

BL O/0383/24

TRADE MARKS ACT 1994

**CONSOLIDATED OPPOSITION/CANCELLATION NOS: OP000432650,
OP000432652, OP000432654 AND OP00043285**

DECISION ON COSTS

1. In Appeal Decision O-141-24, dated 22 February 2024, the appeal against an interim decision in Consolidated Cancellation Nos OP000432650, OP000432652, OP000432654 and OP00043285 was dismissed (“*the Appeal Decision*”).

2. In paragraphs [30] and [31] of that Decision it was stated as follows:

30. As indicated at the time of the hearing the question of costs of this appeal has been left over. The Applicant’s appeal has been dismissed and in the normal course the Opponent would be entitled to a contribution towards the costs of the appeal. It has been agreed that the parties would be given an opportunity to file submissions on costs once my substantive decision on the appeal was issued and that thereafter a decision would be made on the papers.

31. I therefore direct as follows:

- (1) On or before 4pm on Thursday 7 March 2024 the Opponent is to file its submissions as to the appropriate order for costs.
- (2) On or before 4pm on Thursday 28 March 2024 the Applicant is to file its submissions in answer.
- (3) On or before 4 pm on Thursday 11 April 2024 the Opponent is to file its submissions, if any, strictly in reply.

Thereafter a Decision on costs will be made on the basis of the papers.

3. Pursuant to sub-paragraph (1) of the directions set out in paragraph [31] of the Appeal Decision, on Thursday 7 March 2024 the Opponent filed submissions together with supporting invoices requesting a costs award of £3000.

4. No submissions were filed on behalf of the Applicant in accordance with sub-paragraph (2) of the directions set out in paragraph [31] of the Appeal Decision.

5. In the circumstances on 5 April 2024 a Default Notice was issued. The Default Notice stated as follows:

DEFAULT NOTICE

1. In paragraph [31] of Appeal Decision O-141-24 in the above appeal, dated 22 February 2024, directions were given by the Appointed Person as follows with respect to the costs of the appeal:
 31. I therefore direct as follows:
 - (1) On or before 4pm on Thursday 7 March 2024 the Opponent is to file its submissions as to the appropriate order for costs.
 - (2) On or before 4pm on Thursday 28 March 2024 the Applicant is to file its submissions in answer.
 - (3) On or before 4 pm on Thursday 11 April 2024 the Opponent is to file its submissions, if any, strictly in reply.

Thereafter a Decision on costs will be made on the basis of the papers.
 2. By email dated 7 March in accordance with the directions given the Opponent (Selita srl) filed submissions together with copies of invoices in support of their application for the costs of the appeal in the sum of £3000. A copy of those submissions is attached hereto.
 3. In default of the direction given in paragraph [31(2)] the Applicant has not filed any submissions in answer.
 4. The Applicant is therefore in default of the directions given by the Appointed Person in paragraph [31(2)] of the Decision.
 5. Unless the Applicant files submissions in answer on or before 4pm on Friday the 12 April 2024 the costs of the appeal will be determined on the basis of the papers filed by the Opponent on 7 March 2024.
 6. In the event that submissions are filed by the Applicant within the time period specified in paragraph 5 of this email then the time period in paragraph [31(3)] of the Decision for the Opponent to file its submissions in reply is extended to 4 pm on Friday 26 April 2024.
 7. Thereafter the costs of the appeal will be determined on the basis of the papers filed by the parties.
6. No material was filed by the Applicant by 4pm on Friday 12 April 2024.

7. On 26 April 2024 it was confirmed by an email sent on behalf of the Opponent that it had not received any submissions from the Applicant and that it would therefore not be filing any evidence in reply.
8. Therefore, in accordance with paragraph [31] of the Appeal Decision and paragraph [7] of the Default Notice I now decide the issue of costs on the basis of the papers before me.
9. As noted in paragraph [30] of the Appeal Decision the normal course is for the Opponent to be given a contribution towards its costs of the appeal.
10. It is also the long established practice in Registry proceedings to require a contribution to the costs of a successful party, with the amount of the contribution being determined by reference to published scale figures. The scale figures are treated as norms to be applied or departed from with greater or lesser willingness according to the nature and circumstances of the case. The Appointed Persons normally draw upon this approach when awarding costs in relation to appeals brought under section 76 of the 1994 Act.
11. It is however open to the decision taker to depart from the published scale figures in the exercise of the power to award such costs as (s)he may consider reasonable under rule 67 of the Trade Mark Rules 2008.
12. Moreover, when considering the award of costs I have kept in mind that: (1) it is not the purpose of an order for costs to impose a financial penalty on the losing party; and (2) any award should reflect the effort and expenditure to which it relates.
13. Against that background and having carefully considered the papers before me, I have concluded that in the exercise of my discretion the appropriate figure for the order for costs is the sum of £1,500.
14. I therefore order that Global Beauty Products Limited pay to Selita srl the sum of £1500 on or before 4 pm on Friday 17 May 2024.

Emma Himsworth KC

Appointed Person

26 April 2024