

O-259-11

**IN THE MATTER OF:**

**TRADE MARK APPLICATION No. 2436785 by NEST.CO.UK and OPPOSITION THERETO  
UNDER No. 97171 by NEXT RETAIL LIMITED**

**DECISION OF THE APPOINTED PERSON ON COSTS**

1. In this matter, the opposition was unsuccessful but the opponent, Next Retail Limited, appealed to the Appointed Person. Some 2 days before the skeleton arguments were due to be exchanged, the opponent withdrew the appeal.
2. I have now received a letter from Franks & Co., trade mark attorneys for the applicant, Nest.co.uk, seeking a further costs award representing their costs of the withdrawn appeal.
3. I am told that the appeal proceedings have included a failed application for an extension of time by the opponent. This application was opposed by the applicant, who thereby incurred some costs. In addition to that, I am told that the applicant's attorneys had made what is described as "extensive preparation" for the appeal before it was withdrawn.
4. I have had no submissions from the opponent on the question of costs. I would ordinarily ask for those submissions before coming to even a provisional decision, but in the present case (given the very small amounts at stake) it seems to me that any submissions are likely to end up costing more than any impact they may have on the award.
5. In all the circumstances I propose to give a provisional ruling that the opponent should pay £150 to the applicant towards its costs of the Appeal. In the event that the opponent wishes to dispute this figure or to contend that no award should be

made, any submissions should be made in writing by 11 July 2011 after which I shall issue a formal order.

6. If the opponent is happy to accept my provisional ruling, then I would be grateful if it would write a "one liner" to that effect, copied to the Treasury Solicitor, Messrs Franks & Co. and myself, and confirm that the payment has been made.

**IAIN PURVIS QC**  
**THE APPOINTED PERSON**  
**4 July 2011**