

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

CARTIER INTERNATIONAL B.V., ET AL :
MERCIER S.A., S.A. ANCIENNE :
FABRIQUE GEORGE PIAGET ET CIE, :
IWC INTERNATIONAL WATCH CO., A.G. :
ANCIENNE FABRIQUE CONSTANTIN :
SOCIETE ANONYME, LANGE UHREN :
GMBH, AND MANUFACTURE JAEGER- :
LECOULTRE S.A., :

v.

Civ. No. 3:01CV 01948(PCD)

THOMAS J. GORSKI, THOMAS J. GORSKI d/b/a :
FASHION TIME, VARIOUS JOHN DOES :
JANE DOES AND XYZ COMPANIES :

RULING ON PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND COSTS

Plaintiffs move for attorneys' fees and costs. For the reasons set forth herein, Plaintiffs' motion is granted in part.

I. BACKGROUND

In its Ruling on Plaintiffs' Motion for Contempt, this Court stated that "[i]t would be proper to impose on defendants the burden of plaintiffs' costs in bringing and having the hearing on the motion for contempt." Mem. of Decision on Mot. for Contempt, p.4 (Dec. 18, 2002).

II. DISCUSSION

Plaintiffs contend that they are entitled to attorneys' fees and costs of \$11,548.76 in connection with bringing and having the hearing on the motion for contempt. P1. Application for

1 Familiarity with the facts as provided in this Court's previous rulings are presumed

*Attorneys' Fees and Costs*, p. I-2 (Jan. 6, 2003). They seek \$91,076.50 for attorneys' fees, and \$20,472.26 for costs, including various expenses such as the costs of Plaintiffs' investigators and witnesses. *Affirmation of Todd S. Sharin in Support of P1. Accounting of Attorneys Fees and Costs*, p.<sup>4</sup> (Jan. 6, 2003). Plaintiffs provide time records and other documentation to support their motion.

In determining reasonable attorneys' fees, courts typically begin with the lodestar method. See *Societa Bano E Derivati, S.p.A. V. Kaystone Chem., Inc.*, No. 5:90cv599(EBB), 1998 WL 182563, at \*11 (D. Conn. Apr.15, 1998) ("strong presumption that the lodestar figure represents a reasonable fee"); see also *Kaplan V. Gruder*, No. CV9603343085, 2000 WL 767679, at \* 1 (Conn. Super. Ct. May 25, 2000). The lodestar method uses the number of hours reasonably expended in the litigation (excluding excessive, redundant, or otherwise unreasonable hours) multiplied by the prevailing market rates for the services rendered. See generally *Kay v. Seiden*, No. CV946048587S, 1999 WL 621460 (Conn. Super. Aug. 4, 1999), at \*3. Whether a trial court uses the lodestar method as an aid, a trial court should apply the twelve *Johnson* factors. See *Hernandez v. Monterey Vill. Assocs. Ltd. P'ship*, 24 Conn. App. 514, 517 n.3 (App. Ct. 1991).<sup>2</sup> A court is "not required to consider each of the twelve factors individually, but instead [is] required to consider the full panoply of factors and not base its decision solely on one of the elements." *Riggio v. Orkin Exterminating Co.*, 58 Conn. App. 309, 318 (2000), *cert. denied*, 254

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The factors include (1) time and labor required; (2) novelty and difficulty of the questions; (3) skill requisite to perform the legal services properly; (4) preclusion of employment as a result of accepting the case; (5) customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed; (8) amount involved and results obtained; (9) experience, reputation, and ability of the attorneys; (10) undesirability of the case; (11) nature and length of the relationship with the client; and (12) awards in similar cases. *Johnson V. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).

Conn. 917 (2000).

Mindful of the aforementioned standard, the relevant determinations for purposes of this ruling are (1) the appropriate hourly rate by which fees will be computed, (2) the time reasonably spent on the case, and (3) the claim for costs involved.

**A. Hourly Rate**

Prior to reaching the question of hours, Plaintiffs must establish to the satisfaction of this Court that the hourly rate sought is reasonable. Fee applicants must "produce satisfactory evidence in addition to the attorneys' own affidavits - that the requested rates are in line with those prevailing in the community for similar lawyers of reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895-96 n.1 1(1984). The award may be based in part on knowledge of hourly rates charged in a community and is not limited to the submitted evidence. *Miele v. N.Y State Teamsters Conf Pension & Ret. Fund*, 831 F.2d 407, 409 (2d Cir. 1987).

Harley I. Lewin, a Partner, billed at \$450-\$500 per hour; James Donoian, a Partner, billed at \$395 per hour; Todd S. Sharinn, an Associate, billed at \$283.50-\$315 per hour; Gregory Brehm, Counsel, billed at \$340 per hour; Allison Lucas, an Associate, billed at \$255 per hour; Jennifer Burdman, a law clerk, billed at \$200 per hour; Jennifer Smith, a law clerk, billed at \$185 per hour; and Denise Alexander, Paul A. Juergensen, and John Burla, all paralegals, billed at \$160, \$150, and \$130 per hour respectively.

There is no substantiation of the hourly rates requested. Although Plaintiffs contend that their billing rates are reasonable, they have not met their burden of producing sufficient

supporting evidence.<sup>3</sup> The claimed hourly rates are too high and do not reflect the prevailing market rates in Connecticut for the services actually and necessarily rendered.<sup>4</sup> Rates therefore will be assigned based on knowledge of rates charged by counsel in this District. See *Smart SMR of N.Y, Inc., v. Zoning Comm 'n of Stratford*, 9 F. Supp. 2d 143, 150 (D. Conn. 1998); *Evans v. Conn.*, 967 F. Supp. 673, 691-92 (D. Conn.1997); see also *Bizzoco v. Chinitz*, 193 Conn. 304, 310 (1984) ("courts may rely on their general knowledge of what has occurred at the proceedings before them to supply evidence in support of an award of attorney's fee").

Accordingly, the following rates have been reduced: \$225 per hour (Harley I. Lewin); \$200 per hour (James Donoian); \$175 per hour (Gregory Brehm); \$160 per hour (Todd S. Sharinn); \$150 per hour (Allison Lucas); \$60 per hour (Denise Alexander; Paul A. Juergensen; John Burla); and \$50 per hour (Jennifer Burdman; Jennifer Smith).

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- <sup>3</sup> Plaintiffs' attorney Todd S. Sharinn attests in an affirmation about the expertise and typical billing rates of Harley I. Lewin and himself. *Affirmation of Todd S Sharrin, Jan. 6, 2003*, p.4. However, *Blum* instructs that an attorney's own affidavit or statement must be supported by other evidence regarding the reasonableness of the rates. *Blum V. Stenson*, 465 U.S. at 895-96 n. 11. Plaintiffs fail to produce such supporting evidence.
- <sup>4</sup> Plaintiffs acknowledge the general rule that a reasonable hourly rate generally must be in "line with those prevailing in the community for similar lawyers of reasonably comparable skill, experience, and reputation." *Blum*, 465 U.S. at 895-96 n.1 1(1984). However, they note that "the Second Circuit has recognized that exceptions to this general rule 'have been made upon a showing that the special expertise of counsel from a different district is required.'" *Dobson V. Hartford Financial Services Group, Inc.*, No. 3.99cv2256 (JBA), 2002 WL 31094894, \*3 (D. Conn. Aug. 2, 2002). In conclusory fashion, Plaintiffs assert that (1) their experience handling intellectual property litigation and (2) "the highly sophisticated nature of the issues presented warrants the invocation of the exception." They provide no discussion or analysis to establish that the issues involved in this apparently routine trademark infringement case are "highly sophisticated." To the contrary, in *Dobson* the court acknowledged that "the claims at issue... involved novel legal theories, extensive briefing on both motions to dismiss, cross motions for summary judgment and supplemental briefing *Dobson*, 2002 WL 31094894 at \*3 Here, the contempt proceeding for which fees are claimed involved no sophisticated, complex intellectual property issues, but instead involved relatively straightforward legal and factual claims.

## B. Number of Hours

Plaintiffs may be reimbursed only for reasonably expended time. See *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992). Hours that are "excessive, redundant, or otherwise unnecessary" are to be excluded. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). "In dealing with such surplusage, the court has discretion simply to deduct a reasonable percentage of the number of hours claimed 'as a practical means of trimming fat from a fee application.'" *Kirsch v. Fleet Street, Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998) (quoting *New York Ass'n for Retarded Children v. Carey*, 711 F.2d 1136, 1146 (2d Cir. 1983)).

Defendants invite the Court to "trim[] fat" from Plaintiffs' fees without specification, which is no help to this Court. Upon careful review of the record, it is found that many of the hours claimed are excessive, not shown to be necessary, and redundant. The Court credits reasonable hours per attorney, paralegal, and law clerk as follows:

<u>Name</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Harley I. Lewin	\$225	0.8	\$ 180
James Donoian	\$200	0.0	\$ 0
GregoryBrelrrn	\$175	1.2	\$ 210
ToddS.Sharinn	\$160	50.8	\$8128
AllisonLucas	\$150	8.9	\$1335
Jennifer Burdman	\$50	5.5	\$ 275
Jennifer Smith	\$50	3	\$150
Denise Alexander	\$60	1	\$ 60
Paul A. Juergensen	\$60	5.5	\$ 330
John Burla	\$60	0	\$ 0
Total:		83.9	\$10,668

Accordingly, after reducing the hourly rates to the amounts set forth above, multiplying these rates towards the hours expended, the amount of attorneys' fees is \$10,668.

### C. Costs

Defendants contest the \$20,472.26 in costs, including expert investigator fees, arguing that such expert fees are unreasonable given Plaintiffs' contentions that "Defendants' website was consistently directing search engine users to it."

Plaintiffs break down their costs as follows:

George Arnold & Associates (Investigative Services):	\$5,407.50
Deloitte & Touche (Computer Expert):	\$6,674.00
Service of Process costs:	\$ 461.00
Court Reporters/Transcripts:	\$2,890.28
Messenger/Courier Services:	\$ 180.55
Photocopying Charges:	\$1,775.63
Federal Express:	\$ 191.71
LEXIS/Westlaw Charges:	\$2,135.95
Facsimile Charges:	\$ 417.00
Telephone Charges:	\$ 4.14
Local Travel:	\$ 44.20
Travel & Out of Town Lodging:	\$ 180.60
Business Meals:	\$ 34.70
Special Clerical Services:	\$ 75.00

The following discussion explains the reduced costs allowed.

#### 1. George Arnold & Associates

George Arnold & Associates ("GA") billed 39.5 hours at \$85 per hour. The submissions by Plaintiffs are vague, and do not clearly establish the reasonableness of the of time spent. For example, on April 30, 2002 GA billed 2.5 hours for "discuss[ing] case with Todd Sharinn, copy[ing] site, and order[ing] watch." This case does not involve a complex factual scenario or novel legal theories, and it is unclear why it took 2.5 hours to discuss the case and order a watch. Accordingly, only 1 hour of this time is credited. On May 9, 2002, GA billed 1 hour for vague "internet research," and on May 16, 2002 GA billed 1 hour for "email[ing] inquiry to

fashiontime." The extent of the internet research is not apparent to the Court, and it is even less apparent why sending an email would take an entire hour. Accordingly, only one-half hour of the total time billed on May 9 and May 16 is credited. On July 18-20, 2002, and August 20 and 22, 2002, GA billed a total of 4.5 hours to "[r]eview and correct declaration." It is not apparent that reviewing and correcting a declaration reasonably takes 4.5 hours. Accordingly, only 1 hour of this time is credited. On October 6, 2002, GA billed 5 hours as "travel" time. 2.5 hours of this time are credited.<sup>5</sup> In sum, 30.5 hours are credited, for a total of \$2,592.50.

GA billed \$2,050 in costs, including \$1,045.36 for hotel and \$600 for airfare. Plaintiffs include no further itemization for these costs, and do not explain the necessity of the apparently extravagant hotel costs. GA also billed \$33 for telephone calls, \$18.64 in meals, \$28 for a train, and \$85 for postage/shipping. No further substantiation of these costs is provided. Accordingly, these costs are not credited.

The total amount of fees (\$2,592.50) and costs (\$240 for computer database searches) credited to GA is \$2,832.50.

## **2. Deloitte & Touche**

Deloitte & Touche ("DT") billed 20 hours at a rate of \$300 per hour. 12 of these hours were spent in Court during the proceedings, and the remainder of the time was spent preparing for the proceeding. Defendants do not specifically contest this time, and none of this time

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<sup>5</sup> In considering general attorneys' fees, courts have indicated that travel time spent working and preparing the present case is recoverable. See *Gonzalez v Town of Stratford*, 830 F. Supp. 111' 115 (D. Conn. 1992). "[A] different rate of compensation may well be set for different types of litigation tasks." *Cohen V. W Haven Bd. of police Comm'rs*, 638 F.2d 496, 505 (2d Cir. 1980). Travel time spent resting or not working is not appropriately billed at the full rate. *Williams v. KY. City Hous. Auth.*, 975 F. Supp. 317, 324 (S.D.N.Y. 1997) ("courts in this circuit customarily reimburse attorneys for travel time at fifty percent of their hourly rates"). Accordingly, travel time for Plaintiffs' expert witness is reduced by 50%.

appears unreasonable. However, Plaintiff provides no evidence to support a rate of \$300 per hour as reasonable. Accordingly, the hourly rate is reduced to \$200 per hour, and the fees credited to DT amount to \$4000.

DT billed \$674 in costs, including \$6 for meals, \$188 for transportation, and \$480 for vague "administrative expenses." No further substantiation of these costs is provided and eating is a usual fact not necessitated by inquiry into Defendants' conduct. These costs are not credited.

The total amount of fees and costs credited to DT is \$4000.

### **3. Service of Process Costs**

Plaintiffs seek \$461 for service of process costs. Upon review, process was necessary for one application for the contempt subpoena. Accordingly, \$200 is credited for service of process costs.

### **4. Court Reporter/Transcript Fees**

Plaintiffs seek \$2,890.28 for Court Reporter/Transcript fees, including two charges for the transcript regarding their case (they charge two times for \$1,188, once on November 15, 2002, and again on November 25, 2002 (this time for expedited service)). They do not explain why they needed such transcripts, and accordingly these costs are not credited.

### **5. Messenger/Courier Services, Federal Express, Facsimile Charges**

Plaintiffs seek \$180.55 for costs related to messenger and courier services, \$191.71 for Federal Express fees, and \$417 for facsimile charges. It is not apparent why Plaintiffs did not use regular postal service. Accordingly, no costs are credited for messenger/courier services, Federal Express fees, or facsimile charges.



## 6. Photocopying Charges

Plaintiffs bill \$1,775.63 for photocopying charges. Their entries for photocopies are not detailed enough for the Court to determine that this seemingly excessive amount is reasonable. See *Evergreen Pipeline Constr. Co., Inc. V. Merritt- Meridian Constr. Corp.*, 95 F.3d 153, 173 (2d Cir. 1996) (upholding district court's reduction of photocopy fees from \$17,690.78 to \$5,000 where the party seeking reimbursement "did not... itemize these costs or explain why all those copies were necessary").<sup>6</sup>

Accordingly, Plaintiffs are only credited \$500 for photocopying services.

## 7. Electronic Research Charges

Plaintiffs seek \$2,135.95 for LEXIS/Westlaw electronic research.

*Evergreen* held that "computer research is merely a substitute for an attorney's time that is compensable under an application for attorneys' fees and is not a separately taxable cost." *Evergreen*, 95 F.3d at 173. Consequently, "the district court did not abuse its discretion in declining to shift the cost of the item." *Id.* See also *Tsombanidis v. City of W Haven*, 208 F. Supp. 2d 263, 287(D.Conn. 2002) (disallowing \$3,247.55 sought for Westlaw charges "because it is the attorney's time that is compensable, not the medium that delivers the message"); *BD v. DeBuono*, 177 F. Supp. 2d 201, 209 (S.D.N.Y. 2001) (denying plaintiffs request for \$40,744.65 in Westlaw fees, reasoning that "[i]f a firm chooses to unbundle Westlaw fees and make them a separate profit center--instead of incorporating the costs into their hourly rates--that system may work well for them in terms of paying clients, but it does not help them with fee applications...

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<sup>6</sup> Here, Plaintiffs provide breakdowns of the copying charges per day but do not explain what was copied or why so much copying was necessary.

in the *post-[Evergreen]* world."

Accordingly, Plaintiffs' request for \$2,135.95 LEXIS/Westlaw charges is not credited.<sup>7</sup>

#### **8. Telephone Charges**

Plaintiffs seek \$4.14 for telephone charges. While this amount is not extravagant, there is no substantiation regarding who was called and why. Accordingly, no costs are credited for telephone charges.

#### **9. Local Travel, Travel and Out of Town Lodging, Business Meals**

Plaintiffs seek \$44.20 for local travel, \$180.60 for travel and out of town lodging, and \$34.70 for business meals. While these amounts do not appear extravagant, there is no sufficient substantiation or explanation of these costs. Plaintiffs choice of non-local counsel does not warrant the consequent additional expense being charged to Defendants. Accordingly, no costs are credited for local travel, travel and out of town lodging, and business meals.

#### **10. Special Clerical Services**

Plaintiffs bill \$75 for special clerical services; it is not clear for what these services were rendered, and accordingly this cost is not credited.

#### **11. Amount of Costs.**

The total amount of costs credited is \$7,532.50

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<sup>7</sup> Furthermore, the charges attributed to electronic research are general and fail to identify what was researched in each session. In addition, a significant 337.50 hours have been billed in this case, which involves no complex factual twists or novel legal issues.

**III. CONCLUSION**

Plaintiffs' motion for attorneys' fees and costs (Doc. No.51) is **granted in part, as** set forth herein. Plaintiffs are awarded **\$18,200.50** in attorneys' fees and costs.

SO ORDERED.

Dated at New Haven, Connecticut, April 29, 2003.

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PETER C. DORSEY

UNITED STATES DISTRICT JUDGE