

**BL O/0477/23**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK REGISTRATION NOs. UK912971693,  
UK3335054, UK3224112, UK3024868 and UK3247950**

**IN THE NAME OF STEELWORKS INVESTMENT LLC**

**FOR THE FOLLOWING TRADE MARKS:**



*light lips*

**Fuzion 100 Functional Water**



**Light Lips**



**IN CLASSES 32 & 33**

**AND**

**APPLICATIONS FOR RECTIFICATION**

**UNDER NOs. 84863, 84864, 84865, 84866 and 84867**

**BY C7 Brands Limited**

1. The trade marks on the cover page of this decision were applied for and registered as follows:

*UK912971693*

Filing date: 11 June 2014

Registration date: 20 December 2014

For class 33: Alcoholic beverages (except beers); alcoholic wines; spirits and liqueurs; alcopops; alcoholic cocktails.

*UK3335054*

Filing date: 30 August 2018

Registration date: 18 January 2019

For class 32: Aerated mineral waters;Aerated water;Aerated waters;Alcohol free beverages;Apple juice beverages;Apple juice drinks;Beverages consisting of a blend of fruit and vegetable juices;Beverages consisting principally of fruit juices;Beverages containing vitamins;Beverages (Non-alcoholic -);Beverages (Whey -);Bitter lemon;Bottled drinking water;Bottled water;Carbonated mineral water;Carbonated non-alcoholic drinks;Carbonated soft drinks;Carbonated water;Carbonated waters;Cocktails, non-alcoholic;Coconut juice;Coconut water;Coconut water as a beverage;Coconut water as beverage;Coconut-based beverages;Concentrated fruit juice;Concentrated fruit juices;Concentrates for making fruit drinks;Concentrates for making fruit juices;Concentrates for use in the preparation of soft drinks;Concentrates used in the preparation of soft drinks;Cranberry juice;Distilled drinking water;Drinking mineral water;Drinking spring water;Drinking water;Drinking water with vitamins;Drinking waters;Effervescing beverages (Pastilles for -);Effervescing beverages (Powders for -);Energy drinks;Essences for making beverages;Essences for making flavoured mineral water [not in the nature of essential oils];Essences for making non-alcoholic beverages;Essences for making non-alcoholic beverages [not in the nature of essential oils];Essences for making non-alcoholic drinks, not in the nature of essential oils;Extracts for making beverages;Extracts for making non-alcoholic beverages;Flavor enhanced water;Flavored mineral water;Flavored waters;Flavoured carbonated beverages;Flavoured mineral water;Flavoured waters;Frozen fruit beverages;Frozen fruit drinks;Frozen fruit-based beverages;Frozen fruit-based drinks;Fruit beverages;Fruit beverages and fruit juices;Fruit beverages (non-alcoholic);Fruit drinks;Fruit extracts (Non-alcoholic -);Fruit flavored drinks;Fruit flavored soft drinks;Fruit flavoured carbonated drinks;Fruit flavoured drinks;Fruit flavoured waters;Fruit juice;Fruit juice bases;Fruit juice beverages;Fruit juice beverages (Non-alcoholic -);Fruit juice concentrates;Fruit juice drinks;Fruit juice for use as beverages;Fruit juices;Fruit nectars;Fruit nectars,

nonalcoholic;Fruit nectars, non-alcoholic;Fruit smoothies;Fruit squashes;Fruit-based beverages;Fruit-based soft drinks flavored with tea;Fruit-flavored beverages;Fruit-flavored soft drinks;Fruit-flavoured beverages;Functional water-based beverages;Ginger juice beverages;Glacial water;Grape juice;Grape juice beverages;Grapefruit juice;Green vegetable juice beverages;Guava juice;Honey-based beverages (Non-alcoholic -);Isotonic beverages;Isotonic beverages [not for medical purposes];Isotonic drinks;Isotonic non-alcoholic drinks;Juice drinks;Juice (Fruit -);Juices;Kvass [non-alcoholic beverage];Kvass [non-alcoholic beverages];Lemon barley water;Lemon juice for use in the preparation of beverages;Lemon squash;Lemonade;Lemonades;Lime juice cordial;Lime juice for use in the preparation of beverages;Lithia water;Low calorie soft drinks;Low-calorie soft drinks;Mango juice;Melon juice;Mineral enriched water [beverages];Mineral water;Mineral water [beverages];Mineral water (Non-medicated -);Mineral waters;Mineral waters [beverages];Mixed fruit juice;Mixed fruit juices;Mixes for making sorbet beverages;Mung bean beverages;Must;Nectars (Fruit -), non-alcoholic;Non alcoholic aperitifs;Non-alcoholic beverages;Non-alcoholic beverages containing fruit juices;Non-alcoholic beverages containing vegetable juices;Non-alcoholic beverages flavored with coffee;Non-alcoholic beverages flavored with tea;Non-alcoholic beverages flavoured with coffee;Non-alcoholic beverages flavoured with tea;Non-alcoholic beverages with tea flavor;Non-alcoholic carbonated beverages;Non-alcoholic cinnamon punch with dried persimmon (sujeonggwa);Non-alcoholic cocktail bases;Non-alcoholic cocktail mixes;Non-alcoholic cocktails;Non-alcoholic cordials;Non-alcoholic drinks;Non-alcoholic flavored carbonated beverages;Non-alcoholic fruit cocktails;Non-alcoholic fruit drinks;Non-alcoholic fruit extracts;Non-alcoholic fruit extracts used in the preparation of beverages;Non-alcoholic fruit juice beverages;Non-alcoholic fruit punch;Non-alcoholic grape juice beverages;Non-alcoholic honey-based beverages;Non-alcoholic malt beverages;Non-alcoholic malt drinks;Non-alcoholic malt free beverages [other than for medical use];Non-alcoholic punch;Non-alcoholic punches;Non-alcoholic rice punch (sikhye);Non-alcoholic soda beverages flavoured with tea;Non-alcoholic sparkling fruit juice drinks;Non-alcoholic vegetable juice drinks;Non-alcoholic wine;Non-alcoholic wines;Non-carbonated soft drinks;Nut and soy based beverages;Nutritionally fortified beverages;Nutritionally fortified water;Oat-based beverages [not being milk substitutes];Orange barley water;Orange juice;Orange juice beverages;Orange juice drinks;Orange squash;Orgeat;Part frozen slush drinks;Pastilles for effervescing beverages;Pineapple juice beverages;Pomegranate juice;Powders for effervescing beverages;Powders for the preparation of beverages;Powders used in the preparation of coconut water drinks;Powders used in the preparation of fruit-based beverages;Powders used in the preparation of fruit-based drinks;Powders used in the preparation of soft drinks;Preparation for making non-alcoholic beverages;Preparations for making aerated water;Preparations for making beverages;Preparations for making liqueurs;Protein-enriched sports beverages;Quinine water;Ramune (Japanese soda pops);Red ginseng juice beverages;Rice-based beverages, other than milk substitutes;Root beer;Root beers;Root beers, non-alcoholic beverages;Sarsaparilla [non-alcoholic beverage];Seltzer water;Sherbet beverages;Sherbets [beverages];Slush

drinks;Smoked plum beverages;Smoked plum juice beverages;Smoothies;Smoothies containing grains and oats;Smoothies [fruit beverages, fruit predominating];Smoothies [non-alcoholic fruit beverages];Soda pops;Soda water;Soft drinks;Soft drinks flavored with tea;Soft drinks for energy supply;Sorbets [beverages];Sorbets in the nature of beverages;Soy beverage;Soya-based beverages, other than milk substitutes;Soy-based beverages, not being milk substitutes;Sparkling water;Sports drinks;Sports drinks containing electrolytes;Spring water;Spring waters;Squashes [non-alcoholic beverages];Still water;Still waters;Syrup for making beverages;Syrup for making lemonade;Syrups for beverages;Syrups for lemonade;Syrups for making beverages;Syrups for making flavoured mineral waters;Syrups for making fruit-flavored drinks;Syrups for making non-alcoholic beverages;Syrups for making soft drinks;Syrups for making whey-based beverages;Syrups used in the preparation of soft drinks;Table water;Table waters;Tomato juice [beverage];Tomato juice beverages;Tonic water;Tonic water [non-medicated beverages];Unfermented preserved must;Vegetable drinks;Vegetable juice;Vegetable juices [beverage];Vegetable juices [beverages];Vegetable smoothies;Vegetable-based beverages;Vitamin enriched sparkling water [beverages];Vitamin fortified non-alcoholic beverages;Water;Water enhanced with minerals;Water (Lithia -);Water (Seltzer -);Water-based beverages containing tea extracts;Watermelon juice;Waters;Waters [beverages];Waters (Table -);Whey beverages.

*UK3224112*

Filing date: 10 April 2017

Registration date: 13 October 2017

For class 32: Coconut water as beverage.

*UK3024868*

Filing date: 4 October 2013

Registration date: 17 January 2014

For class 33: Wine.

*UK3247950*

Filing date: 3 August 2017

Registration date: 5 January 2018

For class 32: Coconut juice; Coconut water; Coconut water as a beverage; Coconut-based beverages.

2. Applications to record a change of ownership filed on Form TM16 for registration numbers UK912971693, UK3024868 and UK3247950 was made on 9 August 2022, and on 26 August 2022 for UK3335054 and UK3224112. The applications were made by the new owners, Steelworks Investment LLC (“the proprietor”). Attached to the forms was an Asset Purchase Agreement evidencing that an assignment took place. The records were confirmed on 16 August 2022 and 2 September 2022 respectively.

3. On 27 September 2022, an application to rectify the register was made on Form TM26R by the Liquidator (Azets) for C7 Brands Limited (“the applicant”). The applicant stated that C7 Brands Limited are in compulsory liquidation and the liquidator did not give permission for the change of ownership and had not signed any forms or been notified of the transfer. Also provided were the Certificate of Appointment of Liquidator dated 2 February 2022 and a Winding Up Order dated 9 July 2021.

4. As the application for rectification was made by a person other than the registered proprietor, it was necessary to serve the application on the proprietor in accordance with rule 44(2) of the Trade Marks Rules 2008 (“the Rules”). Accordingly, on 7 November 2022 the Registry served the TM26R forms on the proprietor setting a deadline of 9 January 2023 to file submissions/evidence. The proprietor did not file a counterstatement.

## **Evidence**

5. As mentioned above, the applicant filed a Certificate of Appointment of Liquidator by the Secretary of State which confirms the appointment of Louise Mary Brittain of Azets as liquidator for C7 Brands Limited. Also provided is the Notice to Official Receiver of Winding-Up Order dated 9 July 2021.

## **Decision**

6. Rectification of the register is provided for under section 64 of the Act. This states:

“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.

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

(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.

(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.

(4) The registrar may, on request made in the prescribed manner by the proprietor of a registered trade mark, or a licensee, enter any change in his name or address as recorded in the register.

(5) The registrar may remove from the register matter appearing to him to have ceased to have effect."

### *Sufficient interest*

7. The applicant must have a sufficient interest to apply for rectification. The applicant has responsibility for operating C7 Brands as a going-concern and to collect in and assess all its assets and debts. Therefore, I am prepared to accept the applicant has sufficient interest to bring these proceedings.

### *Is it an error capable of correction?*

8. Where an application is filed to record the assignment, the information provided on the Form is taken at face value. The registrar does not investigate or otherwise seek

to establish the legality of the claim to change of ownership until the recordal of change of ownership is challenged. When the ownership is challenged, it is incumbent on the proprietor to show that the contested marks were transferred to the proprietor under a valid assignment. Section 24(3) of the Act is as follows:

“An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, a personal representative.”

9. For ease of reference, I will set out a chronology of events as they appear to me:

- Between 4 October 2013 and 30 August 2018- the five marks in question are registered.
- 6 March 2020- Asset Purchase Agreement. This document is made between the proprietor and C7 Brands Ltd plus two other companies and signed by all parties. The proprietor is the purchaser in the agreement and C7 Brands Ltd together with the two other companies are the sellers.
- 9 July 2021-Notice to Official Receiver of Winding-Up Order
- 2 February 2022- Ms Brittain of Azets is appointed as liquidator for C7 Brands Ltd.
- 9 and 26 August 2022- applications were made to change the ownership of the five registrations to the proprietor.
- 16 August and 2 September 2022- the Registry wrote to the proprietor confirming the change of ownership had been recorded.
- 27 September 2022- the application for rectification from the applicant was received by the registry.

10. The Asset Purchase Agreement mentioned above sets out the assets being sold on page 2 of the agreement as “the brands listed on Exhibit A” and “any other assets of any nature whatsoever related to any of the brands, whether specified in this Agreement or not, including but not limited to (a) any Intellectually [sic] Property...”.


11. At section 1.1.1. intellectual property “for the purposes of this Agreement shall mean with respect to any of the Brands, all [...] (b) trademarks, service marks, trade dress, trade names, logos, corporate names, internet domain names, URLs, and registration and applications for the registration thereof, together with all of the good will associated therewith [...]”

12. Exhibit A of the Agreement is as follows:

**EXHIBIT A**  
**LIST OF BRANDS**

1. **Coco Fuzion 100 for the entirety of the goods and services described in United States Patent and Trademark Office Trademark Classifications 29, 30 and 32**
2. **Light Lips for the entirety of the goods and services described in United States Patent and Trademark Office Trademark Classification 33**

Ideally, the agreement would go on to list the trade mark registrations that it covers however, it appears to have been left as a more open interpretation. Given marks 912971693, 3024868 and 3247950 are marks that include ‘Light lips; or ‘Coco Fuzion 100’ and so, in my mind, they would be included under this assignment.

13. For mark 322412,  this does not include the word ‘Fuzion’ however, it is presented in the same format as the other Coco 100 Fuzion marks and I think it would be reasonable upon seeing the mark to believe that it belongs to the same brand. Moving on to mark 3335054 ‘Fuzion 100 Functional Water’, even though the word ‘Coco’ is missing and there are two additional words, I believe that the inclusion of ‘Fuzion 100’ will be enough for recognition as part of the Coco 100 Fuzion brand.

14. As per the TM26R, the applicant states that the Register should be rectified as they did not give permission for any change of ownership nor had they been notified that any such transfer would occur and therefore the transaction should be void. However, as per the above chronology, I note that the agreement selling all intellectual property relating to the brands Coco Fusion 100 and Light Lips was made between the proprietor and C7 Brands Ltd almost two years prior to the appointment of the applicant as liquidator. Therefore, at the time the agreement was made, the parties to



the sale agreement would not have needed (or indeed been able to seek) the permission of the applicant, nor would they have been able to notify them of the agreement taking place as the liquidator was simply not in place.

15. I am aware that liquidators can potentially look to reverse prior agreements that have been made at an undervalue however, this has not been pleaded and nor is it an issue that the tribunal can consider.

16. It may be that the applicant only became aware of the sale agreement due to the change of ownership on the Register as this did take place after the liquidator had been appointed. However, the Forms TM16 are completed simply to action the updating of the register itself and whilst it is preferred that updates such as these are carried out as soon as possible, there is no legal requirement to do so. The date which is critical to this matter is the date of the agreement itself as it is at that point the change of ownership actually took place. As this is prior to the liquidators involvement, I do not believe any permission could have been sought nor was it required and therefore, as far as the Registry is concerned there is no error capable of rectification.

## **Conclusion**

17. All five applications for rectification are dismissed.

## **Costs**

18. No request for costs has been made and I make no order in this respect.

**Dated this 24<sup>th</sup> day of May 2023**

**L Nicholas**

**For the Registrar**