

O-247-15

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION No. 1505395 IN THE NAME OF GLOBAL BRAND GROUP LLC

AND IN THE MATTER OF APPLICATION FOR REVOCATION No. 84362 THERETO BY PUNTER OF ENGLAND LIMITED

AND IN THE MATTER OF TRADE MARK APPLICATION No. 2618398 BY PUNTER OF ENGLAND LIMITED

AND IN THE MATTER OF OPPOSITION No. 103718 THERETO BY GLOBAL BRAND GROUP LLC

AND IN THE MATTER OF TRADE MARK APPLICATION No. 2632284 BY GLOBAL BRAND GROUP LLC

AND IN THE MATTER OF OPPOSITION No. 104351 THERETO BY PUNTER OF ENGLAND LIMITED

AND IN THE MATTER OF TRADE MARK APPLICATION No. 2643211 BY PUNTER OF ENGLAND LIMITED

AND IN THE MATTER OF OPPOSITION No. 400169 THERETO BY GLOBAL BRAND GROUP LLC

DECISION ON COSTS

1. Punter of England Limited's appeal against a decision on costs (Decision of Mr. George Salthouse, acting for the Registrar, dated 18 October 2013 (O-415-13)) was dismissed for the reasons given in my decision of 31 March 2015 (O-171-15).
2. By letter dated 6 June 2014 Global Brand Group LLC made succinct observations in relation to the appeal. With reference to costs of the appeal the letter stated as follows:

We would request that the Appointed Person award costs in [Global Brand Group LLC's] favour in connection with their consideration of the appeal, advice thereto and submissions made to the appointed Person. We can provide a full schedule of costs should this be sought from the Appointed Person.
3. Both parties requested that the appeal be determined on the papers.

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4. In the circumstances having dismissed the appeal, at paragraph [59] of the Decision, I gave direction for the filing of written representations in relation to the costs of the appeal.
5. No submissions were filed by Global Brand Group LLC by the due date pursuant to the direction given at paragraph [59(1)] of my Decision.
6. By email timed at 15:11 on 17 April 2015 Mr. Prabhjit Gill, on behalf of Punter of England Limited wrote to enquire whether any representations had been filed on behalf of Global Brand Group LLC pursuant to paragraph [59(1)] of the Decision and if so to forward him a copy of the same.
7. By email timed at 11.15 on 20 April it was confirmed to Punter of England Limited that *“[the Appointed Person] has not received any representations on behalf of Global Brand Group LLC in relation to the costs of the appeal over and above those contained in the letter sent on its behalf by J A Kemp & Co dated 6 June 2014 which contained its submissions on the appeal.”*
8. In the event neither side filed any written submissions pursuant to the directions given at paragraph [59] of my Decision. Moreover neither side asked to be heard in relation to the issue as to costs which remain to be determined.
9. Section 68(1) of the Trade Marks Act 1994 establishes that:

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.

Rule 67 of the Trade Marks Rules 2008 accordingly provides that

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 by what parties they are to be paid.
10. The long established practice in Registry proceedings is to require payment of 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.

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11. This approach to the assessment of costs has been retained for the reasons identified in Tribunal Practice Notice TPN 4/2007 (see also Kerly's Law of Trade Marks and Trade Names 15th Edn. (2011) pp.96, 97).
12. Given that the appeal has been dismissed it seems to me that Global Brand Group LLC as the successful party are entitled to a contribution to their costs.
13. No itemisation of any costs has been provided to me on behalf of Global Brand Group LLC. All that I have to take into account is a single letter prepared by the trade mark attorneys instructed on behalf of Global Brand Group LLC. That letter, dated 6 June 2014 contains some very short observations on the appeal and in relation to the costs. The substance of the letter is only one page long.
14. In the circumstances, it seems to me that, given Global Brand LLC was professionally represented; some small amount by reference to the scale figures should be awarded to them for considering the Notice of Appeal and for preparing the brief response.
15. For the reasons I have given above I direct that Punter of England Limited pay £150 as a contribution to Global Brand Group LLC's costs of the appeal. That sum is to be paid within 14 days of the date of this Decision.

EMMA HIMSWORTH Q.C.

Appointed Person

22 May 2015