

TRADE MARKS ACT 1994

Supplementary decision on costs

In the matter of (1) United Kingdom Trade Mark Application No 2576986

Pooja Sweets & Savouries stylised words, and

(2) UK Trade Mark Registration No 2401680

Pooja Sweets & Savouries composite device

both in classes 29, 30, 35, 43

in the name of Pooja Sweets & Savouries Limited

-and-

In the matter of consolidated

(1) Opposition No 102596, and

(2) Application for a declaration of invalidity No 84010

by Pooja Sweets Limited

1) On 24 September 2013 the substantive decision in these proceedings was issued under BL O/384/13. In that decision the following finding was made in relation to costs:

“153) Mr Austen sought costs outwith the scale. In *West t/a Eastenders v Fuller Smith Turner PLC* [2003] EWCA Civ 429 Pumfrey J, sitting in the Court of Appeal, decided that, in awarding costs, the success in relation to separate grounds and the evidence adduced in relation to those grounds should be taken into account. In this case Wolverhampton has lost on most of the grounds. Tooting has been burdened by confused and unclear pleadings. A large part of the evidence of Wolverhampton was without pertinence to the proceedings eg there was much evidence about Sanskrit and its relationship to Indo-European languages. Wolverhampton put in a lot of evidence about its own business for the purposes of passing-off but there was clearly no basis for such a claim. The nature of the evidence and the manner in which Wolverhampton has conducted these proceedings has put an unnecessary and unacceptable burden upon Tooting. It is appropriate to make an award of costs outwith the scale in favour of Tooting. Tooting has two weeks from the date of the issue of this decision to file a breakdown of its costs in relation to these proceedings. A copy should be sent at the same time to Wolverhampton. Wolverhampton has two weeks from the date of receipt of the breakdown of costs to make submissions in relation to the quantum of costs given in the breakdown. **The submissions of Wolverhampton are to be strictly limited to this matter.**”

On 8 October 2013 a breakdown of costs from Tooting (Pooja Sweets & Savouries Limited) was received. The total costs incurred by Tooting was £47,637.87 plus VAT. The VAT will be recoverable by Tooting. Wolverhampton (Pooja Sweets Limited) made no submissions in relation to the costs bill of Tooting within the time allowed.

2) Costs are not being awarded on an indemnity basis. The costs will be outwith the scale but it is not appropriate to award actual costs. Taking into account the unnecessary expense to which Tooting has been put by Wolverhampton, it is considered that it should received 50% of its costs, ex VAT, rounded down to £23,800.

3) Pooja Sweets Limited is ordered to pay Pooja Sweets & Savouries Limited the sum of £23,800. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 7th day of November 2013

**David Landau
For the Registrar
the Comptroller-General**