

O-549-16

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION NO. 2491995 IN THE NAME OF
DAVINDAR DHOUPER AND GURPREET DHOUPER**

**AND THE APPLICATION FOR REVOCATION THERETO UNDER NO. 500699 BY
BVIPR LIMITED**

**AND IN THE MATTER OF OPPOSITION NO. 403837 IN THE NAME OF
DAVINDAR DHOUPER AND GURPREET DHOUPER**

**TO TRADE MARK APPLICATION NO. 3077283 IN THE NAME OF BVIPR
LIMITED**

DECISION AS TO COSTS

1. On 25 October 2016 I issued a Decision (O-495-16) (“*the Decision*”) in the above case in which I dismissed the appeal against a decision by Mrs Ann Corbett, acting for the Registrar, dated 17 February 2016 (O-087-16).
2. The appeal was brought by Davinder Dhouper and Gurpreet Dhouper (“*the Dhoupers*”). The Respondent to the appeal was BVIPR Limited (“*BVIPR*”). BVIPR did not appear at the hearing of the appeal.
3. As noted in paragraph [48] of the Decision in paragraph 24d of the written submissions filed on behalf of BVIPR it was requested that “*An increased cost award be made in favour of [BVIPR]*”. In those circumstances I gave certain directions as follows:
 - (1) On or before 4 pm on or before 1 November 2016 BVIPR must confirm in writing whether or not it is claiming costs other than on the standard scale.
 - (2) In the event that BVIPR confirms that it intends to seek an order for off scale costs then on or before 4 pm on the 8 November 2016 BVIPR must: (a) provide a bill itemising the actual costs upon which it intends to rely for that purpose; and (b) provide a reasoned statement in support of its request for costs to be awarded on an off scale basis.
 - (3) On or before 4 pm on 22 November 2016 the Dhoupers should provide any written submissions that they would wish to make in response to BVIPR’s application for costs.

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Thereafter I will consider and then issue a decision as to costs on the papers before me.’

4. No response was received from BVIPR in accordance with the directions. Therefore on 17 November 2016 a Default Notice was issued which stated as follows:

DEFAULT NOTICE

In paragraph 48 of the Decision on the above appeal dated 25 October 2016 Miss Himsworth QC gave directions as the further conduct of the Respondent’s application for costs. A copy of that Decision is supplied herewith.

To date it would appear that the Respondent has not complied with the directions set out in paragraphs 48 (1) and (2) of that Decision. If the Respondent does not comply with paragraph (1) and if appropriate paragraph (2) of those directions by 5 pm on Thursday 1 December 2016 the Respondent’s application for costs of the appeal other than on the standard scale will be deemed to have been withdrawn.

In the event that the application is deemed withdrawn Miss Himsworth QC will thereafter determine the costs of the appeal on the standard scale on the basis of the papers before her.

If the Respondent does comply with the directions as set out in paragraphs 48 (1) and (2) of the Decision Miss Himsworth QC will thereafter give further directions for the purposes of determining the question of the costs of the appeal.

5. By email dated 18 November 2016 it was confirmed on behalf of BVIPR that ‘*The request for costs above the standard scale is withdrawn on behalf of the Respondent, BVIPR Limited*’.
6. In the light of this indication it now falls to me to make a decision on the costs on the basis of the standard scale.
7. Since the appeal has been dismissed BVIPR are entitled to their costs. Although BVIPR were not represented at the hearing of the Appeal they did file and serve: (1) a Respondent’s Notice; and (2) written submissions on the Appeal. I therefore Order the Dhoupers to pay a contribution towards BVIPR’s costs of £750 within 14 days of the date of this decision as to costs, together with the £1,600 costs awarded by the Hearing Officer below.

Emma Himsworth Q.C.
Appointed Person
21 November 2016