TRADE MARKS ACT 1994

IN THE MATTER of an application
(Rectification No. 9671) by
ALLIED DOMECQ RETAILING LIMITED
for the rectification of the Register
in respect of Trade Mark No. 518567
registered in Class 32
(schedule iv) in the name of A G BARR PLC

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DECISION

ALLIED DOMECQ RETAILING LIMITED, formerly ALLIED-LYONS RETAILING LIMITED, (hereinafter called "the applicants") applied on 16 July 1997 for the rectification of the register under Section 64(1) of the Trade Marks Act 1994 in respect of trade mark number 518567. The applicants claim they are the proprietors of this registered trade mark but as a result of errors, the register shows A.G. BARR PLC as the registered proprietor.

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The applicants state that on 9 September 1993, the then registered proprietors, TIZER LIMITED, assigned trade mark number 518567 to ALLIED DOMECQ RETAILING LIMITED. There then followed a delay in filing the assignment documents with the Trade Mark Registry to record the applicants as the registered proprietors on the register, (under the Trade Marks Act 1938 (as amended)) as the consideration for the assignment was not paid immediately.

The applicants go on to state that the appropriate documentation to record the assignment of trade mark number 518567 to them was eventually filed at the Trade Marks Registry on 18 October 1996, but was returned on 7 November 1996 with the advice that another assignment of trade mark registration number 518567 from TIZER LIMITED to A G BARR PLC had been recorded on the register on 13 April 1995. The applicants subsequently applied to have the register rectified by the substitution of their name on the register as proprietor of this registration.

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The agents acting for A G BARR PLC, the existing registered proprietor, Murgitroyd and Company, wrote to the Registrar on 24 October 1997 to inform him that their clients were aware of the application for rectification and were content for the action to proceed as set out in the Statement of Grounds. They explained that in 1995 this registration was mistakenly included in an assignment of all of TIZER LIMITED'S intellectual property rights to A G Barr PLC, just before the former ceased to trade. The assignment of this registration from TIZER LIMITED to A G BARR PLC in 1995 was therefore in error as it had been in the ownership of ALLIED DOMECQ RETAILING LIMITED at that time.

With these facts in mind I turn to consider the application for rectification which is made under Section 64 of the Act, the relevant provisions of which state:

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5	64(1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register:
10	Provided that an application for rectification may not be made in respect of a matter affecting the validity of the registration of a trade mark.
10	64(2)
15	64(3) Except where the registrar or the court directs other wise, the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.
20	First of all, I am satisfied that the applicant has the necessary standing required by the statute They consider themselves to be the rightful proprietor of the registration and therefore they are a person having a sufficient interest in the matter at issue.
20	I am also satisfied that ALLIED DOMECQ RETAILING LIMITED acquired the trade mark from TIZER LIMITED in 1993, but did not file the assignment documents at the Trade Marl Registry, at that time. Thus when the assignment of intellectual property rights from TIZER LIMITED to A G BARR PLC took place the inclusion of this registration in the
25	documentation was clearly an error and thus trade mark number 518567 stands in the wrong name on the register. Accordingly I direct that the register be rectified forthwith to show that this registration was assigned on 9 September 1993 from TIZER LTD to ALLIED DOMECQ RETAILING LIMITED, of 107, Station Street, Burton-On-Trent, Staffordshire, DE14 1BZ and therefore that the latter be shown as the registered proprietor on the register.
30	In accordance with Section 64, the assignment from TIZER LIMITED to A G BARR PLC currently shown on the register is deemed never to have been made.
35	Dated this 9 Day of January 1998
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M KNIGHT

Acting for the Registrar The Comptroller General