

O/597/20

TRADE MARKS ACT 1994

IN THE MATTER OF NO. 3451373

IN THE NAME OF KISMAT KONNECTIONS LTD FOR THE TRADE MARK



IN CLASS 45

AND

OPPOSITION THERETO UNDER NO. 419531

BY RAJA KOHLI

Background and pleadings

1. Irfan Awan applied to register the trade mark no. 3451373 for the mark



in the UK on 13 December 2019. It was accepted and published in the Trade Marks Journal on 20 December 2019 in respect of the following services:

Class 45: Dating agency services; Dating services; Dating services provided through social networking; Agency services (Dating -); Computer dating services; Internet based dating, matchmaking and personal introduction services; Internet dating services; Video dating services.

2. Ownership of the above mark was transferred to Kismet Konnections Ltd by way of assignment with the effective date of 15 May 2020. The change was recorded on the UK register on 8 June 2020. Kismet Konnections Ltd replaced Irfan Awan as “the applicant” in these proceedings.
3. Raja Kohli (“the opponent”) filed a form TM7a dated 30 December 2019, notifying the applicant of its intention to file an opposition against its application. The opponent subsequently opposed the application on the basis of Section 5(4)(a) and Section 3(6) of the Trade Marks Act 1994 (the Act). An initial TM7 document was filed on 24 February 2020. On 27 February 2020, the tribunal wrote to the opponent acknowledging its TM7 and statement of grounds and requesting further information before any action could be taken. The letter also directed the opponent to further guidance on opposition proceedings as follows:

A Glossary of terms is available from the IPO website at <https://www.gov.uk/government/publications/trade-marks-tribunal-glossary-of-terms>

Further information on the opposition process and a scale of costs are available at <https://www.gov.uk/government/publications/trade-marks-standard-opposition/guidance-standard-opposition-proceedings-before-the-trade-marks-tribunal>.

4. The following guidance was available to the opponent on costs at the link provided:

5. Costs in opposition proceedings

Will I be able to recover all of my costs before the Tribunal or the Appointed Person?

At the conclusion of any proceedings before the Tribunal the successful party may request that an award of costs be made in its favour. There is no upper limit to the award which may be made but it is established practice that the Tribunal awards costs from an official scale. The scale reflects a variable amount for the preparation, filing and examination of forms and for the amount and relevance of any evidence filed. A party without legal representation will be fully reimbursed the cost of any official fees, but will only receive 50% of the amount from the official scale. This ensures that the unrepresented party is not overcompensated for the cost of the proceedings.

What is the scale?


The current scale may be viewed at TPN2/2016 (<https://www.gov.uk/government/publications/tribunal-practice-notice-22016>). Previous scales (<http://webarchive.nationalarchives.gov.uk/20140603093549/http://www.ipo.gov.uk/pro-types/prom-t-law/t-tpn/t-tpn-2008/t-tpn-62008.htm>) can be viewed on the National Archives website.

Will you enforce the costs award if the other side doesn't pay?

No. The enforcement of any award is a matter for the successful party. An order for costs may be enforced in the same way as any order of the High Court. Failure to pay an award may result in the details of the failure to comply with the costs award being published on the IPO website.

5. Following the receipt of the amended form TM7 and statement of grounds, the tribunal wrote to the opponent on 9 April 2020, informing it, amongst other things, that the “form and accompanying statement of grounds” had been sent to the applicant.
6. The opposition under Section 5(4)(a) of the Act opposes all of the applied for services on the basis of the opponent’s alleged earlier unregistered rights in the three marks in the table below:

Unregistered mark 1	
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Unregistered mark 2	
Unregistered mark 3	

7. The opponent claims to have been providing “brand promotion for networking events ... online networking, including singles dating services, match-making services, events planning, support to other support groups, companies and services (e.g. “in partnership with”)” throughout the UK under the signs since 16 September 2018. The opponent claims that use of the trade mark applied for in respect of the services applied for by the applicant would make use of the opponent’s success for the applicant’s own “unscrupulous” benefit. The opponent states that it has also discovered the applicant “has done similar actions to other brands..”.
8. The opposition was also filed under Section 3(6) of Act. The opponent submits that the application has been made in bad faith. The opponent states that the application consists of a logo that was created for the opponent, and that the applicant downloaded the published image, and is looking to use the mark for its own purposes, without the consent of the opponent. The opponent has stated that the applicant initially “conceded that there is a moral conflict by taking my work and effort and passing it off as his own”. The opponent states the applicant has also kept the same strapline as its brand. The opponent opposed all services filed by the applicant on this basis.
9. The applicant filed an initial TM8 form in defence of the opposition on the date of the initial deadline, namely **9 June 2020**. On 10 June 2020, the tribunal wrote to the Parties to inform them that the TM8 filed could not be accepted into proceedings and set a new deadline of **8 July 2020** for the applicant to file an amended counterstatement. The letter sent to the applicant reads as follows:

I refer to the TM8 filed on **9 June 2020**.

The counterstatement has now considered and it is the Registrar's preliminary view that more information is required before any further action can be taken.

This is in line with the Tribunal Practice Notice 4/2000 which is available on the IPO website at www.ipo.gov.uk

The purpose of the TM8 is to admit or deny the opponent's claims which are. Section 5(4)(a) - that your trade mark application is passing off as the opponent's, and Section 3(6) - that your application was made in bad faith. If you do not accept something that the opponent has said, you should say why you do not accept the opponent's grounds;

In light of the preliminary view expressed above, you are invited to file an amended counterstatement, to expressly admit or deny the claims made, on or before **8 July 2020**. If you choose not to amend the counterstatement the Registrar may move to strike out any grounds which are not adequately particularised.

A copy of this letter together with the counterstatement has been sent to the opponent, however the period for filing evidence in support of the opposition has not commenced.

10. On 9 July 2020, a further letter was sent to each of the parties. The letters sent confirmed to the applicant that the period of interrupted days would come to an end on 29 July 2020, and the amendments to the TM8 were due on or before **30 July 2020**.
11. On the 6 August 2020, the applicant contacted the tribunal with an apology and brief reasons for the late reply to the letter above, and to request further information on what was required to proceed with the defence.
12. On 7 August 2020, the tribunal sent a further letter to both parties, attaching copies of the previous letters sent explaining to the applicant what was required, and allowing a further two weeks for the submission of the amended TM8. The letter stated that a failure to file the amended documents by **21 August 2020** would result in the application being abandoned.
13. No amended TM8 was received from the applicant by the deadline of 21 August 2020. On 28 August 2020 the Office wrote to the parties to inform them that the deadline had passed, and that its preliminary view was to deem the application as abandoned. The letter included the following statements:

The registry is minded to deem the application as abandoned as no defence has been filed within the prescribed period.

If you disagree with the preliminary view you **must** provide full written reasons and request a hearing on, or before, **11 September 2020**. This **must** be accompanied by a Witness Statement setting out the reasons as to why the TM8 and counterstatement are being filed outside of the prescribed period.

If no response is received the registry will proceed to deem the application abandoned.

14. On 23 September 2020, the opponent contacted the office via email to request confirmation of the next steps, and to request further information on how to claim for appropriate costs.
15. On 24 September 2020, a further letter was sent to the parties to inform them of the withdrawal of the application. In addition, the opponent was advised by return email to contact the Tribunal Section via email to seek costs. On 25 September 2020, the opponent emailed Tribunalsection@ipo.gov.uk to seek costs, offering to provide further detail on time spent, damages and losses.
16. On 5 October 2020, the tribunal wrote to the applicant informing them of the opponent's request for costs and inviting the applicant to submit any comments on the request in writing on or before **19 October 2020**. A copy of the letter sent was forwarded to the opponent, also on 5 October 2020. No response was received from the applicant.
17. On 3 November 2020, a letter was sent to the parties to inform them of the preliminary view of the Registry to issue a cost award. The opponent was informed in a letter which stated the following:

Following the official letter dated 5 October 2020, the Registry has further considered your request for costs, and the absence of any comments from the applicant in this matter. After reviewing the file, it is the preliminary view of the Registry that an award of **£300** in favour of the opponent would be appropriate. This amount is reached as follows:

Filing of Form TM7	£100.00
Statutory Fee	£200.00
TOTAL	£300.00

If either party disagrees with the preliminary view they should request a hearing on, or before, **17 November 2020**.

If no response is received within the time allowed, the preliminary view will automatically be confirmed.

18. On 3 November 2020 the opponent wrote to the tribunal via email stating it would like to challenge the preliminary view, on the basis that the cost award issued was “significantly low in consideration of duration, time I have put in, administration, collecting and submitting information and even the applicant’s behaviour”. Two additional examples of why the cost award should be increased were also given in the initial email, as follows:

- The opponent stated it would have used the Fast Track opposition procedure if he had realised the cost award was this low, and that he was in fact advised by the office to avoid this due to the cost cap; and
- The applicant did not show up to a hearing that was requested.

19. The opponent also requested the guidelines that were used to calculate the cost award. The tribunal directed the opponent to the Trade Marks Manual at <https://www.gov.uk/guidance/trade-marks-manual/tribunal-section>, specifically sections 5.2 and 5.3 under ‘Costs’. The sections of the manual are copied below:

5.2 Unrepresented parties

Any cost awards made in favour of an unrepresented party will include the full cost of any official fees, but will only cover 50% of the amount from the published scale. This ensures that the unrepresented party is not overcompensated for the cost of the proceedings.

When an award is given by the Hearing Officer either with, or after, the issue of the substantive written decision, the unrepresented party will be invited to provide a breakdown of the costs incurred. This itemised account will include the number of hours spent on the proceedings including travel costs.

The Litigants in Person (Costs and Expenses) Act 1975 sets the minimum level of compensation for litigants in person in Court proceedings at £19.00 per hour.

5.3 The current scale (in proceedings commenced on or after 1st July 2016) is as follows:

Task	Cost
Preparing a statement and considering the other side's statement:	From £200 to £650 depending on the nature of the statements, for example their complexity and relevance.
Preparing evidence and considering and commenting on the other side's evidence:	From £500 if the evidence is light to £2200 if the evidence is substantial. The award could go above this range in exceptionally large cases but will be cut down if the successful party had filed a significant amount of unnecessary evidence.
Preparing for and attending a hearing:	Up to £1600 per day of hearing, capped at £3300 for the full hearing unless one side has behaved unreasonably. From £300 to £550 for preparation of submissions, depending on their substance, if there is no oral hearing.
Expenses:	(a) Official fees arising from the action and paid by the successful party (other than fees for extensions of time). (b) The reasonable travel and accommodation expenses for any witnesses of the successful party required to attend a hearing for cross examination.

This scale also now takes into account the requirement on a party to give reasonable notice that they intend to proceed with a legal remedy and allows the other party to take appropriate action to avoid this if they wish.

See section 5.8 regarding the requirement to notify.

20. Following the opponent's request, a telephone hearing was arranged. Both parties were invited to attend the hearing, but only the opponent opted to take part in the same. The hearing took place before me on 20 November 2020 at 1.30pm.

The hearing

21. At the hearing, Mr Kohli represented himself as the opponent. Before Mr Kohli gave his submissions, I asked him to confirm if he had had the opportunity to consider the costs section of the Trade Mark Manual to which he had been directed prior to the proceedings. Mr Kohli explained that he had looked at this, if only briefly. I explained to Mr Kohli that the costs awards are generally intended to be contributory rather than compensatory, and explained that I did not tell him this with the intention of putting him off making any arguments that he would like to make, but instead so that he may understand the framework within which the cost awards are generally considered before we begin.
22. I invited Mr Kohli to make his submissions. I will summarise the arguments put forward by Mr Kohli below.
23. Mr Kohli began by explaining that he was less than satisfied with the cost award of £300. Mr Kohli explained that the first reason for this is the time and effort he had put into the proceedings. Mr Kohli mentioned that the proceedings had been running from January until November, and that a conservative estimate of the time he has spent on the proceedings to date is two weeks' worth of 8 hour days. Mr Kohli offered to give his rate as a contractor if it would be helpful to proceedings. I explained that in this instance, as no admissible defence was filed, the cost award had been calculated using the scale of costs as referenced. I also explained that should the proceedings have proceeded to a substantive decision, although time spent would be considered when calculating the cost award, this would be by way of a rate of £19, and we would not consider his contractor day rate. Mr Kohli did some quick calculations, and submitted that on that basis he should be entitled to over £1500, not the £300 given.
24. Mr Kohli's second argument was that he was deterred from using the Fast Track procedure by someone at the Intellectual Property Office when filing his opposition, due to the cost cap of £500. He explained that had he had foresight of the low cost award he has now been given, he would have instead

chosen to use the Fast Track route, as he would have liked to have fast tracked the matter. I clarified to Mr Kohli in the hearing that there was indeed a cost cap on the Fast Track proceedings, but that an opposition based on the grounds that he has chosen, namely 5(4)(a) and 3(6) of the Act, would not have been possible via the Fast Track procedure. Mr Kohli stated that he may have altered the grounds upon which he had based the opposition to use this procedure had he known.

25. Mr Kohli detailed that he made numerous attempts to contact and discuss matters with the applicant, as well as describing some of the content of the meetings that he had with the applicant. He explained that the applicant had also filed another trade mark application that is too close to his mark, and also that the applicant had done similar things to other parties. Mr Kohli submitted that the cost award given is not a sufficient deterrent for parties such as the applicant, to stop them engaging in a pattern of bad faith. Mr Kohli explained that he understood that there hadn't been a conclusion made of bad faith as such, but that he still thinks that this point should be considered.

26. Mr Kohli concluded his initial submissions by reiterating the time and effort that had gone into the proceedings to date.

27. At the hearing, I asked Mr Kohli if he was able to give any sort of estimate on how long it took him to research and complete his initial form TM7 specifically. Mr Kohli explained that as a conservative estimate, he would say it took him three days to complete the TM7 document, plus an additional one day of research. He explained that he had to fill out the TM7 twice.

28. I also asked Mr Kohli to clarify what he meant in his email sent prior to the hearing, when he mentioned that the applicant did not show up for a hearing. I explained I had read the file and that I could not find reference to another hearing on the same. Mr Kohli clarified that this actually related to another set of proceedings.

29. Finally, I explained to Mr Kohli that I understood his submissions on the conduct of the applicant in terms of what he alleges they have done to take his mark, and I asked if he had any further submissions on the conduct of the applicant within these proceedings specifically. Mr Kohli explained that the applicant had transferred the ownership of the mark during the proceedings into a company named Kismat Konnections Ltd, that the applicant could have withdrawn the application a lot sooner than they did, and it did not need to let the matter go on for this length of time. Finally, Mr Kohli submitted that he felt the applicant had led him “down a garden path” by indicating it would withdraw its mark and subsequently not doing so.

The decision

30. Due to opposition only reaching the very early stages of proceedings, the initial framework used by the case worker to issue the disputed cost award was taken from the Trade Marks Manual, specifically Sections 5.2 & 5.3 of the Tribunal Section entitled Costs, as set out at paragraph 19 of this decision.

31. The scale of costs used by the Registry is set out under Annex A of Tribunal Practice Notice 2/2016. The scale is as given below:

Annex A

Scale of costs applicable in proceedings commenced on or after 1st July 2016

Task	Cost
Preparing a statement and considering the other side's statement	From £200 to £650 depending on the nature of the statements, for example their complexity and relevance.
Preparing evidence and considering and commenting on the other side's evidence	From £500 if the evidence is light to £2200 if the evidence is substantial. The award could go above this range in exceptionally large cases but will be cut down if the successful party had filed a significant amount of unnecessary evidence.
Preparing for and attending a hearing	Up to £1600 per day of hearing, capped at £3300 for the full hearing unless one side has behaved unreasonably. From £300 to £550 for preparation of submissions, depending on their substance, if there is no oral hearing.
Expenses	(a) Official fees arising from the action and paid by the successful party (other than fees for extensions of time). (b) The reasonable travel and accommodation expenses for any witnesses of the successful party required to attend a hearing for cross examination.

32. Section (3) of TPN 2/2016 explains that the updates made to the scale of costs maintain an underlying contribution-not-compensation approach, as below:

The new scale

(3) Annex A to [TPN 4/2007](#) puts figures to the scale of costs in respect of an award in proceedings commenced on or after 03 December 2007. This scale has not been revised since November 2007 and it now needs updating to take better account of the real costs currently involved in litigation before the Comptroller whilst still maintaining the underlying contribution-not-compensation approach. The new scale at Annex A to this Notice will be applicable in respect of awards of costs in proceedings commenced on or after 1 July 2016. For proceedings commenced before that date, the scale, published as Annex A to [TPN 4/2007](#), will continue to apply. The new scale does not affect the £500 cap on costs in fast track trade mark opposition proceedings.

33. TPN 2/2016 updates and supplements Tribunal Practice Notice TPN 4/2007 and TPN 2/2000. TPN 4/2007 maintains that off scale costs may be given in certain circumstances, and the relevant section of TPN 4/2007 is copied below:

Off scale costs

5. TPN 2/2000 recognises that it is vital that the Comptroller has the ability to award costs off the scale, approaching full compensation, to deal proportionately with wider breaches of rules, delaying tactics or other unreasonable behaviour. Whilst TPN 2/2000 provides some examples of unreasonable behaviour, which could lead to an off scale award of costs, it acknowledges that it would be impossible to indicate all the circumstances in which a Hearing Officer could or should depart from the published scale of costs. The overriding factor was and remains that the Hearing Officer should act judicially in all the facts of a case. It is worth clarifying that just because a party has lost, this in itself is not indicative of unreasonable behaviour

6. TPN 2/2000 gives no guidance as to the basis on which the amount would be assessed to deal proportionately with unreasonable behaviour. In several cases since the publication of TPN 2/2000 Hearing Officers have stated that the amount should be commensurate with the extra expenditure a party has incurred as the result of unreasonable behaviour on the part of the other side. This "extra costs" principle is one which Hearing Officers will take into account in assessing costs in the face of unreasonable behaviour.

7. Any claim for cost approaching full compensation or for "extra costs" will need to be supported by a bill itemizing the actual costs incurred.

8. Depending on the circumstances the Comptroller may also award costs below the minimum indicated by the standard scale. For example, the Comptroller will not normally award costs which appear to him to exceed the reasonable costs incurred by a party.

Conduct of the applicant

34. I have firstly considered Mr Kohli's submissions regarding the conduct of the applicant within the proceedings. I note that Mr Kohli has submitted that the applicant indicated to him it would withdraw its application in conversation, but did not actively do so. Further, I note that the Mr Kohli believes that the applicant should have withdrawn its application at an earlier stage, and not let the proceedings get as far as they did. Whilst I have considered both of these arguments, I note that ultimately, no defence was submitted into proceedings. Whilst I acknowledge the applicant filed an initial TM8 and counterstatement, upon being asked to amend this, they did not refile the document. There was some indication following this that the applicant may wish to file a late defence, but again this did not happen. In my view, even if I were to accept the submission that it was the intention of the applicant to actively withdraw its application (or that it was indicated as such), in my view neither a change of heart, nor a passive withdrawal by way of not filing a defence amounts to unreasonable behaviour in these proceedings. I cannot assume from the opponent's submissions that the alleged comments made by the applicant were for the purpose of interfering with the proceedings, nor do I find this was the result of the same.

35. Mr Kohli made submissions that the change of ownership of the application during the proceedings was notable in terms of the applicant's conduct. However, I do not find this to be relevant in the context of the applicant's conduct in the running of the proceedings, and it does not appear to me that the change of ownership was filed with the intention of causing issues or delay for the opponent in the proceedings, nor do I find this to be the outcome of the action. I do not find this to equate to unreasonable behaviour by the applicant. I note Mr Kohli is unhappy with the applicant's conduct in terms of its choice of company name, but I do not find this to be relevant to my assessment here.

36. Mr Kohli also mentioned he had difficulties tracking down and discussing matters with the applicant, but did also submit that some discussions have

taken place between the parties. I have considered these submissions with reference to the applicant's conduct. However, I do not find that there has been an unreasonable refusal to settle this matter by the applicant that warrants taking the costs of the scale in this instance, not least due to the fact that the application was ultimately undefended and the issues not decided on.

37. With consideration of the factors above, I find no reason for off scale costs to be considered in these proceedings.

Cost awards as a deterrent

38. I note at this stage Mr Kohli's submission that the cost award issued does not act as a suitable deterrent to prevent patterns of bad faith, such as the one he alleges in these proceedings. Whilst I understand Mr Kohli's frustration, I will dismiss this argument fairly swiftly. As I have mentioned above, the intended purpose of the cost award is to contribute towards the costs incurred by a winning party, and not to act as a deterrent to the losing party.

Fast Track Proceedings

39. I have considered Mr Kohli's submission that the Fast Track opposition procedure may have been used had he been aware of the low costs award in the regular opposition proceedings. I have also considered Mr Kohli's submissions that he did not use this following advice received from the Office with reference to the cost cap. I sympathise with Mr Kohli, particularly if he feels he has been misdirected, but I note Mr Kohli was directed by the tribunal to information on costs at the very beginning of proceedings, and in any case I find this to be irrelevant to the matter of the costs award issued. As I mentioned to Mr Kohli within the hearing, an opposition under the grounds he has chosen would not be available to him under the Fast Track route. It is apparent to me that if Mr Kohli was advised not to use the Fast Track route, this was entirely correct in the circumstances. However, the main reason I find this submission to be irrelevant to the current matter, is that the costs award is issued against the applicant, who in any case cannot be found to

have any responsibility or influence over the opposition procedure chosen by the opponent, and so costs against the applicant cannot be increased on this basis.

Costs on the scale

40. As I find no reason to take the costs award off the scale, I am guided in this decision by the scale of costs set out in TPN 2/2016 above, as well as the guidance on how costs should be allocated to unrepresented parties such as Mr Kohli. In this instance, the opposition only proceeded to the first item on the scale, namely "Preparing a statement and considering the other side's statement", and it is within the limits of this section of the scale only that the costs award will be considered.
41. The initial costs award issued was given at a rate of £300. Of this, £100 was for filing the TM7 document, which equates to 50% of the lowest end of the scale.
42. I took submissions from Mr Kohli, within which he indicated that it took him (conservatively) 32 hours of time, in the form of 4 x 8 hour days to research and complete the TM7 form. I note that Mr Kohli also mentioned that an amended TM7 form was completed when considering his time estimate. I consider that the costs are intended to be contributory. I also consider that, in my view, the applicant should not be held to compensate the opponent for the refiling of an amended TM7. I further consider the guidance on issuing cost awards to unrepresented parties in proceedings, and that these should not exceed 50% of the scale fees in these circumstances. On the basis of these considerations, I do not feel that it is appropriate to provide full compensation for all of the hours Mr Kohli has (conservatively) estimated for the completion of his TM7 document and the corresponding research on the same.
43. However, I also find that the rate given of 50% of the lowest end of the scale (equating to roughly 5 hours of Mr Kohli's time), is in my view too low, particularly due to the time spent by Mr Kohli and the more complex grounds upon which the opposition has been filed. It is my view that instead, a

contribution amounting to 2 of the 8 hour days Mr Kohli has claimed is appropriate. Using the rate of £19 an hour as set out in The Litigants in Person (Costs and Expenses) Act 1975, this amounts to £304. I note that this is 50% of £608, which is nearing the top end of the scale costs for represented parties, and based on Mr Kohli's submissions and the grounds filed, I find this to be an appropriate contribution in this instance. I therefore find that the award of costs issued by way of the preliminary view dated 3 November 2020 should be disregarded, and replaced by the following award:

Filing of the Form TM7: £304

Official Fee : £200

Total cost award : £504

44. I therefore order Kismat Konnections Ltd to pay Raja Kohli the sum of £504.

The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 26 day of November 2020

**Rosie Le Breton
For the Registrar**