

O/059/12

TRADE MARKS ACT 1994

**SUPPLEMENTARY DECISION ON COSTS IN THE MATTER OF APPLICATION
NO 2390124
BY MICHEL FARAH TO REGISTER THE TRADE MARK**

PROSONE

IN CLASS 3

**AND IN THE MATTER OF OPPOSITION
THERE TO UNDER NO 94771
BY ELKO ORGANIZATION LIMITED AND TECMOMED S.R.L.**

AND

**DECISION ON COSTS IN THE MATTER OF MICHEL FARAH'S
REGISTRATION NO 2376524 IN RESPECT OF THE TRADE MARK**

NEOPROSONE

**AND IN THE MATTER OF AN APPLICATION FOR INVALIDATION UNDER NO
82423 BY ELKO ORGANIZATION LIMITED AND TECMOMED S.R.L.**

1) In my decision of 12 October 2011, in respect of the Opposition No. 94771 (Decision BL O-345-11), Elko Organization Limited and Tecmomed S.r.l (“EOL&T”) failed in their opposition to Mr Farah’s application. In that Decision, at paragraph 68, I gave directions for the filing of written submissions in respect to the issue of costs of the proceedings and also in an earlier set of proceedings between the same parties.

2) The issue of costs involves the following three different elements:

- **Interlocutory hearing:** I must consider the issue of an award of costs in respect of an interlocutory hearing held on 9 December 2009 where the decision was in favour of Mr Farah.
- **Current substantive proceedings:** The issue of costs in respect of the substantive elements of the current case. Having been successful, Mr Farah would normally be entitled to a contribution towards his costs. However, in this case, such a contribution may be off-set by the costs incurred by EOL&T in respect of the work undertaken to discredit Mr Farah’s evidence.
- **Earlier invalidation proceedings involving Mr Farah’s registered mark NEOPROSONE:** Following a case management conference before my colleague, Allan James, it was agreed that the issue of costs should be suspended pending the final outcome of the current proceedings. Mr Buehrlen, for Mr Farah, argued that such costs should be off-scale. Central to the issue of costs in both sets of proceedings is the EOL&T’s’ allegations that Mr Farah, or somebody acting on Mr Farah’s instructions, tampered with documents in an attempt to support his claim to have earlier use of the marks PROSONE and NEOPROSONE.

3) EOL&T filed written submissions on 1 and 18 November 2011 and the applicant did likewise on 1 November 2011. I will summarise these submissions as they are relevant to each of the three elements identified above.

Interlocutory Hearing

4) The submissions on behalf of EOL&T can be summarised as:

- (i) Mr Farah requested an extension of time and following the hearing on this point it was granted, nevertheless Mr Farah should bear the costs as the hearing was held at his request, seeking an indulgence from the Registry and it is the “normal rule” that where a party seeks such an indulgence, it should pay costs in the event that its request is initially rejected;
- (ii) The hearing was required primarily because adequate reasons in support of the request had not been provided by Mr Farah;
- (iii) As an alternative, it is argued that each party should bear its own costs.

5) No submissions on this issue are put forward on behalf of Mr Farah.

6) Firstly, it is clear from the facts surrounding the interlocutory hearing that there is no justification for an award of costs to be made against EOL&T. The hearing was not as a result of its actions but rather as a result of Mr Farah challenging the view of the Registry. Upon reaching such a conclusion, it must follow that the applicant will not receive any costs.

7) In conclusion, I find that each party must bear its own costs in respect to the interlocutory hearing.

Current Substantive Proceedings

8) The submissions on behalf of EOL&T are:

- (i) Whilst I have issued a decision on the substantive issue in favour of Mr Farah, EOL&T were successful in discrediting the evidence in question. Consequently, it would be wrong for Mr Farah to “get away with such behaviour with impunity”;
- (ii) The opposition is based upon bad faith under Section 3(6). EOL&T were required to expend significant amounts of time and resources to examine and discredit Mr Farah’s claims and to consider this in the context of other dishonest acts (such as in the NEOPROSONE case, discussed below);
- (iii) As a direct result of the Mr Farah’s dishonest and forged evidence, cross-examination of the witnesses was required; EOL&T’s witness was required to attend cross-examination as a tit-for-tat response to Mr Farah being called;
- (iv) They should be entitled to costs on a full compensatory basis in respect of the time and resources expended on successfully discrediting the Mr Farah’s evidence;
- (v) For the same reasons, I should decline to make any order of costs in favour of Mr Farah to penalise him for his behaviour in adducing forged evidence and in seeking to explain away the forged evidence in cross examination.
- (vi) A schedule of costs has been supplied detailing the opponent’s costs in respect of the current proceedings. This totals £26,519.54 plus €17,971.41.

9) The submissions on behalf of Mr Farah can be summarised as follows:

- (i) The opposition failed and therefore, Mr Farah is entitled to costs;
- (ii) Mr Farah requests costs either on a compensatory basis or alternatively on the basis of a significant uplift to the applicable scale of costs detailed in Tribunal Practice Notice (“TPN”) 2/2000;
- (iii) The grounds for such an approach are:
 - a. The applicable scale of costs is out of date, being more than ten years old as of the date of the decision, 12 October 2011;
 - b. EOL&T used the Registrar’s jurisdiction for purposes other than resolving a genuine commercial interest in what would appear to have been an intention to harass Mr Farah;
 - c. EOL&T submitted substantial amounts of evidence that failed to establish their claim and required cross examination detailed study and

substantial costs. Much of this evidence was not strictly relevant to the proceedings;

- d. Regardless of either side's conduct, the evidence, hearing and proceedings were extraordinarily time consuming and fall outside the normal time and effort in defending an opposition
- e. There is no true commercial interest being protected in the UK by EOL&T;
- f. The total costs incurred by the applicant in these proceedings amount to £28,797.50 of which £25,185 is Beck Greener's fees.

10) 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."

11). It is long established practice in Registry proceedings for the unsuccessful party to pay a contribution to the costs of a successful party, with the amount of the contribution being determined by reference to published scale figures. This scale is treated as the norm to be applied or departed from with greater or lesser willingness according to the nature and circumstances of the case.

12) The successful party in these proceedings is the applicant, Mr Farah, and it follows that he is normally entitled to such an award of costs. However, in this case, EOL&T have adduced evidence demonstrating that Mr Farah altered, or was complicit in the altering of documents pertaining to his first use of the mark PROSONE. These documents were not specifically relied upon by Mr Farah in these proceedings, but were submitted by him in the earlier proceedings regarding his attempt to register the mark NEOPROSONE. They were introduced into the current proceedings by EOL&T. Mr Farah was intensively questioned on these alleged alterations during cross examination where he denied the allegations. As I have mentioned previously, I was unconvinced by Mr Farah's denials.

13) Having been directed by EOL&T, at the hearing, to the inconsistencies I am of the view that the documents were indeed altered. It cannot be explained as coincidence that these alterations all brought about the result that the said documents support Mr Farah's contentions.

14) Consequently, whilst successfully defending his application against the opposition, it is my view that the issue of the altered documents and Mr Farah's continued defence of the altered documents under cross examination cast serious

doubts upon his character. Whilst the EOL&T's focus upon this issue was misconceived, it was nonetheless not unreasonable. Taking all of this into account, I find that it is not appropriate for me to make any award of costs to Mr Farah and each party should bear their own costs.

Earlier invalidation proceedings involving Mr Farah's registration of the mark NEOPROSONE

15) It is submitted on behalf of EOL&T that:

- (i) As the proprietor, Mr Farah, surrendered his registration, EOL&T were successful in the proceedings and are entitled to an award of costs;
- (ii) The actions of Mr Farah, in altering documents, qualify as the required "exceptional circumstances" needed for an award of indemnity costs within the meaning identified in *Bowen Jones v Bowen Jones* [1986] 3 All ER 163 and, consequently, an award of costs off the published scale is appropriate;
- (iii) Mr Farah used the numerous extensions of time permitted for him to submit his evidence to prepare the altered documents and he dishonestly represented the position to EOL&T and the Registrar, which can be categorised as an attempt to mislead the Registrar and was an abuse of process;
- (iv) EOL&T requested inspection of Mr Farah's evidence which took some time to arrange, creating further delays;
- (v) EOL&T's request to cross-examine Mr Farah was contested, resulting in an interlocutory hearing taking place where the finding was in favour of the applicant;
- (vi) Shortly after this hearing, Mr Farah surrendered his mark, at which time EOL&T had already been put to significant expense and delay, with the case taking nearly 3 years;
- (vii) EOL&T sets out its additional expenses, supported by copy invoices, as follows:
 - a. Invoice dated 27 February 2006 for £2,006 regarding work done in drafting the invalidation action;
 - b. Invoice dated 27 April 2006 for £1,000 regarding work in respect of the defence and counterstatement;
 - c. Invoice dated 15 June 2006 for £10,000 regarding work in respect of the witness statements of Ms Mezzarobba and Mr Cordoni;
 - d. Invoice dated 31 October 2006 for £2,254.41 in respect of evidence gathering, extension of time requests "and PROSONE matter";
 - e. Invoice dated 25 January 2007 for £1902.50 relating to the PROSONE case and extension requests in the PROSONE and NEOPROSONE cases;
 - f. Invoice dated 28 February 2007 for £6,265 in respect of extensions of time in the NEOPROSONE case, reviewing Mr Farah's evidence and preparing evidence in reply;
 - g. Invoice dated 27 June 2007 for £15,136.66 relating to a review of Mr Farah's forged evidence, requests for further information and original exhibits, drafting of EOL&T's evidence in reply;

- h. Invoice dated 26 September 2007 for £4,000 for preparing EOL&T's reply evidence, reviewing settlement proposals and criminal prosecution issues;
- i. Invoice dated 18 December 2007 for £2,750 relating to settlement proposals, review of cross-examination and evidence and requesting a hearing;
- j. Invoice dated 29 April 2008 for £6,501.96 relating to the PROSONE and LEMONVATE cases and the NEOPROSONE hearing;
- k. Invoice dated 22 August 2008 for £1,800 relating to an "old case involving Defendant", the LEMONVATE case and the PROSONE case;
- l. Invoice dated 21 October 2008 for £1,272 relating to the settlement offer, the NEOPROSONE hearing and skeleton arguments;
- m. Invoice dated 3 December 2008 for £10,115 relating to the PROSONE and NEOPROSONE cases.

16) It is submitted on behalf of Mr Farah that:

- (i) As these proceedings commenced in February 2006, they are subject to the scale of costs, since updated, as set out in TPN 2/2000;
- (ii) It is admitted that a number of documents emanating from the evidence appear to be unsafe (as conceded by Mr Farah, under cross-examination) and that this may have caused some additional time and effort, but it denies that this would justify costs for £83,227, as claimed by EOL&T in its letter of 10 May 2010 (The claim, as currently before me and detailed above, totals just over £63,000);
- (iii) Whilst these proceedings have been pursued, on behalf of EOL&T, by Page, White & Farrer, but that the invoices do not emanate from them and that the full fee of the attorneys was a smaller part;
- (iv) The disputed documents were not served until Mr Farah's second witness statement, dated 29 January 2007 with Ms Mezzarobba's response being filed on 13 June 2007. Consequently, the invoices recorded at f. and g. above and totalling £21,401.75 are the only invoices pertaining to the drafting of the reply evidence on this issue and, further, it is not possible to ascertain what proportion of these fees relates to the issue;
- (v) No expert witness was required and the proofs at issue regarded a simple review of telephone codes and typographical inconsistencies. Therefore, whilst it is conceded that there may be "some justification" for additional costs, it does not extend to such a cost;
- (vi) Page, White & Farrer's invoice for £9,500, dated 3 December 2008 is presumed to cover the cost of attending the case management conference ("CMC") of 26 September 2008. It is alleged that this fee is out of all proportion to what might be expected. The CMC was also in respect to a further request by Mr Farah to suspend the PROSONE proceedings and possible matters concerning other proceedings. Consequently, these costs cannot all be attributed to the issue of cross-examination;
- (vii) In summary, the invoices produced by EOL&T include costs in respect to other proceedings and where costs do relate to relevant expenditure, they appear to be entirely disproportionate;
- (viii) I am referred to the scale of costs applied by the Patent County Court ("PCC") being capped at £50,000 with a total for preparing witness

statements. If I was so minded to go off-scale then it should, in no circumstances, go beyond the scale applied by the PCC.

17) Under Rule 67 it is open to me to depart from the scale of costs in the exercise of the power to award such costs as I consider reasonable. In this respect, Tribunal Practice Note TPN 4/2007 is relevant, despite it relating specifically to a scale of costs applicable only to later cases. Its general comments regarding off-scale costs are relevant to the current proceedings also:

“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 itemising the actual costs incurred.

18) Having considered all of the above, it is clear to me that, being the successful party, EOL&T are entitled to an award of costs. I do not find it appropriate for an award of off-scale costs to be made in respect of the running of the case against Mr Farah in any respect other than to specifically address the issue of the altered documents. In all other respects, the award of costs will be on-scale.

19) Before considering this issue in more detail, I must comment on two issues. Firstly, Mr Farah has questioned the invoices from DLA Piper as they are not the EOL&T’s representatives in these proceedings. Page, White and Farrer explain that the reason for this is because they were instructed in the matter by Mr Nevill Cordell of DLA Piper UK LLP (and later of Allen & Overy LLP). I see no issue with this as the invoices still relate to costs incurred by the EOL&T. I will therefore consider these invoices in my analysis. Secondly, Mr Farah submits that no expert witness was required, but the narrative accompanying EOL&T’s invoices make a number of references to a forensic expert being considered and, at the very least, quotes were sought and received in respect of their services (it is not clear from the narrative whether such services were actually procured). These actions relates directly to the

issue of the altered documents and consequently, it is right and proper that costs incurred in respect of forensic experts are included in my assessment of off-scale costs, even if the limit of this was to consider the need for, obtain quotes from, and then ultimately dismiss the need for such an expert.

20) In respect to the issue of the altered documents, as pointed out by Mr Farah, much of the claim submitted by EOL&T is not relevant as it relates to a period prior to admission into the proceedings of the altered documents. These documents were submitted with Mr Farah's witness statement dated 27 January 2007 and were addressed in Ms Mezzarobba's witness statement of 13 June 2007. Therefore, it is clear that the invoices dated before 27 January 2007, namely those detailed in (a) to (e) of paragraph 15(vii) above, can be ignored for the purpose of this exercise. Costs incurred during this time can be adequately met from the published scale.

21) When considering the related "narratives" to the remaining invoices it is clear that there are no costs that specifically go to the issue of the altered documents in the invoices detailed in (h) to (m) of paragraph 15(vii) above. As submitted on behalf of the proprietor this leaves the invoices detailed at (f) and (g) above. I have reviewed the narrative accompanying these two invoices and many of the items do not relate to this issue. However, the relevant items that do appear to wholly or partially relate to the issue of the altered documents are detailed in the table below, together with a brief explanation of my finding on the costs relevant to the issue:

Date (all 2007)	Amount booked	Relevant Narrative	Relevant costs awarded
2 Feb	£556.50	Review of witness statement of Michel Farah	£556.50
5 Feb	£39.50	Disc evidence served by Farah [...]	£39.50
5 Feb	£318	Review of evidence filed by Farah	£318
6 Feb	£395	Reading of Mr Farah's evidence	£150: Proportionate amount for reading the evidence that included the altered documents
13 Feb	£185.50	Reading of NEOPROSONE evidence	£80: Proportionate amount for reading the evidence that included the altered documents
14 Feb	£318	Liaising [...] re possibility of original documents; analysis of invoices re potential for original copies; [...] [two of 3 issues listed]	£206: Proportionate amount for two relevant items of the three listed
15 Feb.	£424	Liaising re possibility of original documents; analysis of invoices re potential for original copies; [two of 3 issues listed]	£280: Proportionate amount for two relevant items of the three listed
19 Feb	£1484	Drafting second witness statement of Teresa Maria	£330: Applying the 18/81 rule

		Mezzarobba in response to the second witness statement of Michel Maurice Farah	
20 Feb	£2067	Drafting witness statement for Teresa; [plus one other issue]	£230: Being 18/81 of half the amount booked
21 Feb	£583	Amending Teresa's second witness statement	£130: Applying the 18/81 rule
27 Feb	£132.50	Tel call with James Cornish; [...]; review of documents to request original format [one of 2 issues discussed]	£70: Proportionate amount for the final item listed
27 Feb	£159	Final edits to second witness statement [...]	£55: Applying the 18/81 rule
27 Feb	£132.50	Confirmation re requests for original exhibits to Farah's statement	£132.50
1 March	£48	Considering further bills of lading. Email [...] setting out comments on whether or not the bills may be forged documents	£48
1 March	£39.50	Reading our shipping dept comments on bills of lading	£39.50
1 March	£106	Review of Farah's exhibits further to bills of lading analysis	£106
2 March	£53	Correspondence re bills of lading	£53
6 March	£424	Bill of lading research [one of 4 issues listed]	£150: Proportionate amount to reflect the work conducted in respect of the bills of lading
7 March	£583	Review of Farah's exhibits; close analysis of requests for originals ...	£583
15 March	£159	Discussion re forged documents... [one of two issues listed]	£80: Proportionate amount for work undertaken specific to the altered documents
19 March	£106	Following up [...] re possible forged documents [one of 3 issues followed up]	£35: Proportionate amount for work undertaken specific to the altered documents
19 March	£106	Following up [...] re possible forged documents; [one of three issues listed]	£8: Being 18/81 of a third of the amount booked
22 March	£671.50	Reviewing draft 2 nd w/s of Teresa; [one of two issues listed]	£75: Being 18/81 of half the amount booked
22 March	£1405	[...] analysis of documents and amending witness statement [one of two issues listed]	£156: Being 18/81 of half the amount booked
23	£450.50	Research re forensic expert [one	£150: Proportionate

March		of three issues listed]	amount to reflect work relating to the altered documents
23 March	£715.50	[...] follow up re originals and request for further originals [...] [one of 3 issues listed]	£240: Proportionate amount to reflect work relating to the altered documents
27 March	£530	[...] chasing re inspection of documents [one of 5 issues listed]	£110: Proportionate amount to reflect work relating to the altered documents
4 April	£132.50	Follow up meeting [...] re next steps for witness statement/evidence	£30: Applying the 18/81 rule
4 April	£106	Instructions and quotes from forensic experts	£106
5 April	£583	[...] follow up re original exhibits [...] [one of 4 issues listed]	£200: Proportionate amount to reflect work relating to the altered documents
10 April	£450.50	Following up with forensic experts [...] [one of 3 issues listed]	£150, being approximately a third of the costs listed for the 3 issues.
11 April	£53	Tel call [...] re forensic examination of documents	£53
17 April	£530	[...] review of forensic expert quotes; instructions [...] re review of MMF9 [...] [two of 4 issues listed]	£265, being half of the costs listed to reflect 2 of the 4 issues listed being relevant
24 April	£106	[...] forensic expert advice [...] [one of 3 issues listed]	£35, being approximately one third of the amount billed, to reflect one of the three issues being relevant
26 April	£39.50	Reading email from Farah's TM agents re inspection of originals	£39.50
26 April	£132.50	Review of statement prior to inspection of exhibits tomorrow	£132.50
27 April	£1007	Meeting [...] prior to examination of exhibits; examining and photographing exhibits at Beck Greener; meeting [...] at Beck Greener; discussion re time extension and originals; further examination and copying of exhibits	£1007
27 April	£238.50	Dictation of inspection of documents	£238.50
2 May	£344.50	Drafting review further to examination of exhibits	£344.50

4 May	£53	Finalising note on inspection of files	£53
8 May	£79	Tel [...] re evidence/inspection	£79
13 May	£118.50	Reading letter from Beck Greener re original documents; email [...] re same	£118.50
29 May	£2067	Redrafting second witness statement of Teresa; new format re synopsis at beginning; updating further examination of originals	£997: Applying 18/81 rule to first two items and a third of full amount booked for final item that relates wholly to examination of the original documents
30 May	£1935	Drafting and finalising witness statement; [...] inspection of best copies [two of four issues listed]	£215: Being 18/81 of two fourths of the amount booked
31 May	£908.50	Drafting w/s of Teresa; emailing to [...]	£101: Applying 18/81 rule
31 May	£901	Marking up and amending witness statement; [one of three issues listed]	£67: Being 18/81 of a third of the amount booked
1 June	£212	[...] amendments further to discussions with shipping department [one of two issues listed]	£24: Being 18/81 of half the amount booked
6 June	£344.50	Reviewing updated witness statement from Teresa Mezzarobba	£77: Applying the 18/81 rule
6 June	£291.50	Drafting amends to witness statement further to comments from Teresa	£65: Applying the 18/81 rule
8 June	£238.50	Further amends to witness statement; further to client comments; amends to exhibits	£53: Applying the 18/81 rule
8 June	£1113	Redrafting witness statement; track changes to all amends; compiling all exhibits; request for outstanding exhibits; response raised in previous draft; final form witness statement for execution on Monday	£248: Applying the 18/81 rule
10 June	£1580	Reviewing draft w/s of Teresa and amending [one of two issues listed]	£176: Being 18/81 of half the amount booked
11 June	£553	Finalising w/s of Teresa [one of two issues listed]	£62: Being 18/81 of half the amount booked
11 June	£158	Tel [...] to discuss points on Teresa's w/s	£35: Applying the 18/81 rule
11 June	£1378	Further amends to witness statement [one of four issues	£77: Being 18/81 of a quarter of the amount

		listed]	booked
11 June	£118.50	Reviewing [...] amendments to final draft w/s for Teresa; reviewing exhibits to w/s	£27: Applying the 18/81 rule
11 June	£106	Further amends to statement further to discussion [...] [one of two issues listed]	£12: Being 18/81 of half the amount booked
12 June	£450.50	Review of amended witness statement [one of three issues listed]	£34: Being 18/81 of a third of the amount booked
15 June	£1140	[...] scanning of all documents deemed to be forged [...] [one of 4 issues listed]	£285: Proportionate amount to reflect the work involved in scanning the altered documents
TOTAL OFF-SCALE COSTS			£9817.50

22) In Ms Mezzarobba's second witness statement (that provides EOL&T main response to Mr Farah's evidence) eighteen of its eighty one paragraphs deal with the issue of the altered documents. Consequently, the costs awarded in respect of preparing and delivering this statement, as detailed in the table above, have been calculated on the basis of a proportion approximately equivalent to 18/81 and referred to in the table as "the 18/81 rule".

23) Consequently, I consider that EOL&T should be entitled to an award of costs detailed as follows (according to the published scale detailed in TPN 2/2000, unless otherwise stated):

Work undertaken	Costs
Notice of Opposition and accompanying statement	£500
Considering statement of case in reply	£200
Preparing and filing evidence and considering other side's evidence	£1500
Additional off-scale costs relating to the altered documents, forensic experts and inspection of original documents and the relevant proportion of Ms Mezzarobba's witness statement addressing the issue of altered documents	£9817.50
Preparation for cancelled hearing	£300
TOTAL	£12317.50

24) Therefore, I find that EOL&T should be awarded costs of £12317.50. That includes off-scale costs covering the work reasonably and properly undertaken in the presentation of evidence and submissions demonstrating that some of the Mr Farah's documents were altered.

Summary

25) I award costs on the following basis:

- (i) Each party to bear its own costs with regards to the Interlocutory Hearing;
- (ii) Each party to bear its own costs with regards to the current PROSONE proceedings;
- (iii) Mr Farah is to pay the EOL&T the sum of £12317.50. In respect of the earlier proceedings relating to the invalidation proceedings against the registration of the mark NEOPROSONE.

26) I order Michel Farah to pay Elko Organisation Limited and Tecomomed S.r.l. the total sum of £12317.50. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

27) The appeal period for both the substantive decision BL O-345-11 and the issue of costs begins with the date of issue of this supplementary decision.

Dated this 14th day of February 2012

**Mark Bryant
For the Registrar
The Comptroller-General**