

O-057-07

TRADE MARKS ACT 1994

SUPPLEMENTARY DECISION ON COSTS

**IN THE MATTER OF REGISTRATION NO 1552116
IN THE NAME OF MICRO MEDICAL LIMITED
OF THE TRADE MARK:**

MICROGAS

IN CLASS 10

**AND THE APPLICATION FOR REVOCATION THERETO
UNDER NO 82164
BY LINDE MEDICAL SENSORS AG**

Trade Marks Act 1994

**In the matter of registration no 1552116
in the name of Micro Medical Limited
of the trade mark:
MICROGAS
in class 10
and the application for revocation
thereto under no 82164
by Linde Medical Sensors AG**

Supplementary Decision on Costs

1) On 30 January 2007 I issued a decision in relation to the substantive issues in these proceedings. However, I did not make an award of costs for reasons that I gave in my decision. I wrote:

“23) I have a good deal of sympathy with MML’s complaint about the nature of the search for use of the trade mark that was made. This, from the evidence, was confined to a search of MML’s website, some considerable time after the end of the alleged non-use period. It is not uncommon in proceedings before the registrar for parties to file Internet evidence using the web service, *Way Back Machine*. It would have been appropriate for Linde to use this service. Despite the evidence filed by MML, Linde continued with this action; in my view, clearly flying in the face of the evidence. It is the right of parties to file non-use revocation actions. However, if they have made little effort to establish whether there has been use and use is established, then the applicant should expect this to be reflected in costs.

24) On the other side of the coin, there was a good deal of time spent at the beginning of the proceedings in lengthy and ultimately fruitless arguments from Mr Jones in relation to an absence of a statement of truth on his original witness statement and the correction of a clerical error on Linde’s application form.

25) MML having been successful is entitled to a contribution towards its costs. Taking into account my comments in paragraph 23, the costs should be considered by reference to the actual costs incurred by MML (although, taking into account my comments in paragraph 24). Consequently, MML has two weeks from the date of this decision to submit a detailed breakdown of its costs in relation to this case. I will, then, issue a supplementary decision in relation to costs. If such a breakdown is not received in two weeks, the award of costs will be based solely upon the scale.”

2) *Rizla Ltd’s Application* [1993] RPC 365 confirms that in the matter of costs the registrar has a wide discretion. In considering the award of costs, I have taken into account the guidance of the Civil Procedure Rules.

3) On 9 February 2007 a breakdown of costs was received from the representatives of MML, Graham Jones & Company. Certain of the costs relate to the matters referred to in paragraph 24; I cannot see that these costs deserve compensation. Consequently, there will be no compensation for the costs outlined in points 2 to 10 inclusive of the breakdown; this means that there will be no compensation for the costs relating to Bristows. There is also a list of the breakdown of costs incurred by members of staff of MML; costs are based on the legal costs incurred and not upon the costs incurred in discussions with legal representatives by members of staff -see 43 PD 4.6 of the Civil Procedure Rules for a list of acceptable costs. As MML was successful, I do not consider that there should be compensation for item 13.

4) I have decided that the following costs are reasonable and should be awarded:

Item 1- £450.00

Item 11- £1,350.00

Item 12 - £1,200.00

Item 14- £150.00

Total - £3150.00

5) I order Linde Medical Sensors AG to pay Micro Medical Limited the sum of £3150. 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 this case if any appeal against this decision or the earlier decision on the substantive issues is unsuccessful.

Dated this 22nd day of February 2007

**David Landau
For the Registrar
the Comptroller-General**