

O-550-14

**TRADE MARKS ACT 1994**

**TRADE MARK REGISTRATION No. 2572109**

**IN THE NAME OF HAVOC STORE LIMITED**

**AND**

**APPLICATION FOR INVALIDATION No. 500094**

**BY HAVOC FIGHT GEAR LIMITED**

## Background

1. I issued a provisional decision in these invalidation proceedings on 29 September.

2. The provisional outcome was that, subject to a successful resolution of a point about the applicant's ownership of goodwill, the application for invalidation would succeed, except in relation to:

Sweatshirts, hats, baseball caps, toques and beanies in class 25.

3. However, I directed that:

- i) The applicant must either provide a witness statement explaining how, at the date of the application (i.e. 7 March 2013), the applicant company was the owner of the goodwill in the business apparently conducted by Mr Azam as a sole trader since 2007 or ask in writing for Mr Azam to be joined as a co-applicant, and (in the latter case only) agree that Mr Azam will be jointly liable for any costs that become payable, along with the applicant company.
- ii) The proprietor would be given 10 days to comment on the applicant's witness statement/application to join Mr Azam as a co-applicant.

4. I subsequently received a witness statement from Mr Azam dated 10 October 2014 in which he stated that his goodwill in the business was assigned to Havoc Fight Gear Ltd by virtue of an assignment dated 9<sup>th</sup> January 2013.

5. I received a submission Pinsent Mason dated 29 October, which essentially submitted that Mr Azam's claim of assignment should be disbelieved in the absence of a copy of the assignment document or a satisfactory explanation as to why it has not been filed.

6. I permitted Mr Azam until 26 November to file a copy of the assignment or provide an explanation as to why it had not been filed with his witness statement.

7. I permitted Havoc Store Limited until 3 December to request to cross examine Mr Azam on his statement.

8. Received a reply from Mr Azam enclosing a copy of a deed of assignment dated 9 January 2013.

9. No request was made to challenge that evidence through cross examination. I therefore accept it.

## Outcome

10. The result is that the provisional decision is confirmed and (subject to appeal) trade mark registration 2572109 is declared invalid and will be cancelled, except for:

Sweatshirts, hats, baseball caps, toques and beanies in class 25.

## Costs

11. The Registrar has a wide discretion to award costs under Rule 68 of the Trade Mark Rules 2008. I indicated in the provisional decision that I was minded to award the applicant £1500 in costs on the basis set out in paragraphs 75 and 76 of my decision. However, I noted that where a party acts without the cost of legal representation it is important that the costs awarded do not exceed the costs actually incurred. I therefore invited the applicant to provide a breakdown of its actual costs (other than official filing fee costs), which should explain how they have been incurred.

12. Mr Azam provided a breakdown of the time he had spent on the application as follows.

### **TIME**

1) Invalidation Application Form

The filling of the form hours input = 4 hours

2) First Round Of Evidence

Hours input in completing the first round of evidence file, time spent in obtaining advice and research = 100 hours (12.5 days of 8 hours input)

3) Second Round Of Evidence

Hours input in completing the second round of evidence file, time spent in obtaining advice and research = 80 hours (10 days of 8 hours input)

4) Other Correspondence

Hours input in completing all other correspondence to IPO = 5 hours

13. On the basis of having spent 189 hours in total on the matter, Mr Azam estimated his costs at £3780 at a rate of £20 per hour. Mr Azam also claimed £148.52 to cover his disbursements on telephone calls, travel costs and postage, bringing his total claim to £3928.52.

14. I received submissions on behalf of the proprietor which took issue with the number of hours claimed and the generally inadequate and unsupported nature of the costs breakdown. The proprietor submits that the applicant is not entitled to any costs to cover the time he spent on the opposition and should be awarded, at most, the £148.52 spent on disbursements.

15. I reject the submission that the applicant is not entitled to any costs for his time as a litigant in person. This submission is not in line with the position under the Civil Procedure Rules or the practice of this tribunal or its appellate tribunal. See, for example, the decision of Mr Geoffrey Hobbs QC as the Appointed Person in *Club Sail*<sup>1</sup>. However, although I recognise that a litigant in person is likely to take longer to deal with these matters than a legal professional, I regard Mr Azam's estimates as a little excessive. However, even if I were to halve them (which I think would be reasonable) they would still more than justify the scale costs I had in mind - £1500.

16. As I indicated in my provisional decision, the Registrar operates on a scale of costs. The policy is to require the loser to make a contribution towards the costs of the winner. Unless there are exceptional circumstances, costs are not awarded on a compensation basis. The purpose of requesting a costs breakdown was to establish that an award of £1500 was justified. I am satisfied that it is.

17. The process of dealing with the proprietor's challenge to the standing of the applicant, and of dealing with costs, must have added to Mr Azam's costs. I do not consider that it would be proportionate to ask him for a further breakdown of these costs. Indeed to do so could extend the process into a vicious circle. I will therefore summarily update the costs I had intended to award him to £1650 to cover this additional work and cost.

18. I therefore order Havoc Store Limited to pay Havoc Fight Gear Limited the sum of £1650 within 7 days of the end of the period for appeal, or within 7 days of the conclusion of any appeal.

**Dated this 17th Day of December 2014**

**Allan James  
For the Registrar**

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<sup>1</sup> BL O/155/10