

O-206-08

TRADE MARKS ACT 1994

**SUPPLEMENTARY DECISION (COSTS)
IN THE MATTER OF REGISTRATION NO 2363603
IN THE NAME OF TIMOTHY BENSON
OF THE TRADE MARK:**

Trussloft

IN CLASS 37

AND

**THE APPLICATION FOR A DECLARATION
OF INVALIDITY THERETO
UNDER NO 82804
BY TOP-STOREY LOFT CONVERSIONS (NE) LTD**

Trade Marks Act 1994

**Supplementary decision (costs)
in the matter of registration no 2363603
in the name of Timothy Benson
of the trade mark:
Trussloft
in class 37
and the application for a declaration of invalidity
thereto under no 82804
by Top-Storey Loft Conversions (NE) Ltd**

1) On 26 June 2008 I issued a decision in relation to these proceedings. In the decision I stated:

“Top-Storey having been successful is entitled to a contribution towards its costs. As the applicant is a litigant in person I have to bear in mind the actual costs that were incurred; as per the decision of Mr Richard Arnold QC in BL/O/160/08 at paragraph 36. In order that I can make an assessment as to the costs, Top-Storey should advise me of the following:

- A statement of the time spent by Top-Storey in dealing with the proceedings, this should include the time spent in considering the evidence of Mr Benson and the time spent in travelling to and from London and at the hearing (as Mr Benson required the cross-examination of Mr Birch).
- Any additional costs eg travel costs to London (if Mr Birch travelled to London by car the mileage should be given).
- Any other financial losses incurred by Top-Storey in dealing with the proceedings.

Top-Storey should advise me of these costs within four weeks of the date of the issue of this decision. A supplementary decision, in relation to costs, will then be issued.”

2) On 15 July 2008 correspondence in relation to the costs incurred by Top Storey was received. This correspondence gave a breakdown of the costs incurred by Top Storey. The costs were given as follows:

Preparing the first statement and evidence: £360.50. This cost was based on the number of hours, 33, spent by a secretary in compiling the evidence multiplied by the hourly rate of pay and stationery and mailing expenses.

Considering Mr Benson’s statement and evidence and preparing the final statement and evidence: £1527.75. This cost was based on the number of hours, 150, spent by a secretary in compiling the evidence multiplied by the hourly rate of pay and stationery

and mailing expenses minus time spent collecting and preparing information relating to the United States of America.

Included in the breakdown of costs are bills from Marsdens solicitors from April 2005. Although these bills may well deal with a dispute with Mr Benson/Truss Loft Conversions Limited, they clearly emanate from a period well before these proceedings were launched, 16 March 2007, and so cannot be considered in relation to the award of costs.

A bill from Jacksons Commercial & Private Law dated 22 January 2008 is included, this relates to the "Trussloft Patent". It relates to professional charges in considering Top-Storey's papers, meeting with Top-Storey and suggesting amendments to the papers. The bill is for £525 plus £91.88 VAT. The cost of the directors and secretary attending the meeting with Jacksons is also included. The costs for professional advice can be considered, however, the costs for the clients attending the meeting cannot be considered. One is looking at the professional costs alone when there is a claim in relation to them (see *Sisu Capital Fund Ltd v Tucker* [2006] FSR 21).

Top-Storey directors reviewing the evidence and statement: £960. This is calculated at £240 per day for two days for two directors.

Travel expenses from Stockton-on-Tees: £409.60. This is calculated at a rate of 80p for 512 miles.

Twin room at Shepherds Bush: £82.00.

Parking expenses at Shepherds Bush: £16.00.

Tube fare from Shepherds Bush to office for hearing: £16.00. This is calculated at £8 for two persons.

3) In its letter Top-Storey refers to the loss of business owing to the dispute with Mr Benson/Truss Loft Conversions Limited. The registrar can award costs in relation to proceedings, he cannot award damages arising from the actions of parties in proceedings (see *Alouette Innovation Limited v Owen Lewis Richardson* BL 0/078/03).

4) The registrar awards costs as a contribution, awards are not made to cover the total costs of a successful party. I can see nothing in the behaviour of the parties in this case that suggests that I should award costs that exceed the standard scale. It is clear that a large amount of effort has gone into the preparation of the case by Top-Storey. There are a few minor technical short comings in the presentation of the evidence, however, Top-Storey has put forward excellently compiled evidence that is directed at the matters at issue.

5) It is my view that the award of costs to Top-Storey should be at the top end of the scale, taking into account both that as a litigant in person the scale costs should be capped

at two thirds of what would have been awarded to a party with legal representation (as per the decision of Mr Simon Thorley QC, sitting as the appointed person, in *ADRENALIN Trade Mark* BL O/040/02) and the actual costs expended by Top-Storey.

5) I award costs upon the following basis:

Invalidation fee: £200

Statement of case: £200

Considering statement of case in reply and compiling the initial evidence: £350

Considering evidence of Mr Benson and compiling evidence in reply: £1000

Preparation and attendance at hearing: £1,000

Expenses for attending hearing (as Mr Birch was required to attend for cross examination) : £515.60. This was calculated on the following basis:

Accommodation: £82

Parking expenses: £16

Tube fare: £8 (for one person)

Travel expenses: 80p (Inland Revenue mileage allowance rate) x 512: £409.60

Total costs: £3,265.60

6) I order Timothy Benson to pay Top-Storey Loft Conversions (NE) Ltd the sum of £3,265.60. This sum is to 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. The appeal period in relation to the substantive decision will run in parallel with the appeal period in relation to the decision on costs; when that has been issued as stated in the substantive decision.

Dated this 18 day of July 2008

**David Landau
For the Registrar
the Comptroller-General**