

TRADE MARKS ACT 1994

IN THE MATTER OF:

APPLICATION No. 80161

IN THE NAME OF FENCHURCH ENVIRONMENTAL GROUP LTD

FOR REVOCATION OF TRADE MARK REGISTRATION No. 2027376

IN THE NAME OF BACTIGUARD AB

DECISION

1. On 30 November 2001, Fenchurch Environmental Group Ltd filed an application for revocation of trade mark registration number 2027376 under Section 46(1)(a) of the Trade Marks Act 1994.
2. The trade mark was registered in the name of Ad Tech Holdings Ltd on 29 November 1996, with effect from 18 July 1995. It was subsequently assigned to Bactiguard AB on 19 September 2005.
3. The application for revocation succeeded for the reasons given by Dr. Lawrence Cullen on behalf of the Registrar of Trade Marks in a written decision issued under reference BL O-095-07 on 2 April 2007. His decision is reported at [2007] RPC 31, p.701.

4. The Hearing Officer revoked the registration on the ground of non-use with effect from 30 November 1996. He ordered Bactiguard AB to pay £1,950 to Fenchurch Environmental Group Ltd as a contribution towards its costs of the proceedings in the Registry.

5. Bactiguard AB gave notice of appeal to an Appointed Person under Section 76 of the 1994 Act. The appeal came on for hearing before me on 12 July 2007. It was adjourned part heard to allow time for the appellant to comply with a direction given under Rules 57 and 65(4) of the Trade Marks Rules 2000 for the production of specified documents and also to allow time for the parties to explore the possibility of settlement.

6. The appellant subsequently informed the tribunal that it was unable to locate the documents it had been directed to produce. The existence of negotiations for a settlement was put forward as a reason for not re-fixing the hearing of the appeal. The tribunal was eventually informed in June 2009 that no agreement for settlement had been reached.

7. The further hearing of the appeal was scheduled to take place on 13 August 2009. On 7 August 2009 the tribunal was informed that the parties had reached agreement with regard to the disposal of the appeal on the basis that:

- (1) the appeal would be withdrawn;
- (2) each side would bear its own costs of the appeal;
- (3) the Hearing Officer's decision and order for costs would stand.

8. The agreement between the parties is exhaustive of the appeal and sufficient to bring it to an end by abatement without the need for any further order or direction on the part of the tribunal.

Geoffrey Hobbs Q.C.

11 August 2009

Taylor Wessing LLP acted for the Appellant.

Marks & Clerk LLP acted for the Respondent.