

O/1024/22

TRADE MARKS ACT 1994

SUPPLEMENTARY DECISION

IN THE MATTER OF
TRADE MARK APPLICATION NO. 3677896
BY WAN JOU LIN AND GREAT INS COMPANY LIMITED
TO REGISTER THE TRADE MARK:



IN CLASS 11

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 429368
BY GENERAL ECOLOGY, INC.

BACKGROUND

1. On 31 October 2022, I issued a substantive decision in the above identified proceedings¹ in which I found that the opposition brought by General Ecology, Inc. (“the opponent”) against UK application number 3677896 by Wan Jou Lin and Great Ins Company Limited (“the applicants”) was unsuccessful. In that decision, I stated:

“Costs

46. As the applicants have been successful, they are entitled to a contribution towards their costs. As they have not instructed professional representatives, they were invited by the Tribunal by letter on 2 August 2022 to indicate whether they intended to make a request for an award of costs, including accurate estimates of the number of hours spent on a range of given activities relating to defending the proceedings. However, I note that the applicants were not provided with a costs proforma. As a result, I am unable to deal with the issue of costs at this stage.

47. A copy of the costs proforma will be provided to the applicants upon the issuance of this decision. The applicants are 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.

48. In the event that the applicants fail to file a costs proforma within 14 days of the date of this decision, I still propose issuing a supplementary decision dealing with the issue of costs.”

2. The applicants were provided with a copy of the costs proforma by the Tribunal and filed a completed copy of the same on 10 November 2022. I will now make a decision as to costs.

DECISION

¹ BL O/943/22

3. I note that, within the filed costs proforma, the applicants have claimed a total of 670 hours and \$7500 in relation to these proceedings. This comprises 170 hours for completion of the forms, 380 hours for preparing evidence and filing written submissions, 120 hours for preparing submissions in lieu of a hearing and \$7500 (under other expenses) for obtaining legal advice. I have set out my considerations below.

Forms

4. The applicants claim 120 hours for time spent on preparing their Notice of Defence and 50 hours for considering the form filed by the opponent. In the circumstances, this seems disproportionate: the issues were relatively simple, and the forms were not particularly lengthy or complex. Indeed, the opponent's case relied on s.5(2)(b) grounds only, with just one earlier mark. Rather, 2 hours for completing and filing the Notice of Defence seems reasonable along with 1 hour for considering the Notice of Opposition filled by the opponent.

Preparing evidence/written submissions

5. The applicants claim 20 hours for "consulting with lawyer". However, the applicants have been unrepresented throughout these proceedings and no legal representatives have been appointed. As such, in the circumstances, the cost of seeking legal advice is not recoverable. The applicants claim 240 hours for preparing evidence. However, I note that one page of evidence was filed by the applicants, that being attached to their Notice of Defence, which consisted of printouts from the register of the number of registered marks containing the words "natural" and "pure". In the circumstances, it is considered that the time claimed by the applicants for this activity is disproportionate. In any event, for reasons given at paragraphs 8 and 9 of my previous decision, the evidence failed to further the applicants' case. On this basis, I make no award of costs in respect of it. The applicants also claim 120 hours for "writing the submissions". Again, I find the number of hours claimed for this activity to be disproportionate. I accept that the applicants filed written submissions during the evidence rounds as well as in lieu of an oral hearing. However, there is a lack of material difference between the written submissions filed. Moreover, they

were not particularly lengthy, and the issues discussed were not complex. I also acknowledge that the applicants would have likely taken time to consider the opponent's submissions filed during the evidence rounds and carried out research before preparing their own submissions. Consequently, I consider 4 hours for preparing written submissions and considering those filed by the opponent to be reasonable.

Preparing for a hearing

6. The applicants claim 120 hours for "writing final submissions" in preparation for a hearing. However, I note that no hearing took place as a decision in these proceedings was reached from the papers. Furthermore, time has already been awarded for the applicants' written submissions above. Therefore, no time is awarded for this activity.

Other expenses

7. I note that the applicants claim "USD\$7500" for attorney's fees. However, as noted above, the applicant has not been represented throughout these proceedings. Therefore, costs relating to professional fees are not recoverable.
8. In relation to the hours expended, I note that The Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets out the minimum level of compensation for litigants in person in court proceedings at £19 per hour. I see no reason to award anything other than this. I therefore jointly award costs to the applicants on the following basis:

Filing Form TM8 (Notice of Defence) and counterstatement (2 hours x £19)	£38
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Considering the Form TM7 (Notice of Opposition) (1 hour x £19)	£19
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Preparing written submissions and considering

the opponent's submissions (4 hours x £19)	£76
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Total	£133
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9. I hereby order General Ecology, Inc. to jointly pay Wan Jou Lin and Great Ins Company Limited the sum of **£133**. This sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 22nd day of November 2022

S Wallace
For the Registrar