

O/0631/26

DECISION ON COSTS

TRADE MARKS ACT 1994

IN THE MATTER OF:

TRADE MARK APPLICATION No. 4069627

BY LFG LIMITED

**TO REGISTER THE FOLLOWING TRADE MARK
IN CLASSES 24 AND 25**

DYNAMO STRETCH

AND

DYNAMOSTRETCH
(SERIES OF TWO)

AND

**AN OPPOSITION THERETO UNDER NO. 450424
BY SEVENTEEN 17 LIMITED**

Introduction

1. A substantive hearing concerning the above opposition proceedings was scheduled to take place before me on 16 April 2026. On 14 April 2026, LFG Limited (“the applicant”) withdrew its application and the hearing was consequently vacated. Seventeen 17 Limited (“the opponent”) claims that the late withdrawal and the applicant’s previous conduct throughout the proceedings were “designed to delay and frustrate”, such that the opponent should be awarded an off-scale costs award. The present decision is therefore to determine the matter of costs.

Background

2. On 28 June 2024, the applicant applied to register the series of marks **DYNAMO STRETCH** and **DYNAMOSTRETCH**¹ in the UK for a variety of goods in classes 24 and 25. On 25 October 2024, the opponent filed a notice of opposition against the application in its entirety. The opposition was brought under section 5(2)(b) of the Trade Marks Act (“the Act”), with the opponent relying on a single earlier mark; **DYNAMO**². Only the opponent filed evidence, which took the form of written submissions.

3. Further to a request from the applicant on 7 August 2025, a main hearing was later appointed for 16 April 2026, with official letters notifying the parties of the appointment issued on 13 March 2026. The opponent confirmed its attendance on 2 April 2026. On 9 April 2026, having not received notification of attendance from the applicant, an email was sent asking the applicant to provide contact details for the attending representative. No response was received. On 14 April 2026, the opponent filed its skeleton argument in readiness for the hearing. On the same date, the applicant notified the registry that it wished to withdraw its application.

4. On 17 April 2026, the opponent set out a comprehensive background of the proceedings and filed a request for an “enhanced award of costs”. I reproduce the

¹ UK Trade Mark 4069627

² UK Trade Mark 3800284

request below:

Request

13. The Opponent respectfully requests that the Tribunal Section provide an off-scale costs award in favour of the Opponent due to the Applicant's unreasonable behaviour in accordance with TPN 1/2023.
14. The Applicant's conduct outlined above has simply be designed to delay and frustrate proceedings. It is incumbent on professional representatives to adhere to the rules and guidance of the Tribunal and to know what is and is not reasonable.
15. It was unreasonable of the Applicant's representatives to request an extension of time for filing evidence/submissions which were never filed. This simply protracted proceedings.
16. It was unreasonable of the Applicant to request a hearing and then withdraw the Application. There appears to have been no basis for this request other than to delay proceedings and to have the Opponent incur significant costs and time in the preparation of skeleton arguments and for the hearing. The Applicant's actions of filing a request to withdraw the Application just over 1 hour ahead of the deadline to file skeleton arguments did not provide reasonable notice to avoid such time and costs being incurred by the Opponent.
17. Given the above, it is requested that an off-scale cost award is made in favour of the Opponent due to the extra expenditure the Opponent has incurred as a result of the Applicant's conduct.

5. The applicant was invited to file submissions on the matter but it declined to do so.

Decision

6. The power to award costs is provided for by section 68 of the Act, which states as follows:

“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 what parties they are to be paid.”

8. Tribunal Practice Notice (“TPN”) 4 of 2007 indicates that the Tribunal has a wide discretion when it comes to the matter 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. In *Rizla Ltd’s Application*,⁴ it was accepted by the court that the registrar has the power to award costs on a compensatory basis:

“As a matter of jurisdiction, I entertain no doubt that if the Comptroller were of the view that a case had been brought without any bona fide belief that it was soundly based or if in any other way he were satisfied that his jurisdiction was being used other than for the purpose of resolving genuine disputes, he has the power to order compensatory costs. It would be a strange result if the Comptroller were powerless to order more than a contribution from a party who had clearly abused the Comptroller’s jurisdiction.

The superintending examiner in his decision correctly, in my view, framed the issue he had to decide as: “...whether the conduct of the referrer constituted such exceptional circumstances that a standard award of costs would be unreasonable.”

10. In *Evonik Degussa GmbH v Carrs Agriculture Limited*,⁵ Ms Anna Carboni, sitting as the Appointed Person, said:

“24. [...] While the judgment of Anthony Watson QC sitting as a Deputy Judge in *Rizla* referred to this discretion as being “*with no fetter other than the overriding one that he must act judicially*”, I must now also take into account the updated version of the Civil Procedure Rules, which states in Part 1, rule 1.1 the overriding objective as being “*of enabling the court to deal with cases justly and at*

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

⁴ [1993] RPC 365.

⁵ BL O/158/15

proportionate cost" [...]. The additional text militates in favour of sticking to the scale of costs set out in TPN 4/2007 in straightforward appeals to the Appointed Person. However, proportionality works both ways, and it may be appropriate to make slightly higher costs awards in cases which involve an unusually large amount of work, or particularly complex or abnormal issues, even where there is no identifiable abuse or 'bad behaviour' of the paying party which would justify a compensatory award."

11. I will consider each of the opponent's arguments in turn. In doing so, I keep in mind the comments of Daniel Alexander KC, sitting as the Appointed Person in *Allori Limited v Alloro Restaurants Limited*⁶:

"16. The decision maker is therefore entitled to take into account a wide range of factors in considering the costs to be awarded and whether they should be off-scale.

17. These include the conduct of the parties, the nature of the case and whether it is self-evidently without merit, whether there have been abuses of procedure, the extent to which offers made to settle the case were unreasonably rejected and could have resulted in costs being avoided. There is no rigid formula, although the paradigm case for off-scale costs will involve breaches of rules, delaying tactics or unreasonable behaviour. Reasonable people can differ as to how unreasonable behaviour must be before it is appropriate to depart from the usual scale of costs."

The applicant's request for an extension of time

12. Part of the opponent's argument concerns the applicant's request for an extension of time. The deadline for the filing of the applicant's evidence was set at 23 June 2025, as per the official letters issued on 29 April 2025. On 23 June 2025, the applicant filed a request for an extension to the deadline, citing the reasons below:

⁶ BL O/116/13

“Evidence needs to be checked by a member of the applicant who is currently out of the country. We therefore request an extension of 14 days to the deadline for the individual to be in a position to check and sign off on the details of the evidence.”

Although the extension was subsequently awarded, the applicant declined to file evidence by the revised deadline and the evidence rounds were therefore concluded.

13. In my view, the duration requested by the applicant was relatively short and did not give rise to any meaningful delay in the proceedings. There are a number of reasons why the applicant may have elected not to file the evidence it had intended to prepare (or had prepared, as the above request indicates). I have nothing to suggest that the filing was tactical or not genuine and, as it is open to the applicant to make use of the entire period allocated to it for filing evidence (including the short extension), it is equally open to it to ultimately decide not to file evidence if, for example, it is not required to advance its position. For this reason, I am not satisfied that the filing of a request for an extension of time in which to file its evidence, and later not filing said evidence, was an unreasonable action on the applicant's part, and it is difficult to see what additional burden this would have placed on the opponent.

The applicant's request for a hearing and subsequent withdrawal of its application

14. As set out above, it was the applicant that elected to request a hearing in the present case, though it did not provide the information required concerning representation at the hearing at the first opportunity, nor having received a further request from the registry. Instead, the applicant withdrew its application on the same date the parties' skeleton arguments were due. Whilst I can sympathise with the opponent's position and agree that the sequence of events ultimately put the opponent to greater time and cost, it is nonetheless open to the applicant to withdraw its application at any point during the proceedings. Of course, doing so in a more timely manner would certainly have been beneficial to the opponent and I can understand how the applicant's actions may have been perceived as disruptive from the opponent's perspective. It is regrettable that the applicant has not taken the opportunity

to provide submissions to explain its position, but this does not constitute an admission or concession on the matter. The series of events highlighted by the opponent does not, in my view, amount to an abuse of process and, whilst I cannot be sure of the applicant's motivations throughout, I am not satisfied that the occurrences in the present proceedings support a finding that its behaviour was unreasonable, particularly in light of the case law set out above and guidance from the relevant practice notice. I can see no additional basis to justify an award of costs beyond the scale. For the reasons set out here, having carefully considered the conduct of the applicant throughout, I do not consider the circumstances to have been exceptional to an extent that warrants an off-scale cost award.

15. That said, the opponent is entitled to a contribution towards the costs it has incurred. The relevant scale is that published in TPN 1 of 2023. Based upon the guidance set out therein, and having due regard to the circumstances of the case, I award the opponent the sum of £1300, which is calculated as follows:

Official fee:	£100
Preparing a Notice of Opposition and considering the counterstatement:	£300
Preparing evidence:	£400 ⁷
Preparing for a hearing, including the filing of skeleton arguments:	£500

16. I order LFG Limited to pay Seventeen 17 Limited the sum of £1300. 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 against this decision is unsuccessful.

Dated this 21st day of July 2026

Laura Stephens
For the Registrar

⁷ As above, the opponent's evidence took the form of written submissions. I have taken the substantiveness of its submissions into account.