

O-191-13

**SUPPLEMENTARY DECISION**

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION 2546233  
IN THE NAME OF NORTY LTD  
OF THE FOLLOWING TRADE MARK IN CLASSES 25 & 35:

**JUST COOL BY AWDIS**

AND

AN APPLICATION FOR INVALIDITY THERETO (UNDER NO 84242)  
BY ROY DALEY-SMOOTHIE

1) On 26 March 2013 I issued a decision in these proceedings rejecting an application for invalidity filed by Mr Roy Daley-Smoothie against a trade mark registration in the name of Norty Ltd. I do not need to repeat the reasons for the rejection of the application here. I did not deal with this issue of costs in my previous decision because Mr Daley-Smoothie requested the cross-examination of Norty Ltd's primary witness (Mr Jumani) and, therefore, my decision on costs needed to reflect the expenses associated with Mr Jumani's attendance. To this end, Norty Ltd was asked to provide details of such expenses and Mr Daley-Smoothie was given an opportunity to comment upon them.

2) The costs claimed as part of the cross-examination were:

- i) Hotel accommodation in St Ermin's Hotel. Mr Jumani stayed in a double "superior" room costing £157.
- ii) Return flights from Edinburgh to Heathrow. Two invoices are provided due to a change in hearing date. The invoices are for £151.07 and £77.00 respectively.
- iii) Heathrow Express train ticket costing £34.
- iv) Taxi fares between Heathrow Express and hotel accommodation (the two legs total £25).
- v) Airport car parking costing £37.99.

3) Mr Jumani lives in Scotland so it was reasonable for him to travel by plane and to stay overnight at a hotel. However, Mr Daley-Smoothie comments upon these two expenses on the basis that Mr Jumani could have stayed in a standard room in a reasonably priced hotel rather than a superior suite in a luxury hotel. In relation to the flights, Mr Daley-Smoothie states that he should not have to pay for two sets of flights because the change of hearing date was requested by Norty Ltd not by him.

4) I consider that the expenses listed at iii), iv) and v) are all acceptable. In relation to the flights, Mr Daley-Smoothie is correct. It was Norty Ltd that requested a new hearing date so the costs associated with this should not be met by Mr Daley-Smoothie. The lower of the two invoices is the one which relates to the flights to and from the hearing that took place, so this is the only one which is relevant. In relation to the hotel, £157 for a central London hotel does not seem excessive to me. Although the invoice refers to a "double superior" room this does not necessarily mean that Mr Jumani stayed in a luxury suite. The totals I will allow are:

- i) Hotel - £157
- ii) Flights - £77
- iii) Heathrow Express - £34
- iv) Taxi fares - £25
- v) Airport car parking - £37.99

*Total costs associated with Mr Jumani's attendance for cross-examination - £330.99*

5) In relation to the rest of the proceedings, Norty Ltd was successful and is entitled to a contribution towards its costs. Taking into account the costs associated with Mr Jumani's attendance for cross-examination, I hereby order Mr Roy Daley-Smoother to pay Norty Ltd the sum of £2,730.99. This sum is calculated as follows:

*Preparing a statement and considering the other side's statement*  
**£400**

*Considering and filing evidence*  
**£1000**

*Preparing for and attending the hearing*  
**£1000**

*Cross-examination of Mr Jumani*  
**£330.99**

6) The above sum should be paid within seven days of the expiry of the appeal period (which commences on the date of this supplementary decision) or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 14th day of May 2013**

**Oliver Morris  
For the Registrar,  
The Comptroller-General**