



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1379/5/7/20

BETWEEN:

KERILEE INVESTMENTS LIMITED

Claimant

- v -

INTERNATIONAL TIN ASSOCIATION

Defendant

REASONED ORDER

UPON the Tribunal's Order dated 31 January 2024 (the "Unless Order")

AND UPON the Claimant's application for relief from sanctions for non-compliance with the Unless Order (the "Application")

AND UPON hearing counsel for the parties at a remote hearing on 13 May 2024

AND UPON the Tribunal's Ruling dated 21 May 2024 ([2024 CAT 35]) granting the Claimant relief from sanctions for non-compliance with the Unless Order (the "Ruling")

AND UPON reading the parties' submissions on costs dated 27 May 2024 and 28 May 2024 respectively, and the further submissions on costs dated 3,4 and 5 June 2024 respectively

IT IS ORDERED THAT:

1. The costs of the Application should be Defendant's costs in the case.

REASONS

1. There was non-compliance by the Claimant with an unless order; and there was no good reason for that non-compliance. As set out in paragraph 18(2) of our Ruling, there was no estoppel and the previous dealings of the parties had not affected the operation of the Order. In the circumstances, including that the documents which the Claimant initially served were subject to objection, we do not consider that it was unreasonable or opportunistic for the Defendant to oppose relief from sanction. We have had regard to what was said in Swivel UK Ltd v Tecnologmen GmbH [2022] EWHC 825 (Ch) at paragraphs 15 and 22 by Marcus Smith J.
2. In its 8 May 2024 letter, referred to in paragraph 33 of our Ruling of 21 May 2024, the Claimant accepted that the costs of the applications it was making, including that for relief from sanction, would ordinarily fall to be borne by the Claimant. That, in our view, was a realistic assessment of the position, and was intended to influence the Tribunal in its approach to the hearing.
3. We do, however, consider that there should be a recognition of the fact that the Claimant was successful in its application, and that the Tribunal found that the Claimant's breach, taken on its own, was not serious or significant. In our view, the appropriate order is that the costs of the Application should be Defendant's costs in the case.

The Honourable Mr Justice Butcher
Chair of the Competition Appeal Tribunal

Made: 19 June 2024
Drawn: 19 June 2024