

O/209/12

SUPPLEMENTARY DECISION ON COSTS

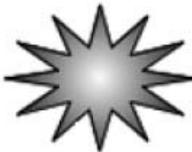
TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 2557692

BY

TORCHY LIMITED

TO REGISTER THE TRADE MARK

T  RCHY

IN CLASS 11

AND

THE OPPOSITION THERETO

UNDER NO 101477

BY

ANNA GORE

SUPPLEMENTARY DECISION ON COSTS

1. On 16 April 2012, I issued a substantive decision in these proceedings. In relation to costs, I said:

“26. The applicant has been successful and is entitled to a contribution towards the cost of the time it has spent on these proceedings. The Registrar usually operates on a published scale of costs¹. However, since the applicant has not been professionally represented during the proceedings, an award made from the published scale might be larger than its actual expenditure. In BL O/160/08 *South Beck*, Mr Richard Arnold QC, sitting as the appointed person, stated:

“32. Secondly, counsel for the opponent submitted that, if CPR r. 48.6 was applicable, the hearing officer had misapplied it. In support of this submission he pointed out that CPR r. 48.6(4) provides:

The amount of costs to be allowed to the litigant in person for any item of work claimed shall be-

(a) where the litigant can prove financial loss, the amount that he can prove he has lost for time reasonably spent on doing the work; or

(b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in the practice direction.

The Part 48 Practice Direction provides at paragraph 52.4 that the amount which may be allowed to a litigant in person under rule 46.8(4) is £9.25 per hour. Counsel submitted that the hearing officer appeared to have awarded the applicant two-thirds of the scale figure which he would have awarded a represented party, and that this could not be justified since the opponent had not proved any financial loss and was very unlikely to have spent over 160 hours on the matter.....

36. In my judgment the approach which should be adopted when the Registrar is asked to make an award of costs in favour of a litigant in person is as follows. The hearing officer should direct the litigant in person pursuant to r. 57 of the 2000 Rules to file a brief schedule or statement setting out (i) any disbursements which the litigant claimed he has incurred, (ii) any other financial losses claimed by the litigant and (iii) a statement of the time spent by the litigant in dealing with the proceedings. The hearing officer should then make an assessment of the costs to be awarded applying by analogy the principles applicable under r. 48.6, but with a fairly broad brush. The objective should be to ensure that litigants in person are neither disadvantaged nor overcompensated by comparison with professionally represented litigants.”

¹ Tribunal Practice Notice 4/2007.

Under the current practice direction, the amount allowed to a litigant in person is £18 per hour.

27. Consequently, the applicant should produce an estimate of its costs, including the number of hours that it has spent on these proceedings, broken down by category of activity, i.e. reviewing the notice of opposition and completing the counterstatement, and reviewing Ms Gore's evidence and filing the very short written submissions letter. This should be filed within 21 days of the date of this decision and should be copied to Ms Gore who will have 10 days from receipt of the estimate to provide written submissions. I will then issue a supplementary decision covering the costs of these proceedings.

28. The period for any appeal against this decision will run concurrently with the appeal period for the supplementary decision on costs and so will not commence until the supplementary decision is issued."

2. The applicant sent a letter on 11 May 2012, signed by Mr Donaghy, in which it wrote that the time it had spent defending the application was minimal and that it did not consider that it would be reasonable to claim any costs. Consequently, no award of costs will be made.

3. The period for appeal against the substantive decision runs concurrently with the period for appeal against this supplementary decision.

Dated this 21st day of May 2012

**Judi Pike
For the Registrar,
the Comptroller-General**