

The cost of unreasonable behaviour

Costs for unreasonable behaviour on the small claims track of the Intellectual Property Enterprise Court

Breitling UK Ltd v. Moshe [2018] EWHC IPEC (small claims)

This case concerned the onward sale on eBay by the First Defendant of promotional products sent out by but returned to the Claimant by clients. Some of these products had been provided to the First Defendant by her partner, the Third Defendant, who worked in the same building as the Claimant, who in turn had received some of them from the Second Defendant, an employee of the Claimant. The basis of the claim was an allegation that such sales offered by the First Defendant amounted to trade mark infringement.

Having handed down judgment in favour of the Defendants, District Judge Hart proceeded to award costs to the Second Defendant under rule 27.14(2)(g) on the basis of unreasonable behaviour by the Claimants. Although she did not assess costs on the indemnity basis, she awarded costs amounting to approximately 80% of the costs incurred by the Second Defendant following the issue of the claim. Her reasons for doing so included:

- a) the fact that the claim was brought against the Second Defendant for trade mark infringement despite the fact that he had provided undertakings, which had been accepted by the Claimants;
- b) the fact that the Claimants had informed the Second Defendant that they had reported his actions to the police, when, on the evidence before the court at trial, no such report had been filed;
- c) the failure of the Claimants to provide a witness for trial or to cross-examine the Second Defendant, the only witness being the solicitor for the Claimants, who was unable to assist the court on the facts of the alleged infringement; and
- d) the fact that the Second Defendant had been forced to spend the costs incurred to protect his reputation and future employability.

The Second Defendant was represented by [Jamie Muir Wood](#), who was instructed by Surjj Legal Limited.

If you would like to speak to someone about this news flash, please contact:

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