

O/0621/26

TRADE MARKS ACT 1994

SUPPLEMENTARY DECISION ON COSTS

IN THE MATTER OF APPLICATION NOS. 3916979 & 3924977
IN THE NAME OF ENNISMORE INTERNATIONAL MANAGEMENT LIMITED
TO REGISTER THE FOLLOWING TRADE MARKS:

DISLOYALTY



IN CLASSES 35 & 43

AND

IN THE MATTER OF OPPOSITIONS THERETO
UNDER NOS. 443128 & 443522
BY SION O'CONNOR

Background

1. On 1 May 2026, a decision in the above consolidated proceedings was published under no. BL O/0379/26 (“the substantive decision”).

2. In summary, these consolidated proceedings concern two oppositions brought by Sion O’Connor against applications in the name of Ennismore International Management Limited (“the applicant”) to register the trade marks displayed on the cover page of this decision.¹

3. The outcome of the substantive decision was that the oppositions failed. The effect of this is that, subject to any appeal against the substantive decision, the applicant’s marks will become registered in the UK.

4. On the issue of costs, I stated as follows:

“63. The applicant has been successful and is entitled to a contribution towards its costs. In his skeleton argument, Mr Hicks submitted as follows

“36. [...] these two oppositions are part of a wider attack made by the Opponent on the Applicant or companies associated with the Applicant.

37. The Opponent does not suggest that he has any commercial interest in opposing the applications. Rather it appears that these oppositions have been launched in order to put the Applicant to trouble and expense, with a view to furthering the Opponent’s wider agenda. Yet further, the oppositions have been burdened by the Opponent with a mass of irrelevant material, putting the Applicant to unnecessary cost in having to consider that material.

¹ As noted in the substantive decision, the second mark is a motion mark which ends with the still image displayed on the cover page of this decision. The mark can be viewed in full on the register: <https://trademarks.ipo.gov.uk/ipo-tmcase/page/Results/1/UK00003924977>.

38. In those circumstances it is submitted that an off-scale award of costs would be appropriate in the event that it is determined that these oppositions should be dismissed.

39. The Applicant suggests that the most convenient way of dealing with the issue of costs and their amount, would be for the IPO to permit written submissions to be made on these issues following the handing down of the decision. This will enable the IPO to see these two oppositions in the context of the Opponent's wider agenda."

64. The substantive matters now having been determined, the applicant is invited to file submissions on costs within 14 days of the date of this decision. Mr O'Connor will have 14 days from receipt of those submissions to make his own submissions on costs. Those submissions should respond to the submissions of the applicant and be limited to the issue of costs only.

65. Once the parties' submissions have been received, a supplementary decision dealing with the matter of costs will be issued. The appeal period for this decision, as well as the decision on costs, will run from the date of that supplementary decision."

5. The applicant and Mr O'Connor filed written submissions on costs on 15 May 2026 and 29 May 2026, respectively. The applicant made a request for off-scale costs in the sum of £24,121.20.² Mr O'Connor disputed the applicant's request for off-scale costs, instead submitting that standard scale costs are appropriate and proportionate in the circumstances.

Supplementary decision

6. The power to award costs is provided for by section 68 of the Trade Marks Act 1994 ("the Act"), which states as follows:

² The claimed amount is exclusive of VAT and does not cover the costs associated with preparing the applicant's written submissions on costs.

“68 (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.

7. Rule 67 of the Trade Marks Rules 2008 (“the Rules”) 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 by what parties they are to be paid.”

8. Tribunal Practice Notice (“TPN”) 4/2007 indicates that the Tribunal has a wide discretion when it comes to the issue of costs, including making awards above or below the published scale where the circumstances warrant it.³ The TPN stipulates that costs off the scale are available “*to deal proportionately with wider breaches of rules, delaying tactics or other unreasonable behaviour*”.

9. The applicant maintains that off-scale costs are appropriate for the following reasons:

(i) Mr O’Connor had no *bona fide* commercial reason for filing the oppositions, pointing to the absence of any suggestion in his evidence or submissions that the applicant’s marks would clash or interfere with any trading activity in which he is involved.

(ii) The multitude of proceedings Mr O’Connor has brought against the applicant suggests that the present oppositions were brought to frustrate the applicant and cause it to incur the costs of defending them.

³ The more recent TPN on costs (1/2023) reiterates the Tribunal’s discretion in this regard.

(iii) Mr O'Connor's evidence and submissions contained false and unsubstantiated claims of alleged improper behaviours and conduct on the part of the applicant without any evidence to support them, attempting to shift the burden to the applicant to rebut such claims.

(iv) Mr O'Connor has sought to use the present oppositions as a forum for relitigating matters already determined by the Tribunal, namely his revocation and invalidity proceedings against the applicant's 'THE HOXTON' trade marks.

(v) The absolute grounds of opposition raised by Mr O'Connor were clearly devoid of any merit and, in particular, he alleged bad faith without any basis for doing so.

10. Firstly, Mr O'Connor refers to several decisions in his submissions when setting out his characterisation of the legal test for off-scale costs.⁴ Mr O'Connor clearly feels that these decisions support his position that off-scale costs are not appropriate in the present proceedings. However, it is well established that previous decisions of the Registrar are not binding. The decisions referred to by Mr O'Connor turned on their own facts and I shall say no more about them.

11. In my view, the applicant's argument at paragraph 9(v) can be dealt with swiftly. Both TPNs cited above make it clear that *"just because a party has lost, this in itself is not indicative of unreasonable behaviour"*. Mr O'Connor raised arguable grounds of opposition. Whilst Mr O'Connor's claims under sections 3(1)(b), 3(1)(c), 3(1)(d) and 3(6) were ultimately unsuccessful, that does not automatically mean that they were entirely without merit. Although I dismissed each ground of opposition, I do not consider the act of bringing them to have been unreasonable.

12. It is also considered that the applicant's argument at paragraph 9(iii) can be dealt with relatively swiftly. It is worth reiterating that bad faith is a serious allegation which should not be lightly made. Nevertheless, as explained by Lord Kitchin in *SkyKick*, *"the essence of the objection that an application to register a mark was made in bad faith*

⁴ Those being under nos. BL O/144/13, BL O/469/11 and BL O/311/11.

*[...] is that the motive or intention of the applicant was to engage in conduct that departed from accepted principles of ethical behaviour or honest commercial practices having regard to the purposes of the trade mark system”.*⁵ Whilst Mr O’Connor’s comments may have been unsavoury to the applicant, the motives, intentions and conduct of a trade mark applicant are a necessary aspect of a claim of bad faith. It is a trade mark applicant’s prerogative to dispute those allegations, as the applicant did in this case, and put forward its own explanation as to why the application was filed, contrary to the allegations against it. It is then a matter for the evidence. In the substantive decision, I found that Mr O’Connor’s evidence was not sufficient for the purposes of proving his allegations. The consequence of this is that his claim failed. However, to my mind, it does not automatically follow that he was acting unreasonably in making those allegations.

13. I do have some sympathy for the applicant resulting from Mr O’Connor’s approach to the evidence. Mr O’Connor appears to have believed that it was largely sufficient to make allegations and challenge the applicant to *“provide evidence if it disagrees”*. This can be seen several times throughout his evidence and submissions. Firstly, this is not correct: before the burden of proof shifts to the trade mark applicant, the opponent must raise a *prima facie* case against it. Secondly, such an approach may prompt a trade mark applicant to expend time and cost on preparing evidential responses which may not be strictly necessary. However, in this case, the applicant filed no evidence. The only response to Mr O’Connor’s evidence was the written submissions of 16 May 2024. Aside from a comment that *“the burden is on the Opponent to show bad faith, not for the Applicant to disprove it”*, I cannot see that Mr O’Connor’s approach actually created any additional or unnecessary work for the applicant. Having given due consideration to the matter, I am of the view that Mr O’Connor’s approach to the evidence was likely based on a misconception, rather than being demonstrative of unreasonable behaviour.

14. I now turn to the applicant’s argument at paragraph 9(iv) above. As I recorded in the substantive decision, much of Mr O’Connor’s case on bad faith in the present

⁵ *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36. The full guidance from Lord Kitchen was set out in the substantive decision.

proceedings appeared to represent a re-run of arguments brought in previous proceedings between the parties. Those were consolidated invalidation proceedings concerning four 'THE HOXTON'/'the hoxton' marks owned by the applicant. Mr O'Connor clearly felt that referring to those marks and proceedings was necessary for his allegation of bad faith in the present proceedings. I acknowledge that some reference to other marks was bound to form part of Mr O'Connor's claim that the applicant had exhibited a pattern of behaviour regarding the alleged control of allegedly descriptive trade marks. Some of it was relevant to the present proceedings, and this was discussed to that extent in the substantive decision.⁶

15. In my view, Mr O'Connor's evidence and submissions regarding other trade marks and related matters went beyond what was necessary for the prosecution of his claim in the present proceedings. A significant proportion of his first witness statement, documentary evidence, written submissions, and oral submissions at the hearing represented an attempt to demonstrate that other marks were descriptive and/or generic, rather than referring to them and any relevant findings to establish a pattern of behaviour. Not only were the applicant's 'THE HOXTON'/'the hoxton' marks validly registered marks at the time (see section 72 of the Act), but these matters were already at issue and being decided in other proceedings. Introducing such evidence and arguments into the present proceedings meant that the applicant would have spent time reviewing it. I am of the view that the time and cost of doing so was disproportionate to the matters at issue in these proceedings.

16. That said, I am not satisfied that the materials were filed for an improper purpose. Moreover, the decision in the other proceedings was issued on 29 September 2025, after all of Mr O'Connor's filings and the hearing in the present proceedings. On that basis, although ultimately unsuccessful, Mr O'Connor would not have known at the relevant times that his evidence and arguments in the other proceedings would be rejected. All things considered, I do not consider introducing the evidence and arguments regarding other marks to be an abuse of process or indicative of unreasonable behaviour justifying a departure from the usual scale.

⁶ See paragraphs 57-58 of the substantive decision.

17. That leaves the interrelated arguments at paragraphs 9(i) and 9(ii) above. Effectively, the applicant's position is that Mr O'Connor had no real commercial reason for filing the oppositions but that they were brought, amongst a number of other proceedings, as a means of frustrating the applicant and causing it to incur expense. Mr O'Connor's response to this is as follows:

"4. The Applicant's skeleton argument before the Hearing Officer characterised the Opponent as having no commercial interest in opposing the applications and as having brought the oppositions to put the Applicant to trouble and expense as part of a "wider agenda". This characterisation is wrong in every material respect and should be rejected.

5. The Opponent is an experienced Brand and Marketing Director with a substantial professional background in the development and management of loyalty programmes, reward programmes and membership programmes. His career includes senior roles at General Electric, British Airways, Capital One, HomeServe, Vanquis Bank and the AA, the Automobile Association. In those roles he has been directly responsible for:

- Developing loyalty programmes for Kaufhof, Metro and Asko customers in Germany;
- Relaunching the Debenhams Cosmetics Privilege Points loyalty programme;
- Developing and managing loyalty and reward credit card programmes for British Airways, Air Liberte and Deutsche BA frequent flyer loyalty programmes;
- Managing the Automobile Association's membership programme with over 3.2 million members, generating £1 billion in annual revenue;
- Managing membership programmes with over 3 million members at HomeServe in the UK and the US.
- Developing loyalty and reward programmes for other UK credit card issuers.

6. The Opponent has, over the course of his career, been responsible for acquiring over 10 million new customers, the majority of whom were part of a loyalty or membership programme. His professional expertise in this field is directly relevant to the subject matter of the opposition. He is not a bystander or a vexatious litigant. He is an expert, and has developed a significant personal trade, in the very category of services to which the applications relate.

7. The Opponent brought these oppositions because, in his professional judgment and based on his direct experience of loyalty programme development and management, the applied-for marks consisted of descriptive and generic terms. He brought them also to protect other genuine and honest traders in their desire to use descriptive terms in this industry. These are legitimate and coherent reasons. They cannot properly be characterised as a "wider attack" or as conduct falling short of honest commercial standards.

[...]

28. The Applicant has consistently suggested that the Opponent has no commercial interest in these proceedings. As set out above, this is factually wrong. The Opponent has extensive professional experience in loyalty programme development and management. He was directly concerned that the registration of the marks would enable the Applicant to assert monopoly rights over descriptive and generic terms in the very sector in which he works, and has worked for the past 30 years, in the UK, in Europe and across the world.

[...]

30. The Applicant's characterisation of the Opponent as a vexatious litigant engaged in a systematic campaign of harassment is further undermined by a simple and striking fact: notwithstanding that the Applicant has filed a very substantial number of trade mark applications over recent years, the present proceedings represent the only oppositions that the Opponent has ever brought against the Applicant's applications. A genuinely vexatious opponent, motivated by a desire to frustrate and harass, would be expected to oppose prolifically

and indiscriminately. The Opponent has done the opposite. He identified two specific applications which, in his professional judgment and based on his direct expertise in loyalty programme development and management, raised genuine concerns about the registration of descriptive and generic terms in a field in which he works. He opposed those two applications and no others. That is the conduct of a considered and principled professional acting on genuine grounds, not the conduct of a vexatious litigant. The Applicant's characterisation of these proceedings as part of a "wider attack" or "wider agenda" cannot be reconciled with the Opponent's actual behaviour, which has been measured and proportionate throughout."

18. I note that the present proceedings are but two of a number of cases past and present between the parties. Aside from the present proceedings (opposition nos. 443128 & 443522) and the four invalidation proceedings referred to above (cancellation nos. 506280, 506326, 506328 and 506865), Mr O'Connor's own evidence and submissions show that he has instigated the following proceedings against the applicant (or companies he says are related thereto):

- Cancellation no. 506022, revocation (non-use) claim against a 'DELANO' word-only mark. The Form TM26(N) was filed on 19 April 2023.
- Cancellation no. 506500, revocation (non-use) claim against a 'DELANO' figurative mark. The Form TM26(N) was filed on 7 September 2023.
- Cancellation no. 506501, revocation (non-use) claim against a 'Delano South Beach' word-only mark. The Form TM26(N) was filed on 7 September 2023.
- Cancellation no. 506021, revocation (non-use) claim against a 'HUDSON' word-only mark. The Form TM26(N) was filed on 19 April 2023.
- Cancellation no. 506372, revocation (non-use) claim against a 'THE HOXTON' figurative mark. The Form TM26(N) was filed on 31 July 2023.

- Cancellation no. 506373, revocation (non-use) claim against a ‘the hoxton’ figurative mark. The Form TM26(N) was filed on 31 July 2023.
- Opposition no. 444355 against a ‘DELANO’ word-only mark filed on 7 June 2023. Based on ‘Delano’ word-only mark filed on 19 April 2023 and bad faith. The Form TM7 was filed on 27 November 2023.

19. Mr O’Connor’s evidence and submissions also refer to the following proceedings brought against him by the applicant (or companies he says are related thereto):

- Opposition no. 441853 against a ‘Delano’ word-only mark filed on 19 April 2023. Based on ‘MAISON DELANO’ word-only mark registered on 13 August 2021 and bad faith. The Form TM7 was filed on 7 July 2023.
- Opposition no. 445340 against a ‘Delano’ word-only mark filed on 9 August 2023. Based on ‘MAISON DELANO’ word-only mark registered on 13 August 2021 and bad faith. The Form TM7 was filed on 17 January 2024.
- Opposition no. 441529 against a ‘Hudson’ word-only mark filed on 18 February 2023. Based on bad faith but referencing earlier registrations. The Form TM7 was filed on 23 June 2023.
- Opposition no. 441324 against a ‘Hudson’ word-only mark filed on 18 February 2023. Based on bad faith but referencing earlier registrations. The Form TM7 was filed on 12 June 2023.
- Opposition no. 441328 against a ‘Hoxton Yards’ word-only mark filed on 17 February 2023. Based on, *inter alia*, ‘the hoxton’ figurative marks registered on 20 April 2017 and 14 July 2017, and a ‘THE HOXTON’ word-only mark registered on 10 August 2012. The Form TM7 was filed on 12 June 2023.
- Opposition no. 433255 against a ‘Hoxton Circus’ word-only mark filed on 29 December 2021. Based on, *inter alia*, ‘the hoxton’/‘THE HOXTON’ figurative

marks registered on 15 November 2007, 20 April 2017 and 14 July 2017, and a 'THE HOXTON' word-only mark registered on 10 August 2012. The Form TM7 was filed on 4 May 2022.

- Opposition no. 443731 against a 'Hoxton Yards' word-only mark filed on 11 July 2023. Based on, *inter alia*, 'the hoxton' figurative marks registered on 20 April 2017 and 14 July 2017, and a 'THE HOXTON' word-only mark registered on 10 August 2012. The Form TM7 was filed on 20 October 2023.
- Opposition no. 433260 against a 'Hoxton Circle' word-only mark filed on 30 December 2021. Based on 'the hoxton'/'THE HOXTON' figurative marks registered on 15 November 2007, 20 April 2017 and 14 July 2017, and a 'THE HOXTON' word-only mark registered on 10 August 2012. The Form TM7 was filed on 4 May 2022.
- Opposition no. 433262 against a 'Hoxton 8' word-only mark filed on 29 December 2021. Based on 'the hoxton'/'THE HOXTON' figurative marks registered on 15 November 2007, 20 April 2017 and 14 July 2017, and a 'THE HOXTON' word-only mark registered on 10 August 2012. The Form TM7 was filed on 4 May 2022.
- Opposition no. 441326 against a 'Dakota Apartments' word-only mark filed on 18 February 2023. Based on bad faith, referencing use of 'DAKOTA' on its website. The Form TM7 was filed on 12 June 2023.
- Opposition no. 441329 against a 'The Dakota' word-only mark filed on 18 February 2023. Based on bad faith, referencing use of 'DAKOTA' on its website. The Form TM7 was filed on 12 June 2023.
- Opposition no. 441147 against a 'NOX HOX' word-only mark filed on 19 February 2023. Based on bad faith, with reference to earlier 'HOXTON'/'the hoxton' registrations. The Form TM7 was filed on 2 June 2023.

20. From all this, the following timeline emerges:

15 November 2007	One of the applicant's 'THE HOXTON' marks becomes registered.
22 December 2010	The applicant's 'DELANO' mark becomes registered.
25 November 2011	One of the applicant's 'HUDSON' marks becomes registered.
10 August 2012	Another of the applicant's 'THE HOXTON' marks becomes registered.
13 March 2013	Another of the applicant's 'HUDSON' marks becomes registered.
23 June 2014	The applicant's 'HUDSON COMMON' mark becomes registered.
5 April 2016	The applicant's 'DELANO' figurative mark and 'Delano South Beach' mark become registered.
20 April 2017	One of the applicant's 'the hoxton' marks becomes registered.
14 July 2017	Another of the applicant's 'the hoxton' marks becomes registered.
13 August 2021	The applicant's 'MAISON DELANO' mark becomes registered.
29 December 2021	Mr O'Connor applies for 'Hoxton Circus' and 'Hoxton 8' marks.
30 December 2021	Mr O'Connor applies for a 'Hoxton Circle' mark.
19 April 2022	The applicant writes to Mr O'Connor asking that he withdraw his applications for 'Hoxton Circus', 'Hoxton Circle' and 'Hoxton 8', making reference to its earlier registrations.
26 April 2022	Mr O'Connor emails the applicant refusing to withdraw his applications.
4 May 2022	The applicant opposes Mr O'Connor's 'Hoxton Circus', 'Hoxton Circle' and 'Hoxton 8' marks.

17 February 2023	Mr O'Connor applies for a 'Hoxton Yards' mark.
18 February 2023	Mr O'Connor applies for 'Hudson', 'Dakota Apartments' and 'The Dakota' marks.
19 February 2023	Mr O'Connor applies for 'NOX HOX' mark.
19 April 2023	Mr O'Connor applies for 'Delano' mark and applies to revoke the 'HUDSON' and 'DELANO' marks.
30 May 2023	The applicant applies for 'DISLOYALTY' (figurative).
2 June 2023	The applicant opposes Mr O'Connor's 'NOX HOX' mark.
7 June 2023	The applicant applies for another 'DELANO' mark.
12 June 2023	The applicant opposes Mr O'Connor's 'Hudson', 'Hoxton Yards', 'Dakota Apartments' and 'The Dakota' marks.
20 June 2023	The applicant applies for 'DISLOYALTY' (motion).
23 June 2023	The applicant opposes Mr O'Connor's other 'Hudson' mark.
7 July 2023	The applicant opposes Mr O'Connor's 'Delano' mark.
10 July 2023	Mr O'Connor applies to invalidate a 'THE HOXTON' mark.
11 July 2023	Mr O'Connor applies for another 'Hoxton Yards' mark.
19 July 2023	Mr O'Connor applies to invalidate two 'the hoxton' marks
31 July 2023	Mr O'Connor applies to revoke 'THE HOXTON' and 'the hoxton' marks.
9 August 2023	Mr O'Connor applies for another 'Delano' mark.
6 September 2023	Mr O'Connor emails the applicant to inform them of his intention to oppose the 'DISLOYALTY' marks. The applicant responds, disagreeing with Mr O'Connor's assessment regarding the

	distinctiveness of its marks and stating that it will defend any oppositions thereto.
7 September 2023	Mr O'Connor applies to revoke the 'DELANO' and 'Delano South Beach' marks.
18 September 2023	Mr O'Connor opposes the applicant's 'DISLOYALTY' figurative mark.
9 October 2023	Mr O'Connor opposes the applicant's 'DISLOYALTY' motion mark.
20 October 2023	The applicant opposes Mr O'Connor's other 'Hoxton Yards' mark.
27 November 2023	Mr O'Connor opposes the applicant's 'DELANO' mark.
4 January 2024	Mr O'Connor applies to invalidate a 'THE HOXTON' mark.
17 January 2024	The applicant opposes Mr O'Connor's 'Delano' mark.

21. In my view, the chronology and surrounding circumstances are capable of raising questions regarding Mr O'Connor's motives in bringing the oppositions to the 'DISLOYALTY' marks. His submission that these are *"the only oppositions"* that he *"has ever brought against the Applicant's applications"* does not accurately reflect the full extent of the litigation activity he has directed at the applicant. His own evidence and submissions disclose that he opposed an application for a 'DELANO' mark and commenced several revocation and invalidation actions against the applicant's registrations. The present oppositions did not arise in isolation. Rather, they form part of multiple proceedings between the parties, largely focusing on the applicant's trade mark portfolio. Further, in his first statement, Mr O'Connor states that *"I have had dealings with the Applicant and their representatives, Wedlake Bell LLP, for the past 2 years. The dealings all stem from the trademark applications I submitted that included the name of the geographic area of London, Hoxton"*. Moreover, in his written submissions of 31 October 2024, he stated that the *"root cause of the interactions between the parties is the Applicant being unwilling or unable to recognise that it does not have exclusive rights to the generic and descriptive name of 'Hoxton'"*. On the

evidence and information before me, the dispute between the parties appears to have begun when the applicant sought to enforce its registered rights against Mr O'Connor's later filed 'HOXTON' applications. There is no obvious connection between 'DISLOYALTY' and the other marks in which Mr O'Connor appears to have taken an interest. Moreover, at least some of those marks were already associated with the applicant. All this raises the question of whether Mr O'Connor's objections to the applicant's 'DISLOYALTY' marks were motivated by genuine concerns relating to the marks themselves or whether they were solely influenced by the wider dispute between the parties.

22. Nevertheless, I am not persuaded that these circumstances, without more, amount to unreasonable behaviour justifying a departure from the usual scale. I bear in mind that, in principle, anyone may bring an opposition under section 3 of the Act; such claims concern the trade mark itself and whether it should be registered. Mr O'Connor was not required to have a competing 'DISLOYALTY' business or mark to oppose the applications.

23. Moreover, Mr O'Connor has expressed his rationale for opposing the 'DISLOYALTY' marks, namely that (i) he has extensive experience in the field of loyalty/membership programmes, (ii) he believed that the applicant's 'DISLOYALTY' marks comprised descriptive and/or generic terms and (iii) he wished to prevent monopoly rights over such terminology being obtained in the sector. In addition to his submissions on the point, his experience in the field was outlined in both his witness statements. Mr O'Connor's narrative evidence also included a focus, albeit misguided in my view, on his concerns that the applicant's marks were descriptive and/or generic, and that the applicant was attempting to monopolise such terms. Whilst I did not agree with Mr O'Connor's assessment of the marks, his claims were not frivolous, and I am prepared to accept that his beliefs were genuinely held.

24. In addition, whilst there is a wider dispute between the parties, the chronology and surrounding circumstances show extensive litigation activity by both sides. Rather than demonstrating unilateral harassment, or a broader course of conduct instigated by Mr O'Connor against the applicant without a *bona fide* belief in his claims, the materials

before me show that both sides have been committed to pursuing their respective positions.

25. Finally, there is no direct evidence that the present proceedings were brought for an improper purpose, were knowingly hopeless, or were commenced solely to frustrate the applicant or put it to unnecessary expense. As things stand, I do not consider it appropriate to make an inference to the detriment of Mr O'Connor.

26. I am fortified in this finding by the evidence of Mr O'Connor informing the applicant of his intention to oppose the applications and proposing a disclaimer as a means of avoiding proceedings. That proposal may or may not have been realistic, and the applicant was entitled to reject it, but Mr O'Connor having reached out in this way does not appear consistent with him having the objective of putting the applicant to unnecessary expense.

27. Having carefully considered the conduct of the proceedings, and all the parties' submissions, it is my view that off-scale costs are not appropriate in this instance.

28. The relevant scale is that published in TPN 1/2023.⁷ In respect of scale costs, the applicant contends that these ought to be awarded at the upper end of the scale. Conversely, Mr O'Connor argues for the lower end of the scale. To arrive at a costs award, I will consider each part of the scale in turn, taking the parties' submissions into account where applicable.

Preparing a statement and considering the other side's statement

29. The scale sets out that the range of costs for this activity is £250 to £750 "*depending on the nature of the statements, for example their complexity and relevance*". Mr O'Connor filed two Form TM7s (one for each opposition). Each form was accompanied by a two-page statement of grounds. The grounds raised were not particularly complex or unusual, though not the lowest level of complexity. Mr O'Connor's comments in his statements of grounds were relevant to the pleaded

⁷ Both oppositions having commenced after 1 February 2023.

grounds and fairly to the point. The statements of grounds largely contained the same information as one another. The applicant would have been required to consider Mr O'Connor's statements and prepare its counterstatements. This would have been the case in both oppositions prior to their consolidation into one set of proceedings. The applicant duly filed two Form TM8s. Each form was accompanied by a nine-page counterstatement. The contents were more detailed than Mr O'Connor's statements of grounds but no less relevant to the pleaded grounds of opposition. Taking all of this into account, as well as the likelihood of some duplication of work, I consider that an award of £400 per opposition is reasonable. I award £800 in respect of this part of the scale.

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

30. The range of costs applicable to this activity is £600 *"if the evidence is light"* to £2,600 *"if the evidence is substantial"*. The scale also states that 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"*. The applicant filed no evidence of its own. However, it would have undoubtedly spent time considering Mr O'Connor's evidence. This comprised two witness statements and 33 exhibits. The witness statements totalled 23 pages. The documentary evidence was not particularly voluminous; excluding header sheets, it comprised 154 pages of evidence. The evidence was accompanied by written submissions. In total, these comprised 30 pages. In my view, a significant proportion of the evidence and submissions filed by Mr O'Connor was unnecessary, since it went to proving matters not at issue in the present proceedings. It should also be said that the line was blurred between evidence of fact and legal arguments in Mr O'Connor's witness statements and his written submissions. This made it rather difficult to follow, as did the labelling scheme he adopted for his exhibits. Whilst I bear in mind Mr O'Connor's submission that much of the evidence was created by, or already known to, the applicant, it still would have been required to review the evidence and consider its implications for the present proceedings. The applicant filed 20 pages of written submissions in which it made arguments relevant to the proceedings and commented on Mr O'Connor's evidence. Balancing all the above, I consider £1,000 to be a reasonable contribution towards the

cost of considering Mr O'Connor's evidence and submissions and preparing written submissions.

Preparing for and attending a hearing (including procedural hearings) or submissions-in-lieu

31. The scale sets out that costs available for this activity are up to £1,900 *“per day of hearing”*. The costs are capped at £3,900 *“for the full hearing unless one side has behaved unreasonably”*. The hearing ran for approximately two hours and produced a 30-page transcript. As such, it was not particularly lengthy. I note that Mr O'Connor made an application to file additional evidence two days before the hearing. This was dealt with as a preliminary issue at the hearing and, ultimately, it was unsuccessful. It did not take a significant amount of time to deal with. However, the applicant would have spent time reviewing Mr O'Connor's request and Mr Hicks did make brief submissions on it at the hearing. In addition to making an application for additional evidence, Mr O'Connor filed 37 pages of written submissions, which I effectively took as his 'skeleton argument'. In my view, the length of the document was disproportionate to the issues to be determined. Moreover, the submissions therein were rather repetitive, at times difficult to follow, and a significant proportion of them were not relevant. Again, the applicant would have spent time reviewing this in preparation for the hearing. After the hearing, Mr O'Connor filed a 20-page document, said to be a script of the submissions he had made. Whilst I appreciate that Mr O'Connor's intention was probably to assist the Tribunal, this was not necessary; as I explained at the outset of the hearing, a transcript writer was in attendance. Although, given that it was filed after the event, I did not take the document into account when preparing the substantive decision, the applicant may have spent time reviewing it. In light of all this, I find that £900 represents a reasonable contribution towards the applicant's costs in respect of this part of the scale.

32. In addition to the hearing, a case management conference took place earlier in the proceedings. This was to determine an extension of time request made by Mr O'Connor. The applicant would have spent time and incurred costs in preparing for and attending the case management conference. However, Mr O'Connor was successful in obtaining the extension of time, effectively allowing his second witness

statement, two further exhibits, and his accompanying written submissions into the proceedings. As such, it would not be appropriate to award costs against Mr O'Connor arising from the case management conference.

Expenses

33. The applicant paid no official fees arising from this action. The main hearing was conducted remotely, with no recoverable expenses arising from the applicant's attendance. I make no award under this heading.

Overall award

34. Combining all the above, I award the applicant the sum of **£2,700** as a contribution towards its costs.

35. I order Sion O'Connor to pay Ennismore International Management Limited the sum of **£2,700**. This sum is to be paid within 21 days of the expiry of the appeal period, or within 21 days of the final determination of the proceedings if any appeal is unsuccessful.

Appeal period

36. As indicated in the substantive decision, the appeal period will commence from the date of this supplementary decision. This applies to the substantive decision and this supplementary decision on costs.

Dated this 17th day of July 2026

James Hopkins
For the Registrar