Intellectual Property Office

BL O/1178/25

18 December 2025

TRADE MARKS ACT 1994

BETWEEN

Bargain Busting Limited	Claimant
and	
Shenzhen SKE Technology Co. Ltd	Defendant

PROCEEDINGS

Determination of the Registrar's action in respect of a court order concerning registration of a trade mark (application number 3786148 CRYSTAL BAR).

HEARING OFFICER J E Porter

SUPPLEMENTARY DECISION – COSTS

Introduction

1 These proceedings concern a procedural dispute about how and when the Registrar should act when a court order states that a trade mark application should proceed to registration – but when there are ongoing proceedings seeking to vary the order and seeking permission to appeal the court's decision.

2 Bargain Busting Limited ("BBL") sought implementation of the order without delay, whereas Shenzhen SKE Technology Co. Ltd ("SKE") said registration should await the outcome of the ongoing court proceedings.

3 In a decision dated 18th September 2025 (BL O/0856/25), I found that the Registrar should proceed to register the mark in accordance with the court order as soon as administratively possible, despite the ongoing court proceedings.

4 In my decision, I invited the parties to make submissions in relation to costs. They duly did so, and also agreed that the matter could be decided on the papers.

The law

5 Section 68(1) of the Act provides for rules to be made empowering the Registrar, in any proceedings before him under the Act, to award any party such costs as the Registrar may consider reasonable. Such provision is then made in rule 67 of the Trade Marks Rules 2008 (as amended).

6 In proceedings before the Registrar, it is long-established practice that only a contribution towards the successful party's costs should normally be awarded, and that the amount should be guided by the Registrar's published scale of costs. The current scale is published in Tribunal Practice Notice 1/2023 ("the TPN"). However, as the TPN says, there is discretion to award costs off the scale in order to "deal proportionately with unreasonable behaviour".

Submissions

7 Brandsmiths (as the legal representatives for BBL) provided written submissions on 16th October 2025 in which they sought off-scale costs. Stobbs (as the legal representatives for SKE) also provided written submissions on the same date in which they did not oppose the awarding of scale costs. However, at the time of their submission, SKE and their representatives had not seen BBL's request for off-scale costs.

8 In light of that, SKE were allowed a short period in which to make further submissions on the question of off-scale costs, and BBL were then allowed a further short period in which to make final submissions in reply. SKE's further submissions were received on 28th October 2025 and BBL's in reply on 4th November 2025.

9 BBL seek off-scale costs to cover their legal expenses in dealing with this matter before the Tribunal. They provided an itemised schedule of their costs, and seek in total an award of £33,559.50.

10 In their submissions, Brandsmiths explain why BBL seek off-scale costs. With regard to the court applications seeking to vary the order and seeking permission to appeal ("the court applications"), BBL say that these were "weaponised" by SKE and Stobbs "for improper motive", namely "with a view to procuring this Tribunal to delay effecting [the order]", thus delaying registration of the mark which was the subject of the substantive proceedings. They refer to this as "diabolical behaviour" and say that it amounted to "an abuse of process and contempt".[1]

11 BBL further allege that, in order to achieve this, SKE and Stobbs "had to repeatedly breach procedural rules, standard practice, case-law, and engage in misleading and deceiving communications to this Tribunal". They say that this unreasonably led to "substantially increased costs" as well as the case management conference ("CMC") and hearing before me that took place as part of these proceedings. They point out that it was SKE seeking to vacate the hearing which gave rise to the CMC and that BBL incurred the costs of preparing for, and undertaking, the hearing whereas "the other side and Stobbs merely observed, despite requesting it [the hearing] in the first place".

12 Overall, they say that SKE and their representatives engaged in "an exceptional and unprecedented degree of unreasonable behaviour all with a view to frustrating the Order from being effected". BBL point to the TPN where examples of unreasonable behaviour are said to include "behaviour designed to delay, frustrate or unreasonably

[1] As noted in my main decision, Brandsmiths shared court documents with the IPO on 18th August 2025, showing that BBL had filed an action for contempt of court against SKE, Stobbs, and two Stobbs employees. In SKE's submissions on 28th October, Stobbs said this matter was ongoing.

increase the costs/burden on the other party and/or repeated breaches of procedural rules". They refer to previous proceedings where the Tribunal has awarded off-scale costs and say more broadly that an off-scale award is not only justifiable but would "serve as a deterrent to others" and "restore faith and integrity in the legal system".

13 SKE's position is that they do not oppose paying scale costs "in line with the usual practice". They arrive at the sum of £400. This is on the basis that the CMC was relatively short and they "see no reason" why an award of costs for the CMC should exceed more than half of the £800 awarded for the substantive Tribunal hearing in 2024.

14 With regards to the hearing itself SKE argue that they were not present and so the hearing was "effectively ex parte"; the usual practice regarding such hearings being not to award costs. They also say that there was "effectively no other procedural stage (i.e. no evidence or statements of case) to which an award of costs might attach".

15 In their further submissions regarding BBL's claim for off-scale costs, SKE make a number of points.

16 First, they refer to the court applications and remind me that, although they are referred to in BBL's submissions, they were not matters before the Registrar.

17 With regard to SKE's unsuccessful application for permission to appeal to the Court of Appeal, they point me to Arnold LJ's order refusing permission but which also refuses a request from BBL for an order for costs in that regard, with Arnold LJ's order stating that there was "no sufficient reason to depart from the normal rule". In SKE's submission, this shows that "the Court of Appeal did not agree with BBL's contention that SKE's conduct in bringing its application for permission to appeal was out of the ordinary or aimed at tactical delay and increasing costs". SKE argue that it is not open to me to find differently on this point, and that I should be informed by the approach taken by the Court of Appeal.

18 Turning to the variation application, at the time of writing their submissions SKE point out that costs in that regard were a matter for the Deputy High Court Judge who was hearing the variation application. Subsequently, on 28th November 2025, Stobbs provided the Tribunal with a copy of Deputy Judge Michael Tappin KC's judgment on costs with regard to the variation application.

19 SKE's overall point here is that – if BBL's contention is that the court applications were "weaponised" by SKE improperly – then these were matters for consideration by the court and so, regarding the proceedings before me, BBL's "reasoning must fail".

20 Turning to the issues which were before me, SKE break these down into three: the question of whether the hearing should proceed (dealt with at the CMC); construction of the order; and implementation of the order. They also make the point that the second and third issues were dealt with at the hearing, which they chose to observe only, and that "any member of the public could have done likewise without fear of an adverse costs award".

21 On the first issue, they rely on wording in my brief post-CMC decision[2] regarding the "particularly unusual and highly awkward situation" as demonstrating that it was reasonable for SKE to have argued the point. There was, they say, "no suggestion that vacation was not an alternative and reasonable option". Thus, they say, scale costs should apply.

22 On the second issue regarding construction of the order, SKE submit that the point did not have detailed consideration at the hearing (although they say that "the position might have been different had SKE been in a position to make representations"). They say that it is difficult to see how any costs can attach to SKE's argument that, on its face, the order did not set out a timescale for implementation, and it was not unreasonable for them "to point out that the order did not explicitly state immediate implementation, because it didn't".

23 On the third issue regarding implementation of the order, SKE refer to paragraph 58 of my decision, which stated that "SKE's request – to leave the register unchanged until routes of appeal have been exhausted – is one that, in broad terms, is very familiar to the IPO Tribunal and to its users. It arises from the long-standing practice set out in *Planet Epos Ltd v Nettec Solutions Ltd* ("POINT FOUR")".

24 They say that it cannot be unreasonable for SKE to have suggested taking a line which was "entirely consistent with well-established IPO practice", albeit that I went on to change that practice in my decision. They also submit that the question raised regarding implementation of the order and section 40 of the Act was put to the parties by me, and so there can be "no suggestion that SKE unreasonably took the point".

25 For these reasons, SKE submit that they have behaved reasonably before the Registrar in this matter and that scale costs should be awarded.

26 Now turning to BBL's points in reply, they dispute the sum for the CMC pointing out that they "had to deal with not one, but two, Kings Counsel that the other side instructed" and that the CMC "involved a number of complicated factors". As for the hearing itself, BBL say that SKE were present but "just chose not to speak" which did not make the hearing *ex parte*, nor did it mean that SKE should avoid liability for BBL's costs in preparing for and conducting the hearing.

27 BBL's response to SKE's point relying on my reference post-CMC to the Tribunal finding itself in an awkward position is that it "does not automatically lead to the conclusion that the arguments put forward by SKE and its representative were entirely reasonable".

28 BBL also submit that SKE and Stobbs are wrongly conflating the issue before me with the outcome on costs regarding the court applications. For example, they submit that the decision on costs made by the court with regard to the variation application would "factor in whether the Variation Application was meritless" whereas the question for me is whether the court applications "were used and weaponised" to frustrate implementation of the order.

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[2] See the Annex to my decision of 18th September 2025.

29 For clarity, BBL confirm that the costs schedule they submitted covers only the costs incurred in relation to Stobbs-Brandsmiths-IPO correspondence regarding registration of the mark, the CMC and hearing before me, and preparation of the costs submissions.

30 BBL take the opportunity to reiterate a number of their allegations, including that SKE and Stobbs were "completely attempting to mislead the Tribunal", the alternative being that "they were, instead, negligent" but that BBL are entitled to off-scale costs in any event.

Assessment

31 Given the context in which the proceedings on this point before the Registrar arose, it is not surprising that both sides have referred in their costs submissions to the related court proceedings and outcomes. Nevertheless, it is entirely clear that the costs being considered here are only those which arose in relation to the proceedings before me on the procedural question, and with which my decision of 18th September 2025 was concerned. It is without doubt that costs in relation to wider related matters, including the substantive dispute at first instance, the appeal to the court, and the court applications are not a matter for me.

32 In terms of costs in the proceedings before me, I first consider the arguments as to whether I should award off-scale costs. As the TPN makes clear, this turns on an assessment of whether SKE and their representatives conducted themselves unreasonably in the proceedings.

33 As I explained in my main decision at paragraphs 64 to 66, SKE's request that the register remain unchanged until the court applications had been decided was consistent with current and long-standing Tribunal practice and with the guidance in the Manual of Trade Marks Practice[3]. I further noted that I was not aware that the practice had been challenged previously.

34 Given this, it seems highly likely that – had BBL not raised the point – the Tribunal would have followed its existing practice. My main decision notes that the Registrar initially took the usual steps. Tribunal staff enquired about the appeal outcome, continued to leave the register unchanged, and asked SKE to confirm whether permission to appeal to the Court of Appeal had been sought.

35 This is the long-standing practice which SKE were, in the event, arguing should be maintained. I do not see how SKE's submissions to the Tribunal can be characterised as the Tribunal somehow being misled or deceived by SKE and Stobbs. Nor do I agree that they were somehow "weaponising" the court applications in respect of the proceedings before me. The existence of those court applications (combined with the particular wording of the order) raised a legitimate question over the Tribunal's practice which needed to be resolved.

36 BBL say that my decision shows how their interpretation of the order was "correct all along". They also rely on the Tribunal's preliminary view (given on 27th August 2025) in this regard. They further highlight that, on 13th October 2025, Arnold LJ refused to

[3] The Manual, and Tribunal practice, have now been revised on this point following my decision.

give permission for a further appeal of the substantive opposition decision to which the present proceedings relate.

37 However, as the TPN says, “just because a party has lost, this in itself is not indicative of unreasonable behaviour”. The fact that SKE ultimately were wrong, and Tribunal practice has since been adjusted, does not make their position an unreasonable one to have taken.

38 Nor do I see it as unreasonable for SKE and Stobbs to have maintained their position having had sight of BBL’s points. For example, although I found against SKE, my main decision makes clear that I shared some of their concerns about any change in practice. In paragraphs 70 and 71 of that decision, I referred to SKE’s submissions on “the duty of the Registrar to maintain an accurate register and the adverse impacts of registering and then potentially reversing a registration” and I went on to say that “I share those concerns. It is clearly unsatisfactory for rights to come on and off the register, leaving third parties and the wider public in a position of considerable uncertainty”. This adds further weight to the view that SKE’s position, and their actions in arguing for it, were reasonable even if, in the end, SKE were not successful.

39 Furthermore, I do not agree that SKE choosing to continue their dispute having received the Tribunal’s preliminary view was at all unreasonable. The preliminary view was that the order was clear and not contingent upon permission to appeal, but that the Registrar “must also take into account that proceedings are currently before the Court which seek to vary the Order”. The preliminary view expressed a concern “not to be seen to disrespect the Court by pre-empting the outcome of the application to vary the Order”. It was very far from indicating that either party had taken an unreasonable position.

40 As I have already noted above, BBL point to examples in the TPN of unreasonable behaviour, including “behaviour designed to delay, frustrate or unreasonably increase the costs/burden on the other party and/or repeated breaches of procedural rules”.

41 In terms of any delay, I note that BBL first sought implementation of the order on 15th July 2025, and by 18th September 2025 the point had been heard and a decision issued. Given that timescale, and the careful consideration that would, in any event, have been needed before changing established Tribunal practice in light of BBL’s request, the delay point does not seem at all persuasive to me.

42 For the reasons I have already given, I do not agree that the course of action taken by SKE and Stobbs was designed to frustrate proceedings or unreasonably increase costs or burdens on BBL. Inevitably, as BBL point out, their costs would have been lower if SKE had not opposed the course of action sought by BBL. But that is in the nature of any dispute, not least one over a previously untested point.

43 I have already noted that BBL allege that SKE and Stobbs “had to repeatedly breach procedural rules” but I cannot see what repeated breach of Tribunal procedural rules may be said to have occurred. The point gets BBL no further.

44 It follows that I do not think the arguments and course of action taken by SKE and Stobbs in these proceedings were unreasonable. They took a reasonable position on a point which had not arisen before, where there were respectable and competing points to consider, and where SKE's reasoning was aligned with current and long-standing Tribunal practice.

45 Turning briefly to the hearing, it was entirely reasonable to request to be heard on the point. I do not agree with BBL's submission that it was "another ploy to delay matters" and therefore unreasonable.

46 BBL is then right to say that it was SKE seeking to vacate the hearing which gave rise to the CMC. Nevertheless, given the position in which SKE and Stobbs found themselves with regard to the contempt proceedings, I do not find it unreasonable of them to have argued for vacation. As my brief post-CMC decision said, it was a "particularly unusual and highly awkward situation with, in my view, no obviously satisfactory solution". Once again, SKE did not win the point but it was reasonable for them to have taken the position that they did when they did, in light of the impact of the contempt proceedings at the time.

47 For all these reasons, I decline to award off-scale costs. I proceed to assess costs on the scale.

48 Although SKE say that the pre-hearing correspondence with the Tribunal was not a stage to which costs might attach, the exchanges were the closest these proceedings got to a statement and counter-statement, albeit with arguments understandably developing as the correspondence ensued. So I agree with BBL that a contribution to their costs should be made in respect of this correspondence.

49 The TPN scale is £250 to £750 for preparing a statement and considering the other side's statement, depending on factors such as the complexity and relevance. The exchanges from both sides were relevant and not particularly complex to consider, and related to a single point of practice, albeit untested. Balancing this up, I award BBL a £400 contribution to their pre-hearing correspondence costs.

50 In terms of preparing for and attending a hearing, the TPN scale sets a limit of £1900 per day. I consider first the CMC. It lasted around 50 minutes and dealt with one single procedural point – namely, whether to vacate – albeit that there were certainly complexities to consider. The daily limit applied *pro-rata* might lead to around £200-300 as a reasonable contribution to a short CMC on a single procedural point, but given the additional complexities a £400 contribution seems appropriate to me.

51 Turning to the hearing itself, I do not accept SKE's point that it was effectively *ex parte*. The matter was clearly contested even though, in the circumstances of the contempt proceedings, SKE and Stobbs did not consider themselves able to participate. On that basis, a contribution to BBL's costs in preparing for and attending the hearing is in order. It was a short and straightforward hearing albeit on an untested point. However, around a quarter of the hearing was taken up with BBL's preliminary argument that the Registrar was not able to hear the matter at all – a point on which I found against them. Factoring this in, alongside the other points, I award a £300 contribution.

52 Finally, BBL refer to their costs in preparing and submitting the costs submissions themselves.

53 BBL's costs submissions were, in my view, longer than necessary and rather hyperbolic. For example, Brandsmiths wrote that "Chaos, on a level not seen before, was caused at the Tribunal", "basic principles of law and order were rocked" and that "the whole fiasco…brought the whole legal system in this country into disrepute".

54 In any case, I am not going to award a contribution on this front because the TPN scale makes no reference to a contribution to such costs, and BBL's costs submissions were largely focussed on the question of off-scale costs, a point on which I have found against them.

Costs order

55 I hereby order the defendant, SKE, to pay the claimant, BBL, the sum of £1100 as a contribution towards their costs in this case.

56 If no appeal is lodged, the sum is to be paid within seven days of the expiry of the appeal period below.

57 If an appeal is lodged, my order is then stayed pending the outcome of the appeal.

Appeal

58 Any appeal must be lodged within 28 days after the date of this decision.

Dr J E PORTER
Chief Hearing Officer, acting for the Registrar