

O-158-11

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION No. 2507344
STANDING IN THE NAME OF
EDWARD MARTIN BERMAN**

AND

**IN THE MATTER OF A REQUEST FOR A DECLARATION
OF INVALIDITY THERETO UNDER No. 83545
BY ROSEMARY SHADBOLT**

BACKGROUND

1) Edward Martin Berman (hereinafter the registered proprietor) has the following trade mark registered in the UK:

Mark	Number	Date Applied for / date registered	Class	Specification
GLOBAL VENEERS	2507344	28.01.09 / 26.06.2009	2	Paints, varnishes; lacquers; staining and colouring preparations; preservatives (paints), preservatives against the deterioration of wood; sealants; weather resistant coatings (paints); preparations for providing a finish to wood surfaces; mastics; rubber coatings; oils for the treatment, preservation and protection of wood.
			19	Non-metallic building materials; wood; wood chipboard; prepared wood; articles of wood for building purposes; boards, panels, cladding, coverings of wood; timber; building, manufactured, sawn and worked timber; timber panels; ply-wood, veneer sheets.
			20	Doors, tables, and other furniture items made of wood; furniture.
			40	Preservation, processing and treatment of wood and timber; consultancy, advisory and information services relating to all the aforesaid services.

2) By an application dated 17 July 2009 Rosemary Shadbolt (hereinafter the applicant) applied for a declaration of invalidity in respect of this registration. The grounds are, in summary:

a) The applicant has been using the name GLOBAL VENEERS in conjunction with a device element since 23 June 2008 in respect of veneered panels, doors and doorsets including the use of paints, lacquers stains; prepared wood and wood based products for doors, tables, panels, flooring, door frames, door edgings and bead linings. As such it has built up a goodwill and reputation in respect of the mark in the UK. The marks of the registered proprietor have been registered in breach of Section 5(4)(a) as the applicant has goodwill in the identical mark in the UK.

3) The registered proprietor filed a counterstatement denying the above grounds. The registered proprietor also states that he has been using the mark as registered since July 2006 and as such is the senior user.

4) Both sides filed evidence. Both ask for an award of costs. The matter came to be heard on 9 March 2011 when the registered proprietor was represented by Mr Lane of Messrs Forrester Ketley & Co. and the applicant by her son, Mr Stephen Shadbolt.

APPLICANT'S EVIDENCE

5) The applicant herself filed a witness statement, dated 16 March 2010. She states that the registered proprietor was previously a director of a company, Global Veneers Limited (number 05811979) which was voluntarily struck off the register at Companies House by the board of Directors. She makes serious allegations regarding the veracity of some of the evidence filed earlier in the application process by the registered proprietor, claiming that the documents are those where the name can be amended at a later date and back copies provided which reflect this change on documents with an earlier date. She states that she could find no use of the mark in suit by Mr Berman despite using search engines, telephone books and other sources where you would

expect a business to be listed. The only use of the term GLOBAL VENEERS prior to the applicant's use was by the Limited company in "chain of custody" documents with the Forest Stewardship Council. This document was changed to show Mr Berman's name in 2009. She comments that the registered proprietor's trading address was also the trading address of E V Exports, a company which recently went into administration. She states that despite being a legal requirement the building does not have a sign stating that the registered proprietor is trading from these premises nor do estate agents advertisements reflect the registered proprietor's presence in the premises.

6) Mrs Shadbolt provides a telephone bill, a bank statement, a copy of advertising, a certificate of registration for Value Added Tax, an invoice as well as letterheads and business cards showing her use of the mark GLOBAL VENEERS. She claims to have been trading as Global veneers since March 2008 and the exhibits relating to her use of the domain name agree with this date. The other items show use of this name shortly thereafter. These are detailed in the list of exhibits below. She submits that the registered proprietor traded as Global Veneers Limited until 13 November 2007, then started under his own name trading as E V Exports, and after the demise of EV Exports in June 2009 then began to trade as a sole trader but trading as Global Veneers. She states that the registered proprietor knew that the applicant was using the name Global Veneers as the applicant purchased items from EV Exports. She states that the registered proprietor has generated his history of use to predate his actual resumption of trade in 2009. She also states that her husband changed the name of his company from RS Doors to Global Veneers Limited (company number 5089516) with the approval of Companies House on 23 April 2008. Exhibit RS21 refers.

7) Mrs Shadbolt also provides the following exhibits:

- RS03: a copy of the company filing history at Companies House showing that Global Veneers Limited was struck off on 13 November 2007.
- RS04-5: Chain of Custody documents with the Forest Stewardship Council which shows Global Veneers Limited. These show an issue date of February 2007, an expiry date of February 2012 and have been printed on 13 February 2009. Ms Shadbolt contends that this was changed to Mr Berman's name at some point in 2009.
- RS06-07: Copies of a Court ordered Compulsory Winding Up order regarding The Veneer Company. The Court Order was dated 6 December 2006, and the company liquidated on 21 November 2008.
- RS08-09: Estate Agent advertisements for the premises said to be occupied by the registered proprietor. These are undated.
- RS10-11: Registration of a website www.globalvaneers.co.uk on 2 March 2009 by the registered proprietor
- RS12-13: Copies of telephone bills showing the applicant using the name Global Demeers as of June 2006. The name is corrected to Global Veneers on second bill dated June 2008.
- RS14: A copy of a Nat West bank statement showing use of Global Veneers as of June 2008 by the applicant.

- RS15: Copies of pages from Mrs Shadbolt’s website dated December 2009. This shows use of name regarding veneered doors.
- RS16: Website domain information, showing applicant registered GlobalVeneers.com on 31 March 2008.
- RS17-18: Copies of a business card and a company letterhead which are undated.
- RS19: Copy of a VAT registration certificate in the name of Rosemary Shadbolt Global Veneers dated 28 August 2008.
- RS20: Copy of an invoice relating to credit insurance showing applicant as Global Veneers dated 24 November 2008.
- RS 21: Copy of change of name certificate issued by Companies House dated 23 April 2008, for RS Doors to become Global Veneers Limited.

REGISTERED PROPRIETORS’ EVIDENCE

8) The registered proprietor himself filed a witness statement dated 14 September 2010. He states:

“1. I have been trading as GLOBAL VENEERS since at least as early as 11 July 2006 as a sole trader. Prior to which, I was trading as GLOBAL VENEERS through my previous company, Global Veneers limited (registered number 05811979) of which I was a director and which has subsequently been voluntarily struck off the register.”

9) He continues:

“Contrary to the Applicant’s assertions, the fact that the company of which I was previously a director, Global Veneers Limited, was voluntarily struck off the register on 13 November 2007 has no bearing on whether I have been trading as GLOBAL VENEERS and the Applicant was wrong to suggest so, in any case, it is well known in business that it is common for companies or sole traders to trade under names for which they have no corresponding registered company names.”

10) Mr Berman states that he informed the certification company SGS UK Limited of his setting up as a sole trader in 2006 and the name on the Forest Stewardship Council certificate was updated after the annual audit in 2007. He states that the Veneer Company Limited was set up in October 1999 with himself and one other director. The other director resigned in 2003 and the company was initially placed into a Company Voluntary Arrangement in 2005, then placed into voluntary liquidation in June 2006 and wound up in November 2006. No paperwork exists for any of these actions, although he states that the administrator/liquidator of Veneer Company Limited did not object to his using the Forest Stewardship Council registration and no payment was sought. He states that after The Veneer Company Ltd was wound up the Forest Stewardship Council certification company, SGSUK Ltd, agreed to change the name and address on the certificate to that of Global Veneers Ltd. Mr Berman states that, from June 2006 - March 2009, the address of Global Veneers was 10 Wooburn Ind. Park, Bucks.. He states that rent was paid from June 2006- October 2008 but during the period November 2008- March 2009 no rent was charged as the company he was renting from, EV Exports, was in the process of moving and closing down its business.

11) He provides a number of exhibits and responds to the comments made by the applicant in each case. I have summarised these comments in with the description of each exhibit as follows:

- EMB01: A copy of a VAT registration form dated 1 June 2006 which states that it was amended. This shows the name of the Mr Berman and Global Veneers. He submits that this shows that HMRC recognise him as trading as Global Veneers
- EMB02: A copy of an invoice dated 21 July 2006, which has GLOBAL VENEERS at the top but in the terms of the invoice states that the goods referred to remain the property of Global Veneers Ltd until payment is made. Mr Berman states that: “The “limited” element is so non-distinctive that it would almost certainly go unnoticed by consumers, and in any case, when deducing which mark is a trading name, consumers look to the head of a document rather than the terms and conditions and other small print.”
- EMB03: A copy of an RBS bank statement dated July 2006 with the account holder shown as Mr E M Berman, Global Veneers. Mr Berman states that although it is possible to amend the name of an account, copies of old statements would reflect the account name at the time they were first issued.
- EMB04: Copies of six mobile telephone bills. The first for the period 20 June 2006 to 31 July 2006 is addressed to Global Veneers Limited. The others for the periods 20 September 2006-31 October 2006, 1 May 2007 – 31 May 2007, 1 August 2008 -31 August 2008, 1 February 2009 – 28 February 2009, 1 August 2010 – 31 August 2010 are all addressed to Mr Edward M Berman, Global Veneers.
- EMB05: copies of a letterhead and business card which are undated.
- EMB06: Copies of pages from the accounts for the years ending 30 June 2007, and 30 June 2008. In each case only seven pages are provided and all the figures have been redacted. I do not regard these pages as providing any worthwhile information. The heading shows simply “Global Veneers” not Mr Berman t/a Global Veneers.
- EMB07: Copies of VAT returns for the years 2005-2008. The due dates shown on the forms are 31.10.2006, 31.01.2007, 30.04.2007, 31.07.2007, 31.10.2008 and 31.01 2009. Again all the figures have been redacted. These are addressed to “Edward Berman, Global Veneers, 10 Wooburn Ind Est.”
- EMB08: This consists of two witness statements. The first, dated 27 July 2010, is by Adrian Bennett the branch manager of Handelsbankers, Enfield. He states that he is aware that Mr Berman has been trading as Global Veneers since June 2006, firstly when he worked for Royal Bank of Scotland and, since December 2007, with his current employer. The second witness statement, dated 14 July 2010, is by Andrew Kirshen the Managing Partner at Kershen Chartered Accountants where he has worked for over forty years. He states that he is aware of Global Veneers, the trading name of Mr Berman and that he has, since 17 May 2006 worked with him in connection with the book keeping, accounting and taxation affairs. He states that Global Veneers has been operating since 2006.
- EMB09: Certificates and invoices from SGS UK Ltd relating to the Forest Stewardship Council registration assessment and certification fees. The certificates show that Global

Veneers Limited was certified from May 2006 - 17 February 2008. The second certificate is in the name of Global Veneers and is for the period 10 August 2006- 17 February 2008. The third certificate in the name of Global Veneers is for the period 18 February 2008 – 17 February 2013. The first invoice, dated 9 August 2006 would appear to have had the word Ltd redacted. The other invoices are addressed to Global Veneers and are dated, 4 September 2006, 9 October 2006, 14 September 2007, 8 October 2007, 24 July 2008 and 14 October 2008 all relate to the certification scheme run by SGS.

- EMB10: Copies of five invoices relating to rental payments regarding premises at 10 Wooburn Ind. Park, Bucks. for the period June 2006 to November 2008. All are addressed to “Global veneers” and all the figures have been redacted.

APPLICANT’S EVIDENCE IN REPLY

12) The applicant herself filed a second witness statement, dated 18 November 2010. Mrs Shadbolt repeats that she has been trading as a sole proprietor using the name GLOBAL VENEERS since March 2008. She provides a number of exhibits in addition to those of her earlier statement to back up this claim. These exhibits are as follows:

- RS12: Copy of phone bill dated 6 June showing her trading as Global Veneers (although it is misspelt as Demeers). Later bills showing the correct term are also provided.
- RS19: VAT registration dated August 2008
- RS22: Sales invoice dated 16 July 2008 under Global Veneers. This shows the supply of a number of veneered doors.
- RS23: Purchase invoice under Global Veneers dated 18 July 2008.
- RS24: Credit insurance under R Shadbolt t/a Global Veneers dated 24 November 2008.
- RS25: Copies of bank statements showing Mrs Shadbolt trading as Global Veneers dated 1 July 2008.
- RS26: Copy of a letter from Natwest stating that the applicant has been trading as Global Veneers since 3 June 2008.

13) Mrs Shadbolt states that she accepts that the registered proprietor traded as Global Veneers Limited in 2006. However, this company ceased trading in 2006, and it was only after E V Exports ceased trading in 2009 and went into administration that the registered proprietor started trading as Global Veneers as a sole proprietor. She points out that on the invoices provided by the registered proprietor, for Global Veneers Limited and himself trading as Global Veneers, the VAT registration number is the same. She deduces that the registered proprietor has applied to change the name of the VAT registration which means that the Limited company must have ceased to exist which means this must have occurred in 2009. She also points out that it would be unusual for an organisation such as the FSC to issue invoices which are handwritten as provided in the evidence of the registered proprietor and that the handwriting of the address appears to match that of the cheque number notation presumably made by the registered proprietor. Mrs Shadbolt also contends that the registered proprietor has shown a number of addresses in his evidence yet none are corroborated by payments to the local authority, payments for land lines, advertisements

(including free advertisements such as yellow pages), insurance (legally required) etc. She also provides a number of exhibits which relate to the activities of the registered proprietor and companies which he was either involved with or acquainted with.

RS03: Copy of an application to Companies House for the striking off of Global Veneers Limited signed on 25 May 2007 by Mr Berman as a Director.

REGISTERED PROPRIETOR'S ADDITIONAL EVIDENCE

14) The registered proprietor filed an additional witness statement, dated 8 March 2011. Mr Berman states:

“3. I then incorporated Global Veneers Limited (Company No. 5811979) on 10 May 2006 as the sole director. However, the company was only “active” for one month and no accounts were ever filed as there was no trading history. It was decided after a discussion with my accountant that due to tax savings it would make more sense to close the Limited company and proceed as a sole trader. It was for this reason that the company was voluntarily struck off on 13 November 2007. I remained a director of Global Veneers Limited until the company was struck off.”

15) Mr Berman states that leaving the references to the limited company on invoices was an oversight which was corrected as soon as it was noticed. He states that all trading was done as himself t/a Global Veneers with the Limited Company never trading. He states that the VAT authorities simply amended the number to reflect the change from Limited Company to sole trader, whilst the bank required a new account to be set up. Regarding the Forest Stewardship Council certificate he states that he was allowed to amend the title from The Veneer Company Limited to Global Veneers Limited and then to himself trading as Global Veneers.

16) Mr Berman provides the following exhibits:

- EB1: Copies of invoices regarding property rental from E.V. Exports Limited dated 10 July 2006, 5 September 2006, 1 November 2006, 2 May 2007, 3 July 2007, and 1 October 2007. These are all for the sum of £1250 per month excluding VAT.
- EB2: Copies of invoices from SGS identical to those already provided with his earlier statement. Also included is a copy of a bank statement showing Mr Berman t/a Global Veneers which details a payment dated 8 September 2006 for the sum of £158.63. This payment corresponds to an invoice from SGS dated 4 September 2006 regarding the Forestry Management System Certification.

APPLICANT'S FURTHER EVIDENCE

17) The applicant filed a witness statement, dated 19 April 2011 by Rosemary Shadbolt who has previously submitted evidence in this case. Although submitted after the hearing this was filed with my agreement due to the fact that the applicant had not seen the registered proprietor's additional evidence prior to the hearing. Mrs Shadbolt's witness statement is more a series of questions regarding the evidence of the registered proprietor along with submissions on how much weight should be attached to the evidence submitted by the registered proprietor. I will take these views into account in my decision.

18) That concludes my review of the evidence filed in these proceedings insofar as I consider it necessary.

DECISION

19) Section 47 of the Trade Marks Act 1994 reads:

“47.-(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

(2) The registration of a trade mark may be declared invalid on the ground -

- (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or
- (b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.”

20) There is only one ground of invalidity, under Section 5(4)(a) which reads:

“5. (4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

- (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

21) In deciding whether the mark in question offends against this section, I intend to adopt the guidance given by the Appointed Person, Mr Geoffrey Hobbs QC, in the *WILD CHILD* case [1998] RPC 455. In that decision Mr Hobbs stated that:

“The question raised by the grounds of opposition is whether normal and fair use of the designation WILD CHILD for the purposes of distinguishing the goods of interest to the applicant from those of other undertakings (see section 1(1) of the Act) was liable to be prevented at the date of the application for registration (see Article 4(4)(b) of the Directive and section 40 of the Act) by enforcement of rights which the opponent could then have asserted against the applicant in accordance with the law of passing off.

A helpful summary of the elements of an action for passing off can be found in Halsbury's Laws of England (4th Edition) Vol. 48 (1995 reissue) at paragraph 165. The guidance given with reference to the speeches in the House of Lords in *Reckitt & Colman Products Ltd v. Borden Inc.* [1990] R.P.C. 341 and *Erven Warnink BV v. J. Townend & Sons (Hull) Ltd* [1979] AC 731 is (with footnotes omitted) as follows:

'The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

- (1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;
- (2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by the defendant are goods or services of the plaintiff; and
- (3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant's misrepresentation.

The restatement of the elements of passing off in the form of this classical trinity has been preferred as providing greater assistance in analysis and decision than the formulation of the elements of the action previously expressed by the House. This latest statement, like the House's previous statement, should not, however, be treated as akin to a statutory definition or as if the words used by the House constitute an exhaustive, literal definition of passing off, and in particular should not be used to exclude from the ambit of the tort recognised forms of the action for passing off which were not under consideration on the facts before the House.'

Further guidance is given in paragraphs 184 to 188 of the same volume with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

'To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

- (1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and
- (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

- (a) the nature and extent of the reputation relied upon;
- (b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;
- (c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;
- (d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

22) I also note the comments of Pumfrey J in *South Cone Incorporated v JackBessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* case, in which he said:

“27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the Registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent’s reputation extends to the goods comprised in the applicant’s specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under Section 11 of the 1938 Act (See Smith Hayden (OVAX) (1946) 63 RPC 97 as qualified by BALI [1969] RPC 472). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed at the relevant date. Once raised the applicant must rebut the prima facie case. Obviously he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of possibilities that passing off will occur.”

23) I must also keep in mind the comments of Mr Justice Floyd in *Minimax GMBH & Co KG and Chubb Fire Limited* [2008] EWHC 1960 (Pat) in which he says of the above:

“Those observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in

the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

24) First I must determine the date at which the applicant’s claim is to be assessed; this is known as the material date. In this regard, I note the judgment of the General Court (GC) in *Last Minute Network Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) Joined Cases T-114/07 and T-115/07*. In that judgment the GC said:

“50 First, there was goodwill or reputation attached to the services offered by LMN in the mind of the relevant public by association with their get-up. In an action for passing off, that reputation must be established at the date on which the defendant began to offer his goods or services (*Cadbury Schweppes v Pub Squash* (1981) R.P.C. 429).

51 However, according to Article 8(4) of Regulation No 40/94 the relevant date is not that date, but the date on which the application for a Community trade mark was filed, since it requires that an applicant seeking a declaration of invalidity has acquired rights over its non registered national mark before the date of filing, in this case 11 March 2000.”

25) In his evidence the registered proprietor claims to have first used his mark considerably before the mark had achieved registration. This use must be taken into account as it could, for example, establish that the registered proprietor is the senior user, or that there had been common law acquiescence, or that the status quo should not be disturbed; any of which could mean that the registered proprietor’s use would not be liable to be prevented by the law of passing-off – the comments in *Croom’s Trade Mark Application* [2005] RPC 2 and *Daimlerchrysler AG v Javid Alavi (T/A Merc)* [2001] RPC 42 refer. The applicant has provided evidence which does not endorse her claims to have used the mark on the wide range of goods as set out in the original statement of grounds. However, considering the matter overall I am willing to accept that as of June 2008 the applicant was trading as *Global Veneers* in relation to the supply of doors, door frames and associated products.

26) The registered proprietor contends that his use began in June 2006. He has stated that although he set up a limited company, *Global Veneers Limited* in May 2006, it was only “active” for one month and did not trade in this time. Following discussions with advisors he states that it was apparent that the tax situation favoured him trading as a sole proprietor. Thus, it is claimed that the limited company was effectively put into limbo whilst Mr Berman traded under the same name. His evidence supports this contention. He has provided copies of VAT statements, bank statements, invoices, both to him and issued by him, and also he has shown that he was registered with the Forest Stewardship Council. I must also take into account the evidence of the bank manager and accountant. The use shown is far from overwhelming but it is sufficient, along with the rest of the documentation for me to reach the conclusion that, on the balance of probabilities, he was trading as a sole proprietor, in veneers, as of June 2006. I understand the scepticism of the applicant for invalidity, who state they have never heard of Mr Berman despite the veneers business being a small industry and their geographical proximity. They raised a number of issues regarding his evidence. I have to assess the issues on the balance of probabilities and I believe that Mr Berman has, just, provided adequate explanations.

27) My main reservation in this case was regarding the issue of whether Mr Berman could trade as a sole proprietor using the same name as the limited company whilst he continued to be a director of that company. Had *Global Veneers Limited* actually traded then this would have been problematical until the company was struck off in November 2007. As the company was

effectively stillborn and never traded then I do not consider this to be an issue. However, even had the company traded Mr Berman would have been entitled to trade as a sole proprietor using the same name as of December 2007. It is clear from the evidence that Mr Berman was trading as Global Veneers at this time. Mr Berman's use on veneers between December 2007 and April 2008, when the applicant began using the name, is enough to make him the senior user. I accept that there are issues as to whether Mr Berman's actions complied with legal requirements set out by various bodies. However, this does not alter the fact that he is the senior user.

28) The ground of invalidity under Section 5(4)(a) fails.

COSTS

29) The registered proprietor has successfully defended his registration and is therefore entitled to a contribution towards his costs. However, I take into account that Mr Berman could have provided much clearer evidence of his use, and set out the trading positions and relationships of his various companies. Had he done so there is every possibility that the matter would not have required a hearing, and it would have significantly reduced the work of the applicant. I therefore decline to make an award of costs.

Dated this 12 day of May 2011

**G W Salthouse
For the Registrar
the Comptroller-General**