

Decision under the Companies Act 2006

In the matter of application No. 348

By Collier Campbell Limited

For a change of company name of registration

No. 07712395

DECISION ON COSTS

Background

1. This is a decision on costs against which there is, under section 74 of the Companies Act 2006 (“the Act”), no right of appeal. As a consequence, I have, where I consider it appropriate and to do justice to the parties’ competing submissions, reproduced below verbatim certain parts of the pleadings and submissions filed.

2. On 17 August 2011, Collier Campbell Limited (hereafter “the applicant”), made an application under the provisions of section 69(1) of the Act, for a change of name of the company registered under no. 07712395. At the time of the application, the company name was COLLIER CAMPBELL ARCHIVE LIMITED (hereafter “the respondent”). Having explained in its application form that it is the name Collier Campbell which had caused it to make the application, the applicant stated:

“10. [The applicant] acquired from the liquidator of Collier Campbell Global Colours Limited in October 2010 its assets for the sum of £16,000. These assets included the rights of Collier Campbell Global Colours Limited in the name “Collier Campbell” and its goodwill. [The applicant] has since been trading under that name which has reputation and goodwill in it.

11. Collier Campbell Global Colours Limited and its predecessors in business (“the Collier Campbell Businesses”) have been inventing and painting textile designs since the 1960s. The merchandise bearing the Collier Campbell Businesses’ designs includes printed, woven and embroidered fabrics of all kinds intended for many uses: apparel and accessories, bedding, towels, throws, home furnishings and carpets as well as ceramics, wallpaper, stationery and gift wrap.”

In its application, the applicant stated that it did not consider the respondent to have any defences to the application.

3. A copy of the application was sent to the respondent’s registered office on 7 September 2011, in accordance with rule 3(2) of the Company Names Adjudicator Rules 2008 (“the rules”) and a period expiring on 7 November 2011 was allowed for a defence to be filed on form CNA2. In a letter issued to the applicant on the same day,

the applicant was allowed until 7 November 2011 to indicate if it wished to join a member, director or designated member of the respondent to the proceedings. In a letter dated 14 October 2011, the applicant responded to that invitation. It did so, in the following terms:

“...we wish to request that Mr Allan Martin Edwards be joined to the proceedings as a co-respondent.

Mr Edwards is a director of the respondent...We request that Mr Edwards be added as a co-respondent to the proceedings because he controls the respondent and is responsible for the respondent's actions. Therefore, we consider that he should be responsible for any costs awarded in our client's favour, especially as the respondent was only recently incorporated and may not have funds to pay such costs.”

4. In a letter dated 8 November 2011, the Tribunal wrote to Mr Edwards and allowed him until 8 December 2011 to comment upon the applicant's request. On 7 November 2011, the respondent filed form CNA5 to request an extension of time of 14 days to file its defence to the application. The form, which was completed by Mr Edwards, contained the following as the basis for the request:

“Response delayed due to respondent's director's absence from UK and delayed assistance from solicitors.”

In a letter dated 14 November 2011, the Tribunal granted the respondent's request and the deadline for filing a defence was extended to 21 November 2011.

5. As no response was received to the official letter of 8 November 2011 sent to Mr Edwards, the Tribunal, in a letter dated 6 January 2012, indicated that Mr Edwards had been joined to the proceedings as a co-respondent. In accordance with rule 5(3) of the rules, Mr Edwards was allowed until 20 January 2012 to request a hearing on this point; no response to that letter was received. On 21 November 2011, the respondent filed its defence to the application. Having asked the applicant to provide: “sufficient evidence to prove all the objections raised in the statement of grounds”, the respondent went on to explain:

“The Collier Campbell name (“the Name”) uniquely identifies the business carried on by Sarah Campbell and Susan Collier (and now her estate) or with their authority and consent. It has come to be associated with Sarah Campbell and Susan Collier and no other. [The respondent] is acting with the consent and authority of Sarah Campbell and Susan Collier (and now her estate) in dealing with other works produced by Sarah Campbell and Susan Collier.

There is and can be, as a matter of law, no goodwill in the Collier Campbell Limited name in isolation. Insofar as the Name is concerned, the goodwill vests in the business carried on by the individuals Sarah Campbell and Susan Collier

(and now her estate). The applicant has previously acknowledged this in a letter sent to Alan Martin Edwards on 4 August 2011. [The applicant] purchased the assets of Collier Campbell Global Colours Limited in October 2010. However, Collier Campbell Global Colours Limited had no rights in the Name and the liquidator of Collier Campbell Global Colours Limited could not therefore have assigned any rights to [the applicant]. To the extent that Collier Campbell Global Colours Limited and [the applicant] carried on that business it was under a licence from Sarah Campbell and Susan Collier (and now her estate) and all goodwill vests in Sarah Campbell and Susan Collier (and now her estate).

Insofar as the Collier Campbell archive is concerned, the goodwill vests in the business carried on by Sarah Campbell and Susan Collier in respect of the archive which is (and has at all material times been) controlled by Sarah Campbell and Susan Collier (and now her estate).

Indeed, [the applicant] does not in fact have any right to use the Name except solely to refer to the artistic works created by Sarah Campbell and Susan Collier (and now her estate) as part of the business carried on under or by reference to the Name, or to the extent that such artistic works form part of the Collier Campbell archive and are expressly licensed to [the applicant].

Accordingly it is inconsistent and misleading for the applicant to claim rights in the Name and the underlying goodwill and therefore [the respondent] denies that [the applicant] has any requisite right to prevent use of the name by [the respondent]. On the contrary, [the respondent] is entitled to restrain use of the name by [the applicant].

In accordance with the above information and section 69(4) (d) & (e) Companies Act 2006, [the respondent's name] was adopted in good faith and that the interests of the applicant are not adversely affected to any significant extent."

6. In a further letter issued on 6 January 2012, the applicant was notified by the Tribunal that a form CNA2 and defence had been received, and the applicant was advised that if it wished to maintain its application evidence in support of its claims should be filed by 6 March 2012. On 5 March 2012, the applicant filed the witness statement of Judith Barbara Lever; Ms Lever is the applicant's sole director and shareholder. The statement ran to 6 pages and 22 numbered paragraphs and was accompanied by exhibit JBL1 (consisting of 71 pages). In a letter dated 12 April 2012, the Tribunal allowed the respondent until 12 June 2012 to file any evidence it considered appropriate. On 12 June 2012, the respondent filed evidence. This consisted of a witness statement from Sarah Campbell which consisted of 9 pages and 37 numbered paragraphs and was accompanied by exhibit SC1 consisting of 5 pages. In a letter dated 22 June 2012, the Tribunal allowed the applicant until 22 August 2012 to file evidence in reply to Ms Campbell's statement. On 22 August 2012, the applicant filed its evidence in reply. This consisted of a further statement from Ms Lever (consisting of 8 pages and 27 numbered paragraphs) and was accompanied by exhibit JBL 2 consisting of 19 pages.

7. In a letter dated 25 September 2012, the Tribunal notified the parties that the evidence rounds were complete and the case was ready for substantive determination. The parties were allowed until 23 October 2012 to indicate if they wished to be heard or until 6 November 2012 to provide written submissions, if a decision was to be made from the papers on file. In a letter dated 30 September 2012, the applicant stated:

“We would inform you that [the applicant] has also applied to register COLLIER CAMPBELL as a trade mark...and that this application has been opposed...by Sarah Campbell and the Estate of Susan Collier. We understand that the Hearing Officer in the trade mark case is expected to issue his decision within a couple of months. These two sets of proceedings are related, with the evidence being based on overlapping sets of facts. We would suggest that [the Tribunal’s] decision be deferred until after trade mark opposition is decided in the Intellectual Property Office...”

8. The applicant asked for the date for the provision of written submissions to be extended until the decision of the hearing officer in the trade mark proceedings was known. In a letter dated 23 November 2012, the Tribunal allowed the respondent a period of 14 days to comment upon the applicant’s request; the respondent did not respond to that invitation. In a letter dated 5 February 2013, the Tribunal noted that a decision in the opposition proceedings had been issued on 16 January 2013 and indicated that these proceedings would be stayed until 16 February 2013. The Tribunal allowed the parties a further period expiring on 16 March 2013, to advise the Tribunal if these proceedings were, inter alia, to continue. In a letter dated 22 February 2013, the applicant wrote to the Tribunal. In that letter it stated:

“In view of the decision on the trade mark proceedings, and (as we understand) since there has been no appeal against this decision, we would hope that the respondent would withdraw its defence and change its name without the need for further proceedings. In any event, the decision on the trade mark opposition proceedings demonstrates that the respondent’s defence has no reasonable prospect of success or is otherwise misconceived and so, in our view, if the defence is not withdrawn, it should be struck out.

We would ask that our client be awarded its costs.”

9. On 8 April 2013, the respondent changed its name to: SARAH CAMPBELL DESIGNS LIMITED. In a letter dated 2 July 2013, the Tribunal noted the change of name. It indicated that as the new name did not appear to be an offending name, the application appeared to be without object and it was, subject to the issue of costs, minded to close the case. In a letter dated 9 July 2013, the applicant agreed, subject to the issue of costs, to the case being closed. In a letter dated 31 July 2013, the Tribunal allowed the applicant until 13 August 2013 to provide a breakdown of the costs sought. In a letter dated 13 August 2013, the applicant stated:

“We would request the costs set out below. We would ask if the Adjudicator could please award our client off-scale costs in view of the unreasonable behaviour of the respondents. Essentially, they appear to have failed to consider the evidence until very late in the day. This meant that they did not change their company name until the Trade Marks Registry issued a decision in parallel proceedings concerning the opposition by Sarah Campbell and another to our client’s application to register the COLLIER CAMPBELL trade mark. Ms Campbell’s opposition failed, and the hearing officer made a number of criticisms of her evidence – see, in particular, paragraphs 25-27, and 34, of his decision...Ms Campbell provided the only evidence in support of the respondents in this case, and it bore, the same faults as that provided to the Trade Marks Registry and also considerable irrelevant comment. We consider that, had the respondents given any real consideration to points that we made in correspondence with them and their solicitors before our client’s preparation of statements and formal evidence, or even application, to the Company Names Tribunal, or properly investigated their own position, the present proceedings could have been avoided.”

10. The costs sought by the applicant were as follows:

| Procedure | Costs |
|---|-------------------------|
| Preparing a statement and considering the other side’s statement: | £3,772,00 |
| Preparing evidence and considering and commenting on the other side’s evidence: | £4,721.07 |
| Expenses – IPO filing fees: | £400.00 |
| Other costs – correspondence with the Respondents/their solicitors: | £6,039.08 |
| Total | £14,932.15 + VAT |

11. In a letter dated 29 August 2013, the Tribunal allowed the respondents until 11 September 2013 to comment upon the applicant’s request. In a letter dated 9 September 2013, the respondents stated, inter alia:

“However, it is clear that what the Applicant has provided in its letter dated 13 August 2013, is woefully inadequate as a *breakdown of costs*.”

In particular, the Adjudicator will note that although the applicant seeks costs totalling £14,932, it makes no attempt to give proper detail about what these costs are. Instead, it sets out just four rather vague categories of costs and then leaves the Adjudicator and respondent to try and guess exactly what these costs might be and what they refer to. For example, how are the Adjudicator and

respondent supposed to tell the difference between “preparing a statement and considering the other side’s statement” and “preparing evidence and considering the other side’s evidence.”

In order to comment properly on the costs being claimed, both the Adjudicator and respondent need to know exactly what work was carried out, by whom and when.

In addition, from the narrative at page 1 of the applicant’s solicitor’s letter, it appears as though the applicant is seeking costs incurred in relation to the proceedings before the Trade Marks Registry.

Not only are we not able to tell what level of costs this accounts for in the total of £14,932 but the applicant makes no attempt to set out the basis upon which it considers that the Company Names Tribunal should have jurisdiction to make a costs order in respect of costs incurred in another forum.

Consequently, we consider that before the respondent can respond both on the principle that it should pay costs relating to the proceedings in the Trade Marks Registry (sic), the applicant should properly explain its position in this regard and provide a detailed breakdown of the £14,932.15 of costs it claims.

Until such information is provided the respondent cannot possibly understand the case it is being asked to meet.

We respectfully request, therefore, that the adjudicator asks the applicant to provide the aforementioned information and that the applicant (sic) have sufficient time thereafter to provide its comments.”

12. In a letter dated 25 October 2013, the Tribunal sought: “a more comprehensive breakdown” of the costs the applicant was seeking and a period expiring on 15 November 2013 was allowed for this purpose. The applicant responded in a letter dated 15 November 2013. In that letter it stated:

“We would also clarify that we are not seeking costs in relation to the proceedings before the trade marks registry, which were conducted by other lawyers. Our correspondence with the co-respondents’ solicitors will have involved discussions of the trade mark position because this was essential to the matter referred to the Company Names Tribunal.”

13. Whilst the quantum of costs sought by the applicant remained the same i.e. £14,932.15 + VAT as did the manner in which it was broken down, I note that the words “Other costs...” (which appeared in the applicant’s first request) was replaced by “Off-scale costs...” The applicant did, however, provide an indication of disbursements incurred, and provided the names and statuses of those undertaking the work, the total time spent and the amount per hour each individual charged. In a letter dated 11

December 2013, the Tribunal allowed the respondent until 25 December 2013 (subsequently amended to 17 January 2014) to comment upon the applicant's revised request.

14. In a letter dated 16 January 2014, the respondent stated, inter alia:

"...we are surprised that in its letter dated 15 November 2013, the applicant solicitors have provided very little additional information about the applicant's claims for costs...No attempt whatsoever has been made to address the concerns raised in our letter dated 9 September 2013 despite the ease with which the applicant could have provided a detailed breakdown of its costs from its solicitors computerised time recording software.

...we are provided with nothing more than a bare denial that the costs claimed do not include costs relating to the trade marks registry but without any evidence to support that assertion. Again, that failing could quite easily have been remedied by a detailed breakdown of costs.

In the circumstances, there is still very little that the respondents can say about the applicant's application for costs other than to challenge its right to recover such costs in any event and to assert that the total claimed is disproportionately high. However, the applicant (sic) would wish to comment further on these issues as and when further information (and preferably a detailed breakdown) is provided and we would respectfully suggest that the Adjudicator again asks the applicant to provide this further information and thereafter allow the respondent to make appropriate submissions once it has been given the opportunity to consider the additional information.

If the applicant refuses to provide such further information that we respectfully submit that the applicant's application for costs should fail in its entirety."

15. Given the very clear differences in the respective parties' positions, the applicant's request for costs had first been itemised in its letter of 13 August 2013 and in an effort to minimise additional costs being incurred, I directed a Case Management Conference ("CMC") be held to discuss the matter further.

16. A CMC took place before me, by telephone, on 1 April 2014. At the CMC, the applicant was represented by Ms Kruse of Dentons UKMEA LLP; the respondents were represented by Mr King of Sheridans. Following the CMC, I wrote to the parties in the following terms:

"The CMC was appointed to discuss SCDL's requests for better particulars in response to CCL's request for an award of off the scale costs. Whilst at the CMC Mr King accepted that CCL was entitled to an award of costs, he challenged, inter alia, the quantum of costs currently being sought and the level of detail provided by CCL to support its request.

I heard both parties' submissions and explained my own reservations about the request as it currently stands. Further, at the CMC, you explained that the figures provided by you in relation to "preparing a statement/preparing evidence" etc. will need to be reconsidered to apportion them to the correct headings.

As I indicated, **CCL is allowed a final 14 days from the date of the CMC to review its request in light of the discussions at the CMC and to provide a revised request for costs.** This request should be copied to **SCDL, who is then allowed a final 14 days from receipt by it of that letter to comment upon it.** On receipt of both parties' submissions, I will, as I explained at the CMC, issue a decision on costs. As per section 74 of the Act, there is no right of appeal against that decision."

17. In a letter dated 11 April 2014, the applicant provided a revised request for costs accompanied by a detailed breakdown of by whom and in relation to what the costs were incurred. The revised request for costs is as follows:

| Procedure | Initial request | Revised request |
|---|-------------------------|------------------------|
| Preparing a statement and considering the other side's statement: | £3,772.00 | £897 |
| Preparing evidence and considering and commenting on the other side's evidence: | £4,721.07 | £7577 |
| Expenses – IPO filing fees: | £400.00 | £400 |
| Off-scale) costs – correspondence with the Respondents/their solicitors: | £6,039.08 | £4095 |
| Total | £14,932.15 + VAT | £12,969 + VAT |

In its letter the applicant states, inter alia:

"In the first two rows of the table [above], the costs have been re-allocated as between preparing and considering Forms CNA1 and CNA2 on the one hand and preparing and considering evidence on the other hand, I have rounded down a couple of figures.

I have also deducted any "pre-litigation" costs from the off-scale costs.

I do hope this will be sufficient and in proportion to this matter, given the amount of time spent and that has passed..."

18. The respondent commented upon the above in its letter of 25 April 2014. In relation to the first two categories in the table shown above, the respondent states:

“No explanation or justification for seeking costs in excess of those [set out in the Practice Direction] is given.

In any case, it is quite clear that this was not a case that required an exceptional amount of evidence to be prepared. Indeed, the evidence relied upon by [the applicant] was “light” and in these circumstances, the respondent should not have to pay the cost of work which was either not relevant or necessary.

The narrative provided by Dentons in respect of costs does not properly identify how the work undertaken was necessary to the preparation of evidence.

Not only are the costs sought in respect of statements and evidence, significantly above those in the scale and should not, therefore, be recoverable, but we also contend on behalf of our clients that the total costs claimed are disproportionate and, as far as we are able to tell from the information provided, result from a number of instances where work has been duplicated as a result of a team of some 6 fee earners being involved in the matter...

In summary, there is no need to depart from the scale costs and even then, in respect of evidence, the award should be closer to £500 rather than £2,500, as a result of the volume of evidence produced, and the amount awarded for work on statements should be no more than the £300-£500 specified.”

In relation to the off-scale costs sought, the respondent states:

“...[The applicant] have made very limited effort to explain why off-scale costs are appropriate in the current circumstances.

As no wide breaches of the rules by our clients or delaying tactics have ever been mentioned by [the applicant] we presume that they continue to allege (as they did on the recent [CMC]), that there was some unreasonable behaviour on the part of our clients.

Although the assertion was made orally, no further detail has been provided in their letter of 11 April 2014 and it is therefore impossible for our clients to respond properly. However, we would point out that there is nothing to support [the applicant's] assertion that our clients conduct was unreasonable at any stage. Our clients had belief in the strength of their case and defended the claims accordingly. There has been no finding that our client's defence was so lacking in any merit that it should not have been advanced in the first place and we therefore submit that [the applicant] has failed to satisfy the criteria pursuant to which the Tribunal might award off-scale costs.

In the event that the Tribunal is minded to award off-scale costs, contrary to what we say above, then we consider that the costs sought are wholly disproportionate (the amount being more than would usually be awarded for the preparation of statements and evidence put together!) and should therefore be significantly reduced. Moreover, included in the costs sought are costs which appear to have been unnecessarily incurred as they relate to *inter partes* correspondence which was not intended to and did not in fact, further the Tribunal proceedings.

It is also wholly unacceptable for [the applicant] to seek to recover costs for administrative matters such as “*calling... to find out if evidence received safely, chasing Post Room...calling the Post Office*” and “*voicemail to Co Names Tribunal*” and associated internal communications. No explanation is provided for the request for costs relating to correspondence with Collier Campbell Global Colours liquidators or communications with client in relation to “strategy”.

19. To the extent that I consider it necessary, that concludes my summary of the background and submissions of the parties.

Decision

20. Rule 11 of the rules states:

“The adjudicator may, at any stage in any proceedings before him under the Act, award to any party by order such costs (in Scotland, expenses) as he considers reasonable, and direct how and by what parties they are to be paid.”

21. The relevant parts of the Tribunal’s Practice Direction read as follows:

“9.0 Voluntary change of name

9.1 New name does not appear to adjudicator to be an offending name

9.2 Name changed after CNA1 served

9.2.1 The adjudicator will be minded to decide that the application is without object and the application will be closed.

9.2.2 If any of the parties object to the closing of the proceedings the adjudicator will consider the merits of the objection(s) and decide on the course of action to be followed.

9.2.3 If the company has voluntarily changed its name after the application has been filed and it had notice that an application would be made, an award of costs could still be made against the newly named company as it remains the same legal entity as the originally named company. Any award of costs would be dependent upon the applicant seeking an award of costs and satisfying the

tribunal that the respondent had received sufficient notice that the application would be made (see 10.4). Requests for costs in such cases will be considered on the facts of the individual case.”

“10.0 Costs

10.1 Scale of costs

10.1.1 Under rule 11, the adjudicator may award costs (in Scotland, expenses) to any party in the proceedings. The adjudicator will not normally award the actual costs incurred but will follow a scale of costs. The scale of costs will give an indication to the parties at the outset as to what they are likely to have to pay if they lose.

For those with legal representation the scale of costs will be as follows:

| Procedure | Costs |
|---|---|
| Preparing a statement and considering the other side’s statement. | From £300 to £500 depending on the nature of the statements. |
| Preparing evidence and considering and commenting on the other side's evidence. | From £500, if the evidence is light, to £2,500 if the evidence is substantial. The award can go above this range in cases involving an exceptional amount of relevant evidence but may be cut down if the successful party had filed a significant amount of unnecessary evidence. |
| Preparing for and attending a hearing. | Up to £1,500 per day of hearing, capped at £3,000 for the full hearing unless one side has behaved unreasonably. From £100 to £500 for preparation of submissions, depending on their substance, if there is no hearing. |
| Expenses. | (a) Official fees arising from the action that have been 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. |

Those without representation will normally receive 50% of the above but will receive the full expenses.

10.5 Off-scale costs

10.5.1 There are exceptions to the practice of awarding costs from the scale, such as unreasonable behaviour. In particular, it should be noted that the

adjudicator expects that a prospective applicant will have sent the respondent a letter before action and properly considered any response prior to filing an application to the tribunal. If an application is unsuccessful because the respondent shows a valid defence under section 69(4) of the Act (such as that it is conducting a legitimate business under the company name) which should have been obvious to the applicant if reasonable pre-action enquiries had been made, the adjudicator will be willing to consider a request from the respondent for an award of costs above the usual scale. Such an award would be made in order to compensate the respondent for the unreasonable behaviour of the applicant; that is, by making an unrealistic application which the respondent has been put to the burden of defending.

10.5.2 If it becomes apparent that a particular party is persistently causing successful applications to be made to the tribunal, the adjudicator will be willing to consider requests for an award of costs off the scale to the applicant(s).

10.5.3 The adjudicator may award costs off the scale, approaching full compensation, to deal proportionately with wide breaches of rules, delaying tactics or other unreasonable behaviour. Any claim for costs approaching full compensation will need to be supported by a bill itemising the actual costs incurred.

10.5.4 The adjudicator may award costs below the minimum indicated by the standard scale. This could happen where, for example, the statement of case/counterstatement and/or evidence is very limited or where a good deal of superfluous and/or irrelevant evidence has been filed.”

22. Although during the course of its written submissions the applicant changed the wording of one element of its claim from “Other costs – correspondence with the respondents/their solicitors” to “Off-scale costs - correspondence with the respondents/their solicitors”, at the CMC, Ms Kruse confirmed that the applicant was seeking to recover its actual costs (including those costs relating to correspondence between the parties and their legal advisors”). However, as I explained at the CMC, the latter category of costs will not feature in my considerations because it does not, in my view, relate to costs incurred in relation to the proceedings. Whilst (not surprisingly) Mr King agreed with my approach in this respect, he did not dispute that the applicant was entitled to a contribution towards the costs it had incurred; what he did not accept was the quantum of costs sought.

23. The basis of the applicant’s claim for off-scale costs is contained in paragraph 9 above. It can be summarised as (i) the respondents acted unreasonably because they did not give any real consideration to the points made by the applicant in correspondence between the parties or investigate their own position before the application was launched, (ii) they failed to consider the evidence filed until late in the day, (iii) their evidence contained a number of faults and irrelevant comments, and (iv) they did not change the company name until an adverse decision in the parallel

opposition proceedings had been made against them. The respondents' position is that they had belief in the strength of their case and defended the claims accordingly. There is, they further argue, nothing to suggest that their conduct engaged the concerns outlined in paragraph 10.5.3 of the Practice Direction reproduced above.

24. I note that following the CMC, the applicant's request for costs has fallen from £14,932.15 + VAT to £12,969 + VAT i.e. a reduction of £1,963.15, I also note that the applicant has provided a detailed breakdown of how the costs claimed have been incurred. However, on the basis of the submissions contained in its letter of 25 April 2014, the respondents suggest that an award in the amount of (no more than) £300-£500 in respect of "preparing and considering statements" and "closer to £500 rather than £2,500" in respect of "preparing and considering evidence" is appropriate; it did not consider that any justification for off-scale costs had been provided.

25. To begin with, I note that save for a short extension (of 14 days) to file its defence to the application, the respondents have complied with all official deadlines; there is, therefore, nothing to suggest they have sought to delay the proceedings. The only unreasonable behaviour upon which the applicant can therefore rely, is that mentioned in paragraph 23 above. In approaching the reasonableness or otherwise of the respondent's behaviour, I remind myself that in its submissions dated 25 April 2014, the respondent's representatives stated: "Our clients had belief in the strength of their case and defended the claims accordingly." In reaching a conclusion, a review of the relevant chronology is, I think, helpful.

26. COLLIER CAMPBELL ARCHIVE LIMITED was incorporated on 20 July 2011. The applicant filed form CNA1 on 17 August 2011; the form CNA2 was filed on 21 November 2011. The applicant's evidence was filed on 2 March 2012, the respondent's evidence on 12 June 2012 and the applicant's evidence in reply on 22 August 2012. Although the proceedings were ready for substantive determination in late September 2012, the proceedings were, at the applicant's request (a request to which the respondent did not object), stayed to await the outcome of the related trade mark proceedings.

27. The applicant (who is the same in both these proceedings and the related trade mark proceedings) filed an application to register the trade mark COLLIER CAMPBELL on 1 August 2011. The trade mark application was published on 26 August 2011 and a Notice of Opposition was filed on 25 November 2011 by Sarah Campbell and the Estate of Susan Collier; the opposition was based upon claims of bad faith and passing off. Both parties filed evidence and a decision (which was taken from the papers on file) was issued on 16 January 2013. The opposition failed on both grounds and the applicant was awarded £1300 as a contribution towards its costs; the parties were allowed until 12 February 2013 to appeal the decision; no appeal was filed.

28. Although the declarants in both sets of proceedings were the same i.e. Sarah Campbell and Judith Lever and the evidence provided was highly similar, in its letter of 15 November 2013, the applicant confirmed that its request for costs in these

proceedings did not include costs incurred in the trade mark proceedings (which was, it explains, handled by other lawyers).

29. I remind myself that the respondent changed its name to SARAH CAMPBELL DESIGNS LIMITED on 8 April 2013. From the above chronology, one can see that although the parties differed slightly between these and the related trade mark proceedings, the declarants were the same as was the majority of the evidence filed, and the issues were clearly related. At the applicant's request the trade mark proceedings were determined first, and, following the applicant's success in those proceedings, on 8 April 2013, the respondent in these proceedings changed its name to the non-offending name shown above. The fact that the respondent/opponent elected to defend its company name/attack the trade mark application and filed what it considered to be relevant pleadings and evidence in both sets of proceedings lends, in my view, credence to the respondent's arguments that they had belief in the strength of their case and explains why the correspondence between the parties (both prior to and during the proceedings) failed to achieve a satisfactory conclusion.

30. The fact that the opposition failed does not, in my view, undermine that conclusion. That the opponents in the trade mark proceedings did not appeal that decision and the respondent in these proceedings changed its name to a non-offending name less than one month after the period to appeal in the trade mark proceedings had expired, suggests to me a clear desire on its part to avoid further unnecessary costs in these proceedings.

31. Having considered all of the submissions filed and the existence of the related trade mark proceedings, I can see nothing unreasonable in the respondent's behaviour which would justify an award of off-scale costs (in relation to those elements of its claim which I can consider – see paragraph 22 above). I am also satisfied that despite its failure in the trade mark proceedings, the respondents, as it put it in its letter of 25 April 2014, "had belief in the strength of their case and defended the claims accordingly." In reaching a conclusion, I will bear this in mind as I will the nature and extent of the pleadings and evidence filed. However, notwithstanding the similarity of the evidence filed in the related trade mark proceedings (and that an award was made in this respect to the applicant in those proceedings), as Ms Kruse explained at the CMC, the evidence gathering exercise began in these proceedings and was extremely time consuming. Having weighed all these factors, I order SARAH CAMPBELL DESIGNS LIMITED (being the same legal entity as COLLIER CAMPBELL ARCHIVE LIMITED) and Mr Allan Martin Edwards being jointly and severally liable, to pay to Collier Campbell Limited costs on the following basis:

| | |
|--|------|
| Preparing a statement and considering - the other side's statement: | £400 |
|--|------|

| | |
|--|-------|
| Preparing evidence and considering and - commenting on the other side's evidence: | £1000 |
|--|-------|

Expenses: - £700

i.e. application fee of £400 + 2 x £150
for filing evidence

Total: - £2100

32. As per section 74 of the Act, there is no right of appeal against this decision.

Dated this 28th day of May 2014

Christopher Bowen
Company Names Adjudicator