

TRADE MARKS ACT 1994

Trade Mark Registration No. 1455509 by Topward Limited

And

Application for Revocation under No. 82370 by Lonsdale Spots Limited

Supplementary Decision on Costs

1. On the 9th January 2008 I issued a decision on behalf of the Registrar in the above proceedings. I decided that the application for revocation failed. I indicated that on the basis of the information I had the applicant would be ordered to pay the registered proprietor the sum of £1850 as a contribution towards its costs. I invited the registered proprietor to provide certain further information so as to enable me to determine how much more the proprietor should be awarded in respect of the costs of the cross examination of three of the proprietor's witnesses.
2. I indicated that the costs for two of the proprietor's officers – Mr Uzan and Ms Appel - should be limited to their travelling costs, and that the costs of the third witness – Mr Wallace, the registered proprietor's Trade Mark Attorney – should be limited to the extra costs involved with him attending the hearing for cross examination.
3. I subsequently received an estimate of £243 each for the costs of Mr Uzan and Ms Appel. Seventy pounds of this was for travelling to and from the hearing my taxi, and the rest for loss of time. I received an estimate for £435 for the extra costs of Mr Wallace's attendance.
4. The applicant provided written submissions objecting to the claims made on behalf of Mr Uzan and Ms Appel on the basis that 1) the estimates went beyond travelling expenses, and 2) the travelling expenses were too high – the witnesses should have travelled by public transport. The estimate for Mr Wallace was also objected to on the basis that, as the proprietor's trade mark attorney with care of the case, he would have been at the hearing with or without the applicant's request for cross examination.
5. In the light of the applicant's challenge I invited the proprietor's trade mark attorney to provide a clarifying witness statement if the request for Mr Wallace's costs was to be maintained. Mr Wallace subsequently provided such a witness statement in which he explains that when the request to cross examination him as a witness was made he was required to hand the management of the case to another attorney in his firm. He says that he would therefore not have attended the hearing except to act as a witness.
6. In line with the Registrar's usual practice, I do not intend to award the proprietor's officers more than their expenses for attending the hearing. Mr Uzan and Ms Appel were present for only a short time and in these circumstances I consider it reasonable

for them to have travelled by taxi in order to minimise the disruption to their business. I will therefore award the proprietor an additional £70 for their taxi fares.

7. I am satisfied that Mr Wallace was not at the hearing other than in his capacity as a witness. Some of the evidence he gave and on which he was examined, such as evidence about the proprietor's invoices, was evidence that would normally come from an officer of the company. A party should not be better off because it elects to tender this sort of evidence via an external trade mark attorney. Further, according to the applicable scale the maximum amount normally awarded for a witness to attend one day hearing is £250. I do not think that there is justification for awarding more. I will therefore award the proprietor a further £250 as a contribution to the cost of Mr Wallace attending the hearing as a witness.

8. As a result of the applicant's challenge, the proprietor will have to pay for a further witness statement from Mr Wallace. According to Mr Wallace's statement, this will cost the proprietor £145. I will order the applicant to pay this sum in full.

9. The overall result is that, subject to any appeal against this decision on costs, the applicant should pay the proprietor the sum of £2315 within 30 days of the date of this decision.

Dated this 15th Day of April 2008

**Allan James
For the Registrar**