

O-476-21

TRADE MARKS ACT 1994

COSTS DECISION
IN THE MATTER OF UK APPLICATION NO 3459423
BY THE FIZZBANG BEVERAGE COMPANY LTD:



AND

THE OPPOSITION THERETO UNDER NO 600001393 BY
SUN MARK LTD

Background

1. On 11 June 2021, I issued a decision in which the opposition under section 5(2)(b) of the Trade Marks Act 1994 (the Act) failed in respect of the trade mark shown on the cover page of this decision.

2. The last three paragraphs of that decision read as follows:

“50. The applicant has been successful and is therefore, in principle, entitled to a contribution towards its costs. However, I note that the opponent has not been provided with a costs proforma. As a result, I am unable to deal with the issue of costs at this stage.

*51. A copy of the costs proforma will be provided to the applicant upon the issuance of this decision. The applicant is hereby directed to file a completed costs proforma to the Tribunal **within 14 days of the date of this decision**. Once this is received, I will issue a supplementary decision dealing with the issue of costs and setting the appeal period.*

52. If the applicant fails to file a costs proforma within 14 days of the date of this decision, I will still issue a supplementary decision dealing with the issue of costs and setting the appeal period.”

3. On 18 June 2021 the applicant submitted a costs proforma setting out the costs incurred in defending its application. These consisted of:

- (i) 20 mins spent considering the notice of opposition.
- (ii) 180 minutes considering forms filed by the other party.
- (iii) 100 minutes researching into the opposition’s brand and its use.
- (iv) 30 minutes composing and responding to email with opponent.
- (v) 150 minutes writing the defence.

4. Regarding point (iii), it is understandable that an unrepresented party would want to research the opponent to some degree, however, the opponent’s use of its brand at

the current time is not relevant to the proceedings (see paragraphs 9-14 in my decision dated 11 June 2021). Costs for this part of the claim are not recoverable. I propose to halve the time spent on this part of the costs claim to account for this.

5. The registrar usually awards costs on a scale. The latest version of the scale was published in 2016 via Tribunal Practice Notice 2/2016. As a matter of practice, litigants in person are asked to complete a costs proforma. The purpose of this is 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 and must also take account of the registrar's practice of awarding costs on a contributory, not compensatory, basis.

6. Save for the claim for assessing use of the opponent's mark, I find the applicant's claim for time spent on its case to be reasonable and I conclude that the appropriate cost award is £136.17.

7. I have calculated this by adopting the standard rate used to calculate costs for unrepresented parties (£19 per hour) multiplied by the time I consider was reasonably spent on this application (7 hours and 10 minutes).

8. I order Sun Mark Ltd to pay the Fizzbang Beverage Company Ltd the sum of £136.17. The above sum should be paid within 21 days of the date of this decision or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings (subject to any order to the contrary by the appellate tribunal).

Dated this 22nd day of June 2021

Al Skilton
For the Registrar,
the Comptroller General