

O/274/12

TRADE MARKS ACT 1994

**APPLICATIONS 83083-86 & 83353 BY BRANDCONCERN B.V.
TO REVOKE TRADE MARK REGISTRATIONS 831769, 874581, 2107935,
2122788 and 2134922**

IN THE NAME OF SCOOTERS INDIA LIMITED

BECAUSE OF NON-USE

Decision on Costs

1. These consolidated proceedings concern five applications by Brandconcern BV ("Brandconcern") to revoke five registrations for the trade mark LAMBRETTA in the name of Scooters India Limited ("Scooters").

2. I gave a decision on 6 June 2012 on behalf of the Registrar in which I directed that:

- i) Trade mark registrations 831769 and 874581 in class 12 should be revoked in their entirety.
- ii) Trade mark registration 2107935 should be revoked except for „Clothing, all for leisurewear, but not including underwear; footwear.’
- iii) Trade mark registration 2122788 should be revoked except for „Watches and parts and fittings for watches’.
- iv) Trade mark registration 2134922 should be revoked except for Class 14: „Watches and parts and fittings for watches’, and Class 25: „Clothing, but not including underwear; footwear.’

3. I invited the parties to make written submissions on costs.

4. I have since received written submissions from Boulton Wade Tennant on behalf of Scooters to the effect that, as the applications partly succeeded and partly failed, each side should bear its own costs.

5. I also received a written communication from Walter Scheffran on behalf of Brandconcern which stated: *“in relation to these five conjoined cases, we request the Registry to award the costs to the Registered Proprietor as the less successful party”*. This appears to invite me to award costs to Scooters and therefore against Brandconcern. However, as English is not Mr Scheffran’s first language, I think he is actually asking for an award of costs to Brandconcern and therefore against the registered proprietor.

6. The revocation applications were directed at all the goods covered by the LAMBRETTA registrations described above. It is true that two of the registrations were completely revoked and the other three registrations were more than 50% revoked. So Brandconcern was more significantly more successful than Scooters on the substance of the dispute. However, Brandconcern was unsuccessful on a series of procedural applications. These

were described in paragraphs 69-94 of my earlier decision. Essentially, Brandconcern:

- i) Made a request to add further applicants to its applications, which it subsequently withdrew at a Case Management Conference (“CMC”) on 10/09/09.
- ii) Unsuccessfully challenged Scooters’ previous representatives’ authority to act. That challenge was rejected at a hearing held on 18/08/10.
- iii) Made an unsuccessful application for security for costs, which was also considered at the hearing held on 18/08/10 and later rejected in a letter dated 5/10/10.
- iv) Unsuccessfully objected to Scooters’ application under Rules 74, 76 & 77 to belatedly enter an EEA address for service. That challenge was rejected at a CMC on 21/09/11.
- v) Unsuccessfully sought leave to appeal that decision independently of an appeal on the substance of the proceedings. That application was rejected at a hearing held on 24/11/11.
- vi) Unsuccessfully applied for more time to file evidence. Scooters objection to that request was substantially upheld at a CMC held on 24/02/12.

7. Although none of these applications were individually unreasonable, taken together they demonstrate what I consider to have been an obstructive and unreasonable approach to the proceedings. Further, whether or not that is right, all these applications must have caused Scooters costs and they all failed.

8. As Tribunal Practice Notice 2/2000 makes clear, the Registrar's Hearing Officers have a wide discretion to award costs, which must be exercised on judicial principles and must not lose sight of the costs caused by procedural applications. In the circumstances before me, I have no hesitation in rejecting Brandconcern's application for an award of costs (if that is what it is). Each side should bear its own costs.

Dated the 18th of July 2012

**Allan James
For the Registrar**