O/0693/25

DECISION ON COSTS
CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

IN THE MATTER OF
TRADE MARK APPLICATION NOS. UK00003846676 AND UK00003846672
IN THE NAME OF MEGA EVENTS/ TRAVEL/ MUSIC LTD
TO REGISTER

THE ROCK ORCHESTRA BY CANDLELIGHT

AND

THE ROCK ORCHESTRA

AS TRADE MARKS IN CLASSES 9,16 AND 25

AND

OPPOSITIONS THERETO NOS. 443973 AND 443975
BY
LONDON SYMPHONIC ROCK ORCHESTRA LTD

Background and pleadings

1. On 7 November 2022, MEGA EVENTS/ TRAVEL/ MUSIC LTD ("***the Applicant***") applied to register in the UK the trade marks shown on the cover page of this decision under numbers UK00003846676 and UK00003846672 in respect of goods in Classes 9, 16 and 25 ("***the Contested Marks***"). Details of the applications were subsequently published for opposition purposes respectively on 11 August 2023 for application number UK00003846676 and on 4 August 2023 for application number UK00003846672.

2. On 2 October 2023 London Symphonic Rock Orchestra LTD ("***the Opponent***") filed Form TM7a, notice of threatened opposition. The Applicant did not withdraw its applications. Subsequently, on 3 November 2023, the Opponent filed Form TM7, opposing the applications in full under sections 5(4)(a) and 3(6) of the Trade Marks Act 1994 ("***the Act***").

3. Under section 5(4)(a), the Opponent relies upon the sign 'London Symphonic Rock Orchestra' and the sign 'ROCK ORCHESTRA' which it claims to have been using throughout the UK since 2018 in relation to "*Live performance services; music concerts; live music concerts; organisation of music concerts; presentation of music concerts; production of music concerts; arranging and conducting of music concerts; promotion of musical concerts; phone cases; mouse mats; refrigerator magnets; sunglasses; cases for sunglasses; paper and cardboard; stationery; pencil cases; wrapping materials; cards, greetings cards and gift tags; paper and plastic bags; tissues and napkins; clothing; footwear; headwear; t-shirts; hoodies; sweaters; vests; hats; caps; wristbands; sweatbands; headbands; socks; beanies; sashes for wear; visors; jumpers; shirts; jackets*". The Opponent claimed that use of the Contested Mark would be contrary to the law of passing off.

4. Under section 3(6), the Opponent submitted, in its statement of grounds, that:

> "As will be shown in evidence, the Opponent company was incorporated on 5 July 2018, which is before the date the Application was filed, and the Opponent has been using the trade marks "London Symphonic Rock Orchestra" and "Rock Orchestra" since its incorporation. Due to the relationship between the Applicant and the Opponent, the Applicant must have been aware of the

Opponent's prior rights in the name ROCK ORCHESTRA and LONDON SYMPHONIC ROCK ORCHESTRA. The Applicant did not inform the Opponent of their intention to file the application. As a result, in filing the Application and thus attempting to obtain sole ownership of the trade mark, potentially with a view to preventing the Opponent from using the trade mark, the Applicant's conduct falls short of the standards of acceptable commercial behaviour and honest commercial and business practices, as observed by reasonable and experienced people in the particular area concerned, as will be shown in evidence".

5. On 15 January 2024 and 22 January 2024, the Applicant filed defences and counterstatements, respectively for oppositions number 443973 and 443975, denying the oppositions in full and provided an account of the parties' relationship and related use of the marks at issue.

6. The Applicant is represented by Harbottle & Lewis LLP and the Opponent is represented by Lee & Thompson LLP.

7. On 23 January 2024 the Registry informed the parties that both opposition proceedings had been consolidated under the lead case, opposition number 443973. In the same letter the Registry admitted the TM8s and set the timetable for the evidence/submissions rounds setting the deadline of 25 March 2024 for the Opponent to submit its evidence/submissions.

8. On 25 March 2024 the Opponent filed a Form TM9 to request a one-month extension of time, the Applicant did not object to it and the Registry, on 26 March 2024, granted such extension of time allowing the Opponent one extra month to file its evidence and/or submissions.

9. On 25 April 2024 the Opponent filed evidence in the form of a witness statement from Laura Stanford accompanied by Exhibits LS1 – LS9. The Opponent put forward a confidentiality request for part of the evidence. The Registry, on 14 May 2024, issued its preliminary view refusing this request. Both parties agreed on the need for confidentiality, however, the Registry maintained its initial position and the request was ultimately refused on 24 July 2024.

10. On 19 September 2024, the Opponent withdrew both consolidated oppositions. No further reasoning was provided to this regard.

11. On 17 April 2025, the Applicant wrote to request an off-scale costs for which it provided the following arguments:

- The Opponent's behaviour appeared intended to force the Applicant to incur in additional costs to disrupt the Applicant's business.
- Prior to the filing of the opposition, the parties entered into a commercial agreement and the Applicant was a mere contractor.
- The opposition was unilaterally withdrawn at a moment in the proceedings (i.e., the date before the Applicant's deadline to file evidence/submission) simply to maximise the Applicant's costs.
- The opposition was used as means to extract significant payment from the Applicant initially sought via settlement proposals.
- The Opponent refused a settlement proposal that would have been more favourable than merely withdrawing the opposition which forced the Applicant to incur in additional costs.
- The opposition was without merit regarding both section 5(4)(a) and section 3(6) grounds.

12. On 28 April 2025, the Registry wrote to the Opponent informing them that the Applicant had requested an award of costs and invited comments on the matter on or before 12 May 2025.

13. On 12 May 2025, the Opponent filed the following comments to show that it did not act unreasonably:

- The Opponent was not a mere contractor of the Applicant, but a collaborator in a joint venture.
- It was not possible for the Opponent to withdraw the opposition earlier in the proceedings.

- The Opponent's settlement proposal was not unreasonable and included economic matters relating to the parties' commercial relationship prior to the opposition.
- The Applicant did not unreasonably reject efforts to settle the dispute. The applicant's latest settlement proposal was not more favourable to the Opponent than merely withdrawing the opposition.
- The Opponent had a legitimate interest in the marks at hand and rightfully acted to protect its intellectual property rights. Therefore, the opposition had merit with regard to both section 5(4)(a) and section 3(6) of the Act.

14. On 5 June 2025 the Registry wrote to the parties issuing its preliminary view as follows:

"The Registry has considered the request for costs, and after reviewing the file, it is the preliminary view of the Registry that an award of **£1100.00** in favour of the applicant would be appropriate. This amount is reached as follows:

Considering the TM7 and filing of TM8 in OP000443973	**£250.00**
Considering the TM7 and filing of TM8 in OP000443975	**£250.00**
Considering the opponent's evidence and preparing applicant's evidence	**£600 .00**
TOTAL	**£1110.00**[1]

Costs in proceedings before the Registry are awarded after consideration of guidance given by the standard published scale. However, the Registrar also has the freedom to award costs off the scale to deal proportionately with unreasonable behaviour. Please see Tribunal Practice Notice 4/2007.

The Registry has reviewed the proceedings and has awarded costs from the standard scale, these proceedings were not considered to be complex, therefore it is appropriate that the award of costs reflects this.

[1] The Applicant correctly pointed out, in their written submissions dated 7 July 2025, that the total cost of £1,110 contained in the Registry's official communication of 5 June 2025 is a typographical error and it should amount to £1,100 according to the breakdown of individual costs outlined in the letter.

If either party disagrees with the preliminary view they should request a hearing within 14 days from the date of this letter; that is on or before 19 June 2025.

If no response is received within the time allowed, the preliminary view will automatically be confirmed."

15. On 19 June 2025, the Applicant requested a hearing on the matter.

Hearing

16. The hearing took place before me on 9 July 2025 by way of telephone conference. The Applicant was represented by Mr Samuel Flack of Harbottle & Lewis LLP and the Opponent by Ms Helene Whelbourn of Lee & Thompson LLP. Both parties provided skeleton arguments.

17. At the hearing, I outlined that the remit of the hearing was to determine whether an off-scale costs award was justifiable under the applicable Tribunal Practice Notices ("TPNs"), Trade Mark Rules 2008 ("the Rules"), the Manual, and case law. I also informed the parties that I had read all the submissions and considered the relevant documents.

18. Both parties attended the hearing and mostly reiterated their arguments from the previously filed submissions. I will summarise the parties' arguments here and refer to them as and where appropriate during this decision.

19. Mr Flack first provided a brief overview of the facts and claim at hand. He submitted that the Opponent was contracted to provide music arrangement services for the Applicant's production until October 2023 (when the parties' contractual relationship ended) at which point the Opponent set up a competing production. The Opponent then opposed the Applicant's attempt to register the name of its production and attempted to use this as leverage to demand an arbitrary settlement sum of £80,000. The Applicant did not accept such settlement proposal, and the Opponent withdrew the consolidated opposition shortly before the Applicant's deadline to file evidence. However, at that point, the Applicant had already undertaken most of the work to prepare its evidence. Mr Flack submitted that this was the Opponent's strategy all along to disrupt the Applicant's business and seek payment of a significant sum from the Applicant in exchange for the withdrawal of

the consolidated opposition. It is on this basis that the Applicant is seeking order for off-scale costs, or, in the alternative, the upper end of each cost scale.

20. Mr Flack clarified that the Applicant requested a hearing as it disagreed with the Registry's preliminary view to refuse to award the Applicant off-scale costs.

21. Firstly, the Applicant disagreed with the fact that the Registry considered the proceedings not to be sufficiently complex for an off-scale award of costs. Mr Flack submitted that the Applicant had to address the Opponent's allegations of bad faith which are extremely serious and needed to be addressed substantively in the evidence. Accordingly, the Applicant had to provide an account of the parties' commercial relationship and address the Opponent's submissions on this point.

22. Secondly, the Applicant found unclear whether the Registry, in issuing its preliminary view, considered the Opponent's conduct. Mr Flack stated that the Opponent's general conduct should give rise to an off-scale cost award because the consolidated opposition was without merit, the Opponent rejected more favourable settlement offers that resulted in unnecessary costs for the Applicant, and the Opponent's conduct was aimed at disrupting the Applicant's business with the additional intent to extract a large payment from the Applicant and force it to incur in unnecessary and avoidable legal costs.

23. Mr Flack contended that the consolidated opposition was unilaterally and purposely withdrawn at the last minute, to maximise the Applicant's cost exposure at the time of the withdrawal since the Applicant had prepared a lengthy witness statement and collected numerous exhibits (as evidence) for filing. Mr Flack also pointed out that the fact that the consolidated opposition was withdrawn before the Opponent had even considered the Applicant's evidence, strongly infers the Opponent had no intention to proceed with the consolidated opposition as it had been filed without merit and in bad faith.

24. Mr Flack referred to the Opponent's argument that the opposition was withdrawn at that time (i.e., the day before the Applicant's deadline to file evidence/submissions in reply) because it had not been possible to obtain instructions to withdraw the consolidated oppositions at an earlier date. Mr Flack submitted that it was unclear what the Opponent intended when saying that it was "impossible to obtain instructions" and he pointed out that from the last two bullets

points of Exhibit LS7 it appeared that the Opponent had completed a tour in the UK and Ireland in May 2024 and then it did not perform again until October 2024.

25. Mr Flack continued submitting that ultimately, the Opponent could have accepted the Applicant's offer of the 23rd of May 2024, and this was arguably more favourable in terms of outcome than the final one, which is that the Applicant's trade marks are registered and there is an award of costs in favour of the Applicant.

26. Mr Flack then moved to argue the Opponent's opposition was without merit. This because the witness statement of Miss Laura Stanford contained no evidence that the Opponent owned any actionable goodwill in the names 'LONDON SYMPHONIC ROCK ORCHESTRA', 'ROCK ORCHESTRA' and 'THE ROCK ORCHESTRA BY CANDLELIGHT'. Mr Flack argued that Miss Stanford and Miss Cox were merely contracted by the Opponent and that 'The London Symphonic Rock Orchestra' worked on just seven productions, three of which were in their capacity as contractors for the Applicant's production and, therefore, ultimately irrelevant for the purposes of demonstrating prior rights. Mr Flack, thus, submitted that for the years 2021 to 2023 more than 60% of the Opponent's turnover could be attributed to the Applicant's production.

27. Mr Flack concluded restating that the Applicant has expended significant costs to respond to the Opponent's accusations of bad faith, which were without merit and that needed to be addressed substantially in the Applicant's evidence and response which created significant costs for the Applicant. Mr Flack concluded his submissions reiterating the ask for an award of off-scale costs or the upper end of each voice according to the 1/2023 TPN cost scale.

28. Ms Whelbourn then put forward her submissions in reply. Ms Whelbourn first addressed the nature of the parties' business relationship submitting that the parties were in a joint venture and that the Opponent was not a mere contractor and it operated in no way in a limited capacity.

29. Ms Whelbourn then disputed that the opposition was filed merely for the purpose of extracting money from the Applicant, and it was devoid of any merit. Ms Whelbourn submitted that the Opponent's company was incorporated in 2018 as shown in Exhibit LS2 and since then it has operated as 'London Symphonic Rock Orchestra', contrary to the Applicant's argument that the Opponent set up a

competing business only after the relationship between the parties ended (i.e., October 2023).

30. Ms Whelbourn also directed me to an Instagram post from 2019 (Exhibit LS4) which showed use of the name 'London Symphonic Rock Orchestra' and to the list of performances by the Opponent (Exhibit LS7) which predated the commencement of the parties' commercial relationship and showing use of the name 'London Symphonic Rock Orchestra'.

31. Ms Whelbourn then addressed the Applicant's claim that the Opponent's behaviour was unreasonable. She submitted that the opposition was clearly not to disrupt the Applicant's business. The Opponent had a business relationship with the Applicant under which they not only helped create the 'Rock Orchestra by Candlelight', but also performed for some time in that event. It was the Opponent's view that they were at least partially entitled to own the intellectual property in that event, including the name.

32. Ms Whelbourn submitted that the opposition was not aimed at extracting money from the Applicant. Ms Whelbourn confirmed that the £80,000 was indeed included in the settlement negotiation and she clarified that such sum was an entirely natural part of settlement negotiations as it derived from the conducting of two separate lines of negotiations between the parties into one (i.e., compensation relating to the business collaboration and the opposition) instead of having two separate sets of negotiations.[2]

33. Ms Whelbourn continued denying that the purpose of the opposition was to force the Applicant to incur in unnecessary legal costs. Ms Whelbourn contended that the Opponent had some right to the intellectual property for the name 'London Symphonic Rock Orchestra' deriving from the joint venture with the Applicant and feared that by allowing the Applicant to file the applications in object, the Applicant

[2] For further clarification on this point, I refer to the Opponent's submissions dated 12 May 2025 paragraph [2] where it is stated that "it is true that as part of the settlement negotiations the opponent included the issue of the monies the opponent felt it was owed from the former joint venture with the applicant. The issues in relation to the monies owned had been the subject of protracted discussions between the parties prior to the filing of the oppositions and so for economy and efficiency the issue was included in the same settlement negotiations. The settlement negotiations also encompassed the issue of the opponent's right to continue to use and exploit its trade mark rights in the name LONDON SYMPHONIC ROCK ORCHESTRA".

would have attempted to use those applications to prevent the Opponent from continue to operate under its name.

34. Ms Whelbourn then provided further clarification on the timing of the withdrawal of the opposition. She explained that the opposition was filed on behalf of the ‘London Symphonic Rock Orchestra’, which is Laura Stanford's business. However, Jess Cox was a partner to that business, and although not fundamentally employed by the ‘London Symphonic Rock Orchestra’, she was nonetheless part of the relationship with the Applicant. Since both Ms Stanford and Ms Cox were funding the oppositions at hand, it was important that instructions as to the conduct of the instant proceedings were agreed by both. Ms Whelbourn submitted that in the period leading up to the withdrawal of the opposition, Miss Cox was on tour in the USA. That made it very difficult due to time zones and work commitments to discuss fully with Miss Cox how to continue with the oppositions.

35. Instructions were obtained to withdraw the oppositions on the basis that both parties agreed to bear their own costs and a proposal to that effect was sent the day before the oppositions were withdrawn and the Applicant's deadline to file a response. A counteroffer was received at 7:00 PM the evening before the Applicant’s deadline to file evidence, but Ms Whelbourn did not see it until the following day, at which point she immediately contacted both Miss Cox and Miss Stanford. At that time in the day Miss Cox was in the USA and not available. As soon as Ms Whelbourn received instructions from Miss Cox that she was happy to withdraw the opposition and let matters end, Ms Whelbourn sent the e-mail withdrawing the opposition. However, that was not until 5:00 PM that day.

36. Ms Whelbourn then moved to address the reasons for withdrawing the opposition. Ms Whelbourn argued that the opposition was withdrawn not because the opposition was unfounded, but because the Opponent came to the conclusion that the parties were not close to reach a settlement agreement and the Opponent felt it was no longer able to fund the opposition further. With regard to these points, Ms Whelbourn submitted that the parties had been long discussing on the issues concerning the monetary compensation deriving from their previous business collaboration (which was then inserted by the Opponent into the settlement proposal for these oppositions) and only subsequently the parties engaged in the opposition proceedings. Therefore, Ms Whelbourn suggested that the Opponent

had been fighting with the Applicant for quite some time on a wider dispute (with correlated costs) before reaching the final decision to withdraw the opposition and let matters end.

37. Ms Whelbourn turned to the merit of the bad faith claim. She submitted that the claim of bad faith was clearly not unfounded since the Opponent felt that it was at least partially owner of the intellectual property rights in the name 'Rock Orchestra' in particular, and that it had earlier use of the name 'London Symphonic Rock Orchestra' along with the fact that the Applicant unilaterally filed the applications at hand without any reference to the Opponent.

38. Ms Whelbourn concluded arguing that the Opponent did not show any type of unreasonable behaviour or acted in abuse of process. Ms Whelbourn contended that the oppositions had merit, the Opponent attempted to reach a settlement, complied with the normal procedural aspects of an opposition, it respected the deadlines, and it did not unnecessarily extend the proceedings.

39. I returned to Mr Flack for any submissions in reply. He addressed Ms Whelbourn's reference that Miss Cox was also providing instructions. Mr Flack contended that throughout these proceedings, and related correspondence, the only reference has been to the 'London Symphonic Rock Orchestra'. Mr Flack disputed that the waiting for Ms Cox who was touring in the USA would have had a material impact upon Ms Whelbourn being able to take instructions between May 2024 and September 2024.

40. Mr Flack submitted that although Exhibit LS7 lists twelve events where the 'London Symphonic Rock Orchestra' performed before November 2020 (time when the Applicant contracted the Opponent), for such events the Opponent was still contracted by third parties (i.e., it did not operate independently under its own name).

41. As final point, Mr Flack turned to the fact that the Opponent's justified the sum of £80,000 in the settlement proposal as a contribution towards the parties' collaboration for the production. Ms Flack submitted that the production was wholly created by the Applicant because Miss Cox and Miss Stanford were contractors hired for the sole purposes of providing musical arrangements. Thus, the sum of £80,000 was asked without any justification.

42. To this latter point from the Applicant, Ms Whelbourn replied that the justification for the sum of money being sought had been part of correspondence between the parties (not introduced into these proceedings) and that Mr Flack was well aware of it. Additionally, Ms Whelbourn submitted that although the justification for the £80,000 settlement proposal was not initially clarified in these proceedings, it subsequently was.

43. I then asked Ms Whelbourn further clarification on the Opponent's delay in answering to the Applicant's settlement proposal that occurred between May 2024 and September 2024. I clarified that although I was aware that Ms Cox was working in the USA in that period, around four months still seemed to me quite a long period to decide on the settlement proposal and inform the Applicant accordingly. Ms Whelbourn submitted that during this period there was a lot of correspondence between her, Ms Stanford and Ms Cox over whether or not to accept the Applicant's settlement proposal, but it was not until early September that they started discussing the possibility of simply withdrawing the oppositions at which point Ms Cox was away on tour in USA (not as part of the 'London Symphonic Rock Orchestra', which is why it does not appear on Exhibit LS7). No further communications happened between Ms Whelbourn and Ms Cox that were not submitted in the proceedings.

44. Finally, I asked the parties if they had any more submissions or comments to make. As neither party had further comments I thanked the parties for their submissions, and I informed them that I intended to reserve my decision to properly reflect upon the submissions made by both parties. I then concluded the hearing.

Legislation and Guidance

45. Section 68 of the Act reads as follows:

"(1) Provision may be made by rules empowering the registrar, in any proceedings before him under this Act –

(a) to award any party such costs as he may consider reasonable, and

(b) to direct how and by what parties they are to be paid. […]"

46. Rule 67 of the Trade Marks Rules 2008 provides:

> "The registrar may, in any proceedings under the Act or these Rules, by order award to any party such costs as the registrar may consider reasonable, and direct how and what parties they are to be paid."

47. TPN 1/2023, at Annex A, sets out the scale of costs applicable:

Scale of costs in proceedings commenced on or after 1 February 2023

Task	Costs
Preparing a statement and considering the other side's statement	From £250 to £750 depending on the nature of the statements, for example their complexity and relevance
Preparing evidence and considering and commenting on the other side's evidence	From £600 if the evidence is light to £2600 if the evidence is substantial. The award could go above this range in exceptionally large cases but will be cut down if the successful party had filed a significant amount of unnecessary evidence
Preparing for and attending a hearing (including procedural hearings) or submissions-in-lieu	Up to £1900 per day of hearing, capped at £3900 for the full hearing unless one side has behaved unreasonably. From £350 to £650 for preparation of submissions, depending on their substance, if there is no oral hearing
Expenses	(a) Official fees arising from the action and paid by the successful party (other than fees for extensions of time) (b) The reasonable travel and accommodation expenses for any witnesses of the successful party required to attend a hearing for cross examination

48. TPN 1/2023 brings together and updates the guidance from previous TPNs about costs in trade mark, patent and design tribunal proceedings (the previous TPNs being 2/2016, 2/2015, 4/2007 & 2/2000). It also updates the scale of costs. The new scale applies to proceedings commenced on, or after, 1 February 2023. TPN 1/2023 maintains that off scale costs may be given in certain circumstances, the relevant section of which is copied below:

"**Off-scale costs**

5. Notwithstanding the published scale, the Tribunal retains the discretion to award costs "off the scale" to deal proportionately with unreasonable behaviour. It is not possible to set out all the circumstances in which a Hearing Officer might depart from the scale. It is worth clarifying though that just because a party has lost, this in itself is not indicative of unreasonable behaviour. Some examples of what might constitute unreasonable behaviour include a party seeking an (avoidable) amendment to its statement of case which, if granted, would cause the other party to have to amend its statement or would lead to the filing of further evidence. Other examples include behaviour designed to delay, frustrate or unreasonably increase the costs/burden on the other party and/or repeated breaches of procedural rules. Off-scale costs may also be awarded if a losing party unreasonably rejected efforts to settle a dispute before an action was launched or a hearing held, or unreasonably declined the opportunity of an appropriate form of Alternative Dispute Resolution.

6. The level of off-scale costs will, generally speaking, be commensurate with the extra expenditure a party has incurred as a result of the unreasonable behaviour. Any claim for costs approaching full compensation or for "extra costs" will need to be supported by a bill itemizing the actual costs incurred. There may be some circumstances where costs below the minimum indicated by the published scale are awarded. For example, a party who does not follow a suggestion from the Hearing Officer as to the most efficient means of managing the case, may only be entitled to whatever award they would have received if they had followed the Hearing Officer's suggestion."

Decision

49. In both its written submissions and at the hearing, the Applicant contended that the Opponent acted in bad faith as it never intended to proceed with the oppositions which were devoid of any merit regarding both section 5(4)(a) and 3(6) grounds and exclusively aimed at disrupting the Applicant's business. The Applicant also claimed that the opposition was filed exclusively to extract a sum of money from

the Applicant and that the timing of the withdrawal was aimed at maximising the Applicant's costs.

1) The merit of the oppositions

51. While I have considered the submissions from the parties on this point, since the opposition never reached the decision stage, I am not required to fully consider the substantive merits of the oppositions at hand. Nonetheless, the Form TM7s and the relative statement of grounds are routinely examined by caseworkers (as set out in para 4 of TPN 4/2000) and if deemed acceptable, they are served to the other party. This is also the case for evidence. In the proceedings at hand, as the forms and evidence were filed properly, there is nothing to suggest that the 5(4)(a) and 3(6) claims were without merit.

2) The Opposition and the timing of its withdrawal aimed at extracting additional costs from the Applicant

52. On 12 March 2024 the Opponent reached out to the Applicant offering to withdraw the Opposition if the Applicant agreed to 1) correspond a lump sum payment of £80,000 (plus VAT) and not to challenge the use and registration of the name 'LONDON SYMPHONIC ROCK ORCHESTRA'.

53. The Applicant did not accept these terms of settlement and submitted that the sum of £80,000 was unjustified. The Opponent clarified that "*as part of the settlement negotiations the opponent included the issue of the monies the opponent felt it was owed from the former joint venture with the applicant […] and for economy and efficiency the issue was included in the same settlement negotiations*".[3]

54. According to the Applicant's evidence of correspondence between the parties, on 23 May 2024 the Applicant refused the Opponent's settlement proposal above and, in exchange of not using or registering the name 'LONDON SYMPHONIC ROCK ORCHESTRA' worldwide (and not challenging such use/registration by the Opponent), the Applicant requested the Opponent to:

- withdraw the opposition;

[3] Opponent's email dated 12 May 2025, [2].

- agree not to use or register (and not to challenge the use and registration of) the names ‘THE ROCK ORCHESTRA’ and ‘THE ROCK ORCHESTRA BY CANDLELIGHT’ worldwide;

55. The Applicant also requested that each party shall bear its own costs of the consolidated opposition and the settlement. In this correspondence the Applicant pointed out that:

> “If this offer is not accepted by the deadline set out in bold above, it will be automatically withdrawn, and our client will commence work on preparing its submissions. Note that, at this stage, our client is not seeking any contribution towards the costs which it has been forced to incur. If the above offer is not accepted and our client is forced to incur further costs, its position on this point is likely to change in any subsequent negotiations”.

56. The Opponent submitted that, initially, it was felt that such agreement could not be acceptable as it did not include the matter concerning the monies deriving from the Parties’ previous relationship (i.e., the collaboration for the Production). However, as the Opponent felt that any settlement with the Applicant was not achievable, it decided to accept the Applicant’s settlement proposal. On 18 September 2024 (i.e., one day prior the deadline for the Applicant to file evidence and submissions) the Opponent informed the Applicant of its intention to withdraw the opposition to conclude the matter at hand on the basis that both parties agreed to bear their own costs. On the same day the Applicant replied to the Opponent restating their terms to settle the opposition, but adding a further condition requiring the Opponent to abstain from acting against the Applicant for any cause of action they may have against the Applicant.[4] At that point the Opponent, having reviewed the revised settlement offer, decided it could not agree to it and, in view of the financial costs incurred up to that point and the stress placed on the individuals involved, it decided to simply withdraw the opposition.

[4] The clause stated that: “*Each of LSRO, Laura Stanford and Jessica Cox hereby release and forever discharge (and shall procure that their respective Related Parties release and forever discharge) all causes of action, claims, rights, liens, debts, demands and set-offs, in all jurisdictions, which they had, have or may have against MEGA or its Related Parties as at the date of this agreement*”

57. From the above, I find that the Opponent's behaviour was not unreasonable or vexatious. The Opponent honestly engaged in settlement negotiations to try to resolve the dispute. The Opponent clarified that the request of £80,000 in the initial settlement proposal also considered the parties' economic claim deriving from their commercial relationship (e.g., the Contract). Whilst I appreciate the Applicant's claim that such economic request was unjustified, I was not provided sufficient economic details on the parties' previous commercial relation to determine whether the Opponent's economic claim should be considered merely unreasonable. I also notice that, in September 2024, when the Opponent communicated its intention to accept the Applicant's settlement proposal and withdraw the opposition, the Applicant added a new condition in the settlement proposal that led the Opponent to refuse the latest proposal and merely withdraw the application. Thus, I believe the Opponent acted well within its rights in refusing the Applicant's settlement proposals.

58. Whilst I find that the Opponent's behaviour was not unreasonable, I, however, agree with the Applicant that the Opponent's timing in withdrawing the opposition led to an unjustified delay in the proceedings and extra costs for the Applicant. More specifically, I refer to the fact that on **23 May 2024** the Applicant communicated to the Opponent a settlement proposal to which the Opponent replied, accepting it, only on the **18 September 2024**. At the hearing, Ms Whelbourn clarified that during this period there was a lot of correspondence between her, Ms Stanford and Ms Cox over whether to accept the Applicant's settlement proposal, but it was not until early September that they started discussing the possibility of simply withdrawing the oppositions at which point Ms Cox was away on tour in USA and this led to a delay in communications and the reach of a final course of action. Ms Whelbourn also submitted that both Ms Stanfield and Ms Cox were funding the oppositions, so instructions had to come from both, and they needed to agree on a shared course of action. Thus, this complicated (and delayed) matters further. Mr Flack contended, at the hearing, that throughout these proceedings, and related correspondence, the only reference has been to the 'London Symphonic Rock Orchestra' and disputed that the waiting for Ms Cox who was touring in the USA would not have had a material impact upon Ms Whelbourn being able to take instructions. Whilst this may be true, I note that

in the Contract also Ms Cox figures as a Party, therefore, it seems reasonable that, at least for the part concerning the monetary claim contained in the settlement proposal, Ms Cox would have been involved in the discussions.

59. Having taken into consideration the above, I appreciate that Ms Stanfield and Ms Cox required time to decide on the best course of action concerning the settlement proposal and the related claims surrounding the use of the name “London Symphonic Rock Orchestra” and that work-related commitments (whether in the UK or abroad) may have delayed this process. However, I find that four months to reach the conclusion to accept the Applicant’s proposal (and withdraw the opposition) seems to be an excessive time, especially considering that this delay led the Applicant to incur in extra costs that could have been avoided.

60. I also note that, at the hearing, Ms Whelbourn submitted that she received the Applicant’s counterproposal on 18 September 2024 at 7:00 PM, which she did not see it until the following day (i.e., 19 September 2024). On 19 September 2024 Ms Whelbourn contacted both Ms Cox (who was in the USA) and Ms Stanford and by 5:00 PM on the same day they managed to reach a decision on the best course of action, instruct Ms Whelbourn who, then, communicated to the Applicant the Opponent’s intention to ultimately withdraw the opposition (and abandon any other claim on the matter). Therefore, I find that such timeliness in assessing the Applicant’s revised settlement proposal by Ms Stanfield and Ms Cox, deciding the action to take (i.e., withdraw the opposition) and liaise with Ms Whelbourn to inform the Applicant on their final decision seems to suggest that the Opponent already had the ability to reach a timely decision on these proceedings and such action could have been taken earlier in the proceedings without a delay of several months.

Conclusion

61. I have carefully considered both parties’ comments and submissions. First, I found that the Opponent had reason to believe that its intellectual property rights were at risk and acted accordingly to protect them. For this reason, the oppositions had merit and were not filed in bad faith. Second, the Opponent honestly engaged with the Applicant and attempted to reach a settlement agreement with the Applicant although this was ultimately not possible.

62. I note that when an application is filed, part of the process before registration is that it is open to opposition. The applications in question are no exception and whilst I understand the Applicant's frustration in having to defend its applications, I do not consider that it suffered any unfair treatment. In addition, during the opposition proceedings, the Opponent is entitled to withdraw the opposition at any stage.

63. Therefore, it is my view that the Opponent has not behaved unreasonably or attempted to delay the proceedings intentionally to warrant anything other than on-scale costs for the Applicant. Nonetheless, it is my view that on-scale costs need to be adjusted to reflect the Opponent's four-month delay in dealing with the Applicant's settlement proposal and withdrawal of the oppositions, forcing the Applicant to incur in, otherwise avoidable, extra costs.

Outcome

64. Following from the facts, submissions and considerations above, I uphold the preliminary view that the Opponent's behaviour does not warrant for off-scale costs in favour of the Applicant. However, in awarding the Applicant in-scale costs in line with the TPN 1/2023, I intend to adjust the cost award in light of the Opponent's delay in concluding the settlement discussions and withdrawing the opposition at hand, causing the Applicant to incur in unjustified costs.

65. Having concluded that there is nothing to suggest that an off-scale award of costs is appropriate, I am guided in this decision by the scale of costs set out in TPN 1/2023, as shown earlier in this decision.

66. First and foremost, I will remind myself that the Tribunal awards costs on a contributory rather than a compensatory basis. I take into account Mr Hobbs QC's (as he then was) comments in *Amaro*, O/257/18:

> "17. […] an award of costs is required to reflect the effort and expenditure to which it relates without inflation for the purpose of imposing a financial penalty by way of punishment on the paying party. The determination of a 'reasonable' amount to award must depend on the nature and circumstances of the case at hand."

67. With regard to the Applicant's table of costs,[5] whilst I have no reason to doubt the amount of work the Applicant undertook for the proceedings at hand, it seems to me that the total sum of £30,840 requested by the Applicant is disproportionately high for the tasks undertaken. Furthermore, the activities surrounding communication with the Registry, solicitors, and general administration are not costs that would be recoverable on the usual scale (for example, the voices in the table titled "*Preparing Applicant's response to Opponents' without prejudice correspondence*" or "*Finalising without prejudice offer and sending to Opponent*"). I, thus, do not award costs for these tasks.

Overall conclusion on costs

68. Following from the above, within the scale of the TPN 1/2023 I intend to award the Applicant with the top scale costs for each voice contained in the table below. I award costs to the Applicant as follows:

Considering the Opponent's notice of opposition (x2)	£750 x2 = 1,500
Preparing evidence and submissions and considering and commenting on the other side's evidence and submissions	£2,600
Preparing for and attending a hearing (including procedural hearings)	£1,500
TOTAL	**£6,000**

69. I hereby order London Symphonic Rock Orchestra LTD to pay MEGA EVENTS/ TRAVEL/ MUSIC LTD the sum of **£6,000**. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

[5] Contained in Annex 3 to the Applicant's submissions dated 17 April 2025.

Dated this 24th day of July 2025

Andrea Rossi

For the Registrar