

O-581-16

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION NO 01550700 AND TRADE MARK NO 02183949B IN THE NAME OF FURNITURE VILLAGE LIMITED

AND IN THE MATTER OF CANCELLATION NUMBERS 00500653 AND 00500654 THERETO IN THE NAME OF FURNITURELAND.CO.UK LIMITED

PRELIMINARY DECISION ON EXTENSION OF TIME

1. On 28 October 2016 a Decision was issued on the above appeal. In paragraph 94 of that Decision directions were given as to written submission as to costs.
2. Pursuant to:
 - (1) paragraph 94(1) of the Decision the Respondent indicated in a letter that it was seeking a costs order off the usual scale in relation to certain costs of the appeal and the Appellant confirmed that it did not seek costs off the usual scale; and
 - (2) paragraph 94(2) of the Decision under cover of a letter dated 17 November 2016 the Respondent provided a schedule of costs together with written submission in support of its application for off scale costs.
3. Subsequently, by email dated 21 November 2016 further directions were issued as follows:
 - (1) on or before 4 pm on Monday 5 December 2016 the Appellant shall provide its written submissions in response to the materials submitted on behalf of the Respondent in support of its application for costs under cover of a letter dated 17 November 2016 from Bracher Rawlins LLP; and
 - (2) on or before 4pm on Wednesday 14 December 2016 the Respondent shall provide its written submissions, if any, strictly in reply to those served on behalf of the Appellant.
4. By email timed at 14:51 on Monday 5 December 2016 the following request was made on behalf of the Appellant:

Further to your email of 21 November 2016, we confirm that the Appellant's submissions are close to being completed. However, we find that we are struggling to make the deadline in the timeable (sic) and so have to request from Ms Himsworth a very short extension of time to 10am tomorrow morning, 6

December 2016 to complete and file the submissions, with a consequential similar extension for those in reply. We apologise for this situation.

5. It is to be noted that with reference to the above email: (a) there is no explanation as to why it has not been possible to comply with the deadline set for the filing of submission; or (b) why it is only a little over an hour before the deadline for the filing of the submissions that the application for an extension of time has been made. In addition there is nothing to suggest that the Appellant has been in contact with the Respondent with regard to agreeing any extension of time. Moreover this is not the first time that the Respondent has failed to comply with a deadline and/or made a very late application in the context of the present proceedings.
6. However, the extension of time requested is very short i.e. until 10 am on 6 December 2016 therefore my preliminary view, subject to anything that the Respondent may wish to submit, is to direct that, pursuant to Rules 62(1)(a), 62(3) and 72(4) of the Trade Mark Rules 2008, unless the Appellant complies with the direction set out in the email of 21 November 2016 by 10 am (GMT) on Tuesday 6 December 2016 a decision as to costs will be made on the basis of the materials currently before me.
7. In the event that the Appellant does comply on or before 10 am (GMT) on Tuesday 6 December 2016 with the direction set out in the email of 21 November 2016 the Respondent's time for complying with the directions set out in the email of 21 November 2016 will be extended until 10 am (GMT) on Thursday 15 December 2016.
8. Should the Respondent wish to make any submissions on the above it should do so before 4pm (GMT) on Thursday 8 December 2016.

Emma Himsworth QC

5 December 2016