

O-530-15

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK 2575691 IN THE NAME OF AGILITISE LIMITED AND AN APPLICATION FOR INVALIDATION THEREOF UNDER NUMBER 500015 IN THE NAME OF PREMIER EVENTS AND LEISURE COMPANY LIMITED

AND IN THE MATTER OF UK TRADE MARK APPLICATION 2640199 IN THE NAME OF PREMIER EVENTS AND LEISURE COMPANY LIMITED ND OPPOSITION THERETO UNDER NUMBER 400221 IN THE NAME OF AGILITISE LIMITED

AND IN THE MATTER OF UK TRADE MARK APPLICATION 3008660 IN THE NAME OF PREMIER EVENTS AND LEISURE COMPANY LIMITED AND OPPOSITION THERETO UNDER NUMBER 400934 IN THE NAME OF AGILITISE LIMITED

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF MR GEORGE SALTHOUSE DATED 2 DECEMBER 2014 AND HIS SUPPLEMENTAL DECISION ON COSTS DATED 27 JANUARY 2015

SUPPLEMENTARY DECISION

1. On 15 October 2015 I handed down a judgment in an appeal by Agilitise Limited (“AL”) against Mr George Salthouse’s substantive decision of 2 December 2014.
2. Premier Events and Leisure Company Limited (“Premier”) had applied to invalidate AL’s trade mark No. 2575691. That mark had been cited as the basis of AL’s oppositions to Premier’s applications Nos. 2640199 and 3008660. Mr Salthouse had decided that AL’s mark was wholly invalid and the oppositions therefore failed. AL appealed, claiming that its mark was wholly valid and that the oppositions should have succeeded.
3. I decided that the appeal succeeded only in so far as the Hearing Officer should not have found AL’s mark to be invalid for “Electronic data storage; provision of business information” in Class 35. I invited AL to indicate whether it wished, in those circumstances, to pursue the oppositions and, by a letter dated 28 October, its trade mark attorneys indicated that AL did not wish to do so.
4. The only issues remaining are, therefore, the question of the costs of the appeal and AL’s appeal against the costs awarded below.

5. The Hearing Officer set out in some detail in his Supplemental Decision dated 27 January 2015 the submissions which had been made on behalf of AL in support of its application for the costs of the proceedings (despite being the losing party). He rejected each of those points, and decided that AL should pay Premier's costs on the usual scale. He awarded Premier a total of £4,386.50.
6. AL appealed the costs decision on the grounds that the costs allowed were excessive.
7. First, AL suggested that the Hearing Officer had awarded "3 amounts" for "statements" and that this was incorrect because Premier had filed additional evidence only because of the inadequacies of its first attempt to prove its case. I am afraid that I think that this submission misunderstood the Hearing Officer's award. He did award £900 for "Preparing statements and considering the other side's statements x 3" but this reflected the fact that there were 3 applications which had been consolidated, it did not relate to the evidence filed, as to which the Hearing Officer made a separate award of £1600, well within the scale for a case in which both sides filed witness statement with numerous exhibits. The amounts awarded for both elements were less than the maximum allowable. I do not accept that the Hearing Officer made any error on this point.
8. Secondly, AL complained that the Hearing Officer should not have awarded £1500 for the hearing, as this is the maximum on the scale, arguing that this must have reflected the fact that there had been cross-examination, which (in its view) arose only due to the inadequacies of Premier's written evidence. It does not seem to me that there is anything in the Hearing Officer's Supplemental Decision which suggests that the costs allowed for the hearing were inflated because of the cross-examination. Even without cross-examination he could well have allowed the same sum of £1500 for a hearing which related to 3 consolidated sets of proceedings.
9. In the circumstances, it does not seem to me that the Grounds of Appeal identified any error of principle in the Hearing Officer's approach to the assessment of the costs below. The appeal is refused.
10. As to the costs of the appeals, it seems to me that although AL succeeded in overturning the Hearing Officer's substantive decision on invalidity in part, the element of success was small. It related to parts of AL's specification which (so far as I can see from the evidence) are not material to its business. Moreover, the services remaining in its specification are so far removed from Premier's services that AL has sensibly decided not to pursue the oppositions. Had AL launched its appeal of the main decision only in relation to the points on which it won, I doubt that Premier would have fought the appeal.

11. On balance, in my view, therefore, Premier was the successful party, and should have a contribution towards its costs of the substantive appeal. Premier suggested in its skeleton argument that it should have its costs on an indemnity basis as the appeal was wholly misconceived. In the light of my decision that the Hearing Officer had erred in his approach to the invalidation application, it does not seem to me that the appeal can be said to have been wholly misconceived, even though I rejected large parts of the Grounds of Appeal. As a result, I am not prepared to order indemnity costs or costs off the scale. Premier should also have its costs in relation to the costs appeal.

12. I will order AL to pay Premier £1200 towards the costs of the appeals, to be paid by 5 PM on 19 November 2015. I will extend the time by which AL is to pay the sum of £4,386.50 awarded by the Hearing Officer so that it is also to be paid by 5 PM on 19 November 2015.

Amanda Michaels
The Appointed Person
4 November 2015