

**O-269-15**

**TRADE MARKS ACT 1994**

**SUPPLEMENTARY DECISION**

**CONSOLIDATED PROCEEDINGS INVOLVING:**

**1. TRADE MARK APPLICATION 2648572  
BY CAFFEINE CLUB COFFEE HOUSES LIMITED FOR THE  
FOLLOWING TRADE MARK IN CLASSES 21, 25, 30, 32, 38, 41, 42 & 43:**

**THE CAFFEINE CLUB**

**AND OPPOSITION THERETO (NO 400286) BY THE CAFFEINE CLUB LTD**

**&**

**2. TRADE MARK APPLICATION 2650634  
BY THE CAFFEINE CLUB LIMITED  
FOR THE FOLLOWING TRADE MARK IN CLASSES 7, 11, 16, 21, 30, 32 & 43:**



**AND OPPOSITION THERETO (NO 400330) BY CAFFEINE CLUB COFFEE  
HOUSES LIMITED**

1. On 28 November 2014 I issued a decision in the above proceedings in favour of Caffeine Club Coffee Houses Limited. In relation to costs I said this:

“60. CCC has been successful and is entitled to a contribution towards its costs. In making my assessment I bear in mind that it was not legally represented so would not have incurred legal costs. [my emphasis] I award CCC the sum of £1000 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

*Preparing a statement and considering the other side’s statement x 2 -  
£300*

*Fee for opposition - £200*

*Considering and filing evidence -- £500*

***Total - £1000***

61. I therefore order The Caffeine Club Limited to pay to Caffeine Club Coffee Houses Limited the sum of £1000. The above sum should 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”

2. Following an appeal (which was subsequently withdrawn), the protagonist behind Caffeine Club Coffee Houses Limited (Mr Eddy) contacted the tribunal to point out that it had in fact been legally represented, but only for part of the proceedings. From a fresh perusal of the official records, I can see that this is indeed the case and, consequently, my decision on costs was erroneous. In view of this, I wrote to the parties saying that:

“The tribunal has been advised by Mr Eddy that, despite what the Hearing Officer indicated in paragraph 60 of his decision, his company was represented in the proceedings albeit up to a certain point. It is clear from the records that this is the case. Accordingly, the Hearing Officer's decision contained an error when he made a lower costs award on the basis that there had been no legal representation.

The Hearing Officer considers that this should be treated as an irregularity in procedure and rectified under the provisions of rule 74(1) of the Trade Mark Rules 2008. The error will be rectified by issuing a new costs direction (in a supplementary decision) to reflect the award that would have been made had the Hearing Officer noticed that Mr Eddy's company had been represented.

The new costs direction will be for the sum of £1300 (£600 for preparing statements/considering the other side's statements, £200 for the opposition fee and £500 for considering and filing evidence). No higher award had been made for the official fee because this is a fixed cost. No higher award has been given for filing evidence because this was filed after Wither & Rogers ceased representing Mr Eddy's company.”

3. The parties were given 14 days to comment on my proposed course of action. Neither party replied.

4. In view of the above, and under the provisions of rule 74(1), I hereby rectify my error on the basis that it was an irregularity in procedure by replacing the costs award previously made by that indicated above. Accordingly, The Caffeine Club Limited is to pay Caffeine Club Coffee Houses Limited the sum of £1300. An appeal period will be set in relation to the costs part of this decision (the substantive matter cannot be reopened) and the award of costs should be paid within 14 days of the expiry of that appeal period or within 14 days of the final determination of any appeal against my decision on costs.

**Dated this 11th day of June 2015**

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