

TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No 2028983
BY CLASSIC MINERAL WATER COMPANY LIMITED
TO REGISTER THE MARK
SILVERWOOD SPRING WATER & DEVICE
IN CLASS 32

AND IN THE MATTER OF OPPOSITION THERETO
BY SILVER SPRING MINERAL WATER COMPANY LIMITED

TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No 2028983
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TO REGISTER A TRADE MARK IN CLASS 32

5

AND IN THE MATTER OF OPPOSITION THERETO
by THE SILVER SPRING MINERAL WATER COMPANY LIMITED.

BACKGROUND

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On 1 August 1995, Classic Mineral Water Company Ltd of 76 Edward Street, Lurgan, County Armagh, BT66 6DB, Northern Ireland applied under the Trade Marks Act 1994 for registration of the trade mark **SILVERWOOD SPRING WATER and DEVICE** (reproduced below) in respect of the following goods in Class 32:

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“Still and sparkling spring waters”

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On the 17 July 1996 The Silver Spring Mineral Water Company Ltd filed notice of opposition to the application. The grounds of opposition are in summary:

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i) The Silver Spring Mineral Water Company Ltd. are the proprietors of three marks (registration numbers 1358280, 1466447 & 1542181) all of which include the words SILVER and SPRING and are registered for goods which are identical or similar to those of the applicants.

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ii) The opponents are also the proprietors of two marks (registration numbers 1529430 & 2009959) which include the word SILVER and are registered for soft drinks.

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iii) The opponents therefore claim that “ By virtue of lengthy and extensive use for soft drinks of its name and the common abbreviations of its name, viz. ‘Silver Spring’ and ‘Silver Spring Mineral Water’, the opponents have acquired reputation and goodwill in the name and abbreviations to such an extent that confusion will arise from the use by others of trade marks including the word Silver with or without the word Spring.” They therefore claim that the application offends against the provisions of Section 5(2) and 5(4) of the Trade Mark Act 1994.

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The applicants subsequently filed a counterstatement denying all of the grounds of opposition, other than agreeing that the opponents are the registered proprietors of the trade marks as claimed. Both sides ask

for an award of costs.

Both sides filed evidence in these proceedings and the matter came to be heard on 15 February 1999 when the applicants were represented by Mr Hamer of Counsel, instructed by the trade mark agents Maguire Boss, and the opponents by Mr Tritton of Counsel, instructed by the trade mark agents J.Y. & G.W Johnson.

OPPONENTS' EVIDENCE

This takes the form of five statutory declarations. The first of which is by Mr James M Ludlow, dated 2 April 1997. Mr Ludlow is the Managing Director of The Silver Spring Mineral Water Company Ltd, a position he has held since 1990. He has 20 years experience in the soft drinks industry with the company.

Mr Ludlow provides a brief history of the company which began when a group of hoteliers, wine merchants and grocers in the Folkestone area used the label (see Annex A) which includes the words "Silver Spring" in 1870. The Limited company was formed in 1888, and until 1954 its trading was conducted mainly in Kent and S.E. England. Since 1954 the company has expanded to sell its wares throughout the UK. The opponents now sell a wide variety of non-alcoholic beverages under different trade names, and a price list showing the range of trade names and products, dated June 1995, is provided at exhibit JML3

In addition to its sales under the trade mark SILVER SPRING the company also produces non-alcoholic beverages for other retailers under other labels. The turnover figures shown in the first column are sales "under the name or trade mark" SILVER SPRING and include the use of the name SILVER SPRING in conjunction with a more prominent trade mark such as "SPRING UP" lemonade. The figures for each financial year, 1 February to 31 January, are as follows:

Year	Turnover under the name or trade mark Silver Spring £ Million	Turnover under "other marks" £ Million
89 - 90	10.9	11
90 - 91	12.5	14
91 - 92	13.2	12.9
92 - 93	14.5	14.2
93 - 94	17.5	18.8
94 - 95	18	19.6
95 - 96	20	21.5
96 - 97	21.5	22.5

The figures for "other trade marks" include sales under the marks SILVER CLEAR and SILVER SLIM. These marks were registered on 7 December 1994 and 10 March 1993 respectively. Both marks

are registered for non-alcoholic beverages in Class 32 (full specification given at Annex A). The registration for SILVER SLIM includes the disclaimer “Registration of this mark shall give no right to the exclusive use, separately, of the words ‘Silver’ and ‘Slim’ “. Mr Ludlow provides separate figures for the year 1 February 1995 to 31 January 1996 during which the sales amounted to in excess of £1million and £165,00 for the marks SILVER CLEAR and SILVER SLIM respectively. He also provided figures for the sales of non-alcoholic beverages, especially low calorie tonic water, under the mark SILVER SLIM for the years 1990 - 1995. Examples of the use of the two marks on labels are at Annex B. These show SILVER SLIM being used on tonic water and SILVER CLEAR on lemonade.

Mr Ludlow states that between “early 1993 and mid 1996” the opponents spent “in excess of half a million pounds on trade advertising”. Of which he claims about £350,000 was spent before 16 June 1995. Advertisements were placed in trade journals such as “The Grocer”, “Checkout and Supermarketing”, “Convenience Store”, “Independent Retailer”, “Independent Grocer”, “Cash and Carry Management”, “Asian Trader” and “Asian Business”. Exhibit JML5 contains examples of these advertisements which show use of the “Silver Spring and device” mark on the leaflets. It is apparent that most of the products offered to the trade bear other trade marks, although some also bear the Silver Spring and Device mark and a few only bear this mark.

The total sales by Silver Spring of aerated spring water bearing the Silver Spring trade mark are stated by Mr Ludlow to have been:

Year ending	Wholesale value
Jan 93	£39,620
Jan 94	£108,815
Jan 95	£83,408

Finally, Mr Ludlow states that, because of the aforementioned, the opponents’ mark Silver Spring is well known and the company itself is referred to as Silver Spring. Of the top ten soft drinks producers in the UK only the opponents have the word Silver in their company name. It is Mr Ludlow’s belief that any non-alcoholic beverage sold in the UK under the name SILVERWOOD or any other combination including the word Silver and closely resembling Silver Spring would be taken as a product produced by the opponents. He concludes by saying, “I believe therefore that no one else should be allowed to use, let alone monopolise, SILVERWOOD for such goods”.

The second statutory declaration, dated 27 March 1997, is by Nicola Bright of Bright Williamson who provide a public relations service to the opponents. At exhibit NB1 are various trade press clippings which show the name of the opponents as Silver Spring. Most of the products shown however are for the companies other brands such as “Perfectly Clear”, “UFD”, “Wizzdom” etc.

The third statutory declaration, dated 7 April 1997, is by Stephen Geoffrey Hale a partner in JY & GW Johnson, trade mark agents for the opponents. Mr Hale make’s reference to a questionnaire survey sent out to “trade contacts” of the opponents. It is not clear whether the covering letter (not exhibited) revealed the purpose of the survey. Five questionnaires were completed and exhibited. The most relevant questions were:

9(a) “If you now saw a new soft drink with a brand name or trade mark including the word ‘Silver’ would you expect it to be produced by any particular manufacturer or supplied by any particular supplier?”

5 17(a) “Do you know the trade mark or brand name Silverwood?”

17(d) “Who produces or supplies these products?”

10 Three of the five respondents in answering question 9(a) mentioned Silver Spring, one of whom also mentioned BARRS. One respondent, Mr D Gardner stated “ Yes. The word Silver to me only brings to mind one soft drink manufacturer ie Silver Spring”. None of the five answered positively to question 17(a) and none were able to say who made Silverwood.

15 Mr Hale states that he carried out a search of the Trade Marks Register for marks in class 32 which contained the word Silver. Of the 14 registrations found six belong to the opponents, the other eight are in different ownership and some of these are registered for soft drinks and mineral water.

20 The fourth statutory declaration is by Mr Barry Penaluna, dated 26 March 1997. Mr Penaluna is the owner of the Fiesta Soft Drinks Company, an independent distributor of soft drinks to the retail trade. He has owned the company for 15 years and prior to this spent 20 years with various other firms in the soft drinks’ industry. Mr Penaluna was one of the five respondents to the questionnaire survey, and the only respondent to complete a statutory declaration. He states that to the best of his knowledge, the opponents are the only company in the soft drinks’ market with the word Silver in its name. Further, the only other use of the word Silver in a brand name in the industry that he is aware of was by BARRS in their BARRS SILVER LEMONADE, which he last saw offered for sale seven years ago. He considers the soft drinks market to include mineral waters.

30 Lastly there is a statutory declaration by Mr Richard Hall, dated 3 April 1997, the chairman of Zenith International Ltd since 1991. Zenith International Ltd specialise in market research and Mr Hall has ten years experience of the soft drinks industry as a marketing consultant, conference organiser, lecturer, journalist, author and industry spokesman. Since 1995, Zenith has been commissioned by Tate & Lyle to produce a report which provides an overview in terms of consumption in the different sectors of the soft drinks market, and mentions changes in brands etc. Mr Hall claims that more than one thousand copies of this report are distributed to manufacturers, journalists and other interested parties, and is accepted by the industry as accurate. The report shows the opponents as 10th in a table of UK sales volumes. Finally, Mr Hall states that as far as he is aware the opponents are the only soft drinks’ manufacturer with a brand containing the word Silver.

40 APPLICANTS’ EVIDENCE

45 This consists of two statutory declarations. The first is by Mr James McKee, dated 3 July 1997, the managing director of Classic Mineral Water Company Ltd. Mr McKee claims that the applicants have used the mark SILVERWOOD in relation to still and spring waters since 1987. He also claims that the applicants’ mineral water is sold throughout the UK in outlets which include multiples such as Budgens, Stewarts and Wellworth. A list of the stores of these multiples is provided. The Budgens’ stores are throughout the UK. Stewarts and Wellworth appear to be based in N. Ireland.

Sales figures for the SILVERWOOD trade mark are as follows:

Year	Turnover £
1987	15,000
1988	14,500
1989	26,000
1990	31,000
1991	78,500
1992	103,000
1993	125,000
1994	45,000
1995	82,000
1996	166,000

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15 Mr McKee states that promotion of the brand has mostly been by in-store tastings, and the applicants liaise with the retailer to promote these events.

Mr McKee accepts that the opponents have established a reputation in the UK in respect of SILVER SPRING in relation to non-alcoholic beverages. However, he objects to certain references to sales which are after the effective date. He also points out that the mark SILVER SLIM had a disclaimer of the word 'silver'.

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With regard to the alleged resemblance between the applicants' mark SILVERWOOD and the opponents' mark SILVER SPRING, Mr McKee states that he believes that they are visually and phonetically very different, and that as far as SILVER per se, the opponents do not use, hold a registration in, and cannot monopolise this word.

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Despite coexisting in the marketplace for over a decade Mr McKee claims that he is unaware of a solitary instance of confusion between the brands. This he states is because the marks look and sound different, and the opponents' mark is split into two words whereas the applicants' mark is a single word.

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The second statutory declaration, dated 2 July 1997, is by David Cullen, a solicitor and advisor to the applicants on trade mark issues. Mr Cullen provides at exhibit DC2 a copy of a search of the Trade Marks Register carried out by a company called Search International. This revealed other marks registered or pending which have the word Silver in them and relate to goods in class 32. However, there is no evidence that any of these marks are in use on soft drinks or mineral waters.

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OPPONENTS' EVIDENCE IN REPLY

This consists of two statutory declarations. The first of which is again by Mr Ludlow, dated 3 October 1997. He comments that the opponents have not sold any products to Stewarts Supermarkets or

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Wellworth Ltd for sale in Northern Ireland. The only products supplied to Budgens have been “Perfectly Clear” soft drinks, “Silver Spring” lemonade and “UFD” fizzy drinks. The second declaration by Mr N Clark, dated 3 October 1997, who is an account executive for the opponents with responsibility for the Budgens account. He confirms Mr Ludlow’s comments on the products supplied to Budgens.

That concludes my review of the evidence. I now turn to the decision.

DECISION

Firstly I consider the grounds of opposition under Section 5 (2) (b) which states:

*“5.(2) A trade mark shall not be registered if because -
(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier mark is protected,*

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

I have to determine whether the marks are so similar that there exists a likelihood of confusion on the part of the relevant public. In deciding whether the two marks are similar I rely on the decision of the Court of Justice of the European Communities (ECJ) in the Sabel v Puma case C251/ 95 - ETMR [1998] 1-84. In that case the court stated that:

“Article 4(1)(b) of the directive does not apply where there is no likelihood of confusion on the part of the public. In that respect, it is clear from the tenth recital in the preamble to the Directive that the appreciation of the likelihood of confusion ‘depends on numerous elements and, in particular, on the recognition of the trade mark on the market, of the association which can be made with the used or registered sign, of the degree of similarity between the trade mark and the sign and between the goods or services identified’. The likelihood of confusion must therefore be appreciated globally, taking into account all factors relevant to the circumstances of the case.

Global appreciation of the visual, aural or conceptual similarity of the marks in question, must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components. The wording of Article 4(1)(b) of the Directive - “there exists a likelihood of confusion on the part of the public” - shows that the perception of the marks in the mind of the average consumer of the type of goods or services in question plays a decisive role in the global appreciation of the likelihood of confusion. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details.

In that perspective, the more distinctive the earlier mark, the greater will be the likelihood of confusion. It is therefore not impossible that the conceptual similarity resulting from the fact that two marks use images with analogous semantic content may give rise to a likelihood of confusion where the earlier mark has a particularly distinctive character, either per se or because of the reputation it enjoys with the public.”

Although most of the opponents' sales have been in soft drinks rather than mineral water, the opponents' marks are all registered in Class 32 non-alcoholic beverages per se. As the opponents' specification would encompass the applicants' goods, the marks must first be considered on the assumption that the goods of the two parties are identical.

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The opponents' marks are all shown at Annex A. It is clear that the SILVER SPRING and DEVICE mark, number 1466447 provides the strongest case for the opponents.

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As the ECJ stated in Sabel v Puma, the public normally perceive trade marks as wholes and do not proceed to analyse the various details. That suggests that the opponents' claim that the public regard the first word of their mark - SILVER - as itself distinctive of their goods, should be treated with caution.

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Visually the marks differ in that the opponents' mark consists of SILVER SPRING as two words whereas the applicants' mark consists of the single word SILVERWOOD and the description "spring water". Each also has a device, in the opponents case a very distinctive fountain type device which spouts either from the "V" in SILVER or from between the two words. The applicants' device is far less distinctive showing a landscape with a stream flowing between a small group of trees. It is clear that each mark begins with the word SILVER and also contains the word SPRING.

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At the hearing Counsel for the opponents made much of the fact that the applicants' mark, SILVERWOOD SPRING WATER and DEVICE, contained both words of the opponents' mark. However, differences need to be considered as well as similarities. The word 'Spring' in the applicants' mark is part of the term 'Spring Water'. This is subordinate to 'SILVERWOOD' and would not be taken as a feature which identifies the provenance of goods. This function is provided by the word SILVERWOOD and the device. By contrast, 'SPRING' in the opponents' mark SILVER SPRING is part of the dominant component identifying the trade origin. Overall I consider that the marks convey a significantly different visual impression.

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Phonetically the first two syllables of each mark are identical, but the additional words WOOD and SPRING makes it difficult to see how one mark could be misheard for the other. Mr Tritton for the opponents invited me to consider that customers would refer to the applicants' product as SILVERWOOD SPRING, and so with imperfect recollection and the slurring of words there would be confusion. I do not consider this scenario as very probable. It relies upon the opponents' contention that the word SPRING should be considered as a dominant component of the applicants' mark, which for the reasons given above, I do not consider that it is. In any event, mineral water usually is sold in two forms, still & sparkling, and the consumer would, in my view, be more likely to ask for SILVERWOOD STILL or SILVERWOOD SPARKLING. Even allowing for imperfect recollection and the slurring of word endings, it is my view that the marks are unlikely to be confused through oral use.

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Considering the conceptual nature of the marks, the applicants state that their mark is suggestive of the name of a wood, perhaps comprised of Silver Birches. Whereas the opponents' mark is suggestive of high quality soft drinks. It is my view that there is no conceptual similarity between the marks.

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These conclusions regarding SILVER SPRING and DEVICE also hold for SILVER CLEAR and SILVER SLIM as they are no more similar to the applicants' mark.

It is clear from the Sabel v Puma case, that a mark with a strong reputation deserves more protection

than one with a limited reputation. The opponents contend that the word SILVER in their mark is the most distinctive aspect with the word SPRING being seen as descriptive. They claim that SILVER is not used in a laudatory sense as it conveys no impression when considering the product. They maintain therefore that the word SILVER is a fancy word. The opponents also argue that none of their competitors in the soft drinks field use trade marks containing the word SILVER, and that they had a substantial reputation in the word SILVER to the extent that Mr Tritton stated that “in any event we have used it for so long that it is, in effect, our mark”.

The applicants do not accept the opponents’ argument that they have reputation in the word SILVER, and referred to the well-known dictum of Lord Parker in the W &G Du Cros Ltd case (1913 RPC 660), as support for their contention that traders should not be allowed to monopolise words / letters that other traders may honestly wish to use in the course of their trade.

At the hearing it was common ground that the opponents enjoy a reputation in their SILVER SPRING and DEVICE mark. This reputation is more for carbonated drinks and tonic water rather than for still and sparkling mineral water. Indeed, the opponents’ sales for aerated spring water under the SILVER SPRING mark is actually less than those of the applicants’.

Nevertheless the opponents’ reputation under SILVER SPRING makes it more plausible that the public could assume that the opponents have a connection with SILVERWOOD. However, in view of the differences between the marks I still do not consider that confusion is likely. There is no evidence of any actual confusion despite the acceptance that Budgens have sold SILVER SPRING and SILVERWOOD products.

The opponents have provided survey evidence and I must consider whether this undermines my conclusion as to the likelihood of confusion. The survey evidence consists of five responses from what were described as “trade contacts” of the opponents. Statistically this survey must be considered insignificant. It is flawed in its approach as the questionnaires were sent to known contacts of the opponents. Question 9(a) encouraged respondents to guess, as illustrated by Mr Gardner’s answer. The bringing to mind of another mark does not, of itself, amount to a likelihood of confusion or association for the purposes of Section 5(2), as per Sabel v Puma.

The construction of question 9(a), by referring to “soft drinks”, which more accurately describes the opponents’ goods, rather than the actual goods of the applicant (water); and by picking out the common element, SILVER, rather than testing reaction to the whole of the applicants’ mark, unfairly prejudiced the result. The survey tells one nothing about what the average consumer of still and sparkling water would think about the respective marks. It is also my view that the questionnaire is so flawed that it reveals nothing about the trade’s view that would be safe to rely upon.

Lastly, I must consider whether the use of the SILVER SLIM and SILVER CLEAR trade marks results in a “family” of trade marks and collective reputation of SILVER prefixed marks, of which SILVERWOOD might be taken for the latest member. It is clear from the BECK KOLLER case (64 1947 RPC 76) that under Section 12 of the 1938 Act the existence of a family of marks with a common distinctive element could assist an opponent if there is evidence that the marks have been used in the marketplace. I believe that the position under Section 5(2) of the new law is the same. I note that SILVER SLIM appears to be used on tonic water and SILVER CLEAR on lemonade. The second word in each case is descriptive, SLIM (low calorie) and CLEAR (translucent if not transparent). WOOD on the other hand is not descriptive of the product, and conjoined with SILVER alludes to a

geographical location, SILVERWOOD. I therefore consider it unlikely that the applicants' mark will be taken as a member of the SILVER SPRING "family" of trade marks.

5 I therefore conclude that taking account of all the relevant circumstances and the identical nature of the goods, the similarity of the marks is not sufficient to have created a likelihood of confusion at 1 August 1995 (the material date). The opposition under Section 5(2) therefore fails.

I now turn to the ground of opposition under Section 5(4)(a) which states;

10 *"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

15 *(b) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a) above, in particular by virtue of the law of copyright, design right or registered designs.*

20 *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."*

In deciding whether the mark in question "SILVERWOOD SPRING WATER and DEVICE" 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 14 RPC 455). In that decision Mr Hobbs stated that:

25 *"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 Art.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.*

30 *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] RPC 341 and Even Warnik BV - v - J. Townend & Sons (Hull) Ltd [1979] AC 731 is (with footnotes omitted) as follows:*

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

40 *(1) that the plaintiff's goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;*

45 *(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.

5 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.'

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15 "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:

20 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

25 (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.

30 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.

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

- 40 (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.

45 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."

With these considerations in mind I turn to assess the evidence filed on the behalf of the parties in the present proceedings as set out earlier in this decision.

5 It is claimed that the public would be confused as to the source of the applicants' goods believing them to originate from the opponents. The opponents state that their products are sold in retail outlets throughout the UK and that in the period "early 1993 - June 1995" approx. £350,000 was spent promoting their products each year. There is no evidence of the market share although annual sales figures for the three years 1 February 1992 - 31 January 1995 show an average sales figure of more than £16.5 million. I have already found that the opponents have a reputation in the market under the trade mark "SILVER SPRING and DEVICE". I have also found earlier in this decision that the opponents' mark (SILVER SPRING and DEVICE) is not similar to the applicants' mark SILVERWOOD SPRING WATER and DEVICE. In my view the lack of similarity will prevent the public believing that the products of the applicants originate from the opponents.

15 I am therefore persuaded that at the relevant date, 1 August 1995, the opponents had a goodwill in goods in class 32 (soft drinks). However, I am not convinced that members of the public would confuse the products of the applicants for those of the opponents. The opposition under Section 5(4) therefore fails.

20 The opposition having failed the applicants are entitled to a contribution towards their costs. I order the opponents to pay the applicants the sum of £1135.

Dated this 5 day of May 1999

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30 George W Salthouse
For the Registrar
The Comptroller General

ANNEX A



SILVER
SPRING



SILVER SPRING



SILVER SPRING



SILVER SPRING



SILVER SPRING

The marks shown above have been registered in Part A of the Register as a series of five marks under No. 1466447 as of the date 07.06.1991 in respect of:

Class 32:

Spring water; non-alcoholic drinks, fruit drinks, mineral water, aerated water, all containing natural spring water; soda water; preparations for making non-alcoholic drinks; fruit juices for use as beverages; lemonade, cola, orangeade, cherryade, limeade, strawberryade, blackcurrantade, melonade, pearade, raspberryade, appleade, ginger beer, bitter lemon, ginger ale, diet lemonade, diet cola, tonic water, cream soda, shandy, cocopina; all included in Class 32.

ANNEX A (cont)

The mark shown below has been registered under No. 2009959 as of the date 07 December 1994

SILVER CLEAR

The mark has been registered in respect of:

Class 32:

Non-alcoholic beverages; soft drinks; carbonated soft-drinks; fruit drinks; sparkling drinks flavoured with lemon, orange, peach, cherry, apple, lime, strawberry, raspberry or other fruit flavour.

1358280 21 September 1988 (32)



Non-alcoholic drinks and preparations for making such drinks; mineral waters and aerated waters; fruit juices for use as beverages; all included in Class 32.

Silver Spring Mineral Water Company Limited, Park Farm, Folkestone, Kent, CT19 5EA.

Agent: Johnsons, 10 Stafford Street, Edinburgh, EH3 7AZ.

1542181 16 July 1993 (32)



Registration of this mark shall give no right to the exclusive use of the words "Mineral Water Company Ltd" and a letter "C".

Aerated water, table water, mineral water, non-alcoholic beverages; all included in Class 32.

SILVER SLIM

The mark shown above has been registered in Part B of the register under No. 1529430 as of the date 10 March 1993 in respect of:

Class 32:

Non-alcoholic beverages and preparations for making such beverages; tonic water, soda water, mineral water, aerated water, sparkling table water; bitter lemon, lemonade, orangeade; cola, fruit squashes, fruit drinks; all included in Class 32.

Registration of this mark shall give no right to the exclusive use, separately, of the words "Silver" and "Slim".

