

TRADE MARKS ACT 1994

**IN THE MATTER OF Trade Mark Registration No 2213298
in the name of Molewood Garage Limited
and**

**An Application under No 12408 for a Declaration of Invalidity
by Douglas James Robb**

SUPPLEMENTARY DECISION

1. On 8th July 2002 I issued a substantive decision in relation to the above application for invalidity. In summary, I found in favour of the applicant for invalidity and I ordered the Registered Proprietor to pay the sum of , 1600 costs to the applicant.
2. Subsequent to the issuing of the above decision, it has been brought to my attention that the Registered Proprietor had filed, on 28th May 2002, a Form TM22 seeking to voluntarily cancel the registration in suit. The Trade Marks Registry took receipt of the Form TM22, but due to an administrative error the form never found its way to the relevant department for actioning. Consequently, the applicant and myself were unaware of the Registered Proprietor's intentions in this matter; this resulted in a hearing taking place and the decision of 8th July 2002 being issued.
3. Had the applicant been made aware of the Registered Proprietor's intention to cancel the registration, the invalidation proceedings may have been withdrawn. If this scenario had come to fruition then the applicant's necessity to attend the hearing would have been obviated and the costs burden against the Registered Proprietor would have been lessened; the Registered Proprietor would still have been liable for costs up to the point of the filing of the TM22.
4. However, the filing of the TM22 would not necessarily have disposed of these proceedings; invalidation may be sought (even in the face of the cancellation of the registration) back to the date of filing of the application for registration. For this reason the decision invalidating the mark must stand. I would in any case be *functus officio*, I would be unable to set aside the decision.
5. Taking the above factors into consideration, I feel it inequitable to place a costs burden upon the Registered Proprietor for a hearing that may not have taken place had the Form TM22 being dealt with in the correct manner. For this reason I reduce the award of costs to the sum of , 1100.
6. A further error has also come to light. In my original decision the order for costs was made against Mr Michael Edwards (an officer of the Registered Proprietor). The costs order should have been made against the Registered Proprietor themselves, namely Molewood Garages Ltd.
8. The necessary power to correct these errors is provided by the Registrar's inherent jurisdiction to so do, and also as an irregularity in procedure has taken place, by Rule 66 of the Trade Mark Rules 2000. As such I rectify my decision in these proceedings by amending

the award of costs given in paragraph 41 of my decision of 8th July 2002. The order is now that Molewood Garages Ltd pays Mr Douglas James Robb the sum of , 1100. The award of costs is payable within 7 days of the date of this supplementary decision.

Dated this 18TH Day of October 2002.

**Dr W J Trott
Principal Hearing Officer
For the Registrar, the Comptroller General**