

**O-267-15**

**SUPPLEMENTARY DECISION**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION 2462925  
BY DAVID HALEWOOD & ANNE-LYDIA HALEWOOD  
TO REGISTER THE FOLLOWING TRADE MARK IN CLASS 25:**

**ICE SCREAM**

**AND**

**OPPOSITION THERETO (NO 96351) BY BBC ICE CREAM, LLC**

1. On 23 November 2009 I issued a provisional decision in these proceedings upholding the opponent's objection to the registration of the applicant's mark under section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The decision was provisional because the earlier marks relied on by the opponent were, at that time, pending (as opposed to registered) marks.

2. Despite the opponent being directed to inform the tribunal as and when any of its earlier marks became registered (or, alternatively, when they had all been refused) it failed to do so, despite one of its earlier marks, Community Trade Mark ("CTM") 3317369, being registered on 9 February 2011. The fact that the registration has become registered was recently discovered by the tribunal in a review of its files. As one of the earlier marks has now been registered, the provisional decision can, therefore, now be confirmed. The tribunal wrote to both parties to indicate that this is what it intended to do, neither party responded.

3. In view of the above, the provisional decision issued on 23 November 2009 is hereby confirmed. The opposition succeeds under section 5(2)(b) of the Act, on the basis of earlier mark CTM 3317369.

4. That leaves the matter of costs. The opponent has been successful and is entitled to a contribution towards its costs. My assessment is as follows:

*Opposition fee - £200*

*Preparing a statement and considering the other side's statement - £300*

*Filing and considering evidence - £500*

*Written submissions - £400*

*Total - £1400*

5. I therefore order David Halewood & Anne-Lydia Halewood, being jointly and severally liable, to pay BBC Ice Cream, LLC the sum of £1400. This should be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 11th day of June 2015**

**Oliver Morris  
For the Registrar,  
The Comptroller-General**