

In the matter of THE TRADE MARKS ACT 1994

**In the matter of Trade Mark Applications No. 2421554 and 2421555
PEEKABOO in Classes 25 and 35 in the name of
MICHAEL CAUNTER and EMILY BOTHWELL**

**In the matter of Oppositions No. 95820 and 95813 thereto by
BLUSTUFF LIMITED**

**Appeal of the Applicant from the decision of
Mrs L White dated 24 June 2009**

DECISION

1. On 10 May 2006, Michael Caunter and Emily Bothwell applied to register two trade marks for a variety of goods and services in classes 25 and 35. Opposition was lodged against each of the applications under sub-section 5(2)(b) of the 1994 Act, based on three earlier trade marks.
2. Both sides filed evidence but neither side requested a hearing, and a decision was made on the papers by Mrs L White dated 24 June 2009. She concluded that the marks were similar, that the goods elements of the specifications were identical and the services elements were similar and she found there was a likelihood of direct confusion between them. On that basis the opposition succeeded and Mrs White ordered the Applicants to pay £2,400 towards the Opponent's costs of the opposition.
3. The Applicants filed Grounds of Appeal and the appeal was listed for hearing before me on 24 March 2010. On 19 March 2010, the Applicants informed all concerned of their intention to withdraw the appeal. The Opponent's attorneys then made an application for an award of costs in respect of the abandoned appeal. They produced a summary of the Opponent's costs of the appeal, totalling £832 of which £490 related to preparing and sending papers and instructions to counsel. The Applicants were invited to respond to that application, but failed to do so.
4. It seems to me that as a matter of principle it is right that the Applicants should pay the Opponent an appropriate contribution towards its costs of the abandoned appeal, in particular because the appeal was withdrawn so very late in the day. It appears that the Opponent had (as one might expect) taken steps towards preparation for the abandoned hearing and that sum is in line with the standard costs tariff.
5. However, it seems to me that reviewing the Grounds of Appeal was not an onerous task in this case, and the sum claimed in respect of informing the client and counsel

of the withdrawal of the appeal is a little on the high side. I will, in all circumstances, order the Applicants to pay the Opponent the sum of £700, such sum to be paid within 14 days of today. That sum is to be paid in addition to the sum awarded in respect of costs by Mrs White, if it has not already been paid.

Amanda Michaels
15 June 2010