

O/0328/26

TRADE MARKS ACT 1994

SUPPLEMENTARY DECISION ON COSTS

IN THE MATTER OF APPLICATION NOS. 3722228 & 3722230  
IN THE NAME OF THE COCA-COLA COMPANY  
TO REGISTER THE FOLLOWING TRADE MARKS:

**COCA-COLA CREATIONS**

AND



IN CLASS 32

AND

IN THE MATTER OF OPPOSITIONS THERETO  
UNDER NOS. 431586 & 431589  
BY ROBINSONS SOFT DRINKS LIMITED

## Background

1. On 17 February 2026, a decision in the above consolidated proceedings was published under number BL O/0126/26 (“the substantive decision”).

2. In summary, these consolidated proceedings concern two oppositions brought by Robinsons Soft Drinks Limited (“the opponent”) against applications in the name of The Coca-Cola Company (“the applicant”) to register the trade marks displayed on the cover page of this decision.

3. The outcome of the substantive decision was that the oppositions failed. The effect of this is that, subject to any appeal against the substantive decision, the applicant’s marks will become registered in the UK.

4. On the issue of costs, I stated as follows:

“102. As the applicant has been successful, it is entitled to a contribution towards its costs. At the hearing, Mr Stone asked for the issue of costs to be determined after my substantive decision is issued. This was on the basis that a “without prejudice save as to costs” offer has been made; Mr Stone said that the applicant may wish to rely on it, but this is dependent on the outcome of the opposition. Mr Stobbs confirmed that the opponent was content with this approach.

103. The substantive matters now having been determined, the parties are invited to file written submissions on the issue of costs within 14 days of the date of this decision. Once the parties’ submissions have been received, or after the expiry of the 14-day period, a supplementary decision dealing with the matter of costs will be issued.

104. I confirm that the appeal period for this decision, as well as any decision on costs, will run from the date of the supplementary decision.”

5. On 3 March 2026, Stobbs filed written submissions on costs on behalf of the opponent. Broadly speaking, the opponent's arguments on costs focused on the published scales.

6. Later on 3 March 2026, White & Case LLP filed the applicant's written submissions on costs. The applicant requested costs off the scale. Alongside its submissions, the applicant filed the witness statement of David Stone dated 26 February 2026. Mr Stone is a partner of White & Case LLP and represented the applicant at the substantive hearing. Mr Stone provides a breakdown of the actual costs incurred by the applicant.

7. On 4 March 2026, the opponent contested the applicant's request and sought an opportunity to respond.

8. In the circumstances, a short period for the opponent to respond to the applicant's request was considered reasonable. This was communicated to the parties by official letter dated 6 March 2026 and a deadline set.

9. On 20 March 2026, the opponent filed its written submissions in response.

10. On 25 March 2026, the applicant highlighted what it perceived to be "factual inaccuracies" within these submissions, inviting the Tribunal to "exercise caution" in relation to the same.

### **Supplementary decision**

11. The power to award costs is provided for by section 68 of the Trade Marks Act ("the Act"), which states as follows:

"68 (1) Provision may be made by rules empowering the registrar, in any proceedings before him under this Act—

(a) to award any party such costs as he may consider reasonable, and

(b) to direct how and by what parties they are to be paid.

12. Rule 67 of the Trade Marks Rules 2008 (“the Rules”) provides:

“The registrar may, in any proceedings under the Act or these Rules, by order award to any party such costs as the registrar may consider reasonable, and direct how and what parties they are to be paid.”

13. Tribunal Practice Notice (“TPN”) 4/2007 indicates that the Tribunal has a wide discretion when it comes to the issue of costs, including making awards above or below the published scale where the circumstances warrant it.<sup>1</sup> The TPN stipulates that costs off the scale are available “to deal proportionately with wider breaches of rules, delaying tactics or other unreasonable behaviour”.

14. Firstly, I agree with the opponent that there is no basis upon which to apportion costs between the parties; the opponent’s claims under sections 5(2)(b) and 5(3) of the Act failed in their entirety. Further, I agree that the same costs position can be applied uniformly across both oppositions, with the caveat that costs will not be duplicated for activities conducted after the proceedings were consolidated on 24 August 2023.<sup>2</sup>

15. I also acknowledge the following comments of Anna Carboni, sitting as the Appointed Person, in *Evonik Degussa GmbH v Carrs Agriculture Limited*, BL O/158/15, as highlighted by the applicant:

“24. [...] While the judgment of Anthony Watson QC sitting as a Deputy Judge in *Rizla* referred to this discretion as being “*with no fetter other than the overriding one that he must act judicially*”, I must now also take into account the updated version of the Civil Procedure Rules, which states in Part 1, rule 1.1 the overriding objective as being “*of enabling the court to deal with cases justly and at proportionate cost*” [...]. The additional text militates in favour of sticking to the scale of costs set out in TPN 4/2007 in straightforward appeals to the Appointed Person. However, proportionality works both ways, and it may be

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<sup>1</sup> The more recent TPN on costs (1/2023) reiterates the Tribunal’s discretion in this regard.

<sup>2</sup> See part 5.9 of the Tribunal section of the Manual of Trade Marks Practice.

appropriate to make slightly higher costs awards in cases which involve an unusually large amount of work, or particularly complex or abnormal issues, even where there is no identifiable abuse or 'bad behaviour' of the paying party which would justify a compensatory award.”

16. The applicant maintains that ‘off-scale’ costs are appropriate for a number of reasons. I take each of these in turn, noting the applicant’s reliance on the following comments of Daniel Alexander KC, sitting as the Appointed Person, in *Allori Limited v Alloro Restaurants Limited*, BL O/116/13:

“16. The decision maker is therefore entitled to take into account a wide range of factors in considering the costs to be awarded and whether they should be off-scale.

17. These include the conduct of the parties, the nature of the case and whether it is self-evidently without merit, whether there have been abuses of procedure, the extent to which offers made to settle the case were unreasonably rejected and could have resulted in costs being avoided. There is no rigid formula, although the paradigm case for off-scale costs will involve breaches of rules, delaying tactics or unreasonable behaviour. Reasonable people can differ as to how unreasonable behaviour must be before it is appropriate to depart from the usual scale of costs.”

#### *Parallel EUIPO proceedings*

17. The applicant explains that the parties were previously engaged in proceedings before the EUIPO concerning identical trade mark applications. It submits that both offices have independently come to the same conclusion and that it should have been obvious to the opponent (at least by the time the EUIPO decisions were issued on 15 October 2024) that the oppositions in this jurisdiction were also going to fail. On this basis, the applicant argues that the oppositions were self-evidently without merit.

18. I do not agree. As the applicant has accepted, decisions of the EUIPO are not binding on the Registrar. Moreover, there is nothing in law which precluded the

opponent from opposing the applicant's UK marks. This was not, as the applicant suggested, the opponent "relitigating its position in the UK"; the present proceedings concerned UK marks, and the opponent was within its rights to seek the refusal of those marks, albeit that its efforts were ultimately unsuccessful. In this regard, I must point out that, just because a party has lost, this in itself is not indicative of unreasonable behaviour. Further, even though the opponent had, in the course of the present proceedings, learnt that its efforts to oppose the applicant's marks in the EU were unsuccessful, that does not automatically render the UK oppositions entirely without merit. I reject the applicant's argument for off-scale costs on the basis of the EU proceedings.

*Without prejudice correspondence*

19. The applicant explains that the parties made various attempts to settle these proceedings. According to the applicant, it was contacted by the opponent's previous representatives as early as 9 May 2022 to gauge whether it would be open to without prejudice discussions concerning its "Creations" range. The applicant submits that this was a sensible approach and, thereafter, a draft settlement agreement was exchanged. The applicant explains that on 17 February 2023, after Stobbs took over the conduct of the proceedings, the opponent set out its requirements for withdrawing the oppositions. The applicant did not agree to settle the matter on those terms. Next, the applicant wrote to the opponent on 21 October 2024, seeking its withdrawal of the oppositions in light of the EUIPO's decisions. The applicant argues that its terms were unreasonably rejected by the opponent and its offer could have resulted in costs savings.

20. I acknowledge that, in principle, the opponent accepting the applicant's 'offer' could have resulted in costs being avoided: if the opponent agreed to withdraw the oppositions, the hearing would not have been necessary. However, it does not appear to me that it was unreasonably rejected by the opponent. Firstly, the terms sent to the opponent on 21 October 2024 do not seem to constitute an offer to settle the proceedings per se. Rather, within that correspondence, the applicant simply invited the opponent to withdraw the oppositions and pay its costs in light of the EUIPO's decisions. I have already outlined that the EUIPO decisions were not binding and did

not render the opponent's claims in this jurisdiction without merit. I do not consider the opponent's unwillingness to withdraw the oppositions purely on that basis to have been unreasonable. In addition, as the opponent has pointed out, the applicant's 'offer' was sent a mere two days before the hearing was due to take place on 23 October 2024, the same day that the parties' skeleton arguments were to be filed. In the circumstances, the opponent was provided with a very short window to consider the applicant's terms, and the preparatory work for the hearing was likely to have already been completed. I reject the applicant's argument for off-scale costs on the basis of the without prejudice correspondence.

### *Nature of the case*

21. The applicant argues that the proceedings involved an unusually large amount of work and particularly complex or abnormal issues because of the way in which the opponent chose to run them. In this regard, it points to the length of the skeleton arguments, the length of the hearing, the length of the decision and the amount of the Tribunal's time which was occupied (including the writing of the substantive decision).

22. To my mind, there was nothing particularly complex about the claims brought by the opponent in these proceedings. The opponent relied upon one earlier mark for the purposes of its claims under sections 5(2)(b) and 5(3) of the Act across both oppositions. There was a fairly narrow range of goods applied for and relied upon. Proof of use was in issue, but there is nothing unusual about that. In addition, whilst the proceedings involved two oppositions, the specifications of the applicant's marks were the same and both marks were 'COCA-COLA CREATIONS' marks (one word-only and the other stylised). It is common to consolidate proceedings in such circumstances, and it did not result in the complexity of the matter being increased.

23. The skeleton arguments were relatively lengthy, though not unusually so. Moreover, their content was not extraordinary or particularly complex. There does not appear to be any indication from the parties' skeleton arguments that the opponent caused the proceedings to become more complex than was necessary. I should add that the parties' skeleton arguments were roughly equal in length; the opponent's comprised 20 pages and the applicant's 24 pages (excluding its list of authorities).

24. The hearing was relatively lengthy. However, this was not due to the complexity of the matters being discussed or the way in which the opponent had run its case. It is fair to say that Mr Stobbs' submissions were lengthy and that much of what was said in response to Mr Stone's submissions was not strictly in reply. However, in my view, Mr Stobbs' approach to the hearing did not border into unreasonable behaviour such that off-scale costs are warranted.

25. As for the substantive decision, I do not agree that it was unusually lengthy. Unfortunately, there was a significant time between the date of the hearing and the substantive decision being issued. However, this was not attributable to the complexity of the matters being determined or the way in which the opponent had run its case. As I explained at the hearing, the Tribunal was (and is) dealing with an unprecedented volume of work, which has led to some delays. The substantive decision was not being drafted throughout the intervening period and there was nothing unusually complex within the same.

26. Taking all of the above into account, I reject the applicant's argument for off-scale costs on the basis of the nature of the case.

### *Conduct of the parties*

27. Under this heading, the applicant argues that the opponent's conduct in these proceedings was unreasonable for a number of reasons. Firstly, it is argued that the opponent filed voluminous irrelevant evidence. The applicant contends that it was required to undertake an unusually large amount of work in assessing the opponent's evidence because it was voluminous and inadequately narrated or signposted. It also argues that the opponent filed irrelevant evidence, including a reference to a video which was not in evidence, references to evidence that was from outside the relevant period, and references to 'ROBS CREATIONS'.

28. I do not consider the evidence that was filed by the opponent to be demonstrative of unreasonable behaviour. In my view, the evidence was not excessive. Jody Tsigarides' ("JT") evidence in chief consisted of an 11-page witness statement and around 200 pages of documentary evidence. Andrew Carver's evidence in reply

comprised a two-page witness statement and 12 pages of documentary evidence. The volume of both fell well within the ordinary page limits. Neither do I agree with the applicant that the opponent's evidence was inadequately narrated or signposted. The documentary evidence is clearly referred to throughout the witness statements. For instance, JT gave a narrative covering an overview of the company and brand, advertising and marketing, sponsorship, sales, brand awareness, and awards, with references to the exhibits where appropriate. Whilst some of the evidence did not specifically factor into my decision, that is hardly unusual and is unlikely to have created a large amount of unnecessary work for the applicant.

29. As for the specific issues referred to, the only video referred to in the opponent's evidence was in the following passage of JT's witness statement:

“18. [...] Attached at Exhibit JT7 is an article from Marketing Communication News giving details of the advertising campaign, as well as a web printout from Ads of the World which shows the aforementioned TV advert (which can also be viewed at <https://www.youtube.com/watch?v=u3XCK75EZ0Q>). Also attached is an internal document showing radio scripts used in radio adverts for the campaign.”

30. Although the full video was not evidenced, the opponent provided a still of the advert and a third-party article about it. To my mind, that is an acceptable way in which a party may wish to demonstrate that a trade mark has featured in an advert. I referred to this evidence in the substantive decision.<sup>3</sup> The URL appears to have been included for information purposes. I do not consider this part of JT's narrative to be indicative of unreasonable behaviour.

31. Although some of the opponent's evidence was, as the applicant has identified, from outside the relevant period, I do not consider that this warrants an off-scale costs award. When seeking to establish genuine use of a trade mark, I agree that parties ought to focus on evidence from within the relevant period. Broadly speaking, filing evidence from after the relevant period is to be avoided insofar as is possible.

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<sup>3</sup> At paragraphs 25 and 48.

However, it is not necessarily unreasonable to file such evidence. In this case, the evidence filed by the opponent from after the relevant period made up a small proportion of the evidence as a whole. In my view, it is not likely to have created a large amount of unnecessary work such that it should be considered unreasonable behaviour. In fact, some of the evidence from after the relevant period, specifically the market share information, was used in the substantive decision to cast light back onto the position during the relevant period.

32. As for references to 'ROBS CREATIONS', the applicant says that this evidence was irrelevant because it constitutes an "altogether different beverage". The references to 'ROBS CREATIONS' were in the sales schedules provided by JT, under the heading 'Brand Variant'. Contrary to the applicant's submissions, this evidence was not irrelevant. It was introduced by JT as schedules of sales of 'FRUIT CREATIONS'. The evidence was discussed in the substantive decision,<sup>4</sup> and was taken into account as part of the evidential picture as a whole.

33. In addition, the applicant says that the opponent's conduct was unreasonable because, until the hearing, it had relied upon both direct and indirect confusion under section 5(2)(b). It argues that direct confusion should have been abandoned much earlier in the proceedings to save the applicant having to deal with it.

34. It is true that the opponent's pleaded position in these proceedings covered both direct and indirect confusion. In bringing the claims, the opponent argued that "[...] there exists a likelihood of confusion on the part of the public (both direct and indirect), that includes a likelihood of association".<sup>5</sup> It is also the case that this remained the position until Mr Stobbs' submissions at the hearing, where he conceded that "there is plainly no direct confusion" in his opening submissions.<sup>6</sup> However, that does not automatically mean that the applicant is entitled to off-scale costs. Whilst the narrowing of issues in cases at the earliest opportunity is certainly to be encouraged, in this case, I cannot see that the opponent's reliance on both direct and indirect confusion until its submissions at the hearing actually created any additional or unnecessary work for

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<sup>4</sup> At paragraph 24.

<sup>5</sup> See paragraph 6 at Q5 of the opponent's Form TM7s.

<sup>6</sup> Transcript, page 24

the applicant. On the issue of likelihood of confusion, Mr Stone's skeleton argument makes no reference to direct confusion or any arguments as to why, for instance, the marks would not be mistaken for one another. Whilst not explicitly referred to as such, Mr Stone's arguments focused on indirect confusion.<sup>7</sup> At the hearing itself, Mr Stone made no submissions on direct confusion. In the circumstances, I reject the applicant's argument for off-scale costs on the basis of the opponent's late narrowing of its case on confusion.

35. The next behaviour complained of was that the opponent's evidence did not establish genuine use or a reputation for the opponent's mark for all the goods relied upon, but that these were not abandoned until the hearing. In this connection, the applicant submits that it had already assessed the opponent's evidence in the context of all the goods relied upon and incurred unnecessary costs in doing so.

36. As recorded in the substantive decision, the opponent made statements of use in respect of a range of goods in class 32.<sup>8</sup> Proof of use was requested for all of these goods in the applicant's counterstatements.

37. Within the evidence, JT did not outline the specific goods for which they believed their evidence established genuine use, instead electing to conclude their statement with a claim in respect of "the relevant goods and services". However, 'FRUIT CREATIONS' was introduced earlier in their statement as "a premium-tier squash", and all the evidence thereafter related to fruit squash.

38. When discussing statements of use made under a statement of truth and evidence which only supports a narrower range of goods/services, Philip Harris, sitting as the Appointed Person, in *PW Branding, Inc v Zabou Group Limited*, BL O/0234/25, stated as follows:

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<sup>7</sup> See, for example, paragraph 86 where it states "On account of the differences in the marks, as outlined above, the relevant consumers will not believe that the goods covered by the marks originate from the same or economically linked undertakings. This leads to the obvious conclusion that there is no likelihood of confusion".

<sup>8</sup> Paragraphs 3 and 6.

“88. [...] This is not simply a “tick-box” exercise. Parties and their professional representatives must give proper consideration to how far they can assert the use of a mark under a statement of truth. In this day and technological age, any party required to state the nature of its use should have the information available to it at the press of a button and a glance at a spreadsheet or other record, in at least sufficient detail to make a reasonably correct and truthful statement. This matters, because the opposing party (in particular a litigant in person) will make decisions on how best to defend, pursue or even settle their case based, amongst other things, on trusting the supposed truth of the facts of use put to them in the pleadings.

[...]

90. I accept a party might reasonably put a properly arguable wide interpretation on the general identification of goods supported by its actual use, and as the Hearing Officer says, these claims do need not be precise (at least at the filing stage of a claim) but that is a world away from claiming use where there manifestly is none and the party knows or should reasonably know that to be the case. [...]

39. Mr Harris held that, in general, the sanction in such circumstances should be in costs, including off-scale costs in appropriate cases. I bear that in mind. However, I do not consider there to have been any real prejudice to the applicant in this case, and the proceedings appeared to progress on the basis of a proper understanding of the opponent’s actual use.

40. In his skeleton argument, Mr Stobbs submitted that a fair specification based upon the evidence should be *fruit beverages*. In his own skeleton argument, Mr Stone argued that, at best, there had only been use in relation to squash. Mr Stone did not extensively deliberate over what goods the evidence could establish use for. The discussion at the hearing focused more on whether there could be said to be genuine use at all, rather than the specific goods for which genuine use could be found. From its submissions on costs, it appears to have been clear to the applicant that the opponent had not used its mark for the full range of goods claimed. It states that this

was obvious, and that the opponent should have admitted that there was no use beyond fruit squash. Considering the above, as well as the fact that the full range of goods was not particularly lengthy or varied, I am not satisfied that the opponent's failure to narrow its claims on use until the hearing would have created a great deal of additional or unnecessary work for the applicant. I reject the applicant's argument for off-scale costs on the basis of the opponent's failure to formally narrow its case on use until the hearing.

41. Finally, the applicant argues that its costs were significantly increased due to what it describes as "hopeless arguments" by the opponent that were "doomed to fail". In particular, the applicant refers to (i) the opponent's claim that it had used its mark on goods that it clearly had not and (ii) the opponent running a *Medion* argument when it was self-evidently hopeless.<sup>9</sup>

42. I have already dealt with the argument about the opponent's statement of use above. As for the *Medion* argument, this was specifically raised in the opponent's skeleton argument and pursued at the hearing. Whilst I dismissed the argument in the decision,<sup>10</sup> it is not fair to say it was self-evidently hopeless. I did not agree with the opponent's argument on how its mark would be perceived, namely the descriptive word 'FRUIT' followed by the (independently) distinctive word 'CREATIONS', but I do not consider that it was an unreasonable argument to make. I reiterate that just because a party has lost, this in itself is not indicative of unreasonable behaviour. The particular situation envisaged by *Medion* is a type of indirect confusion which is, in principle, alive in any case where indirect confusion is alleged. I do not consider that the opponent's reliance on it, albeit ultimately unsuccessful, would have created any additional or unnecessary work for the applicant. I reject the applicant's argument for off-scale costs on the basis of this line of argument advanced by the opponent.

43. Having considered the applicant's arguments and the opponent's conduct in these proceedings in the round, I do not consider it to be indicative of unreasonable behaviour such that an award of off-scale costs is warranted. Instead, I will make an

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<sup>9</sup> Here the applicant is referring to the opponent's reliance on *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04.

<sup>10</sup> See paragraphs 84-87.

award of costs by reference to the relevant scale, which is that published in TPN 2/2016.<sup>11</sup>

44. Whilst I did not consider that it warranted off-scale costs, I will make a slight increase to the award for the hearing to account for (i) the fact that the opponent's broader claims of use were not narrowed until the hearing, (ii) Mr Stobbs' submissions being overly lengthy and, to an extent, disproportionate to the issues requiring determination, and (iii) many of Mr Stobbs' submissions in response not being strictly in reply. I have not made an award for the submissions filed after the hearing or for the preparation of Mr Stone's witness statement, since the applicant's request for off-scale costs has been dismissed.

45. In the circumstances, I award the applicant the sum of **£3,000** as a contribution towards its costs, which is calculated as follows:

Considering the opponent's statements and preparing counterstatements	£600
Preparing evidence and considering the opponent's evidence	£1,000
Preparing for and attending a hearing	£1,400

46. I order Robinsons Soft Drinks Limited to pay The Coca-Cola Company the sum of **£3,000**. This sum is to be paid within 21 days of the expiry of the appeal period, or within 21 days of the final determination of the proceedings if any appeal is unsuccessful.

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<sup>11</sup> These proceedings having commenced after 1 July 2016 but before 1 February 2023.

## **Appeal period**

47. As indicated in the substantive decision, the appeal period will commence from the date of this supplementary decision. This applies to the substantive decision and this supplementary decision on costs.

**Dated this 16<sup>th</sup> day of April 2026**

**James Hopkins**  
**For the Registrar**