

TRADE MARKS ACT 1994

**IN THE MATTER OF Trade Mark No. 2199497
in the name of Aldgate Warehouse Limited**

and

**IN THE MATTER OF an application for a
Declaration of Invalidity under No 12377 by Daniel Melamed**

COSTS

In my substantive decision of 1st August 2002 in the above matter I declared the registration invalid, but in the absence of more detailed submission on costs I made no finding on costs. The parties have since made written submissions. I said in my letter of 30th September 2002 that I would issue a written decision on costs unless either party requested to be heard. Neither party has requested to be heard, so I make the following decision based on the parties' written submissions.

In short, the applicants say that they contacted the registered proprietors in October 2000, well before the application for a declaration of invalidity to give them the opportunity of surrendering the registration or face the possibility of an application for invalidity. The registered proprietors indicated they would defend any application and so the applicants were put to the trouble of making the application, which included detailed evidence on the use of the registration. The registered proprietors say that it was only when this evidence became available that they were fully aware of the case against them and they promptly surrendered the mark as a result. Surrender did not, however, dispose of the application. Up until the production of the applicant's evidence, they considered that they had a perfectly valid claim to the mark based on their own use. Accordingly, they believe that each side should bear its own costs in these proceedings.

In view of my findings on the substantive issue and the overall circumstances of the case including, in particular, the existence of a 'direct hit' earlier trade mark to which the registered proprietor's attention was drawn well before the filing of the application, I consider that the applicants are entitled to a contribution towards their costs of £500 based on the scale of costs published in TPN 2/2000. I have not awarded more as the registered proprietors effectively conceded the matter promptly once the application was filed and, whilst a fairly detailed and broad based statement of case/evidence had been filed by the applicants, the matter really distilled into a straightforward section 5(1) finding.

This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of the case if any appeal against this decision is unsuccessful.

Dated this 20TH day of November 2002

**Edward S Smith
For the Registrar, the Comptroller-General.**