

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
TRADE MARK APPLICATIONS Nos. 2442444, 2442447 AND 2459605  
IN THE NAME OF WAPPLE.NET LIMITED**

**AND IN THE MATTER OF  
CONSOLIDATED OPPOSITIONS Nos. 95786, 95787 AND 95890 THERETO  
BY APPLE INC**

**AND IN THE MATTER OF  
AN APPEAL TO THE APPOINTED PERSON BY THE OPPONENT  
AGAINST DECISIONS OF MR. DAVID LANDAU  
DATED 1 FEBRUARY 2012 AND 9 MARCH 2012**

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**SUPPLEMENTAL DECISION**

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**Introduction**

1. I issued my decision in writing in the matter of this appeal on 8 July 2013 under number BL O/277/13.
2. I decided that an appeal brought by Apple Inc. (AI) against decisions of Mr. David Landau, the Hearing Officer acting for the Registrar, dated 1 February 2012 and 9 March 2010 (BL O/036/12 and BL O/108/12 respectively) was largely unsuccessful save as to one point.
3. At paragraph 103(3) of BL O/277/13, I ordered that AI should pay Wapple.net Limited (WN) the sum of £900 as a contribution towards WN's costs of defending the appeal insofar as successful. That was according to a misunderstanding on my part that the parties were agreed that the winner's costs of the appeal should be assessed on a scale cost basis.
4. It was subsequently brought to my attention that WN sought costs off scale in relation to the appeal (letter Gateley, dated 10 July 2013).
5. I have therefore reconsidered the costs of the appeal and my decision is as follows.

**Scale costs**

6. The Appointed Person is a specialist route of appeal against decisions of the Trade Marks Registrar at low or reasonable cost. In furtherance of the latter, the Appointed Person generally follows the Registrar's practice, encapsulated in Tribunal Practice Notice 4/2007, of awarding successful parties a contribution towards their costs by reference to published scale figures.

7. However, as TPN 4/2007 recognises: (1) breaches of rules, delaying tactics or unreasonable behaviour on the part of a party can lead to an award of costs off the scale; (2) just because a party has lost its case, is not in itself indicative of unreasonable behaviour.
8. WN claimed costs off scale for the same reason as it did below:

*“Off scale for the very same reason below. We did consider all sorts of evidence and arguments which should have been perfectly apparent are not arguable ....”* (Transcript, p. 114)
9. In BL O/277/13, I confirmed in principle the Hearing Officer’s off scale award in relation to WN’s costs of dealing with AI’s evidence.
10. On appeal, AI relied upon items in the evidence of Thomas R. La Perle and on the evidence of John Harris. WN needed to revisit that evidence in the light of points taken on appeal. However, WN was compensated in off scale costs for dealing with that evidence below and must fairly be presumed to be familiar with it. I do not think it appropriate to compensate WN twice in dealing with this evidence and I reject WN’s request for off scale costs in that regard.
11. Concerning the arguments taken by AI on appeal, I do not consider that AI’s conduct can be characterised as unreasonable or the appeal spurious. As TPN 4/2007 acknowledges the fact that a party loses an appeal is not indicative of that party’s unreasonableness. Some of Mr. Engelman’s points on AI’s behalf were better than others, but that is not an uncommon feature of appeals.

### **Conclusion**

12. My supplemental decision is therefore to confirm the order I made at paragraph 103(3) of my decision in BL O/277/13 that AI pay WN the sum of £900 towards WN’s costs of defending the appeal insofar as successful. Such sum is now to be paid within 7 days of this decision.

Professor Ruth Annand, 15 July 2013