

**TRADE MARKS ACT 1994  
IN THE MATTER OF APPLICATION No. 2355496  
BY BBC ICE CREAM LLC TO REGISTER THE  
TRADE MARK ICE CREAM IN CLASSES 3, 14, 18 & 25  
AND  
IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 96116 BY MS DOZIE T/A HIGH HEELS AND ICE CREAM LTD**

***SUPPLEMENTARY DECISION***

1) On 28 June 2010 I issued decision O-210-10 which found in favour of the opponent. As a private litigant I required her to provide a brief schedule of costs setting out any disbursements incurred, any other financial losses claimed and a statement of the time spent in dealing with the proceedings.

2) At paragraphs 30 & 31 I set out the principles upon which private litigants should be reimbursed. At paragraph 32 I said:

“32) In accordance with these principles I direct Ms Dozie to provide a brief schedule of costs setting out any disbursements incurred, any other financial losses claimed and a statement of the time spent in dealing with the proceedings. This should be submitted to the Registry, and copied to the applicant’s agent, within one month of the date of issue of this decision. The applicant will then have two weeks to provide comments on these costs. I shall then issue a supplementary decision concerning the costs.”

3) The opponent has not provided the information requested but instead supplied the following:

“Opposition application fee £200  
Preparing a statement and considering the other side’s statement £450  
Preparing evidence and considering and commenting on the other side’s evidence £1,260  
The applicant’s evidence was rather substantial and took several hours to peruse.  
Preparing for and attending a hearing £500  
I spent considerable time researching case law and preparing my submission.”

4) The applicant has responded at some length, pointing out that the opponent appeared to have confused the Registry Scale of costs used when a professional representative is involved, and also seeking to have costs awarded to the applicant because of the manner in which the opposition was conducted. They state:

“Ms Dozie’s own evidence consisted of copies of emails and one letter that were merely faxed through just prior to {sic} start of the tele conference hearing on 27 January. This “evidence” was not accompanied by a witness statement.

Ms Dozie has not “commented” in any way to the Applicant’s evidence. We have not received any correspondence from her on this and nothing has been lodged with the UKIPO (by way of evidence in reply) so we fail to see how this comment by Ms Dozie

warrants any consideration with regard to the costs claimed. In any event the applicant's evidence consists mainly of computer print outs and copy press releases, Many if the pages do not contain much in the way of printed word. We do not believe that this evidence would take "several hours to peruse",

5) Further they contend:

"Our view is that Ms Dozie was aware of the opposition procedure and what was required by way of filing evidence to support the opposition, In any event, this information is easily accessible from the UKIPO's website and UKIPO Officers are available by telephone for advice and assistance in procedure. Further, FORM TM9 specifically states that the other party should be sent a copy of the form. Ms Dozie did not send copies of any extension requests to us. By virtue of not copying us in, extensions should not have been granted. However, as a matter of courtesy we did not, initially, object to this lack of compliance.

Extensions of time are available to file evidence for compelling reasons. It appears to us that Ms Dozie has throughout these proceedings, sought to rely on extensions of time to file evidence. It is obvious now that the "evidence" filed by Ms Dozie, in both rounds, was not sufficient to support the opposition, As a consequence, the delays have prejudiced the Applicant's business and commercial activities and, inherently, put the Applicant to additional costs. Further, the evidence filed by Ms Dozie has amounted to a copy of a book cover (irrelevant in these proceedings) and copies of emails that were dismissed by Mrs Pike. Therefore there has been insufficient evidence to support the claims made by Ms Dozie in the opposition. The extensions of time sought have therefore been pointless and we query why they were filed in the first instance."

6) The applicant also provides a detailed chronology of the deadlines in the instant case as follows:

"23 September 2008- Ms Dozie was given the deadline of to [sic] file her evidence in support of the proceedings. An extension of time request to file this evidence was lodged on 19 September 2008. The reason given was that not all relevant correspondence was received from the UKIPO for Ms Dozie to file her evidence. The extension was granted and the deadline set was 23 December 2008.

23 December 2008 – Ms Dozie lodged a further extension of time to file her evidence. The reason given was that Ms Dozie suffered a bereavement. The extension was granted and the deadline of 6 January 2009 was set. The evidence was filed on 6 and 9 January 2009.

9 July 2009- This deadline to file evidence in reply was set by the UKIPO, however, it was subsequently extended to 9 August because of an error on the part of the UKIPO.

9 August 2009- Ms Dozie lodged a short extension to 9 September to file her evidence. This was refused on 13 October because the reasons given by Ms Dozie were insufficient.

3 December 2009 - A telephone conference hearing was scheduled for this date. This was initially cancelled by Ms Dozie on the day, but she tried to reinstate it on the basis that it took place at 3pm that day. The hearing was cancelled.

7 January 2010 – The hearing was then re-scheduled for this date and subsequently cancelled by Ms Dozie.

27 January 2010 – The hearing took place. The telephone hearing to discuss the refused extension of time was cancelled twice by Ms Dozie. It was scheduled, initially, to take place on 3 December and subsequently on 7 January 2010. It eventually took place on 27 January 2010. Ms Dozie’s evidence in reply was faxed through minutes before the start of the hearing. It was not presented at the correct time in the proceedings and was not produced in the correct format. It was, however, not accepted by the UKIPO.”

7) I agree with most of the applicant’s submissions. The evidence that the applicant filed was relatively scant, with much of it having little printed matter upon it. The opponent’s evidence was minute and mostly irrelevant. Indeed in my decision I dealt with both sides evidence in two paragraphs. The interlocutory hearing found against the opponent and the evidence in reply, such as it was, was not allowed into the case.

8) As Ms Dozie has not supplied the information requested regarding the time she spent on the case I have to consider the evidence filed by both sides and make a judgement of the length of time she would have taken to prepare her evidence and also to consider the evidence filed by the applicant. I also have to form an opinion on the length of time it would have taken Ms Dozie to prepare her submissions. The costs awarded to the opponent have to be reduced by the applicant’s for the interlocutory hearing which was cancelled twice by Ms Dozie and would have resulted in wasted costs for the applicant, albeit these would not be substantial.

9) Taking all the above into consideration I order the applicant to pay the opponent the sum of £150. This sum to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 09 day of August 2010**

**G W Salthouse  
For the Registrar  
The Comptroller-General**