

O/432/21

TRADE MARKS ACT 1994

SUPPLEMENTARY DECISION ON COSTS

IN THE MATTER OF REGISTRATION NO. UK00003333426

IN THE NAME OF WAYNE BARRETT-MCGRATH

FOR THE FOLLOWING TRADE MARK:

Slaughter and the Dogs

IN CLASS 9

AND IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF
INVALIDITY THERETO UNDER NO. 503042

BY MICK ROSSI

BACKGROUND

1. On 2 June 2021, I issued a decision in the above identified proceedings, the outcome of which was in favour of Mr Wayne Barrett-McGrath (“the proprietor”). In relation to costs, I stated:

“60. The proprietor has been successful and is entitled to a contribution towards his costs. As the proprietor is unrepresented, the following letter was sent on 22 March 2021:

“If you intend to make a request for an award of costs you must complete and return the attached pro-forma and send a copy to the other party.
[...]

If there is to be a “decision from the papers” this should be provided by 19 April 2021. If a hearing is taking place you will be advised of the deadline to do so when the Hearing is appointed.”

61. However, no date was subsequently set for the proprietor to file a proforma.

62. Consequently, **I direct that the proprietor file a costs proforma within 14 days of the date of this decision**, if he wishes to claim costs. This should include a breakdown of the actual costs, including accurate estimates of the number of hours spent on each of the activities listed and any travel costs. I will then assess the costs I consider to be reasonable and issue a supplementary costs decision. For the avoidance of doubt, if the proforma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded.”

2. On the same date, the proprietor filed its completed costs proforma.

3. Mick Rossi (“the applicant”) filed written submissions commenting upon the proprietor’s costs proforma dated 7 June 2021.

4. I will now give a supplementary decision on costs.

PRELIMINARY POINT

5. I note that in his written submissions, the applicant has requested that no costs award be made in this case. However, costs follow the event and, as the proprietor has been successful, he is entitled to a contribution towards his costs. Consequently, I do not consider it appropriate to make no order as to costs in this case.

DECISION

6. The proprietor claims that the amount of time spent in these proceedings is as follows:

Notice of Cancellation	10 hours
Considering forms filed by the other party	2 hours
Reviewing Cancellation Applicant's evidence	50 hours
Research and preparation of evidence rebuttal	100 hours
Researching, speaking and preparing witness statements	20 hours
Preparing for and attending hearing	20 hours

7. The proprietor has also claimed 100 hours in relation to:

“Emailing Tribunal and Cancellation Applicant, Printing, Pain and Suffering from Slandering and Defamation from Cancellation Representative”.

8. The registrar usually awards costs on a scale published in Tribunal Practice Notice 2/2016. As a matter of practice, litigants in person are asked to complete a costs proforma to ensure that the costs awarded do not exceed the amount spent on the proceedings. There is no right to be awarded the amount claimed. This is subject to an assessment of the reasonableness of the claim. As noted by the applicant in his written submissions, the Registrar awards costs on a contributory, not compensatory basis; account must be taken of that when assessing the claim made.

9. The proprietor has claimed 10 hours for completing a Notice of Cancellation. However, I note that the proprietor did not file a Notice of Cancellation; rather it filed a Counterstatement. I will proceed on the basis that is a typographical error and that this sum was intended to relate to the completion of the Counterstatement. I appreciate that the proprietor, not being familiar with proceedings of this kind, would have been required to undertake some research in order to be able to complete that form correctly. However, on balance, I consider 5 hours to be reasonable. I consider the claimed 2 hours to be reasonable for considering the forms filed by the applicant.

10. There was a reasonable amount of evidence filed in this case. However, I consider 170 hours to be well above what is reasonable for the preparation and filing of evidence and considering the evidence filed by the applicant. On balance, I consider 20 hours to be reasonable in this regard.

11. The hearing was relatively short as the applicant elected to file written submissions in lieu of attendance. The proprietor was represented at the hearing by his wife, Ms Custer-McGrath. I recognise that Ms Custer-McGrath would have had to familiarise herself with the process and, due to her lack of familiarity, would have had to undertake a certain amount of additional preparation prior to attendance at that hearing. On balance, I consider 15 hours a reasonable amount of time to have spent in this regard.

12. The amount claimed for correspondence with the Tribunal and the other side is not something that is recoverable on the usual scale. Similarly, time spent undertaking printing is not recoverable.

13. With regard to the claim for pain and suffering, as the applicant notes in his written submissions, this is outside the scope of any award to be made by this Tribunal in respect of costs. Consequently, I make no award in respect of the amount claimed under that heading. For the avoidance of doubt, there is no claim for off-scale costs and, in any event, I do not consider there to be grounds for such an award to be made.

14. Taking all of this into account, I consider the following to be reasonable:

Preparing and filing a Counterstatement	5 hours
Considering the forms filed by the applicant	2 hours
Preparing and filing evidence	20 hours
Preparing for and attending hearing	15 hours
Total	42 hours

15. In relation to the hours spent on these proceedings, I note that The Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 an hour. I see no reason to award anything other than this. I therefore award the applicant the sum of £798 (42 hours at £19 per hour).

16. I hereby order Mick Rossi to pay Wayne Barrett-McGrath the sum of £798. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

APPEAL PERIOD

17. The appeal period in relation to both this decision on costs and the substantive decision issued on 2 June 2021 begins from the date of this supplementary decision.

Dated this 9th day of June 2021

S WILSON

For the Registrar