

O-425-10

**TRADE MARKS ACT 1994**

**SUPPLEMENTARY DECISION ON COSTS**

**IN THE MATTER OF INTERNATIONAL REGISTRATION NO 973157**

**IN THE NAME OF HEALING POWER, INC**

**OF THE TRADE MARK:**

**DBCARE**

**IN CLASS 5**

**AND**

**THE APPLICATION FOR A DECLARATION OF INVALIDITY THERETO**

**UNDER NO 16143**

**BY**

**ACE CONTINENTAL EXPORTS LIMITED**

## **Trade Marks Act 1994**

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in the name of Healing Power, Inc  
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and the application for a declaration of invalidity  
thereto under no 973157  
by Ace Continental Exports Limited**

1) In the decision of 16 November 2010, BL O/397/10, the following was decided in relation to costs:

“22) Ace having been successful is entitled to a contribution towards its costs. Mr Alkin submitted that as the hearing had been arranged at the request of Healing and Healing had not attended, that actual costs should be awarded in respect of the attendance at the hearing. It is noted that the letter from Healing states: “the undersigned registered holder respectfully, request to be heard, by written statement, prior to rendering any summary judgment”. There is ambiguity in the request. However, Healing was advised on 28 September 2010 that a hearing was scheduled for 9 November 2010 and so had plenty of time to advise the tribunal if it was going to attend or file written submissions. It was silent. Consequently, it is considered appropriate to consider the actual costs incurred by Ace for attendance at the hearing; that is not to state that actual costs will be granted. Ace has two weeks from the date of this decision to advise of the costs for attendance at the hearing. A supplementary decision will then be issued in relation to the costs. The period for appeal for both the substantive decision and the supplementary decision will run from the date of the issue of the latter decision.”

2) In a letter dated 29 November 2010 the costs for attendance at the hearing were given. Fees for counsel attending the hearing were £750 + VAT and solicitors' fees of £735 + VAT were incurred for attendance at the hearing. The travelling costs of the solicitor were £68. There is nothing unreasonable about these costs and the full sums, without VAT, will be awarded. There was also reference to preparation of submissions in readiness for the hearing. However, Mr Alkin prayed in aid the submissions in the letter of 20 August 2010. It is not considered appropriate to effectively compensate for the submissions twice.

3) Costs are awarded upon the following basis:

Application fee:	£200
Preparing a statement and considering the statement of Healing:	£200
Written submissions (the letter of 20 August 2010):	£250
Costs of attendance at hearing:	£1,553
Total:	£2,203

**Healing Power, Inc is ordered to pay Ace Continental Exports Limited the sum of £2,203. 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 is unsuccessful.**

**Dated this 08 day of December 2010**

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

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