

O/477/21

TRADE MARKS ACT 1994

SUPPLEMENTARY DECISION

IN THE MATTER OF APPLICATION NO. UK00003490381

BY HAYLEY MCCAUGHRAN

TO REGISTER:

Skin Sisters

AS A TRADE MARK IN CLASS 3

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP600001433 BY

SAMANTHA HEATLEY

BACKGROUND

1. In my decision O/430/21, issued on 8 June 2021, I found that the opposition brought by Samantha Heatley (“the opponent”) was successful against application no. 3490381 by Hayley McCaughran (“the applicant”) in respect of all of the goods against which it was aimed. In that decision I stated:

“COSTS

41. As the opponent has been successful, she is entitled to a contribution towards her costs. However, I note that the opponent has not been provided with a costs proforma. As a result, I am unable to deal with the issue of costs at this stage.

42. A copy of the costs proforma will be provided to the opponent upon the issuance of this decision. The opponent is hereby directed to file a completed costs proforma to the Tribunal within 14 days of the date of this decision. Once this is received, I will issue a supplementary decision deal[ing] with the issue of costs.

43. In the event that the opponent fails to file a costs proforma within 14 days of the date of this decision, she will only be entitled to recover the official fee that was paid upon filing the opposition. Regardless of whether the opponent files a costs proforma or not, I still propose issuing a supplementary decision dealing with the issue of costs.”

2. The opponent was provided with a copy of the costs proforma by the Tribunal and filed a completed copy of the same on 16 June 2021. The opponent claims that she has spent the following amount of time on these proceedings:

Forms

Notice of Opposition

30 minutes

Notice of Cancellation 30 minutes

Notice of Defence 30 minutes

Considering forms filed by the other party: 30 minutes

Preparing evidence/written submissions

Researching her position regarding her Intellectual Property: 2 hours

Preparing and writing and amending submissions: 4 hours

Other expenses

Travel to post office to obtain recorded letter: 30 minutes

Total: 8 hours 30 minutes

3. The opponent also claims official fees of £100 for filing the notice of opposition.

4. Firstly, these proceedings were opposition proceedings and no notice of cancellation was required or filed. I also note that the opponent has claimed time for the notice of defence, which was not a form she filed or was required to. While it could be that the opponent spent 30 minutes considering the notice of defence filed by the applicant, I do not consider this to be the case. This is on the basis that the opponent has also claimed 30 minutes for considering forms filed by the applicant and I note that the only form filed by the applicant was the notice of defence. While I consider the time spent for filing the notice of opposition and considering the applicant's forms to be reasonable, I do not consider that the opponent can recover costs for a notice of cancellation or notice of defence.

5. As the opponent is a litigant in person, I consider that the further costs claimed for researching the opponent's position regarding her Intellectual Property to be reasonable and acceptable. Moving on to the time spent for preparing, writing and amending her written submissions, I consider this to be excessive. This is on the basis that the submissions were only one page long. I consider it to be reasonable that the opponent be entitled to costs equal to one hour for the preparing and filing of her written submissions. Finally, the other expenses, being the costs claimed for travel to the post office to collect a letter are not costs that would be recoverable on the scale if the opponent was represented. I do not, therefore, consider these costs to be recoverable in these proceedings.
6. Taking all of this into account, I consider a costs award for a total of 4 hours to be reasonable, plus the claimed official fees of £100.
7. In relation to the hours expended, I note that the Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour. I see no reason to award anything other than this. I therefore award the opponent the sum of £76.00 (4 hours at £19.00 per hour) and an additional £100 for official fees, totalling **£176.00**.
8. I hereby order Hayley McCaughran to pay Samantha Heatley the sum of £176.00. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 22nd day of June 2021

A COOPER
For the Registrar