

TRADE MARKS ACT 1994

**IN THE MATTER OF THE APPLICATION
(RECTIFICATION NO. 9895) BY BRITVIC SOFT DRINKS LIMITED**

**FOR RECTIFICATION OF REGISTRATION
NO. 2055831**

5 **TRADE MARKS ACT 1994**

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10 **FOR RECTIFICATION OF REGISTRATION NO. 2055831**

DECISION

15 The trade mark GENESIS was registered on 16 May 1997 under number 2055931 in Class 11 in respect of:

20 “Apparatus and instruments for dispensing and/or cooling beverages; beverage dispensing equipment; draught soft drinks dispensers; beverage cooling apparatus; parts and fittings for all the aforesaid goods”.

The registration stands in the name of BRITVIC SOFT DRINKS LIMITED.

25 By an application dated 28 November 1997 BRITVIC SOFT DRINKS LIMITED applied for rectification of the register under the provisions of Section 64(1) of the Trade Marks Act 1994, to show that the registration covers both Classes 7 and 11, as follows:-

30 Class 7: Apparatus and instruments for dispensing beverages; beverage dispensing equipment; draught soft drinks dispensers; parts and fittings for all the aforesaid goods.

Class 11: Apparatus and instruments for cooling beverages; parts and fittings for all the aforesaid goods.

35 The Statement of Grounds states that since the registration of No. 2055831, the registered proprietor has filed two further applications for registration covering soft drinks dispensing apparatus. Both of these are proceeding in Class 7, following a ruling from the Trade Mark Registry’s Classification Section, dated 24 September 1997, a copy of which is annexed to this decision. The registered proprietor therefore wishes the register to be rectified by the
40 amendment of this registration as set out above.

The relevant part of Section 64 of the Act states:

45 **64.(1)** Any person having a sufficient interest may apply for the rectification of an error or omission in the register:

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.

50 (2) An application for rectification may be made either to the registrar or to the court, except that-

- 5 (a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and
- (b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.
- 10 (3) Except where the registrar or the court directs otherwise, the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.

15 First of all I am satisfied that the applicant for rectification, as the proprietor shown on the register, has a sufficient interest in the matter and that there are no proceedings concerning this registration pending before the Court. I go on therefore to consider whether there is an error or omission in the register such that rectification is necessary and justified.

20 The specification of goods covered by this registration and shown earlier in this decision is the specification shown on the form TM3, the application for registration, on which it was stated that the class into which the goods were to be placed was class 11. These details were not amended during the examination stage. The registration therefore covers the goods in the class sought by the proprietor. There was therefore no error or omission, prima facie, by the

25 Trade Mark Registry.

I go on to consider therefore whether the goods covered by the specification were nevertheless incorrectly placed to class 11. In this connection I note Section 34 of the Act which states:

- 30 **34.(1)** Goods and services shall be classified for the purposes of the registration of trade marks according to a prescribed system of classification.
- (2) Any question arising as to the class within which any goods or services fall
- 35 shall be determined by the registrar, whose decision shall be final.

The prescribed system of classification is the International Classification of Goods & Services (6th edition) as set out in Schedule 4 of the Trade Mark Rules 1994. The general heading for class 11 is as follows:-

40 Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.

In determining whether the goods and services shown on an application form fall into the class stated on the form an Examiner will have regard to the TRADE MARK REGISTRY'S GUIDE TO THE CLASSIFICATION OF GOODS AND SERVICES IN THE UNITED KINGDOM (1997 edition). I note that the specification of the registration consists of the terms "apparatus and instruments for dispensing beverages"; "drinks dispensers" and "parts and fittings for all the aforesaid goods". This description could cover 'Drinking Fountains' which according to the Guide (and the ruling by the Trade Mark Registry referred to earlier)

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50 are in class 11; the description could also cover drinking water supply apparatus, which

5 according to the Guide falls into class 11 and drinking water filters which similarly fall into class 11. In the circumstances I do not consider that there was any error or omission in proceeding with the application as one for registration in class 11 on the basis of the specification of goods as set out on the application form.

10 In the circumstances, I conclude that the registration, results from a properly filed application (insofar as the Trade Mark Registry is concerned) in respect of goods which appropriately fall into class 11. The application was published accordingly and subsequently the registration certificate was issued. The fact that the goods covered by the specification may also fall into class 7 is, in my view not relevant at this stage. After an application has been published and
15 registered there is no provision in the Act or rules to broaden the scope of the registration. If an applicant wishes to have coverage for goods which fall into two or more classes then they may either file two or more applications or file an application covering two or more classes as provided for in Rule 8 of the Trade Mark Rules.

20 Section 64(1) of the Act is there, in my view, to correct errors or omissions of a clerical nature. The amendment to the registration sought in this case is far more substantive in nature and therefore it is not appropriate to a request for action under this provision.

25 Accordingly, the application for rectification by BRITVIC SOFT DRINKS LIMITED is refused.

Dated this 4 day of February 1998

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**M KNIGHT
For the Registrar
the Comptroller General**