

BL O-519-18

SUPPLEMENTARY DECISION

TRADE MARKS ACT 1994

IN THE MATTER OF
TRADE MARK REGISTRATION NOS. 2490862A & 2490862B
IN THE NAME OF SIMON BUCKLEY
FOR THE TRADE MARKS

HEROES BITTER

&

HEROES LAGER
HEROE LAGER
(SERIES OF 2)

AND THE APPLICATION FOR CANCELLATION THEREOF
UNDER NOS. CA00501586 & CA000501587

BY
HEROES DRINKS COMPANY C.I.C.

1. On 19 June 2018 a decision was issued in respect of these UK proceedings.

2. The applicant for cancellation was successful and an award of costs was made as follows:

“21. As the applicant has been successful, it is entitled to an award of costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 2/2016. Bearing in mind the guidance given in TPN 2/2016, I award costs on the following basis:

£200 Application fee

£200 Preparing a statement and considering the counterstatement

£500 Considering evidence and preparing submissions

£900 Total

22. I order Simon Buckley to pay Heroes Drinks Company C.I.C. the sum of £900. This sum is to be paid within 14 days of the expiry of the appeal period or within 14 days of the final determination of this case if any appeal against this decision is unsuccessful.”

3. By way of an email dated 7 August 2018 from Heroes Drinks Company C.I.C., it was brought to my attention that the costs should have reflected the official fees for two applications for cancellation.

4. The relevant rule contained within the Trade Marks Rules 2008 (as amended) (the Rules) which provides guidance for the Registrar in such circumstances is as follows:

74.— (1) Subject to rule 77, the registrar may authorise the rectification of any irregularity in procedure (including the rectification of any document filed) connected with any proceeding or other matter before the registrar or the Office.

(2) Any rectification made under paragraph (1) shall be made—

- (a) after giving the parties such notice; and
 - (b) subject to such conditions,
- as the registrar may direct.

5. In accordance with this provision, the amended cost award in respect of these proceedings is as follows:

£400 Official fees for two applications for cancellation
£200 Preparing a statement and considering the counterstatement
£500 Considering evidence and preparing submissions
£1100 Total

6. I order Simon Buckley to pay Heroes Drinks Company C.I.C. the sum of £1100. This sum is to be paid within 14 days of the expiry of the appeal period which, in respect of costs only, runs from the date of this supplementary decision; or within 7 days of the final determination if any costs appeal against this decision is unsuccessful. The appeal period for the substantive decision excluding costs is not affected by this supplementary decision.

Dated this 22nd day of August 2018

June Ralph
For the Registrar