

TRADE MARKS ACT 1994

**IN THE MATTER OF UK trade mark application 2517770
by Vitabiotics Ltd to register the mark
SWEETELA in Classes 1 and 5**

**AND IN THE MATTER OF Opposition No. 99611
by Reckitt Benckiser Healthcare (UK) Ltd**

**Appeal of the Applicant from the decision of
Mr. Oliver Morris dated 30 September 2010**

DECISION ON COSTS

1. By a decision dated 9 May 2011, I dismissed Reckitt's appeal from the decision of Mr Oliver Morris dated 30 September 2010. I indicated that the respondent, Vita, was entitled to a contribution towards its costs of the appeal.
2. As Vita was not legally represented, I referred the parties to CPR 48.6 and to the decision of Mr Richard Arnold QC, acting as the Appointed Person in *South Beck*, B/L O/160/08 (9 June 2008) and I invited Vita to provide me with 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 appeal.
3. Vita provided me with a breakdown by a letter dated 25 May 2011. This claimed:
 - a. £750 in respect of its director, Mr Taylor's, preparation for the hearing;
 - b. £750 in respect of Mr Taylor's attendance at the hearing;
 - c. £25 travel expenses (receipts were provided).
4. Reckitt provided me with comments in response dated 2 June 2011. It submitted that Vita could not prove loss for the time spent by Mr Taylor, so it should be awarded costs for time reasonably spent on doing the work, and attending the hearing, at the rate set out in the Costs Practice Direction. Reckitt suggested that a reasonable allowance would have been 1 day for preparation and ½ day for the hearing.

5. Applying the provisions of CPR 48, it seems to me that Vita has not proved financial loss within the meaning of CPR 48.6 (4)(a); no hourly rate has been given and the sums claimed for preparation and attendance are not supported by any documentation.
6. For these reasons, it seems to me that I should award Vita an amount for the time reasonably spent on doing the work, at the rate set out in the practice direction. Reckitt's submission that a day should have sufficed for preparation of the appeal seems to me rather on the low side. Mr Taylor had to revisit the evidence and the decision of the Hearing Officer, and to consider Reckitt's Grounds of Appeal, skeleton argument and the authorities, and he had clearly prepared the case with care. Given that Mr Taylor is not a trade mark expert, I consider that 2 days' work, i.e. 16 hours, is a reasonable estimate of the time he should reasonably have taken in such preparation. In addition, I would allow for Mr Taylor's attendance at the appeal and some travelling time, say a further four hours in total. At £9.25 per hour that amounts to £185. I allow the travel costs in full, making a total of £210.
7. I therefore order Reckitt to pay Vita £210 as a contribution towards its costs of the appeal, that sum is in addition to the costs of £450 awarded by the Hearing Officer as costs of the hearing below. The Hearing Officer originally ordered that the costs below should be paid within seven days after the decision in any appeal, so if they have not yet been paid, they should be paid forthwith. The additional £210 shall be paid by 4 pm on 23 June 2011.

Amanda Michaels
9 June 2011