

O-502-19

**SUPPLEMENTARY DECISION ON
COSTS**

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3262854
BY THOMAS JOHN BURTON TO REGISTER:**

Syndikat

&

SYNDIKAT

AS A SERIES OF TWO TRADE MARKS IN CLASSES 9 & 41

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO. 411503

BY

LIFESTYLE INTERNATIONAL HOLDINGS COÖPERATIEF U.A.

& ART OF ENTERTAINMENT B.V.

BACKGROUND & PLEADINGS

1. On 12 April 2019, I issued an interim decision in these proceedings. Having concluded that the opposition should succeed, in relation to costs, I stated:

“73. At the hearing, Ms Blythe indicated that costs should be on the scale and follow the event. In relation to the applicant’s costs, I mentioned to Mr Bottomley that as far as I was aware, the costs proforma which had been sent to the applicant at the conclusion of the evidence rounds had only been completed in relation to a Case Management Conference (“CMC”) held during the course of the proceedings. While Mr Bottomley confirmed my understanding of the position was correct, he explained that the costs proforma had been completed in that manner because there had been a misunderstanding on the part of the applicant.

74. At the hearing, Mr Bottomley then attempted to address me on negotiations that had taken place between the parties in an attempt to settle the dispute amicably, and what he regarded as the impact such negotiations should have on the matter of costs. At the hearing, I pointed out that, for example, documents exchanged between parties in an attempt to settle a dispute may be regarded as without prejudice irrespective of whether they actually carried that specific marking. In short, I was concerned that the matters Mr Bottomley wished to bring to my attention were highly likely to be regarded as without prejudice. In this regard, I note that even when communications have been marked “without prejudice save as to costs”, it is not appropriate for such communications to be brought to a decision taker’s attention in relation to costs before the substantive decision is issued. However, at the hearing, Mr Bottomley’s view was that the negotiations had been conducted on an open basis and could be relied upon by the applicant.

75. Following the hearing, the Casework Examiner wrote to the applicant allowing him a period of 14 days to consider correcting the misunderstanding which had occurred and in so doing file an amended costs proforma; the opponents were allowed a corresponding period to consider commenting on any amended costs proforma the applicant elected to file. Also following the hearing, the Tribunal received an email from Mr Bottomley (copied to the opponents) regarding his submissions at the hearing which I felt may be considered to be without prejudice; the opponents elected not to comment upon these submissions. On 21 March 2019, the applicant filed an amended costs proforma, in relation to which no comments were received from the opponents.

76. As it appears there may be communications upon which the applicant may be entitled to rely in relation to the matter of costs, he **is allowed 14 days from the date of this interim decision to provide any documents/comments he considers he is entitled to rely upon.** Any such documents/comments provided should be copied to the **opponents who will then be allowed a period of 14 days from the date that it receives a copy of any documents/comments filed to provide documents/comments of its own.** At the conclusion of that period, I will review any documents/comments the parties may provide/make and issue a supplementary decision, in which I will deal with costs and set the period for appeal.”

2. In an email dated 25 April 2019, Mr Burton responded to that invitation and on 8 May 2019 the opponents provided submissions in reply. In an email dated 9 May 2019, Mr Burton responded to the opponents’ submissions, stating:

“The letter is selective, inaccurate, mistaken and misleading in a number of important respects. From my understanding of the current process, it seems that I do not now have an opportunity to respond or comment further, before you issue your decision on costs, which seems to be potentially unfair on me.

I appreciate that there needs to be some finality on submissions but I would request the opportunity to respond finally in writing within a short period of time.”

3. In an email of the same date, the opponents reacted to Mr Burton’s email indicating that they felt “very strongly that Mr Burton should not be given additional time”. They further indicated that they take the view that Mr Burton “does not have the funds to pay a costs award” and that should it prove necessary, the opponents would seek an additional costs award to reflect any further time and expense they had to incur in dealing with Mr Burton’s request.

4. In an email dated 13 May 2019, Mr Burton renewed his request, stating:

“In that email and in paragraph (7) of their letter, they made statements which are uninformed and factually incorrect...that point is a side show to some more troubling points made in their letter which, as I have said in my previous email, is selective, inaccurate, mistaken and misleading in a number of important respects.”

5. In an official letter dated 15 May 2019, the tribunal stated:

“[The Hearing Officer] notes and agrees with the following comment contained in your email of 9 May: “I appreciate that there needs to be some finality on submissions...”.

He has considered your request in light of both the above and what he regards as the very clear process outlined in paragraph 76 of the interim decision. Having done so, his preliminary view is that your request to file further submissions (a request which is likely to result in further submissions from the opponent), should be refused.

If either party disagrees with the preliminary view they should request a hearing within 14 days from the date of this letter that is on or before 29 May 2019.

If no hearing is requested in the period allowed, the Hearing Officer will proceed to issue a supplementary decision on the basis of the written submissions filed to date.”

6. In an email dated 16 May 2019, Mr Burton indicated that he did “not want to waste everybody’s time by holding a hearing” and he referred to three points he wanted to draw to my attention. He stated:

“I hope that Dummett Copp will permit these matters to be admitted without the need for a hearing, if not, I will ask for a hearing.”

7. In an official letter dated 28 May 2019, the tribunal clarified the position for Mr Burton and reminded the parties of the deadline to request a hearing. In an email of the same date, Mr Burton requested a hearing.

8. In an email dated 29 May 2019, the opponents asked for, inter alia, Mr Burton’s request to file further submissions to be refused. If a hearing was to take place, the opponents indicated they would be attending the hearing and would be seeking an additional award, “off the scale to fully compensate it”, as they regarded Mr Burton’s request to “constitute delaying tactics and unreasonable behaviour.” Finally, given what they regarded as Mr Burton’s “disregard of tribunal rules, and a potential award of costs to date”, the opponents sought an order for security for costs against Mr Burton to ensure they do “not unduly suffer due to a non-payment.”

9. The hearing requested by Mr Burton took place before me on 27 June 2019 by telephone conference. As at the substantive hearing, Mr Burton was represented by Mr Bottomley and the opponents by Ms Blythe of counsel instructed by Ms Harris of

Dummett Copp LLP (“DC”). In my letter of 28 June 2019 to Mr Burton following the hearing, I stated:

“As at the outset Ms Blythe indicated that the opponents were no longer pursuing an Order for security for costs, I need say no more about it.

Insofar as your request to reply to the opponents’ submissions of 8 May 2019 are concerned, the procedure outlined in paragraph 76 of my interim decision was, I think, very clear and allowed both parties an opportunity to provide all the documents and submissions it wished me to take into account in reaching a conclusion on the matter of costs.

To allow you to circumvent that procedure was, in my view, likely to lead to a request from the opponents to file further submission in reply and, the possibility of a still further request from you to reply to any further submission the opponents may file; hence my preliminary view mentioned above. As I agree with the comment (contained in your email of 9 May 2019) i.e. “that there needs to be some finality on submissions”, and as I heard nothing from Mr Bottomley at the CMC to suggest my preliminary view was in error, at the CMC I refused your request to rely upon the (now) two remaining points contained in your email of 16 May 2019.

In correspondence and at the CMC, the opponents sought an award of costs off the scale in relation to the CMC. Should I consider such an award to be appropriate, I will, as Ms Blythe suggested, request an itemised bill from DC.

I shall, in due course, issue a supplementary decision on costs. This will be based upon your submissions of 25 April 2019 and the opponents’ submissions of 8 May 2019. In that supplementary decision I will, to the extent I consider it

necessary, refer to the outcome of the CMC and what impact, if any, my decision may have upon you.”

Chronology of events

10. To assist me in reaching a conclusion I have, on the basis of the papers provided by the parties, prepared a chronology of events. The position appears to me to be as follows:

- | | |
|------------------|---|
| 11 October 2017: | The application for registration is filed; |
| 27 October: | Application published for opposition purposes; |
| 21 December: | DC files Forms TM7A to extend the opposition period; |
| 22 December: | DC writes to Mr Burton asking for the application to be withdrawn and provides a set of undertakings for him to sign. He is allowed until 13 January 2018 to comply; |
| 17 January 2018: | DC reminds Mr Burton of the above letter asking for a response by 24 January; |
| 22 January: | Mr Burton writes to DC offering to withdraw his application if the opponents reimburse the fee for filing the application “and any other fees for the withdrawal”, withdraws “their request for undertakings” and confirms that “there is no possibility of confusion between [his] business as currently carried on and theirs as currently carried on”; |

29 January: Opposition filed;

5 March: Form TM8 and counterstatement filed;

12 April: Period for the opponents' evidence to be filed commences;

2 May: Ms Rebecca Stuffer of I-Motion GmbH ("IM") writes to Mr Burton. In her email, she asks Mr Burton to answer six questions with a view to bringing matters "to a speedy conclusion by finding a mutual solution" and she offers to meet Mr Burton in London between 18 and 20 May;

8 May: Mr Burton replies to the above providing the answers to Ms Stuffer's questions;

17 May: Ms Stuffer replies to Mr Burton offering him two options. The first, is that Mr Burton withdraws his application and agrees not to pursue any further applications which are the same or similar, in exchange for which, he is allowed to hold, in England, electronic music events for the style "techno" under the name "Syndikat" without seeking permission from the opponents. If he agrees, IM indicates that it will "pay the costs which [he] has incurred so far for the trade mark application to the UK-IPO." The second option, is that he may register his "Syndikat" trade mark in class 41 and that once registered, use will only be permitted for techno events in England. Option 2 requires the parties to bear their own costs;

- 24 May: Mr Burton replies to the above, pointing out why neither option is acceptable and provides what he considers to be a basis for further discussions. At point 5, he states: “We expect you to meet our reasonable costs on the preparation, negotiation and finalisation of any compromise agreement that emerges from our discussions”;
- 24 May: DC writes to Mr Burton asking him to agree to a three month suspension of the proceedings to allow negotiations to continue;
- 24 May: Mr Burton replies to the above indicating that subject to “a more acceptable proposal” from the opponents, he is not prepared to agree to a pause in the proceedings;
- 30 May: Ms Stuffer replies to Mr Burton’s email of 24 May, stating “most points you mentioned therefore are reasonable and acceptable for us...” and she comments “please feel free to draw up an agreement”;
- 31 May: Mr Burton replies to the above. Having stated that “I am sure that we can progress along the lines of our recent exchanges”, he notes that Ms Stuffer has not commented upon point 5 of his email of 24 May and he asks for confirmation in this regard before he obtains a fee estimate from a lawyer;
- 7 June: Ms Stuffer replies to the above indicating that IM’s attorneys can arrange for an agreement to be produced and states: “Additional you asked for meeting your costs, by now we

can't agree on that unless we have a concrete idea about the amount. Maybe you can explain this more detailed?";

7 June: Opponents file Form TM9 and fee to request an extension of time for 2 months;

8 June: Mr Burton replies to Ms Stuffer explaining that a lawyer has indicated that drafting a settlement/co-existence agreement will cost "about £5,000". Mr Burton indicates he is prepared to "go 50/50 on the cost", but would want his lawyer to prepare the first draft. He asks for confirmation of the acceptability of the above, adding "the quicker we can do this, the less time you will have spend (sic) on dealing with the IPO matters":

8 June: Ms Stuffer replies to Mr Burton indicating that IM's lawyers will handle the matter and IM "will bear the costs in total for this". She indicates she will send a copy of the draft agreement to him by the end of the following week;

8 June: Mr Burton advises Ms Stuffer that he is "happy to leave you to draw up the agreement";

12 June: Opponents' evidence due;

12 June: Official letter indicating that the extension of time is refused and that any challenge to that decision will be considered at a CMC to be held on 5 July;

- 26 June: Ms Stuffer provides Mr Burton with a draft agreement (a copy of which is provided). Having indicated that the matter can be discussed by telephone, she states “Please kindly note that we need your confirmation and signing today to send the agreement over to the UK IPO to suspend proceedings”;
- 26 June: Mr Burton replies to the above commenting that in his view the draft agreement “does not bear much resemblance to what was set out in [the party’s] email exchanges” and the fact that the agreement will be governed by German law “is fundamentally unacceptable to [him]”. He suggests that the parties wait until after the CMC (mentioned below) has been held before proceeding further;
- 5 July: A CMC takes place at which, inter alia, the evidence of Mr Vordemvenne was admitted into the proceedings and Mr Burton was allowed until 6 September to file his evidence;
- 9 August: Mr Burton’s evidence filed;
- 13 September: Mr Burton writes to DC, inter alia, suggesting that discussions regarding a co-existence agreement could be resumed (with a draft produced by his lawyer and governed by English law) with the opponents contributing £2500 to the cost of the drafting of the agreement;
- 26 September: DC replies to Mr Burton indicating that the opponents will not give him “£2500 to pay for your own legal advice” and advising him that Ms Stuffer is “still willing to talk to you

about the terms stated in the document.” A reply is sought by
3 October 2018;

- 5 October: Opponents’ evidence in reply filed;
- 10 October: Mr Burton replies to DC’s email of 26 September indicating that he would prefer to deal with DC (rather than Ms Stuffer), he wants his own lawyer to prepare a draft agreement, any agreement would be governed by English law, and the opponents would be responsible for £2500 “of the costs of this agreement”;
- 7 November: DC writes to Mr Burton explaining that in its view the draft agreement sent by Ms Stuffer did contain the key points agreed in the exchange of emails mentioned above, Ms Stuffer stands ready to discuss the matter with Mr Burton and that the opponents cannot accept that any agreement the party’s reach should be governed by English law;
- 8 November: Mr Burton replies to DC indicating that given what he regarded as the distance between the parties following the receipt of the draft agreement from Ms Stuffer, he saw no benefit in contacting Ms Stuffer. He adds that if the opponents are prepared to modify their position in line with the email exchanges mentioned above, Ms Stuffer should call him;
- 5 December: Opponents request a hearing;
- 6 March 2019: Substantive hearing held;

- 12 April: Interim decision issued – opposition succeeds;
- 27 June: Hearing held to determine Mr Burton’s request to reply to the opponents’ written submissions of 8 May 2019.

11. Finally, I also note that commencing on 29 August 2018, there was an exchange of correspondence between the parties and the tribunal in relation to a request by the opponents for Mr Burton to provide security for costs. Those exchanges culminated in a letter from the tribunal dated 21 November 2018, in which the opponents’ request was refused because “the opponent has already incurred the majority of their costs.”

12. As far as I can tell, none of the documents provided by the parties in their emails of 25 April and 8 May 2019 is marked without prejudice. That, of course, does not matter if they formed part of a series of exchanges which constituted a genuine attempt to reach an agreement. That is clearly the case here. However, as neither party has raised any objections, it is upon the basis of all the documents provided that my decision on costs will be made.

13. As my chronology shows, following the issue of the opponents’ letter before action on 22 December 2017, in his reply of 22 January 2018, Mr Burton offered to withdraw his application if the opponents agree to reimburse him for, inter alia, the cost of filing the application and to confirm there is no possibility of confusion between the party’s respective businesses. In their written submissions, the opponents comment on this offer stating “On this basis, of course, a solution of the matter could not be reached”.

14. Although Mr Burton offered to withdraw his application, I agree with the opponents that the pre-conditions that he placed upon that withdrawal in relation to the confirmation he required from them as to there being no possibility of confusion between the parties’ businesses was unrealistic. I am not, therefore surprised, that the

opponents rejected that offer and proceeded to file formal opposition to his application some seven days later.

15. Having received Mr Burton's notice of Defence in early March 2018 and following the commencement of the period for the opponents to file their evidence on 12 April 2018, in early May 2018, Ms Stuffer wrote to Mr Burton asking him a number of questions, the answers to which it was hoped would allow an agreement to be reached. These questions were reasonable as was Mr Burton's prompt response. On the basis of those answers, on 17 May 2018, Ms Stuffer offered him two options. In his email of 24 May 2018, he explained, not unreasonably in my view, why neither of these options were acceptable to him. The relevant part of that email, together with Ms Stuffer's responses of 30 May 2018 (shown in bold) are as follows:

"I do believe that we can work out a mutually acceptable compromise position but this will have to look significantly different to what you have proposed so far. It would require each of us to define our respective markets and agree not to trespass into each other's; anything outside those defined markets can be exploited by either of us...

To facilitate discussions on my proposed alternative way, it may be helpful for you to have my comments on some of the specifics of your two options:

1. Territorially, you have limited us to England for dance events – we need to be able to operate in the whole of the United Kingdom and the republic of Ireland.

("we agree with that")

2. Musically, you have proposed to limit us to "techno events"...we are into industrial, melodic, Detroit techno to name but a few – I would consider these to be sub-generics of "techno" but we can define the list.

(“we could name those styles sub-genres as well, but we can specify them”)

3. To confirm, we do not, and would commit not to offer, Hardcore or HardTek which is your market. We would expect a reciprocal commitment from you not to come into our territorial or music market. (my emphasis)

(“we agree with that”)

4. You have also limited us to class 41 and not class 9. An important part of our business plan is intended to be the record business so we must be able to register in class 9 and any territorial limitation would not apply to that aspect of our business...”

(“record business will base on your “techno events” so we talk about (for example) compilations (kind of event belonging)?”)

16. On the basis of that exchange an amicable resolution appeared possible. Following an exchange of correspondence in relation to who was going to produce the first draft agreement, on 8 June 2018, Ms Stuffer indicated that IM would produce the first draft agreement and on the same date Mr Burton indicated he was content with that approach; I note that the opponents’ evidence was due four days later. On 26 June 2018, Ms Stuffer provided Mr Burton with a draft agreement, indicating that he needed to agree and sign it on the same day he received it to, she explained, allow the agreement to be sent to the tribunal and the proceedings to be suspended. Although the draft agreement, to which I will return shortly, is only three pages long, to expect Mr Burton to review and agree it on the same day was, in my view, clearly inappropriate. On the same day Mr Burton replied to this request stating:

“I have quickly scanned the document and it does not bear much resemblance to what was set out in our email exchanges. For example, I made it clear (and it

was accepted) that you would undertake not to expand into our territorial or geographical market. Most importantly, the agreement is expressed to be under German law which is fundamentally unacceptable to me. I do not intend to spend money on consulting with a German lawyer and you have previously refused to pay my legal costs.”

17. Following the CMC held on 5 July 2018, at which the opponents’ request for additional time was granted and its evidence admitted into the proceedings, there appears to have been no further contact between the parties until, on 29 August 2018, the opponents sought an order for security of costs against Mr Burton. In his letter of 13 September 2018, Mr Burton reacted to that request, suggesting that discussions could be resumed, with a new draft agreement being drafted by his lawyer, to which the opponents were asked to contribute £2500. The opponents refused to pay Mr Burton, but indicated that Ms Stuffer was still prepared to discuss the matter based on the original draft agreement sent to him. Mr Burton responded reiterating that he wanted his lawyer to prepare a draft agreement, that it would be governed by English law and that he required the opponents to provide the sum mentioned as a contribution. DC responded to Mr Burton stating:

“Contrary to [his comments] the co-existence agreement drafted by Ms Stuffer contained the key points agreed upon in the email exchanges...namely:

the concession that you may offer dance events throughout the UK and the Republic of Ireland...

that you may use the trade mark not only for “techno events” but also expressly for various sub-genres of techno music...

that you will not offer any events that include Hardcore or HardTek...

that you may carry out your intended record business within the scope of the musical genres you may offer...

It is, therefore, incomprehensible as to why a new agreement should be drafted...

As to your further condition that the Agreement should be governed by English law and shall have English jurisdiction, our client, as owner of the prior rights and previously as the exclusive licensee of the owner, cannot accept this..."

18. The draft agreement sent to Mr Burton by Ms Stuffer in June 2018 contained the following:

"1. LiveStyle will allow Mr Burton under the conditions set out below to apply for registration of a national UK trade mark "Syndikat"/"SYNDIKAT" at the UK IPO in the Nice classes 9 and 41 and to use them in the UK territory (England, Wales, Scotland, Northern Ireland) and the Republic of Ireland.

2. LiveStyle will allow Mr Burton to use the trade mark series [as above] for electronic music events, this being limited, however, to the music styles "techno" and its subgenres.

3. Mr Burton is not allowed to use the trade mark series [as above] to hold events for the "harder styles" of electronic music; this covers in particular the music styles "hard core", "hard style", "hard techno" and their subgenres..."

19. If one compares the above with what was discussed between Mr Burton and Ms Stuffer in their emails of 24 and 30 May 2018, it appears to me that points 1 and 2 reflect, for the most part, what was agreed between the parties. However, it appears that no account has been taken of Mr Burton's request that his use in class 9 be without

“territorial limitation”. As to point 3 of the initial exchanges, earlier I explained that Mr Burton stated and Ms Stuffer responded:

“3. To confirm, we do not, and would commit not to offer, Hardcore or HardTek which is your market. We would expect a reciprocal commitment from you not to come into our territorial or music market.

(“**we agree with that**”).”

20. In his email of 26 June 2018 to Ms Stuffer, Mr Burton stated:

“For example, I made it clear (and it was accepted) that you would undertake not to expand into our territorial or geographical market...”

21. In their submissions, the opponents state:

“(5) In his email to Ms Stuffer of 26 June 2018, Mr. Burton stated that “it was accepted that you would undertake not to expand into our territorial or geographical market”...This is incorrect. At no point did Ms Stuffer say that and in any event, the Opponent’s prior EUTM registrations for SYNDICATE gave it exclusive rights to use its marks in the UK. The Opponent agreed that it would not hold events for the same type of music as Mr Burton, but it did not state that it would not operate in the UK. Indeed, it sold tickets in the UK to its events and had done for a number of years, so it would definitely not have put itself in the position of not being able to use its SYNDICATE mark in the UK in the future.”

22. The exchange I have reproduced at paragraph 19 above includes, from Mr Burton, “We would expect a reciprocal commitment from you not to come into our territorial or music market” and a reply from Ms Stuffer in which she stated: “we agree with that.”

In its submissions, DC further states that the “opponent agreed that it would not hold events for the same type of music as Mr Burton” (which is correct). However, while clause three of the draft agreement places a restriction on Mr Burton’s use (in relation to “harder styles”) there is, as far as I can tell, no equivalent restriction on the opponents (even in relation to the type of music upon which they may use their trade marks).

23. Whilst it is clear that both parties made efforts to reach an amicable agreement, neither party’s conduct is, in my view, beyond reproach. In particular: (i) Mr Burton’s initial offer to withdraw his application on the unrealistic terms mentioned, (ii) that despite the indication contained in her email to Mr Burton of 30 May 2018, the draft agreement sent by Ms Stuffer to Mr Burton on 26 June 2018 contained, inter alia, no reciprocal obligations on the part of the opponents, and (iii) the opponents’ request that Mr Burton had to agree and sign the draft agreement on the same day he received it.

24. However, there is, in my view, a more fundamental issue to be considered. In his first response to the draft agreement on 26 June 2018, Mr Burton stated:

“Most importantly, the agreement is expressed under German law which is fundamentally unacceptable to me....”

And:

In his email of 13 September 2018, Mr Burton stated:

“...Alternatively, we might resurrect discussions on a co-existence under English law...”

And:

In his email of 10 October 2018, Mr Burton stated:

“Accordingly, if your client wants to proceed down this route...3. It will be governed by English law/subject to English courts...”

25. The use of the words “most importantly” in Mr Burton’s email of 26 June 2018 are, in my view, crucial. Their presence in his initial response and his continued insistence on any agreement between the parties being governed by English law indicates how fundamental this issue was to any amicable agreement being reached. It also strongly suggests to me that even if the draft agreement sent by Ms Stuffer to Mr Burton on 26 June 2018 had included reciprocal obligations on its part and even if Mr Burton had been given sufficient time to consider and comment upon it, he was highly likely to have rejected it on this point. In addition, he was, in my view, likely to continue to reject it until such time as either the opponents agreed to his request or, perhaps, offered to make a contribution towards his costs (which they made very clear they were not prepared to do).

26. In their submissions, the opponents state:

“As the prior rights owner...being based outside the UK, to choose its own jurisdiction and legal system governing the co-existence agreement...”

27. For the reasons indicated, that, I think, is a reasonable position for the opponents to adopt. Thus it appears to me that on the basis of the factual matrix I have described, the only realistic option available to the opponents to break the impasse that existed between the parties and achieve finality, was to obtain a determination on the merits. This is the approach they adopted and in which they were wholly successful. As a consequence, the opponents are, in my view, entitled to an awards of costs in their favour.

Calculation of the costs award

28. Awards of costs in proceedings commenced after 1 July 2016 are governed by Annex A of Tribunal Practice Notice (“TPN”) 2 of 2016. The opponents’ position is that they should receive an award of costs on the scale for the period up to and including the substantive hearing and an award of costs off the scale for the hearing held in relation to Mr Burton’s request to reply to the opponents’ submissions (in relation to which he was unsuccessful).

29. I agree that an award of costs on the scale is appropriate for the period indicated, but I make no award to the opponents in respect of their attendance at the CMC mentioned which, despite Mr Bottomley’s attendance on Mr Burton’s behalf, only became necessary following the tribunal’s decision to refuse their request for additional time to file their evidence in chief.

30. I also agree that the opponents are entitled to an award of costs in relation to the hearing held following the issue of the interim decision. However, although the basis of Mr Burton’s request was somewhat misguided (the additional matters upon which he wished to rely ought, as Ms Blythe pointed out, to have been considered by me in the preparation of my decision on costs in any case), there was, in my view, nothing abusive in his request. As a consequence, I do not intend to award costs to the opponents off the scale in relation to the hearing. In addition, I remind myself that skeleton arguments were not required for the hearing, the hearing was conducted by telephone and was relatively brief and, given the issue involved and the prior involvement in the proceedings of, inter alia, the opponents’ counsel, any preparation time ought to have been minimal.

31. Finally, while I note Mr Burton’s comments in relation to the opponents’ request to be heard on the substantive issue and the potential value of the hearing, it is sufficient for me to point out their decision to request a hearing was one they were entitled to

make and, as they have been successful, in relation to which they are entitled to a contribution. Bearing all the above in mind, I award costs to the opponents on the following basis:

Preparing the Notice of Opposition and considering Mr Burton's counterstatement:	£200
Preparing evidence and considering and commenting on Mr Burton's evidence:	£900
Preparing for and attending two hearings:	£1000
Official fee:	£100
Total:	£2200

32. I order Thomas John Burton to pay to Livestyle International Holdings Coöperatief U.A. & Art of Entertainment B.V. (jointly) the sum of **£2200**. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful

Dated this 28th day of August 2019

C J BOWEN
For the Registrar