

BL O/0444/26

TRADE MARKS ACT 1994

TRADE MARK APPLICATION
NO. UK00003786148

CRYSTAL BAR

IN THE NAME OF
BARGAIN BUSTING LIMITED

AND

OPPOSITION NO. OP000435653
BY
SHENZHEN SKE TECHNOLOGY CO. LTD

AND

IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON
BY
BARGAIN BUSTING LIMITED
AGAINST DECISION BL O/0856/25
DATED 18th SEPTEMBER 2025

*Mr Stephen Lowry of Brandsmiths SL Ltd appeared for Bargain Busting Limited
Mr Richard Davies KC (instructed by Stobbs (IP) Limited) appeared for Shenzhen Ske Technology Co. Ltd*

APPEAL DECISION

Introduction & Background

1. This is an appeal by Bargain Busting Limited (“BBL”) from costs decision BL O/1178/25 of Dr J E Porter, Chief Hearing Officer, acting for the Registrar, dated 18th September 2025. That decision was itself subsequent to procedural decision BL O/0856/25.
2. In *Shenzhen SKE Technology Co Ltd v Bargain Busting Ltd* [2025] EWHC 1629 Deputy Judge Mr Michael KC refused the Respondent’s appeal from UKIPO Opposition Decision BL O/1063/24 and ordered that the Appellant’s application “shall proceed to registration”. A dispute then arose as to whether the Registrar should stay registration pending a possible appeal by the Respondent. That would have been the Registrar’s usual practice, but the Appellant argued that the practice was contrary to case law and CPR rule 52.16, such that court orders were not stayed by or by the possibility of appeal. As I understand it, everyone involved acknowledges that this was a unique and untested point of law and practice.

3. The proceedings were hard-fought in both the Court and Registry arenas, even to the extent that the Appellant commenced parallel criminal contempt proceedings against the Respondent's representative firm and individual practitioners within that firm¹.
4. A hearing was appointed to determine how the Registrar should deal with the Application and by Decision BL O/0856/25 Dr Porter agreed with the Appellant that the application should be registered forthwith and that the Registrar's practice should be changed accordingly. Dr Porter then invited the parties to make written submission on costs. The Appellant sought off-scale costs of £33,559.50 on the basis of the Respondent's allegedly unreasonable conduct.
5. In his Supplemental Decision on costs, Dr Porter refused to award off-scale costs as requested by the Appellant. His reasons were as follows:

31 Given the context in which the proceedings on this point before the Registrar arose, it is not surprising that both sides have referred in their costs submissions to the related court proceedings and outcomes. Nevertheless, it is entirely clear that the costs being considered here are only those which arose in relation to the proceedings before me on the procedural question, and with which my decision of 18th September 2025 was concerned. It is without doubt that costs in relation to wider related matters, including the substantive dispute at first instance, the appeal to the court, and the court applications are not a matter for me.

32 In terms of costs in the proceedings before me, I first consider the arguments as to whether I should award off-scale costs. As the TPN² makes clear, this turns on an assessment of whether SKE and their representatives conducted themselves unreasonably in the proceedings.

33 As I explained in my main decision at paragraphs 64 to 66, SKE's request that the register remain unchanged until the court applications had been decided was consistent with current and long-standing Tribunal practice and with the guidance in the Manual of Trade Marks Practice³. I further noted that I was not aware that the practice had been challenged previously.

34 Given this, it seems highly likely that – had BBL not raised the point – the Tribunal would have followed its existing practice. My main decision notes that the Registrar initially took the usual steps. Tribunal staff enquired about the appeal outcome, continued to leave the register unchanged, and asked SKE to confirm whether permission to appeal to the Court of Appeal had been sought.

¹ Since struck out by the decision of HHJ Paul Matthews in *BARGAIN BUSTING LIMITED v SHENZHEN SKE TECHNOLOGY COMPANY LIMITED and others* [2026] EWHC 933 (Ch, handed down after the appeal hearing but before this Decision was written).

² Tribunal Practice Note 1/2023

35 This is the long-standing practice which SKE were, in the event, arguing should be maintained. I do not see how SKE's submissions to the Tribunal can be characterised as the Tribunal somehow being misled or deceived by SKE and Stobbs. Nor do I agree that they were somehow "weaponising" the court applications in respect of the proceedings before me. The existence of those court applications (combined with the particular wording of the order) raised a legitimate question over the Tribunal's practice which needed to be resolved.

36 BBL say that my decision shows how their interpretation of the order was "correct all along". They also rely on the Tribunal's preliminary view (given on 27th August 2025) in this regard. They further highlight that, on 13th October 2025, Arnold LJ refused to give permission for a further appeal of the substantive opposition decision to which the present proceedings relate.

37 However, as the TPN says, "just because a party has lost, this in itself is not indicative of unreasonable behaviour". The fact that SKE ultimately were wrong, and Tribunal practice has since been adjusted, does not make their position an unreasonable one to have taken.

38 Nor do I see it as unreasonable for SKE and Stobbs to have maintained their position having had sight of BBL's points. For example, although I found against SKE, my main decision makes clear that I shared some of their concerns about any change in practice. In paragraphs 70 and 71 of that decision, I referred to SKE's submissions on "the duty of the Registrar to maintain an accurate register and the adverse impacts of registering and then potentially reversing a registration" and I went on to say that "I share those concerns. It is clearly unsatisfactory for rights to come on and off the register, leaving third parties and the wider public in a position of considerable uncertainty". This adds further weight to the view that SKE's position, and their actions in arguing for it, were reasonable even if, in the end, SKE were not successful.

39 Furthermore, I do not agree that SKE choosing to continue their dispute having received the Tribunal's preliminary view was at all unreasonable. The preliminary view was that the order was clear and not contingent upon permission to appeal, but that the Registrar "must also take into account that proceedings are currently before the Court which seek to vary the Order". The preliminary view expressed a concern "not to be seen to disrespect the Court by pre-empting the outcome of the application to vary the Order". It was very far from indicating that either party had taken an unreasonable position.

40 As I have already noted above, BBL point to examples in the TPN of unreasonable behaviour, including “behaviour designed to delay, frustrate or unreasonably increase the costs/burden on the other party and/or repeated breaches of procedural rules”.

41 In terms of any delay, I note that BBL first sought implementation of the order on 15th July 2025, and by 18th September 2025 the point had been heard and a decision issued. Given that timescale, and the careful consideration that would, in any event, have been needed before changing established Tribunal practice in light of BBL’s request, the delay point does not seem at all persuasive to me.

42 For the reasons I have already given, I do not agree that the course of action taken by SKE and Stobbs was designed to frustrate proceedings or unreasonably increase costs or burdens on BBL. Inevitably, as BBL point out, their costs would have been lower if SKE had not opposed the course of action sought by BBL. But that is in the nature of any dispute, not least one over a previously untested point.

43 I have already noted that BBL allege that SKE and Stobbs “had to repeatedly breach procedural rules” but I cannot see what repeated breach of Tribunal procedural rules may be said to have occurred. The point gets BBL no further.

44 It follows that I do not think the arguments and course of action taken by SKE and Stobbs in these proceedings were unreasonable. They took a reasonable position on a point which had not arisen before, where there were respectable and competing points to consider, and where SKE’s reasoning was aligned with current and long-standing Tribunal practice.

45 Turning briefly to the hearing, it was entirely reasonable to request to be heard on the point. I do not agree with BBL’s submission that it was “another ploy to delay matters” and therefore unreasonable.

46 BBL is then right to say that it was SKE seeking to vacate the hearing which gave rise to the CMC. Nevertheless, given the position in which SKE and Stobbs found themselves with regard to the contempt proceedings, I do not find it unreasonable of them to have argued for vacation. As my brief post-CMC decision said, it was a “particularly unusual and highly awkward situation with, in my view, no obviously satisfactory solution”. Once again, SKE did not win the point but it was reasonable for them to have taken the position that they did when they did, in light of the impact of the contempt proceedings at the time.

47 For all these reasons, I decline to award off-scale costs. I proceed to assess costs on the scale.”

6. The Hearing Officer went on to assess on-scale costs at £1100, reasoning as follows:

48 Although SKE say that the pre-hearing correspondence with the Tribunal was not a stage to which costs might attach, the exchanges were the closest these proceedings got to a statement and counter-statement, albeit with arguments understandably developing as the correspondence ensued. So I agree with BBL that a contribution to their costs should be made in respect of this correspondence.

49 The TPN scale is £250 to £750 for preparing a statement and considering the other side’s statement, depending on factors such as the complexity and relevance. The exchanges from both sides were relevant and not particularly complex to consider, and related to a single point of practice, albeit untested. Balancing this up, I award BBL a £400 contribution to their pre-hearing correspondence costs.

50 In terms of preparing for and attending a hearing, the TPN scale sets a limit of £1900 per day. I consider first the CMC. It lasted around 50 minutes and dealt with one single procedural point – namely, whether to vacate – albeit that there were certainly complexities to consider. The daily limit applied pro-rata might lead to around £200-300 as a reasonable contribution to a short CMC on a single procedural point but given the additional complexities a £400 contribution seems appropriate to me.

51 Turning to the hearing itself, I do not accept SKE’s point that it was effectively *ex parte*. The matter was clearly contested even though, in the circumstances of the contempt proceedings, SKE and Stobbs did not consider themselves able to participate. On that basis, a contribution to BBL’s costs in preparing for and attending the hearing is in order. It was a short and straightforward hearing albeit on an untested point. However, around a quarter of the hearing was taken up with BBL’s preliminary argument that the Registrar was not able to hear the matter at all – a point on which I found against them. Factoring this in, alongside the other points, I award a £300 contribution.

7. The Appellant appealed against this Costs decision on 15 January 2026. There are five grounds of appeal, as follows:

- 1) The Chief Hearing Officer failed to give due consideration to SKE and Stobbs' role in the delay between the Order of Deputy Judge Michael Tappin KC being issued and it being effected;

- 2) The Chief Hearing Officer's conclusion that SKE and Stobbs' behaviour contesting the registration of the CRYSTAL BAR mark was reasonable irrational;
- 3) The Hearing Officer failed to consider that the Respondent's representatives, in making submissions against the immediate implementation of the order of DJ Tappin KC, were thereby intended to mislead the Tribunal.
- 4) The Chief Hearing Officer's award of costs in respect of the CMC (£400) was higher than the award of costs in respect of the substantive hearing (£300), which is unjustifiable and outside the bounds within which reasonable disagreement is possible;
- 5) The Chief Hearing Officer's calculations of the on-scale costs that he decided to award were manifestly incorrect and cannot be justified.

Standard of Review

8. I understood the parties to be in agreement as to the relevant standard, which has been repeated many times albeit in various restated forms. An appeal is by way of review, not a rehearing. It is well established that before I can interfere with the decision of the Hearing Officer, particularly an evaluative one, I must be satisfied that there was a distinct and material error of principle in the decision or that the Hearing Officer was wrong. The relevant principles were set out in *Axogen Corporation v Aviv Scientific Limited* [2022] EWHC 95 (Ch) at [24]. Further guidance was given by the Supreme Court in *Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc* [2025] UKSC 25 at [93] to [95].
9. In particular, in the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other (as here), the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education v Pie Corbett Consultancy* [2017] RPC 17 at [52(iv)], *REEF Trade Mark* [2003] RPC 5 at [28] and *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11 at [50]-[51]).
10. As to the exercise of discretion by the Registrar (which includes decisions on costs), in BL O/675/25 *COCO7* Mr Iain Purvis KC noted at [19] that:

“Matters of discretion are not fertile grounds for an appeal unless the Hearing Officer exercising that discretion has made a serious error of law or a clear error of principle or has made serious errors of fact which underlay, materially, the exercise of that discretion”.
11. At the start of the Hearing I also drew the parties' attention to the comments of Mr. Geoffrey Hobbs QC (as he then was) in BL O-048-10 *LEUKIC* at [23]:

23. The power to award costs under Rule 67 remains broad and flexible to a degree which leaves relatively little room for an appellant to establish that the exercise of it was wrong in the circumstances in which it came to be exercised. As Sir Peter Gibson observed in *Martin v. Randall* [2007] EWCA Civ 1155 at paragraph 16:

“An appellate court’s ability to interfere with a trial judge’s exercise of discretion is constrained. It is only where the trial judge has exceeded the generous ambit within which reasonable disagreement is possible that the appellate court is entitled to interfere. An often-adopted statement of the circumstances in which an appeal against an exercise of discretion will be allowed is that of Stuart-Smith LJ in *Roache v. News Group Newspapers Ltd* [1998] EMLR 161 at p 172:

‘Before the court can interfere it must be shown that the judge has either erred in principle in his approach or has left out of account or has taken into account some feature that he should, or should not, have considered, or that his decision was wholly wrong because the court is forced to the conclusion that he has not balanced the various factors fairly in the scale.’ ”

Moving forward on that basis it would be necessary for the Opponent to establish that the Hearing Officer’s decision on costs was untenable.” (*my emphasis*).

12. I am also mindful of the guidance to the way appellate courts should approach the writing of judgments as set out by the Court of Appeal in *Unik Bond SA v. Catbalogan Holdings Sarl* [2025] EWCA Civ 1594:

59. In *Re Portsmouth City Football Club Ltd (in liquidation)* [2013] EWCA Civ 916, [2013] Bus LR 1152 Mummery LJ (with whom Rimer and Underhill LJ agreed) posed the question at [36]: “What sensible purpose could be served by this court repeating in its judgments detailed discussions of every point raised in the grounds of appeal and the skeleton arguments when they have already been dealt with correctly and in detail in the judgment under appeal? No purpose at all, in my view.”

60. He continued at [38]: “The proper administration of justice does not require this court to create work for itself, for other judges, for practitioners and for the public by producing yet another long and complicated judgment only to repeat what has already been fully explained in a sound judgment under appeal. If the judgment in the court below is correct, this court can legitimately adopt and affirm it without any obligation to say the same things over again in different words. The losing party will be told exactly why the appeal was dismissed: there was nothing wrong with the decision appealed or the reasons for it.”

13. I bear these principles in mind.

Decision

Ground 1 – Failure to take into SKE and Stobbs' role in the delay between the Order of Deputy Judge Michael Tappin KC being issued and it being effected

14. There was a delay of 11 weeks between the issue of the Order and its implementation. Some of that delay arose from the inactivity of either party. The remainder was taken up with this procedural dispute. Mr Lowry submitted that in considering costs, the Chief Hearing Officer failed to give due consideration to SKE and Stobbs' role in that delay (i.e. by engaging in the procedural dispute, which Mr. Lowry characterised, in effect, as an unreasonable delaying tactic) and that his conclusions were “totally unreasonable and irrational”.

15. The Hearing Officer dealt with this issue at [40 - 41] and it can be seen he was not persuaded by it. I cannot see anything irrational, unreasonable or untenable about his reasoning. Much of Mr Lowry's submissions merely reiterated arguments put to the Chief Hearing Officer, which had been considered and dismissed. Nothing, beyond assertion, was put to me to explain why that amounted to irrationality.

16. Ground 1 is dismissed.

Ground 2 - The Chief Hearing Officer's conclusion that SKE and Stobbs' behaviour contesting the registration of the CRYSTAL BAR mark was reasonable, was irrational;

17. The Appellant's position is predicated on the proposition that a court order, once issued, must be immediately obeyed. “Therefore” it was submitted, “SKE and Stobbs' position on this issue was not objectively reasonable and the Chief Hearing Officer's finding to the contrary was irrational”. The Appellant relied on *R (on the application of Majera (formerly SM (Rwanda))) v Secretary of State for the Home Department* [2021] UKSC 46 (“Majera”), in which at [45] the Supreme Court said there is “legal duty to obey a court order which has not been set aside” and that “this is a rule of law, not merely a matter of good practice”.

18. Since the Hearing in this matter, HHJ Paul Matthews sitting in the Bristol Civil Justice Centre handed down his Decision³ in parallel proceedings by the Appellant against the Respondent, Stobbs and certain of its lawyers for criminal contempt arising out of the same facts. HHJ Matthews said:

52 But, in my judgment, there is nothing improper, in the sense used by Popplewell LJ, in a person interested in the (non) registration of a trade mark submitting that, for some reason or another, the registration should not yet take place. Such a person is not denying that the

³ *Bargain Busting Limited v Shenzhen Ske Technology Company and ors* [2026] EWHC 933 (Ch) at [52]

law exists or is ultimately applicable, but on the contrary is submitting that there exists a good reason for not yet applying it. But it goes further than that. Litigants, and their lawyers, are entitled to argue as to what the law actually *is*.

19. I have read the Hearing Officer's Decision and it is in the same vein throughout, as summed up at [44-45]. The appeal ground is no more than a disagreement with the Chief Hearing Officer's decision.

20. Ground 2 is dismissed.

Ground 3 – The Chief Hearing Officer failed to take into account that Stobbs et al made “misleading submissions”.

21. The nub of the Appellant's argument was that in the light of *Majera*, any submissions to the Registrar arguing against immediate implementation of the Order of DJ Tappin KC “*can clearly be characterised as attempts to mislead or deceive the Tribunal*”. The Chief Hearing Officer should have treated them as such and that not to do so was irrational *and no reasonable hearing officer would have arrived at that conclusion*. It is not suggested that anything Stobbs or its lawyers said was wrong, merely that by the act of arguing the point they were misleading the Tribunal.

22. The Hearing Officer clearly considered all the relevant matters and concluded at [35] “*I do not see how SKE's submissions to the Tribunal can be characterised as the Tribunal somehow being misled or deceived by SKE and Stobbs.*” That is a perfectly reasonable evaluation to make. Again, HHJ Matthews explained (*ibid.*) “*Litigants, and their lawyers, are entitled to argue as to what the law actually is.*”

23. Ground 3 is dismissed.

Ground 4 - The Chief Hearing Officer's award of on-scale costs in respect of the CMC (£400) was higher than the award of costs in respect of the substantive hearing (£300), which is unjustifiable and outside the bounds within which reasonable disagreement is possible

Ground 5 - The Chief Hearing Officer's calculations of the on-scale costs that he decided to award were manifestly incorrect and cannot be justified.

24. Ground 4 and 5 can be taken together as both concern the Chief Hearing Officer's exercise of his discretion in awarding on-scale costs.

25. It is symptomatic of the Appellant's approach to this Appeal that it is disputing amounts which, given the nominal values of on-scale costs, will only ever be minor relative to the actual costs incurred.

26. As to Ground 4, in his Skeleton Argument Mr. Lowry put it thus:

“26. The Chief Hearing Officer awarded costs of £400 for the CMC on whether the substantive hearing on 12 September 2025 should have taken place, yet his costs award for the substantive hearing itself was only £300.

27. The Chief Hearing Officer erred at paragraphs 51 and 54 of the Decision by reducing the costs award for the substantive hearing on the basis that BBL was unsuccessful on the preliminary issue concerning whether the IPO could hold a hearing.”

27. As for Ground 5 Mr Lowry said

“It is unjustifiable to award only £300 for the hearing when the scale permits up to £1,900 per day. A one-hour hearing is not unusually short in the context of substantive trademark hearings. The award was therefore well outside the range of reasonable outcomes.”

28. For the Respondent, Mr, Davies submitted that these grounds were “*frankly bizarre*” and disproportionate. He went on to submit that

“We might not agree with it or say it is a bit high or low but we have in here something that is entirely discretionary. Provided that discretion is rationally implemented and we have a reason why (“the Chief Hearing Officer) did what he did, we say he cannot be faulted and certainly cannot be shown to be wrong”.

29. The Hearing Officer clearly explained his rationale at [50-51]. That reasoning is neither irrational nor untenable. It is well within the bounds within which disagreement is possible, and another Hearing Officer might have awarded more or, indeed, less. But that is the nature of such assessments and as previously noted, matters of discretion are not fertile grounds of appeal. I see nothing here to justify appellate intervention.

30. Grounds 4 and 5 are dismissed.

Conclusion

31. The Appeal is dismissed in its entirety.

Costs

32. The appeal having been unsuccessful the Respondent is entitled to its costs.

33. The Chief Hearing Officer’s award below for the substantive issues, in the amount of £1100, stands. On this costs appeal, Mr. Davies argued only for costs “on-scale”. For considering the Appellant’s Grounds of Appeal, I award £400. For preparing for and attending the half-day Hearing I award £800. The total is £1200, which, after deduction of the £1100 awarded below, leaves the Appellant to pay £100 to the Respondent, this amount to be paid within 21 days of the date of issue of this Decision.

34.I will make a separate formal order only if asked to do so.

Philip Harris

Appointed Person

24 May 2026