

**TRADE MARKS ACT 1994**

**1. Application 2460646 by Osotspa Co. Ltd to register a complex trade mark in class 32**

**AND Opposition 95807 by PepsiCo, Inc. partly based on earlier UK trade mark 2020690 – MAX**

**2. Applications 83298 & 83299 by Osotspa Co. Ltd to invalidate and revoke registration 2020690**

**3. Applications 2491581 & 2491695 by PepsiCo. Inc. to register MAX and a figurative mark including the word MAX**

**AND Oppositions 98358 and 98360 by Osotspa Co. Ltd**

1. In a provisional decision dated 19 May 2010 I found that:

- i) Applications 83298 and 83299 by Osotspa Co. Ltd for PepsiCo Inc.'s trade mark registration 2020960 to be revoked and/or declared invalid, should be rejected.
- ii) Opposition 95807 by PepsiCo Inc. against trade mark application 2460646 by Osotspa Co. Ltd, should succeed in respect of 'soft drinks' and 'fruit drinks' but fail in respect of the remainder of the opposed goods covered by that application.
- iii) Opposition 98360 by Osotspa Co. Ltd to application 2491695 by PepsiCo Inc. should be rejected.
- iv) Opposition 98358 by Osotspa Co. Ltd to application 2491581 by PepsiCo Inc. should succeed to the extent that the application covered 'energy drinks', but otherwise fail.

2. In accordance with Tribunal Practice Notice 2/2006, I gave PepsiCo.Inc. 21 days from the date of the provisional decision to file a Form TM21 amending the list of goods to:

Mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; but not including energy drinks; syrups and other preparations for making beverages.

- or making another amendment which had the same effect. I indicated that, in the absence of such an amendment, the application would have to be refused for the general term "*other non-alcoholic drinks*" (which covers energy drinks).

3. No such amendment was made.

4. The parties asked to be permitted to make submissions on costs after having the benefit of my provisional decision. I therefore allowed them 28 days to make such submissions. Due to the effect of the political difficulties in Thailand on the commercial activities of Osotspa Co. Ltd, I permitted that party a further 14 days to make submissions. In the event, neither side made submissions on costs.

5. I therefore confirm my provisional decisions as final. In the case of application 2491581 this means that it will proceed to registration for:

Mineral and aerated waters; fruit drinks and fruit juices; syrups and other preparations for making beverages.

- And will be refused for "non-alcoholic beverages".

6. As neither party has asked me to award costs other than on the basis of the Registrar's published scale, and I can see no obvious justification for any other course, I intend to assess costs based on the scale.

7. In deciding this matter it is appropriate to take into account the relative success of the various applications covered by my decision. In my judgment, PepsiCo Inc. has been more successful than Osotspa Co. Ltd. The latter's applications to have the former's MAX trade mark cancelled were unsuccessful. Further, Osotspa Co. Ltd's opposition to PepsiCo Inc.'s application 2491695 failed completely. The outcomes of these cases points to an award of costs in favour of PepsiCo Inc.

8. By contrast, Osotspa Co. Ltd's opposition to PepsiCo Inc.'s application 2491695 and PepsiCo Inc.'s opposition to Osotspa Co. Ltd's application 2460646 were partly successful, but partly failed. In my view, the awardable costs for these applications should be taken to cancel each other out.

9. I therefore order Osotspa Co. Ltd to pay PepsiCo Inc. the sum of £2900 as a contribution towards the cost of these proceedings made up of:

- i) £900 for reading Osotspa's applications for cancellation and notice of opposition in Opposition 98360 and for filing counterstatements;
- ii) £1500 for filing evidence and reading Osotspa Co. Ltd's evidence;
- iii) £500 for preparing for and attending the hearing.

10. The above sum to be paid within 14 days of the end of the period allowed for appeal.

**Dated this 20 day of July 2010**

**Allan James  
For the Registrar**