

**TRADE MARKS ACCT 1994**

**IN THE MATTER OF:**

**OPPOSITION No. 93515**

**IN THE NAME OF NELSON KRUSCHANDL**

**TO THE REGISTRATION OF TRADE MARK No. 2315925**

**IN THE NAME OF DONALD WALES**

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**DECISION ON COSTS**

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1. On 28 October 2011 I refused Mr. Kruschandl's application for the hearing of his appeal in the present case to be adjourned. I did so in the circumstances and for the reasons explained in a Ruling that has since been posted on the Trade Marks Registry website under reference BL O-400-11. At the conclusion of the hearing I dismissed his appeal for the reasons given in a Decision that has since been posted on the Trade Marks Registry website under reference BL O-398-11.

2. It was not possible to deal with the costs of the dismissed appeal on 28 October 2011. At my request, the Treasury Solicitor's Department sent copies of the following documents to Mr. Kruschandl and Mr. Wales (the respondent to the appeal) on 4 November 2011: (1) the transcript of the hearing which had taken place on 28 October 2011; (2) the transcript of the Ruling delivered in the course of that hearing; (3) the transcript of the Decision delivered at the conclusion of the hearing. Thereafter on 22

November 2011 I gave the following directions for the making of representations with regard to the costs of the dismissed appeal:

- (1) if Mr. Wales proposed to seek an award in respect of his costs of the appeal, he should send me written representations in support of his request containing a schedule or statement of the items of work and expenditure to which his claim related, this to be done by 6:00 pm on Friday, 2 December 2011;
- (2) Mr. Kruschandl was directed to send me any written representations he wished to make in answer to those of Mr. Wales under paragraph (1) above, this to be done by 6.00pm on Friday, 16 December 2011;
- (3) Mr. Wales was directed to send me any written representations he wished to make in reply to those of Mr. Kruschandl under paragraph (2) above, this to be done by 6.00pm on Friday, 23 December 2011;
- (4) any written representations sent to me under paragraphs (1) to (3) above were at the same time to be copied to the opposite party and to the Treasury Solicitor's Department (Ref. R 1101166D/PJB/A5).

3. In the body of the order for directions the parties were notified that if neither side had informed me in writing by 6.00pm on Friday 6 January 2012 that they wished to be heard in relation to the request for an award of costs, I would proceed to deal with the matter in a supplementary decision in writing taking account of the written representations I had received.

4. By letter dated 28 November 2011 Mr. Wales asked for an award of costs to be made in his favour by reference to the following itemisations of work and expenditure:

**Hearing on May 12<sup>th</sup> 2011**

Attended London Office but no hearing due to technical problem  
Half a day lost working hours say £200.00  
Train and tube fare £22.40 and car park £3.00 **Total of £225.40**

**Hearing on June 16<sup>th</sup> 2011**

Attended London Office  
Half a day lost working hours say £200.00  
Train and tube fare £22.40 and car park £3.00 **Total of £225.40**

**Hearing on October 28<sup>th</sup> 2011**

Attended London Office  
Half a day lost working hours say £200.00  
Train and tube fare £22.40 and car park £3.00 **Total of £225.40**

**Preparation of documents**

Total time spent reading evidence and preparing responses say 8 hours  
Advice from Marks and Clerk for this appeal over a period of 11 months

Photocopying inks and paper £20.00  
Postage £15.00  
Phone calls £10.00 **Total of £45.00**

5. Mr. Kruschandl responded in a letter of 4 December 2011 containing 37 numbered paragraphs, at number (23) of which he pointed out that the hearing scheduled to take place on 12 May 2011 had been abandoned for reasons entirely outside the control of the parties and at number (24) of which he commented that no more time had been spent on the substantive hearing of the appeal than had been spent on the substantive hearing of the application which resulted in the decision under appeal.

6. Mr. Wales replied in a letter of 20 December 2011 in which he emphasised the significant cost in time and money which the unsuccessful appeal had imposed upon him.

7. On 2 January 2012 Mr. Kruschandl sent a letter containing 21 numbered paragraphs of comments and observations relating to grievances which he considers he is entitled to pursue in respect of the 'behaviour' of Mr. Wales and persons associated with him. An item from the 12 August 2011 edition of The Times newspaper was provided as Exhibit 1 to the letter. An unsigned Deed of Compromise and a Trade Mark Licence Agreement signed only by one party were provided as Exhibit 2 to the letter. These dated back to 2007.

8. He expressed a desire to bring forward more documents in support of his position in relation to trade mark number 2315925 (registered on 9 October 2009 with effect from 6 November 2002) and opposition number 93515 (filed on 27 June 2005 and deemed withdrawn under Rule 68(2) of the Trade Marks Rules 2008 in September 2009):

'I will shortly be in a position to provide the Court with a copy of correspondence between parties to show that this/the opposition would be withdrawn on the issue of a/the licence from the [Malcolm Campbell Heritage Trust]': paragraph 8.

'I would welcome time to adduce the "documents" I refer to as to halting opposition and acting as my agent': paragraph 20.

'I should like to hear from the court as to "the documents" before making a decision as to requesting a hearing, primarily to discuss the [Respondent's] absolute refusal to mediate, where he is clearly fanning the flames of litigation, in the face of overwhelming evidence of tortious and contractual wrongdoing. My understanding is that the court should positively encourage friendly settlement': paragraph 21.

9. Mr. Kruschandl's appeal was determined on its merits in my Decision given on 28<sup>th</sup> October 2011. The question now before me is whether there should be an award in favour of the Respondent in relation to his costs of the unsuccessful appeal. It is neither necessary nor appropriate for me to resolve that question by reference to the alleged rights and wrongs of the past and closed opposition to the registration of trade mark number 2315925 or the events surrounding the ultimately successful application for registration of that trade mark. I am therefore not willing to go into the contents or circumstances of further documents relating to such matters.

10. As I have already said, the parties were notified in my order for directions dated 22 November 2011 that any request for a hearing on the question of costs needed to be made by 6.00pm on Friday 6 January 2012. The Respondent did not request a hearing. In his letter of 2 January 2012 Mr. Kruschandl expressly declined to say whether he would request a hearing until after he had heard whether the tribunal would allow him to bring forward the additional documents he had mentioned. He appears to have consciously omitted to request a hearing as required by my order for directions. I have therefore proceeded to deal with the costs of the appeal in writing taking account of the written representations I have received.

11. The Respondent, Mr. Wales, is the successful party to the appeal. I see no reason to deny him an award of costs in relation to the work and expenditure imposed upon him by the appeal. However, I think it would be wrong in principle to require the unsuccessful Appellant, Mr. Kruschandl, to pay anything towards the costs thrown away by the failure

to put in place the technical facilities required for the hearing on 12 May 2011, which had to be abandoned through no fault of the parties. If the Respondent wishes to be compensated for his costs of the abandoned hearing, it is open to him to apply to the Registrar for an ex gratia payment in that connection.

12. I propose to make an award of costs in relation to his work and expenditure in connection with the hearings that took place on 16 June and 28 October 2011. His car parking expenses and fares amounting to £50.80 appear to me to be reasonable in amount and properly incurred. I think the same is true of his figures totalling £45 for photocopying, postage and phone calls.

13. Whilst it is appropriate to allow a litigant in person more time for a particular task than a professional adviser would be allowed, it remains necessary to ensure that such litigants are neither disadvantaged nor over-compensated by comparison with others who are professionally represented: SOUTH BECK Trade Mark (BL O-160-08; 9 June 2008) at paragraphs 36 and 37 per Mr. Richard Arnold QC.

14. Half a day for each hearing plus 8 hours for reading and preparation in relation to the conduct of the appeal (so about 15 hours in total) seems to me to provide a fair basis for assessment of a figure for time spent. The reference to 'Advice from Marks & Clerk for this appeal of a period of 11 months' is obscure and I will therefore not allow anything additional for time or expenditure in respect of it.

15. If the Respondent had been acting on his own behalf in proceedings within the scope of the Litigants in Person (Costs and Expenses) Act 1975 the hourly rate of

remuneration he could claim would have been subject to a bottom limit (which was increased from £9.25 per hour to £18 per hour with effect from 1 October 2011). It is not obligatory for me to apply either of these figures to the Respondent's claim for time spent in relation to the present appeal. I think that £20 per hour would be a reasonable figure to apply in the circumstances of the present case, with the result that he will be awarded a total of £300 by way of remuneration at the rate of £20 per hour for 15 hours of time spent.

16. For the reasons given above, I order Mr. Kruschandl to pay £395.80 to the Respondent, Mr. Wales, as a contribution towards his costs of the unsuccessful appeal, such sum to be paid within 21 days of the date of this decision. The sum I have awarded in respect of the unsuccessful appeal is additional to the sum of £1,200 awarded by the Registrar's hearing officer in relation to the opposition proceedings as a whole.

**Geoffrey Hobbs QC**

19 January 2012