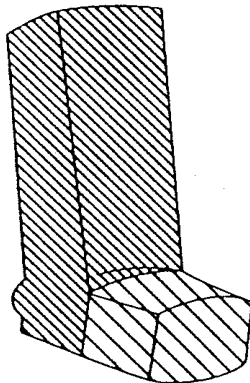


**IN THE MATTER OF Registration No 1524601  
in the name of Glaxo Group Limited**

**AND IN THE MATTER OF Application No 8936  
by Riker Laboratories Inc. for the registration to be  
declared invalid**

1. On 25 March 1996, Riker Laboratories Inc made an application for registration No 1524601 in Class 5 to be declared invalid. The registration stands in the name of Glaxo Group Limited.
2. Registration No 1524601 is represented below:



3. The mark was originally defined in these terms:

"The trade mark consists of the colour pink applied to the cap of the mouthpiece of the inhaler device and colour maroon will apply to the remainder of the surface of the inhaler device, as shown in the representation on the form of application."

4. On 21 January 1998 the registered proprietor made an application to alter the registered trade mark. The nature of the alteration as described in that application is as follows:

"The registered proprietor requires trade mark No 1524601 to be limited to specific Pantone colours as follows:

- (i) the colour pink applied to cap of the mouthpiece portion of the inhaler device should be limited to Pantone colour 197C; and
- (ii) the colour maroon applied to the remainder of the surface of the inhaler device should be limited to Pantone colour 492C;
- (iii) as shown in the representation on the form of application."

5. The trade mark is registered in respect of:

"Pharmaceutical preparations containing beclomethasone, dipropionate or solvate thereof sold in a metered dose aerosol can which delivers 250 micrograms of active ingredient per actuation; all included in Class 5."

6. The trade mark is registered with effect from 21 January 1993. It is common ground that this is the relevant date for the purposes of these proceedings. The matter came to be heard on 8 March 2000 when the applicant was represented by Ms A Carboni of Linklaters, and the registered proprietor was represented by Ms S Field of Bristows.

7. The grounds for invalidation, insofar as they were pursued before me, are as follows:

- (i) the mark was registered in breach of Section 3(1)(b),(c) & (d) of the Trade Marks Act 1994, being a mark a) devoid of any distinctive character b) which consists exclusively of signs or indications which serve in the pharmaceutical trade to designate the intended purpose, kind and other characteristics of the

goods, and c) consisting exclusively of a signs or indication which has become customary both in the current language and the bona fide and established practices of the trade to designate intended purpose and strength of the product.

- (ii) the mark had not, as a consequence of any use which had been made of it before the date of application, acquired a distinctive character;
- (iii) the mark has not, as a consequence of any use which may have been made of it after registration, acquired a distinctive character in relation to the goods for which it is registered;
- (iv) the mark was registered in breach of Section 3(3)(a) of the Act as contrary to public policy, as monopoly rights obtained through this registration put at risk members of the public who suffer from asthma.

8. The registered proprietor failed to file a counterstatement within the period allowed for doing so. The proprietor has nevertheless sought to rebut the grounds for invalidation put forward through his evidence. I will come to the registered proprietor's evidence later. I begin by summarising the applicant's evidence.

9. The applicant's evidence consists of the Statutory Declaration dated 26 November 1996 by Geoffrey Tattersall Murray, who is employed as a legal adviser by the 3M group of companies, of which the applicant forms a part. The main points which emerge from Mr Murray's declaration are as follows:

- (i) the colours pink and maroon in the trade mark registration No 1524601 are far too non-specific and open to wide interpretation;
- (ii) the colour pink when applied to inhalers indicates that a product is stronger than the usual dosage;

- (iii) it is of particular concern to asthma sufferers that the colour of inhalers be used to describe the product that is contained therein, no matter who the manufacturer might be.

10. Exhibit GM1 to Mr Murray's declaration consists of a copy of an article that appeared in MIMS magazine on 27 October 1992. The article reports that the national asthma campaign was urging GP's who were aware of confusion over inhaler colours to complain to the Association of the British Pharmaceutical Industry. Exhibit GM2 to Mr Murray's declaration consists of a copy of an earlier Statutory Declaration and accompanying exhibits filed in respect of opposition proceedings relating to other similar trade marks. The earlier declaration is also by Mr Murray. Exhibit 4 to Mr Murray's earlier declaration consists of a copy of an article that appeared in the Observer newspaper on 28 February 1993. The article is under the heading "Asthma sufferers at risk from inhaler colour code confusion". The relevant part of the article is as follows:

"Inhalers have traditionally been colour coded - relievers are blue; preventers are usually brown or red.

Government encouragement of cheaper generic inhalers has resulted in a colour-coding free-for-all, leaving patients bewildered and doctors exasperated.

Dr Mark Levy, Chairman of the GP's in Asthma Group, said: 'Now inhalers are available in every colour under the sun, depending on which batch the pharmacist was able to pick up cheaply that week. The situation is terribly confusing'."

11. Exhibits 3 and 6 to Mr Murray's earlier declaration consist of copies of similar articles that appeared in the British Medical Journal of 10 October 1992 and MIMS magazine of 20 October 1992.

12. The registered proprietor's evidence consists of a Statutory Declaration dated 16 February 1998 by Daryl John Baker, who describes himself as the "Therapy Area Director - Respiratory of Global Commercial Development, Glaxo Wellcome Plc." Mr Baker also attaches to his

declaration a copy of an earlier Statutory Declaration that he made in relation to the opposition proceedings described in Mr Murray's evidence. The main points that emerge from Mr Baker's evidence are as follows:

- (i) there are two types of asthma inhalers. One is used to prevent an asthma attack; the other is used to relieve an attack;
- (ii) the product which is the subject of registered trade mark No 1524601 is used to prevent asthma attacks. It is known as the Becloforte inhaler;
- (iii) the Becloforte inhaler was introduced into the United Kingdom in October 1982. The colour of this inhaler was originally entirely maroon but was changed to a combination of maroon body and pink cap sometime between 1986 and 1988;
- (iv) in 1988 over a million Becloforte inhaler devices were sold at a value of nearly £25 million. By 1992 the number sold had risen to nearly 2 million with a value of over £46 million;
- (v) the registered proprietor markets three other products containing the active ingredient Beclonethasone Dipropionate. These are known as the Becotide 50, 100 and 200, respectively. The numeral reflects the number of micrograms of active ingredient per actuation of the inhaler device (together with the Becloforte inhaler, these products are referred to collectively by the registered proprietor as "the BDP products");.
- (vi) in each of the years 1988 through to 1992, the registered proprietor spent in excess of £1M promoting BDP products. This has principally been on advertisements in medical journals and circulation material sent to medical practitioners throughout the United Kingdom, together with sales representatives calling on general practitioners and practice nurses;

- (vii) the preventer inhalers produced or licensed by Glaxo Wellcome are coloured brown, beige, maroon and pink and various shades of orange (and were, until 1990, also coloured green).

13. With regard to the applicant's contention that the colour pink, when applied to inhalers, indicates a product that is stronger than the usual dosage, Mr Baker notes that the products of 3M (Riker's sister company) of the same dosage and active ingredient are not pink. The AeroBec Forte has a maroon body and a maroon cap with a grey stripe around the body, and the Filair Forte has a maroon body and a grey cap. There is a further product on the UK market of the same dosage and active ingredient called the Beclazone 250. This is produced by a company called Baker & Norton. This inhaler has a maroon/raspberry tube and a pale pink cap. Mr Baker says that Baker & Norton is licensed by Glaxo Wellcome to use similar colour combinations for the Beclazone range as Glaxo Wellcome uses for its BDP range. There is one other product on the market of the same dosage and active ingredient as the Becloforte inhaler. This is known as the BDP spacehaler. It is produced by a company called Evans and this inhaler has a dark brown tube and a beige cap;

14. Exhibit DB4 to Mr Baker's earlier declaration includes a graph showing the market share of preventative inhalers held by the registered proprietor's Becloforte product. At the end of 1992 the registered proprietor's Becloforte inhaler appears to have held something under 20% of the UK market for preventative inhalers. The registered proprietor's Becotide inhaler products accounted for around a further 45% of the UK market in preventative inhalers. The next largest player in the market was a company called Pulmicort, whose products accounted for something under 10% of the relevant market at the end of 1992. It appears that the registered proprietor's market share declined after 1992 when the number of other products and players in the market appears to have increased significantly. Exhibit DB5 to Mr Baker's earlier declaration also includes a graph indicating the amount spent promoting the Becloforte and Becotide brands in the years 1979 through to 1996. The information given in this graph is not entirely consistent with the figures provided in Mr Baker's declaration. However, the graph confirms that promotional spend on the registered proprietor's Becloforte and Becotide brands declined sharply after 1992. For example, in 1992 the registered proprietor claims to have

spent around £600,000 promoting its Becloforte product. This reduced to about £50,000 in 1993.

15. That concludes my review of the evidence. I now turn to the decision. I bear in mind that in accordance with Section 72 of the Act, registration is prima facie evidence of validity. The onus is therefore on the applicant to show that registration No 1524601 is invalid.

16. Section 47(1) of the Act provides:

"47.-(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered."

17. Section 3(1) provides:

"3.-(1) The following shall not be registered -

- (a) signs which do not satisfy the requirements of Section 1(1);
- (b) trade marks which are devoid of any distinctive character;
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services;
- (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade.

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it."

18. Section 3(3)(a) of the Act provides:

"3(3) A trade mark shall not be registered if it is:

(a) contrary to public policy or to accepted principles of morality."

19. The Opponent has not been able to identify any public policy relating to the use of colours on inhaler devices which the trade mark registration offends. It seems to me that the Opponent's position is really that there *ought* to be a public policy that colours should only be used on inhalers to indicate purpose and strength. However, if the Department of Health has no such policy it is not for the Registrar to introduce such a policy via the Trade Marks Act. This ground fails.

20. The registered mark consists of two colours applied to the body and cap of an asthma inhaler of the shape depicted in the registration. There is no suggestion that the shape is in any way out of the ordinary. It is absolutely typical of the shapes used for these types of inhalers. I believe that it is therefore right to consider the trade mark as consisting essentially of the colours.

21. As a result of the registered proprietor's application in 1998 to amend his trade mark, the following appeared in Trade Mark Journal 6271:

"The following disclaimer has been placed on the mark: The colour pink applied to cap of mouthpiece portion of inhaler device is limited to Pantone colour 197C; the colour maroon applied to remainder of the surface of the inhaler device should be limited to Pantone colour 492C."



22. Section 44(1) & (2) of the Act provide:

“(1) A registered trade mark shall not be altered in the register, during the period of registration or on renewal.

(2) Nevertheless, the registrar may, at the request of the proprietor, allow the alteration of a registered trade mark where the mark includes the proprietor’s name or address and the alteration is limited to alteration of that name or address and does not substantially affect the identity of the mark.”

23. Section 13(1) of the Act provides:

“(1) An applicant for registration of a trade mark, or the proprietor of a registered trade mark, may-

(a) disclaim any right to the exclusive use of any specified element of the trade mark , or

(b) agree that the rights conferred by registration shall be subject to a specified territorial or other limitation;

and where the registration of a trade mark is subject to a disclaimer or limitation, the rights conferred by section 9 (rights conferred by registered trade mark) are restricted accordingly.”

24. I believe it is clear that there is no provision to amend a registered trade mark with regard to colour. The Registrar has accepted the proprietor’s application as one to voluntarily limit the infringement rights under Section 9 of the Act. It is of course important that a trade mark is properly defined. It is particularly important for the purposes of infringement and other disputes on relative grounds. I do not consider that this limitation has much bearing on whether the particular colours maroon and pink have an *inherently* distinctive character. Considered as an unused mark, two shades of maroon and of pink must be just as distinctive as any other two shades. Shades of colour(s) may be more relevant in assessing the extent of the public’s recognition of the colours.

25. I will first consider the applicant's contention that the trade mark was registered contrary to Section 3(1) (d) of the Act. The basis of this objection is revealed in Mr Murray's declaration where he says:

"The point which raises particular concern in respect of public health is that pink, when applied to inhalers, indicates that a product is stronger than the usual dosage."

26. The registered proprietor responds to this by pointing out that neither of the applicant's 250 mcg Beclonethasone Dipropionate products are marketed in inhalers coloured pink. One has a maroon tube and a grey cap; the other has a maroon tube with a maroon cap and a grey strip around the tube. Although another party, Baker Norton, markets an identical product in an inhaler which has a raspberry/maroon tube and a pale pink cap, this use is said to be licensed by the registered proprietor. As the colours are not the same, it is difficult to see what the subject of the licence might be. No details have been submitted.

27. It is important to recognise that there is a certain amount of imprecision in the use of names to describe colours. I would have said that the body of the registered proprietor's inhaler device, as illustrated in the promotional material included with Mr Baker's declaration, is a dark shade of pink. The registered proprietor describes it as maroon. It may be that this was the colour that Mr Murray had in mind when he made the statement referred to above.

28. It appears that, by 1998, three of the four manufacturers of Beclomethasone Dipropionate inhalers sold in a 250 micrograms metered dose aerosol, sold their product in an inhaler with a dark pink/maroon body. However, the position at the material date of 21 January 1993 is much less clear. As I have already noted, the onus is on the applicant to demonstrate that trade mark registration No 1524601 is invalid. By failing to file evidence which addresses the market situation at the material date, the applicant has failed to discharge the onus which is upon it. Consequently the ground of invalidation based upon Section 3(1)(d) of the Act fails.

29. I will next consider whether the mark was registered contrary to Section 3(1)(b) of the Act. This was the main ground of Ms Carboni's attack at the hearing. Miss Field submitted

that the choice of the colours maroon and pink was a capricious one made by the registered proprietor to distinguish its goods. Miss Field pointed out that there was no evidence that the colours had been used before in relation to inhaler devices. In consequence, she submitted that the colours were inherently distinctive for these goods. She also asked me to bear in mind that the registered proprietor's specification was extremely narrow. The exclusive right sought was therefore a right that was very limited in scope. She submitted that this should be borne in mind in assessing the capacity of the colours at issue to distinguish the registered proprietor's goods.

30. Ms Carboni pointed to the articles exhibited in evidence as attachments to Mr Murray's declaration, which suggested that the colour red was regarded as a traditional means of identifying preventative inhalers by the date of the application in 1993, and that the traditional method of colour coding inhalers had started to disintegrate by that time, indicating that a range of other colours were being used by various manufacturers for this purpose by 1993.

31. I do not accept that the choice of two colours that have not been used before in relation to a particular product necessarily means that those colours are inherently distinctive. As with most goods, colour is an unavoidable feature of an asthma inhaler. Because the average consumer is accustomed to colours appearing on goods and their packaging, he does not usually regard a colour as an indication of the trade source of the product. There may be exceptions. Some products have no natural colour or they come in a uniform colour, or perhaps a very small range of colours. In these circumstances the addition of an unusual colour may be regarded as a capricious addition to the goods and qualify for registration even before the mark has been put into use. I do not think that asthma inhalers fall into this category. The registered proprietor's evidence indicates that its own inhalers come in a variety of colours. There were clearly other manufacturers producing inhalers in a range of colours before the relevant date. The evidence suggests that the number of coloured inhalers on the market had increased to the point that it was causing some concern in the relevant circles by the material date. In these circumstances I do not consider that the colours maroon and pink can be regarded as having an *inherently* distinctive character as at 21 January 1993.

32. I am fortified in this view by the words of Lord Justice Robert Walker in *Procter & Gamble Ltd's trade mark applications* 1999 RPC 673 at 680, lines 42 to 46, where he said:

"Despite the fairly strong language of Section 3(1)(b), 'devoid of any distinctive character' - Mr Morcom emphasised the word 'any' - that provision must in my judgment be directed to a visible sign or combination of signs which can, by itself, readily distinguish one traders product - in this case an ordinary, inexpensive household product - from that of another competing trader."

33. For the reasons I have given, I have come to the view that the registered trade mark is not readily capable of distinguishing the goods of one undertaking. It is therefore devoid of any distinctive character and, prima facie, excluded from registration by Section 3(1)(b) of the Act. That conclusion appears to accord with the Registrar's view of the application prior to registration. The application was advertised before acceptance under the proviso to Section 18(1) of the Trade Marks Act 1938, indicating that the application was proceeding on the basis that the mark had acquired a distinctive character through use.

34. Having decided that the trade mark is excluded from registration by Section 3(1)(b) of the Act, there is no need for me to reach a conclusion on whether the trade mark is also excluded by Section 3(1)(c).

35. Even though the application was examined against the requirements of the Trade Marks Act 1938, once registered the mark was placed upon the register maintained under the 1994 Act. It is common ground that, in considering questions of validity, I must decide whether the evidence upon which the registered proprietor relies is sufficient to satisfy the proviso to Section 3(1) of the Trade Marks Act 1994. This presents me with a difficulty. The difficulty is that neither side has filed a copy of the evidence originally placed before the Registrar and upon which the original decision to accept the application was based. Ms Field (correctly) conceded that I was entitled to assume that the original evidence was no better than the evidence filed by the registered proprietor in these proceedings. I intend to proceed on that basis.

36. The European Court of Justice provided guidance on the interpretation of Article 3(3) of the Directive (which corresponds to the proviso to Section 3(1) of the Act) in the case of *Windsurfing Chiemsee Produktions v Boots & Attenberger* 1999 ETMR 585 at page 600.

The Court said:

"51. In assessing the distinctive character of a mark in respect of which registration has been applied for, the following may also be taken into account: the market share held by the mark; how intensive, geographically widespread and longstanding use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant class of persons who, because of the mark, identify goods as originating from a particular undertaking; and statements from Chambers of Commerce and Industry or other trade and professional associations.

52. If, on the basis of those factors, the competent authority finds that the relevant class of persons, or at least a significant proportion thereof, identify goods as originating from a particular undertaking because of the trade mark, it must hold that the requirements for registering the mark laid down in Article 3(3) of the Directive is satisfied. However, the circumstances in which that requirement may be regarded as satisfied cannot be shown to exist solely by reference to general, abstract data such as pre-determined percentages.

53. As regards the method to be used to assess the distinctive character of a mark in respect of which registration is applied for, community law does not preclude the competent authority, where it has particular difficulty in that connection, from having recourse, under the conditions laid down in its own national law, to an opinion poll as guidance for its judgment."

37. From the registered proprietor's evidence it appears that the mark had just under 20% of the market for preventative inhalers at the relevant date. This is a significant proportion of the market. Consistent with this the scale of the use of the mark in the period leading up to the application for registration was substantial. It is not entirely clear how longstanding the use of

the mark had been. The proprietor says that the Becloforte inhaler was introduced into the UK in October 1982. The colour was originally entirely maroon but was changed sometime between 1986 and 1988 to a maroon body and light pink cap, as depicted in the registration. Thus, the registered proprietor can only definitely say that the mark was used for around five years prior to the date of the application for registration.

38. Ms Carboni reminded me of the (by now well-known) words of Jacob J in *British Sugar 1996 RPC p281*, where he cautioned against the 'unspoken and illogical assumption that use equals distinctiveness'. The same point appears in a more recent judgment from the Court of Appeal in the case of *Bach Flower Remedies Ltd v Healing Herbs Ltd*, 21 October 1999, which as far as I am aware has not yet been reported. In that case Lord Justice Morritt said that:

"..... use of a mark does not prove that the mark is distinctive. Increased use, of itself, does not do so either. The use and increased use must be in a distinctive sense to have materiality"

39. Ms Carboni pointed out that the registered proprietor had not filed any evidence from the trade or from members of the public to attest to the result of the use made of the mark. As far as the nature of the use itself is concerned, Ms Carboni pointed out that the registered proprietor's coloured inhaler carried the word mark Becloforte together with a device of a letter B. The latter point echoes further comments made by Jacob J in the *British Sugar* case where he warned that it was dangerous to assume that a non-distinctive sign had become distinctive of trade origin through use when it had always been used together with a distinctive trade mark. As Ms Field pointed out, the *British Sugar* case concerned a laudatory word with very little trade mark potential. The extent to which a sign appears to lack potential as a trade mark must be relevant in assessing the likelihood that it has come to be viewed as a mark as a result of the use made of it. Further, although it is true that the registered proprietor's Becloforte inhaler carries that name and the letter 'B' upon its surface, neither sign appears particularly prominently. This is mainly because the word and letter are applied in the same colour as the body of the inhaler. Consequently, it is fair to say that the colour of the inhaler is

apparent before the name Becloforte or the device of a letter 'B'. However, I must also bear in mind that the trade mark Becloforte appears prominently in the registered proprietor's promotional material and, I dare say, also appears on the product packaging. I bear this in mind in considering the nature of the registered proprietor's user which, in the absence of any evidence from the public or the trade, was all that the Registrar had to go on in assessing whether the trade mark had acquired the necessary distinctive character as a result of the use made of it.

40. It does not appear that the contrasting light pink cap plays a vital role in providing the sign as a whole with a trade mark character. The light pink cap does not appear in any of the registered proprietor's promotional material exhibited to Mr Baker's declaration. The representation of the inhaler device is either shown without a cap at all, or with the maroon cap that appears to have been used prior to 1986 (or 1988).

41. In a case of asthma inhalers it is clearly important that the patient uses the correct inhaler and does not receive a dose of steroid which is higher or lower than their clinical need. The first page in Exhibit DB6 to Mr Baker's declaration consists of a promotional leaflet for its Becotide range of inhalers. The leaflet contains a coloured representation of three inhalers. These are the Becotide 50 inhaler, the Becotide 100 and the Becotide 200. The inhalers are shown adjacent to each other. The Becotide 50 is shown in an inhaler with a beige body. The Becotide 100 has a brown inhaler body. The Becotide 200 has a dark pink inhaler body. The latter appears to contradict a statement in Mr Baker's evidence that the Becotide 200 has, since its launch in 1991, always been sold in an inhaler with a beige body and cap. My own impression is that the average consumer of the product would regard these colours as indicating inhalers of different strengths.

42. There is nothing in the evidence which indicates that the registered proprietor has ever used these colours in an overtly trade mark manner. For example, there is nothing in the promotional material like an exhortation to "look for the one in the maroon tube". The colours are not mentioned at all.

43. The registered proprietor's inhalers all appear to have different colour combinations. This is not a case where there is a "corporate livery" whereby a certain colour or colours link all the products of one undertaking. It is, of course, possible for an undertaking to use various unlinked colour combinations as trade marks and for each of those colour combinations to be distinctive of the goods of that undertaking. One can see an example of this in *Smith, Kline and French Laboratories v Sterling-Winthrop Group Ltd 1976 RPC 511, starting at 532*. However, in that case there was a substantial body of evidence from the trade which attested to the fact that the various marks had acquired the necessary distinctiveness: that they had come to denote the goods of one undertaking. There is no such evidence in this case. In the absence of such evidence, and bearing in mind the nature of the registered proprietor's use of the trade mark, I do not believe that the Registrar was entitled to accept evidence of use alone as sufficient to establish that the mark had acquired a distinctive character prior to the relevant date. I have therefore come to the conclusion that the mark was registered contrary to Section 3(1)(b) of the Act and that the proprietor was not entitled to registration on the basis that the trade mark had acquired the distinctive character which it inherently lacked.

44. That is not the end of the matter because the proviso to Section 47(1) of the Act states that a trade mark which was registered in breach of Section 3(1)(b) shall not be declared invalid if it has acquired a distinctive character after the date of registration. In *British Sugar*, Jacob J said that "once the attacker is over the hurdle of showing the original registration was bad, the onus is on the proprietor to show that mark has since acquired a distinctive character." The registered proprietor cannot benefit from this provision in this case. I have evidence of continuing use, but the use after the relevant date is on a reducing scale. The market share is reduced and the promotional expenditure is much reduced. Further, there is evidence that by the date of the application for invalidation, other traders had started using similar colours for an identical product. There is no evidence from the trade or public to support the view that the public relies on relatively small differences in the colours or shapes of inhalers to distinguish the goods of different undertakings. The registered proprietor's position at the later date is, if anything, worse than at the date of the registration. There is, therefore, no basis for exercising the provision set out in the proviso to Section 47(1) of the Act in the registered proprietor's favour.



45. I conclude that trade mark registration No 1524601 is invalid and will be removed from the register.

46. The application for invalidation having succeeded, the applicant is entitled to a contribution towards its costs. I order the registered proprietor to pay the applicant the sum of £900 within 28 days of the period allowed for filing an appeal or, in the event of an unsuccessful appeal, within 28 days of this decision becoming final.

**Dated this 4 Day of May 2000**

**Allan James**

**For the Registrar**

**The Comptroller General**