TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 82708
BY AIKMAN AND ASSOCIATES FOR REVOCATION OF TRADE MARK No. 2106556 STANDING IN THE NAME OF APPLE INC.**

AND IN THE MATTER OF AN APPEAL FROM A DECISION OF MR G SALTHOUSE DATED 8 APRIL 2008

DECISION

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1. On 10 November 2008, I rejected an appeal against Mr Salthouse's decision of 8 April 2008 and indicated that, had it been necessary to do so, I would have allowed the Respondent trade mark proprietor's cross-appeal.

2. I now deal with the costs of the appeal in the light of submissions made in writing on behalf of both parties.

3. Mr Salthouse ordered the Appellant to pay a contribution of £2000 towards the Respondent's costs of the hearing below. The Appellant accepts that I should not disturb that order.

4. I am reminded that my discretion which must be exercised judicially, as set out in *Rizla Limited's Application* [1993] RPC 365, and in line with the Civil Procedure Rules. Both parties have referred me to the Registry's standard scale of costs, and the Appellant refers in particular to TPN 4/2007.

5. The Appellant also accepts that it must pay something towards the Respondent's costs of the appeal. The only question is as to the amount to be paid.

6. The Appellant submits that there are two reasons why I should reduce its contribution towards the Respondent's costs. First, that the Appellant's

submissions succeeded in relation to one aspect of its appeal (paragraph 42 of my decision). Secondly, that the cross-appeal arose only because of the Respondent's own fault in seeking to adduce evidence late, that the application was rejected by the Hearing Officer although "supported" by the Appellant and that the latter's opposition to the cross-appeal was to avoid the undesirable outcome of a re-hearing based on fresh evidence.

7. It seems to me that the Appellant is right to say that a substantial part of the appeal related to the Hearing Office's findings arising from the evidence relating to the Respondent's use of the mark on its web sites. This was an issue on which the Appellant succeeded and it is fair to make some reduction in the costs award to reflect that success.

8. On the other hand, I do not accept that it would be right to make any deduction on the basis asked as to the cross-appeal. The Respondent's additional evidence was indeed late, and had the hearing below been adjourned to allow for further evidence, it would have had to pay the costs thrown away, but those facts do not seem to me to affect the costs of the appeal. Moreover, it seems to me that despite the practical approach adopted by the Appellant in correspondence prior to the hearing below, its attorney (when invited to do so by the Hearing Officer) did object to the Respondent's application to adduce the late evidence, just as the Appellant objected to the cross-appeal. In those circumstances, and as substantial time at the hearing before me was spent on the cross-appeal, it seems to me on balance that the Appellant ought to make the standard contribution towards the Respondent's costs of the cross-appeal.

9. Applying the standard scale, the maximum I could award is £2100. I will reduce that sum to allow for the element of success on the part of the Appellant. I therefore order the Appellant to make a contribution to the Respondent's costs in the sum of £1600.

10. The Appellant asked for 21 days to make any payment, and I order it to pay £1600, together with the £2000 ordered by the Hearing Officer, by 5 p.m. on Friday 12 December 2008.

Amanda Michaels
26 November 2008