ASH (NOW
DECEASED)**

1. On 30 October 2019, I issued a decision in the above identified proceedings, the outcome of which was in favour of whom I have previously referred to as Party A. In relation to costs, I stated:

“124. I hereby set a period of 28 days (from the date of this decision) for both sides to make written submissions on costs, which, ordinarily, would be made in favour of Party A as the successful party.

125. Costs are normally based on a scale of costs (see TPN 2/2016), however, given that Party A has not been represented during these proceedings, they must complete a pro-forma (which will be provided with the covering letter to this decision), which is intended to highlight the amount of time expended. If this results in a claim above the scale, a full explanation as to why off-scale costs are to be awarded should be provided.

126. If Party B submits that it should receive costs, notwithstanding that it has been unsuccessful in the proceedings, it should likewise complete the pro-forma (and provide an explanation for any claimed off-scale costs) as, other than the hearing, it too has been unrepresented.”

2. Written submissions were received from both parties. From the content of the respective submissions, it is clear that both sides are seeking costs above the scale. The reasons for doing so are based on the conduct of their opposite party and the many procedural issues each respectively raised. Party B also dedicated a considerable amount of its submissions to allegations of fraud in respect of documents that Party A filed during the proceedings. I return to this shortly. I note from my previous decision the comments in the first paragraph:

“1. These proceedings have been hard fought by both sides, hard fought in an often emotionally charged manner. In their dealings with the Tribunal, neither side has been represented by legally qualified representatives; this has not helped matters. The proceedings have been overly long and, despite best efforts to control matters, have been punctuated by large numbers of procedural issues and applications.”

3. The procedural matters raised by the parties included:

- Various partnership issues which were frequently raised and pressed by Party B;
- Disclosure requests made by Party B;
- Disclosure request made by Party A;
- Letters of pre-action/claimed intimidation sent by Party B and frequently raised by Party A;
- Requests for cross-examination made by Party B;
- Request for security for costs made by Party A;
- Late/further evidence, particularly from Party A;
- Late evidence at the hearing, from both Party A and Party B.
- Adding an extra claim at the hearing, by Party A.

4. My first decision provides the context of the above issues and what I determined in relation to them. What is clear to me is that neither party have been overly helpful in the way these proceedings have been prosecuted. Each side has put the other to more time and trouble than was needed. Although they may disagree, my view is that neither side has been significantly worse than the other in terms of that conduct. In view of this, I reject the respective claims for above scale costs and will, instead, award costs from the published scale¹, costs which will be in favour of Party A as the successful party.

5. Before assessing the costs, I make some observations about the references to fraud in Party B's submissions. The claims made (some for the first time) included allegations of forged contracts provided in evidence² and, further, the back-dating of witness statements. I do not intend (and in any event, have no power) to re-open the proceedings to determine Party B's claims. The proper (and only) course is for Party B to appeal my first decision with such allegations as the whole, or part, of its grounds for doing so.

¹ As set out in Tribunal Practice Notice 2/2016.

² The submissions included a report from a hand-writing expert.

6. In terms of costs, Party B also submitted that Party A have not incurred costs because: i) they were represented, *pro bono*, by Mr Allen, and, ii) there was a litigation funding campaign via a crowd-funding website. In my judgement, neither of these factors disentitles Party A from a costs award. In terms of the crowd-funding campaign, this is a separate matter and, furthermore, the campaign may also have related to funding for the High Court action. In terms of not having to pay Mr Allen due to him working *pro bono*, this puts Party A in the same position as a litigant in person who, likewise, are not disentitled to an award of costs even though they have not had to pay legal fees to a professional representative.

7. In terms of the costs award I make, it should be remembered that this is intended to be a contribution towards costs as opposed to full compensation, based on reasonable time and effort expended. Furthermore, having already determined that above scale costs should not be paid, the amount payable must not exceed the published scale. In terms of quantum, I note that The Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour; I see no reason to award anything other than this. I set out below the scale, what Party A have claimed in relation to it, together with my views in relation to such claims:

Preparing a statement and considering the other side's statement

8. The scale indicates: "From £200 to £650 depending on the nature of the statements, for example their complexity and relevance."

9. Party A have claimed 27 hours in total (which I assume covers both sets of proceedings) dealing with this aspect, time which, in itself, is not unreasonable. However, given costs are intended as a contribution as opposed to full compensation, I will allow for 20 hours at £19, so totalling £380.

10. Party A have also claimed for the official fee of £200 (for their invalidation claim), something which may be recovered in full.

Preparing evidence and considering and commenting on the other side's evidence

11. The scale indicates: "From £500 if the evidence is light to £2200 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."

12. Party A have claimed 260 hours in total dealing with this aspect of the case. At a rate of £19 per hour, this would equate to more than double scale costs for this aspect of the proceedings. Whilst the evidence was substantial, I do not consider it to be an exceptionally large case for which the scale should be exceeded. Furthermore, the piece-meal way in which it was produced will have increased the time it took to compile. Given this, and, again, the contributory nature of costs awards, I will allow for 100 hours at £19, so totalling £1900.

Preparing for and attending the hearing

13. The scale indicates: "Up to £1600 per day of hearing, capped at £3300 for the full hearing unless one side has behaved unreasonably. From £300 to £550 for preparation of submissions, depending on their substance, if there is no oral hearing."

14. Party A have claimed 21 hours for dealing with this aspect of the case, time which, in itself, is not unreasonable when the day of the hearing is taken into account, plus the preparation time. However, given costs are intended as a contribution as opposed to full compensation, I will allow for 16 hours at £19, so totalling £304.

Total

- Preparing a statement and considering the other side's statement - £380
- Official fee - £200
- Preparing evidence and considering and commenting on the other side's evidence - £1900
- Preparing for and attending the hearing - £304
- **Total - £2784**

15. I note that Party A made further requests for costs based on photocopying/printing etc, but this should be absorbed into the other costs.

16. I therefore order Anglo Atlantic Media Limited to pay, jointly, Roger Spear, Neil Innes (the estate of³), Larry Smith, Rodney Slater & Vernon Dudley Bohay Nowell, the sum of £2784⁴. The period for appeal for both my first (substantive) decision and this supplementary decision on costs, commences as of the date of this decision. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 21st day of January 2020

Oliver Morris
For the Registrar,
the Comptroller-General

³ Mr Innes unfortunately passed away shortly before this supplementary decision was issued.

⁴ The costs award does not cover Mr Ash who, unfortunately, passed away during the course of the proceedings. His estate indicated that they wished to play no further part in the proceedings.