

O-062-11

TRADE MARKS ACT 1994

TRADE MARK APPLICATION No. 2491924

BY POWAWALKER LTD

TO REGISTER THE MARK 'POWAWALKER' IN CLASS 12

AND

OPPOSITION No. 98224

BY POWAKADDY INTERNATIONAL LTD

1. On 30 November 2010, I issued a decision on behalf of the Registrar rejecting opposition No. 98224. At the request of the parties, I permitted them further time in which to make submissions on costs.

2. There was no appeal against the decision on the substance of the opposition and therefore that is now final.

3. Both parties made submissions on costs. It is common ground that costs should be decided on the basis of the Registrar's published scale of costs. However, the applicant points out that the award should take account of the volume of evidence filed, including public survey evidence in this case, and that there was additional correspondence and a case management conference about the survey.

4. I have taken into account that the opponent's evidence unusually includes a public survey, which the applicant had to analyse, consider and address. On the other hand the survey was quite informal and small scale, and would not have needed the sort of analysis often associated with large scale public surveys. The overall volume of evidence from the opponent was not excessive. Further, the applicant also added to the usual amount of the evidence by seeking leave to file additional evidence on the eve of the hearing.

5. The opponent sought leave to file survey evidence which triggered several exchanges of letters with the applicant's representatives and a case management conference. Ultimately, directions were given, but not entirely complied with. It therefore seems to me that the applicant is entitled to some additional compensation for commenting on the proposed directions.

6. Taking these matters into account, I order Powakaddy International Ltd to pay Powawalker Ltd the sum of £3200 as a contribution towards the cost of these proceedings. Subject to any appeal, this sum to be paid within 28 days of the date of this decision.

7. The award consists of:

- £400 for considering the notice of opposition and preparing and filing the counterstatement
- £1300 for filing evidence and considering the opponent's evidence
- £500 for dealing with the opponent's request for directions for a survey and taking part in a case management conference
- £1000 for representation at the hearing, including the preparation of a skeleton argument.

Dated this 22 Day of February 2010

**Allan James
For the Registrar**