
**DECISION ON COSTS
FOLLOWING WITHDRAWAL OF APPEAL**

1. This was to have been an appeal against a decision dated 23 February 2021 of the Hearing Officer, Clare Boucher. She allowed an opposition against the registration of the mark icecoolfashion based upon earlier ICE, ICE PLAY and ICE ICEBERG registrations in the name of the Opponent/Respondent, Gilmar SPA.
2. The appeal was due to be heard on Friday 10 September 2021. The agents for the Applicant/Appellant, Ice Cool Designers Limited, wrote to the UKIPO on 27 August 2021 to request withdrawal of the appeal and vacation of the forthcoming hearing. They also submitted that there should be no order as to costs.
3. The agent for the Opponent/Respondent replied on 3 September 2021 seeking an award of costs on the usual scale. It was said that the lodging of the Appeal had caused the Opponent/Respondent to incur costs, including the filing of a Respondent's Notice, which was prepared by Counsel.
4. I have dealt with similar issues in two previous decisions, Glo Glu O/097/17 and Dance UK Dance O/108/19. I intend to apply the same principles here. As I explained in Dance UK Dance at §11:

[T]he Registry and the Appointed Persons will always encourage parties to compromise or withdraw disputes where possible. If an application, opposition or appeal is compromised or withdrawn then this not only benefits the parties in terms of saved time and expense, but it also benefits other users of the trade mark system because the resources available can be directed to resolution of other outstanding disputes. Further, the sooner a matter is removed from the hearings list, the greater the procedural efficiency for all involved.

5. Nevertheless, whilst parties are to be encouraged to withdraw proceedings in good time before the hearing to save the other party costs and to save wasting tribunal resources, there is no reason why costs already incurred should not be compensated on the usual scale.
6. In future, I will expect a represented party who is withdrawing proceedings to attempt to agree the issue of costs with the other side as part of the withdrawal. Given the nature of the scale, it may be cheaper for both parties to agree that there should be no order as to costs on the appeal, rather than wasting money arguing about relatively modest sums.
7. Nevertheless, in the present case I have been asked to award costs to the Opponent/Respondent. Happily neither side has wasted resources in arguing the point at length. I also bear in mind that the appeal was withdrawn in good time before the hearing (some 2 weeks in advance), thereby avoiding the wasted costs of preparing for the hearing itself.
8. I will make an award to represent the costs of the Opponent/Respondent having to consider the Notice of Appeal. However I will not make an award in respect of the Respondent's Notice. I am simply not in a position to judge whether the Respondent's Notice was reasonable to file; that would require me to assess the merits of the appeal, which have not been argued.
9. Doing the best I can with the material before me, and noting that the Notice of Appeal was relatively succinct, I make an award of costs of £400 in respect of this appeal to account for the Opponent/Respondent's costs.
10. This sum needs to be added to the sum of £1550 already awarded by the Hearing Officer to the Opponent/Respondent.
11. The total sum of £1950 should be paid by the Applicant/Appellant within 21 days of the date of the order which follows this decision.

Thomas Mitcheson QC
The Appointed Person

The Applicant/Appellant was represented by ip21 Limited

The Opponent/Respondent was represented by Boulton Wade Tennant LLP

The Registrar took no part in the Appeal