

O/0083/25

SUPPLEMENTARY DECISION

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NOS. 3857239 & 3857242

IN THE NAME OF TARGET HEALTHCARE LIMITED FOR



AND

Target Healthcare

IN CLASSES 5, 35, 39, 40 & 44

AND

**THE OPPOSITIONS THERETO
UNDER NOS. 440763 & 441442 BY
TARGET BRANDS, INC.**

1. On 13 January 2025, a decision in the above consolidated opposition proceedings was published under reference number BL O/0021/25 (“my decision”). The oppositions had been brought under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”) and were partially successful under section 5(2)(b).

2. In my decision, I recorded the fact that the opponent had not filed evidence about its business but had not formally withdrawn its pleaded ground of opposition under section 5(3) of the Act. Since the opponent had not filed any evidence about its business, the section 5(3) ground failed. Following the publication of the decision, the opponent’s representatives wrote to the Tribunal on 21 January 2025, pointing out that they had sent a letter dated 4 December 2023 to the Tribunal in which the opponent had withdrawn its section 5(3) ground, prior to filing evidence. A copy of the letter was attached.

3. The letter dated 4 December 2023 had never reached the official file. I had not seen it when I wrote and issued my decision. The opponent’s representatives, in their letter of 21 January 2025, said:

“...under the power granted BY rule 74 (1) (Trade Mark Rules 2008) to the Registrar, we request correction of this factual error in the decision and also request a review of any implication that this may have in the apportionment of costs, in particular the amount corresponding to the official fees in the proceedings.”

4. Consequently, this supplementary decision corrects the error concerning the opponent’s withdrawal of its section 5(3) ground: the opponent withdrew its section 5(3) ground on 4 December 2023 in its letter of that date.

5. The opponent filed evidence which was relevant to the section 5(2)(b) ground. I said this about costs:

“58. The opponent has been more successful than the applicant against the goods and services which it opposed and is entitled to a contribution towards its costs, based upon the scale of costs published in Tribunal Practice Notice

1/2023. I assess costs as follows, taking into account the economies achieved through consolidation of the cases after the defences were filed. I have reduced the statutory fees for the oppositions to £100 each because the opponent filed no evidence to substantiate its section 5(3) claims. I have reduced the award by 25% to reflect the partial failure of the oppositions.

Official fees for filing the oppositions x2	£200
Preparing and filing the notice of oppositions and considering the counterstatements x2	£600
Filing evidence	£600
Filing written submissions in lieu of a hearing	£400
Less 25%	-£450
Total	£1350"

6. The fact that I had not seen the letter withdrawing the section 5(3) ground makes no difference to the cost award. The statutory fee for an opposition brought solely under section 5(2)(b) is £100, not £200. The opponent chose not to continue with its section 5(3) ground, so is not entitled to any part of its statutory fee other than that which equates to the fee it would have paid had it pleaded only section 5(2)(b) in the first place: £100. As there were two oppositions, there are two £100 statutory fees in the cost breakdown. The evidence award is in respect of the evidence filed to support the section 5(2)(b) ground.

7. Taking all of the above into account, the fact that I had not seen the opponent's letter of 4 December 2023 prior to issuing my decision had no material impact upon any of the outcomes reached in my decision. So, while this error is plainly an irregularity, it is one that is capable of being corrected under Rule 74 of the Trade Marks Rules 2008. Consequently, I give the parties notice that this supplementary

decision corrects that irregularity. The appeal period in respect of these proceedings begins from the date of this supplementary decision.

Dated this 29th day of January 2025

Judi Pike
For the Registrar