

O-033-13

TRADE MARKS ACT 1994

**SUPPLEMENTARY DECISION IN RELATION TO COSTS**

IN THE MATTERS OF APPLICATION NO 2586233

BY SEAMÔR – A PARTNERSHIP

TO REGISTER THE TRADE MARK:



AND  
THE OPPOSITION THERETO

UNDER NO 102421

BY

ANGLESEY SEA ZOO AND MARINE RESOURCE CENTRE LIMITED

AND  
APPLICATION NO 2586420

BY ANGLESEY SEA ZOO AND MARINE RESOURCE CENTRE LIMITED

TO REGISTER THE TRADE MARK:

**SeaMor**

AND THE OPPOSITION THERETO

UNDER NO 103206

BY SEAMÔR – A PARTNERSHIP

1) On 13 December 2012 a decision was issued in relation to the substantive issues in relation to these proceedings. The following finding was made in regard to the award of costs:

“107) SM having been successful is entitled to a contribution towards its costs. In BL O/160/08 Mr Richard Arnold QC, sitting as the appointed person, stated:

“32. Secondly, counsel for the opponent submitted that, if CPR r. 48.6 was applicable, the hearing officer had misapplied it. In support of this submission he pointed out that CPR r. 48.6(4) provides:

The amount of costs to be allowed to the litigant in person for any item of work claimed shall be-

(a) where the litigant can prove financial loss, the amount that he can prove he has lost for time reasonably spent on doing the work; or

(b) where the litigant cannot prove financial loss, an amount for the time reasonably spent on doing the work at the rate set out in the practice direction.

The Part 48 Practice Direction provides at paragraph 52.4 that the amount which may be allowed to a litigant in person under rule 46.8(4) is £9.25 per hour. Counsel submitted that the hearing officer appeared to have awarded the applicant two-thirds of the scale figure which he would have awarded a represented party, and that this could not be justified since the opponent had not proved any financial loss and was very unlikely to have spent over 160 hours on the matter.....

36. In my judgment the approach which should be adopted when the Registrar is asked to make an award of costs in favour of a litigant in person is as follows. The hearing officer should direct the litigant in person pursuant to r. 57 of the 2000 Rules to file a brief schedule or statement setting out (i) any disbursements which the litigant claimed he has incurred, (ii) any other financial losses claimed by the litigant and (iii) a statement of the time spent by the litigant in dealing with the proceedings. The hearing officer should then make an assessment of the costs to be awarded applying by analogy the principles applicable under r. 48.6, but with a fairly broad brush. The objective should be to ensure that litigants in person are neither disadvantaged nor overcompensated by comparison with professionally represented litigants.”

(Under the current practice direction the amount allowed to an unrepresented party is £18 per hour.)

**108) SM should furnish, within 2 weeks of the date of issue of this decision, a brief schedule of costs incurred by it, as indicated in the decision of Mr Arnold. A supplementary decision on costs will then be issued.**

2) On 27 December an e-mail was received from SeaMôr (a partnership) (SM). The contents of the e-mail are reproduced below:

As requested, please find below a brief schedule of costs and time spent on the above case.

- i) Disbursements - £1555. Through driving, phone calls, postage etc.
- ii) Any other financial losses - None claimed for.
- iii) Time spent on case - 214 hours.

I understand that the total from the above comes to an amount that is over the capped figure for costs. I would like to point out that as we have not been able to afford legal representation for this case we have had to build up a base knowledge in this field, by reading past decisions on line, and researching on line. Obviously, the time spent filling out the necessary forms has been a lot longer than it would have been for someone who fills them in on a regular basis, but these are our actual hours.

I would also like to comment that critical times of the case have come at when we have been at our busiest with running the business. The added stress that was imposed upon us is priceless. I know that saying this doesn't get us anywhere, but I wanted to.

I would also like to thank you for having a great website that allowed us to research from home, and look at a vast amount of past decisions, without it we would have been stuffed.

3) Anglesey Sea Zoo and Marine Resource Centre Limited (Zoo) was asked to comment upon the claim for costs. It responded in the following terms:

1. The disbursements of £1,555 for driving, telephone calls, postage, etc.

No breakdown of the charges has been provided. It is not clear why driving costs have been included as none of the proceedings required any form of travel as the case management hearings were done by telephone and the hearing was decided on the papers before it. It is difficult to see how telephone calls and postage added to a total of over £1,500.

2. We accept that no other financial losses have been claimed for.
3. We also find it difficult to understand that 214 hours were spent on dealing with this case. No breakdown of the time spent has been provided. We would have expected to see a spreadsheet of the hours taken for each step, 214 is a very specific number of hours, we presume therefore, it would not have been difficult for the partnership to provide a breakdown.

4) It is considered that the points raised by Zoo in point 1 are valid. It is difficult to understand why driving costs were involved. The file records a number of telephone calls. There would have been postage costs. In the absence of any detail from SM, and taking into account how the proceedings were progressed, a sum of £50 towards expenses is reasonable.

5) 214 hours is the equivalent to more than 5 forty hour weeks. As a litigant in person, research would have been undertaken by SM. SM sought and collated evidence. 50 hours of work are considered to be a reasonable recognition of the time that would have been spent in preparation of the evidence of SM. 50 hours at £18 per hour gives a total of £900. If costs on the scale had been awarded they would have been awarded at £750 for the preparation of the evidence of SM and the consideration of the evidence of Zoo. The compensation to SM should not exceed what it would have received if it had been legally represented. Consequently, this sum is capped at £750. SM is entitled to compensation for preparation and consideration of the statements and counterstatements. A period of 6 hours is allowed for this, giving a sum of £108; this is below what would have been awarded if there had been legal representation and so is allowed in its entirety. SM is also entitled to compensation in relation to its written submissions. A period of 4 hours is allowed for this, giving a sum of £72; this is below what would have been awarded if there had been legal representation and so is allowed in its entirety.

6) SM is entitled to £200 for the opposition fee.

7) Costs are awarded in relation to the costs incurred in proceedings. There is no power to award anything akin to damages.

8) The total sum that is to be awarded is £1,180.

**9) The period for appeal against the substantive decision runs concurrently with the period for appeal against this supplementary decision.**

**Anglesey Sea Zoo and Marine Resource Centre Limited is to pay SeaMôr (a partnership) the sum of £1,180. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against the decisions is unsuccessful.**

**Dated this 22nd day of January 2013**

**David Landau  
For the Registrar  
the Comptroller-General**