

O/0915/26

TRADE MARKS ACT 1994

SUPPLEMENTARY DECISION ON COSTS

IN THE MATTER OF REGISTRATION NOS. UK00002249939, UK00002249965, UK00002432644, UK00002528241, UK00002528310, UK00003066798, UK00002621369, UK00003066799, UK00003066800, UK00003066804, WO0000001459238, UK00003316938, UK00801459238, UK00917033903, UK00917197716, UK00801457599, UK801446195, WO0000001446195 AND WO0000001457599 IN THE NAME OF FRASERS PROPERTY LIMITED

WHICH ARE SUBJECT TO APPLICATIONS FOR REVOCATION ON THE GROUNDS OF NON-USE AND/OR APPLICATIONS FOR DECLARATIONS OF INVALIDITY UNDER NOS. 503533, 503534, 503553, 503536, 503554, 503537, 503538, 503539, 503541, 503558, 503543, 503546, 503547, 503562, 503563, 503572, 503573, 503574, 503575, 503615, 503624 AND 503625 BY HOUSE OF FRASER BRANDS LIMITED

AND IN THE MATTER OF REGISTRATION NOS. UK00001286014, UK00002206967, UK00002220284, UK00002242905, UK00910919223, UK00003240006 AND UK00916925166 IN THE NAME OF HOUSE OF FRASER BRANDS LIMITED

WHICH ARE SUBJECT TO APPLICATIONS FOR REVOCATION ON THE GROUNDS OF NON-USE UNDER NOS. 507255, 507256, 507257, 507258, 507259, 507260 AND 507261 BY FRASERS PROPERTY LIMITED

AND IN THE MATTER OF APPLICATION NOS. UK00003347575 AND UK00003703970 BY HOUSE OF FRASER BRANDS LIMITED

AND OPPOSITIONS THERETO UNDER NOS. 415923 AND 433584 BY FRASERS PROPERTY LIMITED

AND IN THE MATTER OF APPLICATION NOS. UK00003924953 AND UK00003924964 BY FRASERS GROUP FINANCIAL SERVICES LIMITED

AND OPPOSITIONS THERETO UNDER NOS. 443699 AND 443704 BY FRASERS PROPERTY LIMITED

AND IN THE MATTER OF APPLICATION NOS. UK00003942805, UK00003942748, UK00003944536, UK00003944584 AND UK00003944586

BY FRASERS PROPERTY LIMITED

AND OPPOSITIONS THERETO UNDER NOS. 445514, 445515, 445516, 445827 AND 445831 BY HOUSE OF FRASER BRANDS LIMITED

BACKGROUND

1. On 7 April 2026, I issued a decision in the above identified proceedings. In those proceedings, both parties enjoyed a degree of success. I adopt the same definitions as set out in the original decision. In that decision, in relation to costs, I stated:

“543. It was agreed at the hearing, that the parties would not be in a position to make submissions on costs until they had sight of my decision. It was agreed that written submissions would be appropriate. Consequently, I direct as follows:

- a. The parties have 28 days from the date of this decision in which to make written submissions on costs.
- b. The parties will have 28 days from receipt of the other side’s submissions in which to make any necessary submissions in reply.

544. I will then issue a supplementary decision on costs.”

2. The parties jointly requested a short extension of time to the deadline to file their written submissions on costs, which was granted.¹ Both parties subsequently filed their submissions on 15 May 2026. FPL’s submissions were accompanied by:

- a. Costs bundle and index.
- b. Legal authorities.
- c. Schedule of costs.

3. HOF filed written submissions in reply dated 12 June 2026. These submissions were accompanied by exhibits RB1 to RB12.

¹ See the Registry’s email dated 28 April 2026.

4. No submissions in reply were filed by FPL. However, HOF's submissions in reply resulted in the following correspondence being filed by the parties:

- a. A letter from FPL in response to the reply submissions dated 19 June 2026.
- b. A letter from HOF responding dated 24 June 2026.
- c. A final letter of response filed by FPL dated 25 June 2026.

5. I will now give a supplementary decision on costs.

DECISION

Preliminary Issue

6. In response to one of the arguments raised by FPL, HOF filed materials which includes correspondence marked "without prejudice" or "without prejudice save as to costs". The parties subsequently filed submissions regarding whether this material was admissible or not. For the reasons given below, I do not consider the original argument raised by FPL to have any merit. Consequently, the question of whether the documents relied upon in response to that argument are admissible is irrelevant and I do not need to consider it any further.

HOF's late request to file evidence

7. Before considering the costs of the overall proceedings, it should be noted that HOF made a late application to file evidence in these proceedings. At the hearing, I agreed to admit that evidence subject to agreement from HOF that they would pay FPL's costs of dealing with that application. Specifically, at the hearing, I said:

"I should say that the costs of all of this will be borne by House of Fraser and we are talking about actual costs here off the scale. I think that is the only fair way of compensating Frasers Property for the lateness and the inconvenience of having to deal with this late request. With that in mind, Mr Caddick, obviously

any costs claimed will be subject to a reasonableness assessment by myself. However, is that something your client wishes to proceed with in light of the potential costs consequences of this?"

8. Mr Caddick took instructions on my question and responded:

"Thank you very much. We are happy to proceed in the way in which you indicate and we are grateful for your indulgence on this."

9. I was, therefore, somewhat surprised that in its submissions, HOF has stated as follows:

"2. It is acknowledged that the costs incurred by Frasers Property Limited ("FPL") in complying with the Hearing Officer's direction as to the late evidence filed by HoF (Decision, [39-44]) are to be borne by HoF in any event. However, FPL confined itself to submissions on that evidence, and neither requested to be heard nor filed any evidence in response. There was no prejudice to FPL that was incapable of being compensated in costs.

3. As to the level of costs, there is nothing to argue in favour of costs on anything other than the standard scale. We therefore submit that the costs should be confined to the lower end of the published scale, and suggest a figure of £750." (my emphasis)

10. For the avoidance of doubt, it is not now open to HOF to resile from its agreement to pay FPL's actual costs of this part of the proceedings. That was the basis upon which I allowed the evidence in and that is the basis upon which I will proceed to award costs.

11. The fees claimed by FPL with regard to this late application are as follows:

Fees specifically for dealing with HoF late evidence	D Young Fees: £2,400 (5.3 hours) Counsel Fees: £1,012	Includes: • Reviewing HoF late evidence. • Preparing submissions in response.
--	---	--

12. It seems to me that 5 hours is a reasonable amount of time to claim for this work. The costs claimed by FPL's representatives, divided by the number of hours spent, appear to produce an hourly rate of around £450 (assuming this work was all carried out by the same individual). The *Solicitors' Guideline Hourly Rates* presents a starting point for assessing what can be considered a reasonable hourly rate. FPL's representatives are based in central London. In relation to this part of the proceedings, the fee earner who seems to have had the most involvement is Mr Peter Byrd. I understand Mr Byrd to be a Grade A fee earner i.e. he has over 8 years' experience. Consequently, the hourly rate applicable is £422 for London band 2.² As such, I consider £2,250 to be an appropriate award in respect of the fees incurred in respect of the late evidence.

13. With regard to Counsel's fees, time would have had to be spent in preparing to deal with this particular matter at the hearing (over and above the anticipated preparatory work for the hearing). Consequently, I consider the amount claimed (being £1,012) to be reasonable. This brings the total amount awarded in respect of this work to **£3,262**.

Who was the successful party overall?

14. I turn now to the costs of the overall proceedings. As noted above, both parties have enjoyed a degree of success. Consequently, before it is possible to consider the

² Whilst I bear in mind that FPL's submissions on costs did not specify the qualification details of the fee earner in question, I have adopted the same approach to this analysis as that undertaken by Professor Johnson on appeal in *enrich Learning*, BL O/0006/26.

question of costs, it is first necessary to explore whether one party has been more successful than the other in these proceedings.

15. To my mind, the decision in this regard is fairly clear. FPL have enjoyed the greater degree of success. In terms of a literal analysis of which party has been most successful, I accept that both parties' marks were revoked to a fairly significant extent. However, on balance, it seems that HOF was least successful on the revocations. In terms of the invalidations brought by HOF, FPL succeeded on more terms than HOF. The same is true of the vast majority of the oppositions issued by the parties. However, most importantly, FPL has also been the most successful party with regard to the crux of the dispute i.e. whether HOF should be able to register its FRASER and FRASER derivative marks in respect of goods/services which would constitute an extension of its business into areas in which (or in close proximity to those in which) FPL were operating.

16. As such, whilst I accept that some allowance will need to be made for the fact that HOF has enjoyed some success, FPL is clearly the more successful party in these proceedings.

Are off-scale costs appropriate?

17. FPL has made various allegations against HOF which I consider to be unfounded. For example, the argument that HOF has acted unreasonably in bringing the number of claims that they have brought is, to my mind, without merit. Clearly, these proceedings have escalated, but that has been contributed to by both parties. A party is within its rights to challenge the validity of another party's trade marks and it is common for that to be done in retaliation where those marks are relied upon in other proceedings brought against that party. Whilst I acknowledge that HOF brought proceedings against a large number of FPL's marks, including those that were not relied upon in the original oppositions, there is nothing unreasonable in doing so on the face of it. There is clearly a real commercial dispute at the heart of these proceedings. I am satisfied that all the proceedings were brought in relation to this dispute. In these circumstances, the number of applications is just part and parcel of the litigation.

18. Similarly, the argument levied at HOF that it did not engage in settlement negotiations does not appear to me to have any merit. There was a mediation in which both parties engaged. It is true that there appears to have been little engagement in settlement from HOF in the more advanced stages of proceedings. However, both parties had clearly made attempts to settle, and both made (in my view, legitimate) decisions not to proceed with certain aspects of the settlement. For example, FPL had itself declined to engage in a second mediation. It is, perhaps, unsurprising that a settlement was not reached given the extent and nature of the dispute in both this jurisdiction and others. All in all, I do not consider that either party has unreasonably failed to engage in alternative methods of resolving this dispute.

19. The suggestion by FPL that HOF created “last-minute disorder” by asking to adjourn the hearing due to the unavailability of their witness for cross-examination does not, in my view, warrant off-scale costs. Whilst I appreciate that the request was made late in the day, the timing of that request arose due to the reason for the witness being unavailable (which related to a family emergency). It was, therefore, not something that could have been anticipated at an earlier date and was out of HOF’s control.

20. However, I do agree with FPL that this case has not been prosecuted by HOF in a reasonable way in many respects. Overall, there appears to have been a lack of focus which has resulted in additional costs being incurred by FPL. The following are, to my mind, examples of this:

- a. In a number of cases (see, for example, CA000503572) the Tribunal contacted HOF’s representatives, inviting them to streamline their reliance upon earlier rights in order to keep costs down and avoid unnecessary submissions. HOF elected not to do so and kept its case very broad. This, undoubtedly, resulted in additional (and unnecessary) costs being incurred by FPL in reviewing the pleadings.
- b. HOF filed multiple witness statements given by Mr Lane which included large amounts of narrative evidence, all of which HOF was forced to concede at the hearing should be given no weight and upon which they decided not to rely.

This very late concession meant that FPL was forced to engage in review and responding to this narrative evidence during the course of proceedings and to incur the costs of doing so, despite it ultimately becoming unnecessary.

- c. There were no clear concessions in the skeleton argument filed by HOF regarding FPL's genuine use of its marks. However, on the first day of the hearing, concessions were made in oral submissions that FPL had put its marks to genuine use for at least some of the services for which its marks were registered. These concessions were confirmed in writing (for the first time) overnight between the first and second days of the hearing. Whilst concessions should always be made where possible, they should be made at the earliest possible opportunity and certainly by the time the skeleton argument is filed. The timing of this concession meant that it came after Mr Hollingworth's primary submissions and submissions on whether the concessions went far enough (or not as the case may be) had to be prepared ready for the next day. This is reflective of the lack of focus on HOF's part and the resulting need for last-minute work on FPL's part.

21. In my view, the result of this is that FPL should be entitled to an up-lift by way of off-scale costs for the additional work undertaken at the pleadings stage, in the evidence rounds and in preparation for the hearing. For clarity, I do not consider that off-scale costs for all of the work undertaken is appropriate; much of it is simply due to the nature of the proceedings and the work required to bring/defend the claims, none of which was due to the unreasonable conduct of HOF. Consequently, I will return to the amount of up-lift that I consider appropriate below.

The scale costs

22. These proceedings were commenced between 2019 and 2023. This means that there were two different Tribunal Practice Directions ("TPN") on costs applicable (TPN 2/2016 and TPN 1/2023). I have borne this in mind in making the below award.

23. The scales in both of these TPNs relate, essentially, to the scale costs for individual cases. These proceedings consist of 38 cases. Clearly, it would not be appropriate to

multiply the scale costs by 38, because that would not account for the costs savings that arise from the consolidation. However, equally clearly, a costs scale intended to cover a single case cannot be applied here. In deciding what costs to award, I also must bear in mind (as noted above) that a reduction will need to be made for FPL's only partial success. With that in mind, I consider the sum of **£23,800** to be appropriate, calculated as follows:

Preparing forms and considering HOF's forms	£4,600
Preparing evidence and considering HOF's evidence	£9,000
Preparing for and attendance at the hearing	£7,200
CMCs	£800
Official fees	£2,200
Total	£23,800

Off-scale costs

24. With regard to the additional work in the pleadings stage, FPL has sought costs of £55,000 (amounting to 170 hours work). It states that around 20% of this time was attributable to dealing with and considering the deficiencies and amendments required to HOF's various forms. That amounts to 34 hours. In my view, this is high. I consider 20 hours to be appropriate. With regard to the amount claimed, it is not specified what level of fee earner would have been responsible for this work. I would expect that fee earners of different grades would have been involved in this aspect of the work. The burden is on FPL to provide me with sufficient detail to enable me to assess the amount of hours attributable to each grade. I do not agree with HOF that their failure to do so should result in no award being made at all. However, given the lack of particularisation, I will calculate the amount based upon a Grade D fee earner carrying out the work, at an hourly rate of £157. This amounts to an uplift of **£3,140**.

25. With regard to the additional costs incurred during the evidence rounds, FPL has claimed £315,000 (being 1,170 hours work) for considering and preparing evidence in chief, and £60,000 (being 179 hours work) for considering and preparing evidence in reply. In addition to this, £1,250 is claimed for counsel's fee regarding evidence in chief and £13,000 regarding evidence in reply. In my view, around 35 hours additional work is appropriate for this aspect of the claim. Again, no breakdown is given by fee earner. Consequently, I will take the same approach of applying a Grade D fee earner rate. This amounts to an uplift of **£5,495**. Whilst it may be the case that Counsel's advice would have been sought in relation to the issues with HOF's evidence, no information is provided regarding the scope of the advice/input sought from Counsel; without that information, it is impossible for me to assess what proportion of these fees would have related to that aspect of the work. As such, I make no award in this respect.

26. With regard to the additional costs incurred regarding the late concessions made at the hearing, it seems likely to me that the vast majority of the work incurred would have been incurred by Counsel in preparation for oral submissions on the second day, although no doubt instructions would have been needed. As such, I consider 5 hours to be reasonable in respect of the instructions given (at an hourly rate of £157), which amounts to **£785**. It is not clear from the Schedule of Costs provided what proportion of the Counsel's fees relate to this part of the work; the only information is that the fees include "preparation of skeletons" and "attendance at hearing". In the absence of any particularisation, I decline to make an award in this regard.³

27. Taking all of this into account, I consider an additional off-scale costs award of £9,420 is appropriate. With that in mind, combined with the scale costs and the award made in respect of the late request to file evidence, the total costs due to FPL are **£36,482**.

³ This can be distinguished from the circumstances discussed at paragraphs 12 and 13 above, where a specific amount was identified for Counsel's fees in relation to the particular part of the work in issue.

Final Remarks

28. In making this decision, I have borne in mind HOF's request that FPL be ordered to pay off-scale costs in respect of some of the proceedings, where late concessions were made. For the sake of completeness, I will make a brief comment on the merits of that request. Whilst I accept HOF's submission that these concessions could have been made earlier, they were made 10 days prior to the hearing (and, therefore, prior to skeleton arguments being filed). It is fairly common in proceedings for concessions to be made when the parties turn their minds to preparing for the hearing. Indeed, concessions are often made in the skeleton argument itself. Consequently, I do not consider that FPL acted improperly in making these concessions when it did. As such, I dismiss HOF's request.

Costs Order

29. I therefore order House of Fraser Brands Limited and Frasers Group Financial Services Limited (jointly and severally) to pay Frasers Property Limited the sum of **£36,482**. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Appeal

30. The appeal period in respect of both this costs decision and the substantive decision will run from the date of this supplementary decision.

Dated this 6th day of October 2026

S WILSON

For the Registrar