BL O/0739/26

TRADE MARKS ACT 1994

DECISION ON COSTS

IN THE MATTER OF TRADE MARK APPLICATION NO. 4203134
BY APACARE GROUP LIMITED
TO REGISTER THE FOLLOWING TRADE MARK:

IN CLASSES 3 AND 21

-AND-

THE OPPOSITION THERETO UNDER NO. 457341
BY CUMDENTE GMBH

INTRODUCTION

1. On 23 June 2026, the Registry issued a preliminary view not to award costs in these opposition proceedings. The preliminary view was issued following the withdrawal of the trade mark application by the trade mark applicant, APACARE GROUP LIMITED (“AGL”) before its defence filing deadline. The opponent, Cumdente GmbH (“Cumdente”) disputes the preliminary view and seeks a cost order above the published scale (“off-scale”) in its favour. The present decision is therefore to determine the matter of costs following the procedural hearing held before me by telephone conference on 30 July 2026.

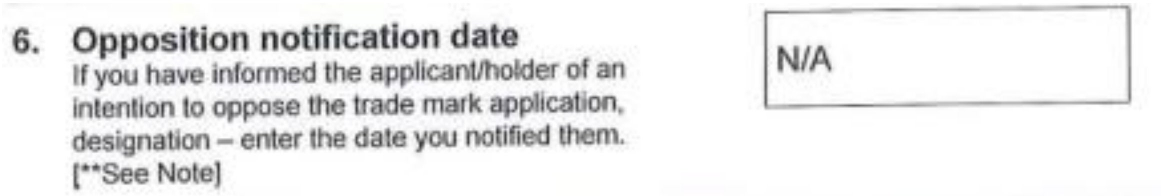
2. The hearing was attended by Mr Ian Bartlett of Beck Greener LLP, representing the Cumdente. Neither AGL, nor its representatives, YH Consulting Limited, attended the hearing.

BACKGROUND

3. On 14 May 2025, AGL applied to register the mark shown on the cover page of this decision, for a variety of dental-related goods in Classes 3 and 21. On 8 October 2025 Cumdente filed a Form TM7 ‘Notice of opposition’ against the application. The opposition was brought under sections 5(2)(b), 5(3), 5(4)(a) and 3(6) of the Trade Marks Act 1994 (“the Act”), with Cumdente relying on the following trade marks registered and/or used in respect of a variety of dental-related goods in Classes 3, 5, 10 and 21:

Trade Mark	Registration No.	Goods
APA	914098206	Class 5
Apa Care	811220975	Class 3
	801362883	Classes 3 and 5
Apa Care	3909541	Classes 3, 5, 10 and 21
Apa Care	WO0000001759056	Classes 3, 5, 10 and 21
APA	Unregistered	“cosmetic and dental products and preparations”
APA CARE	Unregistered	“cosmetic and dental products and preparations”

4. Cumdente had not filed a Form TM7A, ‘Notice of threatened opposition’, before commencing the opposition, and answered question 6 of its Form TM7, as follows (“N/A” standing for “not applicable”):



6. Opposition notification date
If you have informed the applicant/holder of an intention to oppose the trade mark application, designation – enter the date you notified them. [**See Note]

N/A

5. The ‘Note’ to which question 6 refers states as follows (my emphasis for clarity):

> “An opposition launched without giving the applicant or holder a reasonable opportunity to withdraw the application, international designation or amendment **may** result in the opponent being ineligible for an award of costs”.

6. AGL withdrew its trade mark application before the deadline for filing its Form TM8 defence to the opposition. Following that withdrawal, Cumdente sought an off-scale costs order. The Registry issued a preliminary view on that request, which Cumdente challenged, requesting to be heard on the matter.

7. Cumdente filed skeleton arguments ahead of the hearing. Those arguments set out a history of proceedings between the parties involving ‘APA’ and ‘Apa Care’ marks in respect of dental-related goods. That history includes an unpaid costs order of £2,800 in Cumdente’s favour.

8. When it filed its Form TM7, Cumdente stated in its covering email that it had applied (2 days prior) for the £2,800 order to be added to the unpaid costs register and noted that AGL was already on the Registry’s unpaid costs register for a separate matter with a third party; it also sought security for costs in the present proceedings; and asked that AGL should not be permitted to defend the opposition unless it first paid both the requested security and the outstanding £2,800 costs from the earlier proceedings.

9. The Registry responded that the security for costs request would not be considered unless and until it was known whether AGL had defended the opposition. Cumdente confirmed by email on 4 November 2025, that it understood that position.

10. Following AGL's withdrawal of its trade mark application, Cumdente sought off-scale costs for having had to go to the expense of initiating opposition proceedings. It essentially claimed its actual legal costs incurred in bringing the opposition (in the sum of £1,478). The Registry invited AGL's comments to this request, but no response was received. The Registry then issued its preliminary view on the request for off-scale costs, dated 23 June 2026, stating as follows:

> On review of the proceedings, it is noted that no form TM7a was filed, and Q6 of the form TM7 has been completed as N/A.
>
> Please refer to 5.8 of the work manual which states " If the first a party receives of the action against their mark is the receipt of the notification that proceedings have been launched and the application is subsequently withdrawn, or the mark surrendered, before a counter-statement is filed, the Tribunal will decline to make any award at all."
>
> The Tribunal has considered your request for off scale costs and, following a review of the file, it is the preliminary view of the Tribunal that no costs will be awarded.

11. I note that, in its skeleton arguments, Cumdente additionally claimed its costs of preparing for and attending the costs hearing, therefore its total off-scale costs request is for the sum of £2,478.

12. At the hearing, Mr Bartlett informed me that Cumdente is a German company specialising in dental-related goods sold under the marks 'APA' and 'Apa Care'. He explained that AGL had obtained a UK registration for 'ApaCare' in respect of dental-related goods, which Cumdente successfully invalidated by way of decision number BL O/0601/25, published on 1 July 2025, wherein AGL was ordered to pay Cumdente £2,800. That decision concerned consolidated invalidation and opposition proceedings, in which Cumdente was the applicant for invalidation and AGL was the opponent in the opposition).[1] I note that although Cumdente's invalidation application

[1] The opposition was against Cumdente's trade mark number 3909541.

was brought on several grounds, including bad faith, it succeeded on the basis of its earlier rights under relative grounds. The Hearing Officer did not consider *"that Cumdente had provided sufficient evidence that point[ed] to there being a prima facie case that AGL acted in bad faith"*;[2] nor did he consider that the evidence supported a finding that Cumdente had a reputation in the UK for the purposes of the section 5(3) ground.

13. The skeleton arguments also included a table setting out the proceedings between the parties, which I have annexed to this decision. Referring to that table, Mr Bartlett submitted that Cumdente has been compelled to oppose, or seek to invalidate, AGL's repeated applications for variations on 'APA' and 'ApaCare' marks in respect of dental-related goods, incurring significant expense on each occasion and without recovering its costs. He submitted that the procedural history between the parties demonstrated a pattern of conduct by AGL, which he characterised as serial and abusive. He likened that conduct to a "Gleissner-type case",[3] and argued that an off-scale costs award on the indemnity basis was justified to mark and deter AGL's behaviour. He submitted that, although the sum sought was not substantial, such an order was necessary to send a clear message to AGL that the conduct complained of should stop.

14. As to the absence of a Form TM7A, and Cumdente's answer of "N/A" to question 6 of the Form TM7, Mr Bartlett submitted that AGL did not require fresh notice. He argued that, by reason of the previous proceedings between the parties, AGL was already fully aware of Cumdente's rights and of the likelihood that any further trade mark application would be challenged. He said the requirement for prior notice was therefore effectively satisfied by the parties' procedural history leading up to the present proceedings. I note that in the various proceedings between the parties, Cumdente relies on its registrations for 'APA', 'Apa Care' and the 'Apa + tooth device' mark.

15. The issue for me to decide is therefore whether I should award costs and, if so, whether the behaviour complained of justifies an award above the published scale.

[2] BL O/0601/25 at [106].
[3] *Apple Inc. v Michael Gleissner*, BL O/015/17 and the subsequent decision on costs, BL O/118/17.

DECISION

16. 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."

17. 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."

18. 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.[4] The TPN stipulates that costs off the scale are available *"to deal proportionately with wider breaches of rules, delaying tactics or other unreasonable behaviour"*.

19. In *Rizla Ltd's Application*,[5] 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.

[4] The most recent TPN on costs (1/2023) reiterates the Tribunal's discretion in this regard.
[5] [1993] RPC 365.

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."

20. In *Evonik Degussa GmbH v Carrs Agriculture Limited*,[6] 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 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."

21. In *Allori Limited v Alloro Restaurants Limited*,[7] Daniel Alexander KC, sitting as the Appointed Person, said:

> "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,

[6] BL O/158/15
[7] BL O/116/13

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."

22. Having regard to the procedural history between the parties, as set out in the table annexed to this decision, I accept that there has been a pattern of consecutive trade mark applications by AGL in respect of dental-related goods. The applications are not identical to each other, but they are variations on a theme: each contains, or is closely based on, the words 'APA' or 'Apa Care', sometimes with additional wording or stylisation. I also note that, in the proceedings following the initial invalidation action, Cumdente has repeatedly asserted the same trade mark rights against AGL, namely its registrations for 'APA' and 'Apa Care' in respect of dental-related goods. In those later proceedings, AGL has either withdrawn its application or failed to defend it.

23. Mr Bartlett referred me to the *Apple v Gleissner* case, in which the Tribunal awarded substantial off-scale costs in response to persistent and abusive trade mark filing conduct. I do not consider the proceedings between Cumdente and AGL to be comparable to the facts of that case. Several of AGL's later applications were filed before decision BL O/0601/25 was issued on 1 July 2025, and therefore before the dispute between the parties had been determined. I also take into account that the applications have been for various renderings of marks containing wording aligned with AGL's own company name, rather than wholly opportunistic or random filings, and that AGL did not pursue those matters to a final determination. The different renderings may also be understood as attempts to move its marks away from Cumdente's registrations.

24. In these circumstances, while I accept that the procedural history between the parties is relevant, I do not consider that AGL's conduct, viewed as a whole, amounts to such unreasonable or abusive behaviour, or such exceptional circumstances, as would make it proportionate to award the full sum of £2,478 on an indemnity basis. However, that conclusion should not be taken as minimising the procedural history between the parties, or as meaning that no costs should be awarded at all.

25. Notwithstanding that Cumdente did not file a Form TM7A, and marked question 6 of its Form TM7 as "N/A", I consider that this is an appropriate case in which to depart

from the ordinary position outlined in part 5.8 of the Tribunal section of the Registry's Manual and exercise discretion. I accept that the procedural history between the parties is such that AGL would have been aware of Cumdente's trade mark rights and of its objection to the registration of a conflicting mark. The note to question 6 states that an opposition launched without prior notice *"may"* result in the opponent being ineligible for an award of costs. The warning is therefore not expressed in absolute terms. In my view, that wording preserves the ability to exercise discretion to award costs in appropriate circumstances, notwithstanding the absence of express pre-action notice.

26. I accordingly exercise the Registry's discretion to award costs in this case. In the circumstances, I am satisfied that an award on the contributory scale published in TPN 1/2023 is appropriate. Having regard to the guidance in that TPN, and to the circumstances of the case, I award Cumdente the sum of £1,500 as a contribution towards the cost of the proceedings. This sum is calculated as follows:

Official fee	£200
Preparing the statement of grounds	£500
Preparation for, and attendance at a procedural hearing on costs	£800
TOTAL	**£1,500**

27. I therefore order APACARE GROUP LIMITED to pay Cumdente GmbH the sum of **£1,500**. The 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 14th day of August 2026

Daniela Ferrari

For the Registrar

Annex

Initiation of proceeding	Opposition/Invalidation	Outcome	Costs award	Whether paid	Contested mark
30 May 2023	Invalidation of AGL's UK registration No. UK00003564102 Filed 16 April 2021.	Registration invalidated by decision of the IPO tribunal dated 01 July 2025	£2400 in favour of Cumdente	No.	ApaCare
14 September 2023	Opposition by AGL to Cumdente's TMA No. UK00003909541 APA.	AGL's Opposition refused.	Ditto	No.	
29 May 2023	Opposition by Cumdente to TMA No. UK00003888073 APACARE filed on 13 March 2023.	AGL failed to file a defence. Application refused.	No costs requested		APACARE
27 September 2023	Opposition by Cumdente to TMA No. UK00003934687 APACARE Filed on 16 July 2023.	AGL failed to file a defence. Application refused.	No costs requested		ApaCare
28 October 2024	AGL's UK application No. UK00004117451 APACARE filed on 28 October 2024	Application withdrawn	No costs requested		apa care
	Opposition by Cumdente to AGL's application No. UK00004203134 APACARE filed on 14 May 2025	AGL withdrew the application.	Costs above the scale requested.		apa care
13 March 2026	Cancellation by Cumdente of AGL's registration No. UK00004263250 APA ultra filed on 12 September 2025	AGL did not defend the cancellation. Decision in Cumdente's favour issued 27 July 2026.	A costs order over the scale is being sought.		apa ultra

To note in relation to the above table:

- I have included an additional column on the far right to indicate AGL's contested marks for ease of reference;
- there are 7 entries in the table and the first two are the consolidated proceedings resulting in decision number BL O/0601/25. Although a costs award of £2,400 is entered, the actual award was £2,800;
- no opposition proceedings were initiated against trade mark application number 4117451 on 28 October 2024 – it was filed on 28 October 2024 and was subsequently deemed withdrawn by the Registry, effective from the filing date;
- the sixth (undated) entry in the list relates to the present proceedings, filed on 8 October 2025.