

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALLEGHENY COUPLING COMPANY,)	
)	
Plaintiff,)	
v.)	C.A. No. 06-76 Erie
)	District Judge McLaughlin
BETTS INDUSTRIES, INC.,)	
)	
Defendant.)	
)	
)	

MEMORANDUM OPINION

McLAUGHLIN, SEAN J., J.

I. Background

Pending before the Court is a document filed by Plaintiff Allegheny Coupling Company (“Allegheny”) styled a Motion for Amendment of Finding of Fact and Relief from Order Pursuant to Fed. R. Civ. Pro. 52(b) and 60 (hereinafter, “Motion for Amendment/Relief”) (Doc. No. 141). Also pending before the Court is Defendant Betts Industries, Inc.’s (“Betts”) Renewed Application for Attorney Fees and Costs Pursuant to Opinion and Order of March 31, 2011 (Doc No. 144). This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 and 1367.

By way of background, Allegheny commenced the instant action on March 24, 2006 alleging, *inter alia*, trademark and trade dress infringement in violation of the Lanham Trademark Act, 15 U.S.C. § 1051 et sq. (“Lanham Act”) and various state law claims including conversion of property. See Allegheny Coupling Co. v. Betts Industries, Inc., 2011 WL 1230151, *1 (W.D. Pa. 2011) (“Allegheny III”). Allegheny and Betts also each sought a declaratory judgment as to the ownership of certain

E. Mosco, billed 11.6 hours at a rate of \$100.00 per hour. See Supplement to Application, Ex. A. An additional 130 hours was billed by paralegals at a rate of either \$65.00 or \$75.00 per hour. See Application for Attorney Fees, Ex. A, ¶¶ 16, 21, 22; Supplement to Application, Ex. A. Multiplying the total hours by the applicable billable rate produces an initial lodestar figure of \$306,445.00.⁷ Betts has also documented total litigation costs of \$23,804.67. See Application for Attorney Fees, Ex. A, ¶¶ 31; Supplement to Application, Ex. A and B.

Given that fees which are incurred in connection with state law claims are not recoverable, counsel for Betts has voluntarily excluded the following hours which they have identified as related exclusively to the defense of the non-Lanham Act claims: 69.5 hours from Attorney Lanzillo, 26.5 hours from Attorney Devlin, and 8.9 paralegal hours. See Application for Attorney Fees, Ex. A, ¶ 32. Excluding those hours reduces the calculated fee for all activities which Betts alleges were related exclusively to Lanham Act claims from \$306,445.00 to \$284,864.00. Betts' counsel has volunteered to reduce this fee amount (as well its litigation costs) by an additional 10% to account for any activities relating exclusively to state law claims that might not have been identifiable from its time sheets. Id. at ¶ 32. Accepting this voluntary deduction would result, as discussed above, in a requested fee award of \$256,377.60 and costs in the amount of \$21,424.20, for a total of \$277,801.80.

⁷ Allegheny contends that Betts is not entitled to recover fees and expenses incurred in conjunction with its pursuit of the fee award. We disagree. See Gilbreth Int'l. Corp. v. Lionel Leisure, Inc., 622 F.Supp. 478, 483 (E.D. Pa. 1985) (noting in a patent case that "recent authorities have determined that [fees incurred in the preparation of a fee petition itself] are properly included in an award"); In re Fine Paper Antitrust Litigation, 751 F.2d 562, 595 n. 26 (3rd Cir. 1984) ("[I]n litigated statutory fee cases, fee petition is, of course, properly included in the lodestar."); Noxell Corp. v. Firehouse No. 1 Bar-B-Que Restaurant, 771 F.2d 521, 528 (D.C. Cir. 1985) ("Hours reasonably devoted to a request for fees are compensable" in a Lanham Act case); Wiesenberger v. Huecker, 593 F.2d 49 (6th Cir. 1979) (same); Bretford Mfg., Inc. v. Smith System Mfg. Co., 421 F.Supp.2d 1117 (N.D. Ill. 2006) (same).

Having carefully reviewed the record, however, we conclude that a larger reduction than that suggested by Betts is warranted. Although Allegheny's Lanham Act claims were the primary focus of this litigation, state law claims represented seven of the nine counts of Allegheny's Third Amended Complaint and formed the subject of extensive discovery and briefing at summary judgment, particularly with respect to the parties' cross-motions for declaratory relief with respect to ownership of certain manufacturing equipment and product lines. See, e.g., Defendant's Brief in Support of Motion for Summary Judgment, Doc. No. 77, pp. 35-44. Moreover, in reviewing the individual billing entries contained in Betts' submissions, many of the entries are vague with respect to the specific subject matter of the work performed. For example, numerous entries indicate that counsel performed "legal research" or "reviewed documents" without indicating to which claims the research or documents pertained. See, generally, Application for Attorney Fees, Ex. B. It is well-settled that "[i]t is incumbent on the fee applicant . . . 'to maintain billing records in a manner that will enable a reviewing court to identify distinct claims.'" McKenna v. City of Philadelphia, 582 F.3d 447, 458 (3rd Cir. 2009) (quoting Hensley, 461 U.S. at 437). Here, the nature of many entries is such that a differentiation between the Lanham Act claims and the non-Lanham Act claims is difficult, if not impossible.

Based on the above analysis, we will reduce Betts' requested award of \$277,801.80 by an additional 30%, resulting in a total award of \$194,461.26. See Application for Attorney Fees, Ex. A; Supplement to Application, Ex. A.

IV. Conclusion

For the reasons stated herein, Allegheny's Motion for Relief/Amendment is denied. Betts' Application for Attorney Fees is granted. Attorney fees and costs are awarded in favor of Betts in the amount of \$194,461.26.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALLEGHENY COUPLING COMPANY,)	
)	
Plaintiff,)	
v.)	C.A. No. 06-76 Erie
)	District Judge McLaughlin
BETTS INDUSTRIES, INC.,)	
)	
Defendant.)	
)	
)	

ORDER

AND NOW, this 27th day of September, 2012, and for the reasons set forth in the accompanying Memorandum Opinion,

IT IS HEREBY ORDERED that Betts' Application for Attorney Fees is GRANTED. Allegheny's Motion for Relief/Amendment is DENIED. Attorney fees and costs are awarded in favor of Betts in the amount of \$194,461.26.

IT IS SO ORDERED.

/s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record. ____