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UPC: Groucho Marx would be happy with the removal of the opt-out fee

Miquel Montaña (Clifford Chance) · Friday, March 4th, 2016

In our blog of 31 October 2013 (“*Groucho Marx, fairness and the opting-out fee*”) we explained that Groucho Marx once sent a telegram to the Friar’s Club of Beverly Hills with the following text: “Please accept my resignation. I don’t want to belong to any club that will accept people like me as a member.” In that blog, we wondered whether he would have had the same reaction if he had been told that he would have to pay a fee for not becoming a member of a club of which he did not wish to be a member in the first place. We added that, believe it or not, such club did exist and it was called the “Unified Patent Court”. And we concluded our blog, stating that “a fair solution would be to really listen to stakeholders [...] so that they might help in building a club that would be more appealing to them.”

Well, Groucho Marx would be happy to learn that the committee preparing the opening of the Friar’s Club has finally decided to abandon the idea of requiring an “opt-out fee”. In particular, the “Explanatory Note” to the Rules on Court fees and recoverable costs approved on 25 February 2016 justifies the removal of the “opt-out fee” on the following grounds:

“One of the few areas of clear consensus in consultation responses was that the opt-out fee should be removed or lowered to reflect the commitment made by the Preparatory Committee that the fees for both the opt-out and its withdrawal are set to reclaim administrative costs only and that the Court would not profit from either of these.

We now know much more detail as to how the proposed opt-out process will work and that the administration burden rests almost entirely with the applicant. We also know that any cost to the Court associated with the opt-out is related to processing the fee. There is no additional cost for the Case Management System to process opt-out requests if there is no fee. Requiring people to make payment generates costs for the court which would not be needed if there were no fee. So, removing the fee removes the cost; it also eliminates the problem of how to process payments particularly during provisional application and honours the commitment already made to only reclaim administrative costs for the opt-out.”

All in all, the removal of the “opt-out fee”, apart from being a tribute to common sense, will hopefully raise awareness on fairness among the members of the club.

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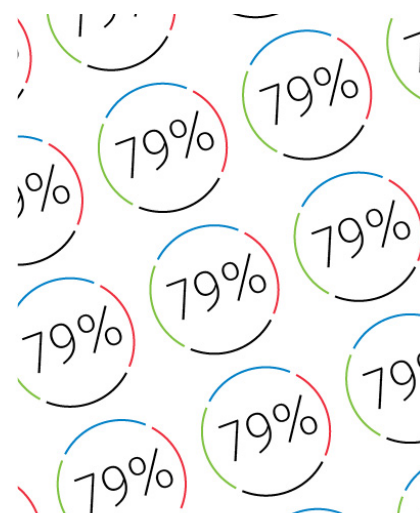
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