

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No 2003701
BY KEMIRA KEMI AKTIEBOLAG
TO REGISTER THE TRADE MARK KEMIFERM
IN CLASS 1**

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER No 45101
BY KEMIN INDUSTRIES INC**

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5 TO REGISTER THE TRADE MARK KEMIFERM
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15 DECISION

On 25 November 1994 Kemira Kemi Aktiebolag applied to register the mark KEMIFERM for the following specification of goods:

20 CLASS 1 Ensiling agents, ensiling agents based on sulphuric acid, ensiling agents based on sulphuric acid in combination with formic acid.

The application is numbered 2003701.

25 On 15 August 1996 Kemin Industries Inc filed notice of opposition to this application. The grounds of opposition are in summary as follows:-

- (i) under Section 1 of the Act in that the mark applied for is not capable of distinguishing the applicants' goods
- 30 (ii) under Section 3(3)(b) in that use of the mark will mislead the public as to its nature and/or origin
- (iii) under Section 3(5) "inasmuch as United Kingdom law provides that the use of deceptive and/or misleading trade descriptions and the like are unlawful, and having regard to the likelihood of the use of the trademark KEMIFERM being taken as indicating a connection in the course of trade with ourselves, because of our extensive use of the KEMIN trademarks".
- 40 (iv) under Section 5(2) having regard to a number of registrations standing in their name (see Annex A for details)
- (v) under Section 5(3) in that, having regard to the reputation attaching to their KEMIN trade marks, "use by third parties and without due cause of trademarks which incorporate the prefix KEM- or the prefix KEMI- for a wide range of goods (in particular chemicals and similar goods, including the goods for which registration of Trademark No 2003701 is being sought) and for which we have not registered any of the KEMIN trademarks would take unfair advantage of
- 45

and/or would be detrimental to the distinctive character or repute of the KEMIN trademarks.”

5 The applicants filed a counterstatement denying the above grounds and refer to a number of registrations of their own in this country.

Both sides ask for an award of costs in their favour.

10 Both sides filed evidence. The matter came to be heard on 28 March 2000 when the opponents were represented by Mr D Minto of Eric Potter Clarkson, trade mark attorneys. The applicants were not represented at the hearing.

Opponents’ Evidence

15 The opponents filed a statutory declaration by Mary A Nelson, Vice President of Kemin Industries Inc.

20 Ms Nelson says that the company was formed in 1961 and incorporated as “Chemical Industries Inc” in 1963. The corporate title was changed to “Kemin Industries Inc” in 1968. It trades on an international basis and is in common ownership with two associated companies, namely Kemin Europa NV and Kemin Industries (Asia) Pte Ltd. The three associated companies have a number of subsidiaries around the world, including the United Kingdom, the worldwide headquarters being at Kemin Industries Inc, Des Moines, Iowa, USA.

25 Ms Nelson further says that her company is a recognised leader in the discovery and manufacture of ingredients used in human foods and animal feeds with annual total sales of nearly \$90 million and has accordingly established an extensive international reputation in its area of trade. They manufacture, market and sell a wide range of goods, including in particular chemical products, preservatives, surfactants, anti-oxidants, bacterial concentrates, 30 colouring matters and pigments, acidifiers, sanitizers, stabilisers, deodorisers, silage inoculants, enzymes and additives for animal foodstuffs. The goods are manufactured in the USA, Mexico, Belgium, Singapore, Thailand and India. The Company and its associated companies have warehouses and sales offices around the world, including the United Kingdom.

35 Ms Nelson refers to numerous trade marks which derive from and/or relate to the company name KEMIN and which therefore incorporate the element KEM or commence with the prefixes KEM- or KEMI-. They are listed at paragraph 7 of the declaration. The first, namely KEMIN was first used in 1963 and has been in continuous use since then. Registrations 40 outside the UK are listed at Exhibit MN1 to the declaration. Their products have been sold continuously in the UK, it is said, since the late 1960s under the various KEMIN trademarks. Kemin UK Ltd was established on 4 January 1974 and has been actively in business since that time as Kemin Europa NV’s UK subsidiary. Kemin UK Ltd’s products are sold to major feed mills, poultry integrators, distributors of feed products to feed mills and farmers. UK 45 registrations and applications are detailed at Exhibit MN2 and reproduced as Annex A to this decision. Exhibits MN3 and MN4 provide samples and copies of the company’s labelling, packaging, stationery, product literature and brochures (for both the UK and other markets) incorporating their various trade marks. No detail is provided as to which of the marks are

used in the UK or the extent or date of first use in the UK of those marks. However, the total of annual retail sales under the KEMIN trade mark alone up to the year 1994 (the material date being 25 November 1994) are:

	<u>Year</u>	<u>UK</u> <u>US \$</u>
5	1989	3,900,000
	1990	4,650,000
	1991	5,700,000
10	1992	4,550,000
	1993	3,300,000
	1994	3,450,000

15 Details of worldwide sales on a substantial scale are also provided with sales ranging from over 40million US Dollars in 1989 to 80million US dollars in 1994.

Figures are provided for the other KEMIN trade marks. However, the only figure provided which is up to the relevant date and relates to the UK is US\$ 9,700 for the year 1994.

20 Figures are provided relating to the advertising and promotion of goods sold under all the KEMIN trade marks (also in US dollars) as follows:

	<u>Year</u>	<u>UK</u>
25	1989	119,000
	1990	140,000
	1991	173,300
	1992	200,000
	1993	65,900
30	1994	58,000

Details of worldwide advertising and promotion of goods are also provided. These rose from 340,000 US dollars in 1989 to over 1.1 million US dollars in 1994.

35 Samples of advertising materials and promotional items are provided at Exhibit MN5 of the declaration.

40 Ms Nelson goes on to say that while recognising that there are various KEM- trademarks on the UK register it is the goods of the present application which are very similar to those of interest to the opponents, in which they have an extensive reputation.

45 Ms Nelson refers to examples of confusion. Exhibit MN6 is a copy of a letter from a UK Consultant Nutritionist/Technologist (Mr J Portsmouth) to Mr Roger Ingham, Division Director at Kemin Europa NV indicating apparent confusion between the goods of the opponents and the applicants. Exhibit MN7 is a copy of a letter to the same UK Consultant Nutritionist/Technologist from one of his clients SJD Humphrey Holdings Ltd (Dr Marangos) expressing concern over possible confusion. Exhibit MN8 shows an extract from a UK

publication “International Milling Flour and Feed” magazine. In this a picture of members of staff from Kemin Industries (Asia) Pte Ltd is captioned “Kemira Industries (Asia) Pte Ltd”, demonstrating apparent confusion between the applicants’ and opponents’ company names. Exhibit MN9 is a copy of a customer services call log from the USA apparently showing the customer’s belief that the KEM prefix of a product from another company indicates a product from the opponents. Exhibit MN10 is a copy of a letter to the opponents’ UK agents from Mr R Pugh who says he has acted as a consultant for Kemin (UK) Ltd for 10 years and also to the feed industry and a number of large poultry clients. He states that it is his belief that the name Kemiferm is very similar to the Kemin products sold in the UK and that a lot of his clients would be confused.

A further statutory declaration was filed by the previously mentioned Mr J Portsmouth. This sets out his qualifications and experience in the field of Poultry Science and in the field of animal and poultry nutrition, an area he has been involved with for 40 years. He is registered as an expert witness in poultry nutrition with the Law Society. Mr Portsmouth formed his company in 1991, which provides nutrition consultancy services to both national and international companies including, but not limited to, integrated broiler and layer operations, feed producing companies, pharmaceutical companies and premix companies. He says that during the course of his Company’s business a number of UK clients have brought to his attention confusion existing between the applicants’ mark and products marketed by the opponents and that he has also encountered such confusion. He also refers to the letter he wrote - Exhibit MN6 of Ms Nelson’s declaration, above, annexed to his declaration as Exhibit JP1.

A statutory declaration is also filed by the previously mentioned Dr Marangos of SJD Humphrey Holdings Ltd. He sets out his qualifications and experience in the animal and poultry feed industry. He says that his company is involved in the production and marketing of eggs, poultry and feed. He states that he has become aware of the applicants’ mark and expresses the opinion that goods marketed by the applicants with a prefix KEM will cause widespread confusion in the industry. He provides at Exhibit TM1 a copy of the letter to Mr Portsmouth, previously referred to as Exhibit MN7 of Ms Nelson’s declaration. He says that such confusion may lead to the possibility of customers buying the wrong product and incorporating it into animal feed which could affect the livestock’s performance.

Applicants’ Evidence

This consists of two statutory declarations. The first is by Mr William Gray being Managing Director of Kemira Chemicals Limited, Harrogate, a subsidiary of the applicants. The second is by Mr Tage Johansson, being Finance Director of Kemira Kemi Aktiebolag being a wholly owned subsidiary of Kemira Oy.

Mr Gray’s Evidence

Mr Gray says that his company is well established in the UK and sells chemical products to a wide range of industry, including agriculture, North Sea Oil, chemicals and minerals. He further says that use of their marks KEMIRA and prefix KEMI- in the UK has been extensive so that their reputation for the mark and the prefix is well established in agriculture and

throughout industry. He gives the example of extensive use in agriculture by a sister company, Kemira Agro Limited, in the UK in relation to fertilisers and fertiliser products. Exhibit KK1 consists of a list of KEMIRA and KEMI- marks registered in the UK in relation to chemical and agricultural products in the name of the parent company Kemira Oy. Exhibit 5 KK2 shows details of currently pending trade mark applications in the UK. Exhibit KK3 shows details of registrations and currently pending applications for the trade mark KEMIRA and those prefixed KEMI- in various countries of the world by the parent company. Mr Gray also refers to an opposition by the present opponents to a trade mark application for KEMIRA filed in Spain by the applicants' parent company which had been rejected and concludes that 10 they have established a worldwide reputation for the prefix KEMI-.

Mr Gray refers to the opponents belief that there is a risk of confusion of the goods sold under the trade mark KEMIFERM and their own goods and says that since goods were first sold under the trade mark in 1994 there have been no subsequent instances of confusion known to 15 him. He further says that because of their reputation in KEMI- marks they did not conduct searches prior to filing the application, since they thought the totality was distinctive and available for use. Exhibit KK4 provides examples of the mark in use.

Mr Johansson's Evidence

Mr Johansson confirms the relationship between the various companies as referred to in the above evidence. He says that he is now aware of the KEMIN trade mark but has not been aware of any confusion between goods sold under that mark and his company's products and sees no reason why customers such as farmers are any more susceptible to confusion than any 20 other member of the general public.

Exhibit KA1 provides the annual report for the parent company, Kemira Oy, dated 1996 (ie. after the filing date).

Mr Johansson further says that KEMI in Swedish represents the equivalent of the English word "chemistry" and that this prefix should, therefore, be available for use by any company and also that no one party should be entitled to exclusive rights to the prefix KEM or phonetic equivalent CHEM. Exhibit KA2 provides a list of registered trade marks in numerous 25 ownerships in relation to Class 1 goods which bear the prefix CHEM or KEM. He also confirms that use of the trade mark KEMIRA and the prefix KEMI was first commenced by the Kemira Group of companies in 1972 and has been used continually since, and says that, during that time and through sales of products a substantial reputation has developed in the prefix KEMI.

That concludes my review of the evidence.

DECISION

At the hearing Mr Minto indicated that he would not be pursuing the grounds based on 45 Sections 1, 3(3)(b) and 3(5). The applicants in their counterstatement also denied that the application was open to objection under Section 5(4)(a) and that it should not be refused in

the exercise of the Registrar's discretion. The former was not pleaded and the latter does not exist under the 1994 Act. I need say no more about any of the above.

The opposition thus resolves itself into one based on Sections 5(2) and 5(3). I will deal first with Section 5(2). This reads:

“(2) A trade mark shall not be registered if because-

(a) it is identical with an earlier trade mark and is to be registered for goods of services similar to those for which the earlier trade mark is protected, or

(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 trade 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.”

As identical marks are not involved sub-paragraph (b) applies here.

I indicated at the hearing that I would be taking account of the guidance provided by the European Court of Justice in *Sabel BV v Puma AG* (1998 RPC 199 at 224), *Canon v MGM* (1999 ETMR 1) and *Lloyd Schufabrik Meyer & Co GmbH v Klijsen Handel BV* (1999 ETMR 690 at 698).

It is clear from these cases that:-

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer, of the goods/services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components;

(e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa;

- (f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either *per se* or because of the use that has been made of it;

5 In this particular case the opponents have a large number of registrations and claim to be using a number of marks in addition to their housemark KEMIN. I will consider firstly the extent to which the earlier trade marks have a particularly distinctive character arising either from their inherent characteristics or the use that has been made of them.

10 There is a suggestion in the applicants' evidence that KEM (being the phonetic equivalent of CHEM) would be seen as alluding to the nature of the goods, that is to say chemical products. I will comment further on this later in the decision but there is no evidence on the point one way or the other to guide me on customer perception of marks incorporating such an element. My own view is that the public would be more likely to see marks such as KEMIN or
15 KEMIFERM as invented words. The position may be rather more arguable where KEM is used in combination with a descriptive element such as the mark KEM-WET.

So far as the impact of the opponents' use is concerned I draw the following conclusions from the evidence:

20 **S** there has been a significant level of use of the mark KEMIN particularly in the form which incorporates the device element as shown in registration No 1220727

25 **S** it is not clear from the exhibits (many of which are said to be 'printed in the USA' or otherwise not obviously directed at the UK market) precisely which other marks have been in use and in respect of which goods in this country

30 **S** the use claimed for marks other than the KEMIN mark was at a very low level by the material date of 25 November 1994 (the only figure given for the years up to and including the material date being US \$ 9,700 during 1994) with no further particularisation of the actual marks involved.

35 Any enhanced claim to distinctive character thus relates only to the KEMIN mark (and then mainly the word and device form).

So far as the goods are concerned the opponents have an earlier trade mark (No 1319254), the specification of which is cast in broad terms (chemical products for use in agriculture etc). This must inevitably encompass the applicants' goods. I should nevertheless give my view on
40 the matter of similarity having regard also to those goods contained within the opponents' specification in respect of which they claim use and reputation. From the evidence filed, notably Ms Nelson's comments on sales outlets (major feed mills, poultry integrators, distributors of feed products to feed mills and farmers) I infer that a significant part of the opponents' trade in this country has been in the feed additives business. The applicants' goods
45 are described as ensiling agents, that is to say chemical products for acting on silage, a crop harvested for animal fodder. Further light is shed on the applicants' goods in Exhibit KK4 which describes the KEMIFERM product as being a silage additive "for improved palatability

and preserved nutrients in grass, clover, alfalfa, legumes and maize under detrimental weather conditions”. The opponents’ goods too are additives to produce various effects on animal feed such as aiding digestion, reducing mould growth, enhancing flavour, increasing growth rates etc. I note in particular that the opponents’ KEM LAC product is described as a silage stabiliser which introduces strains of bacteria to, inter alia, control heat and shrinkage, improve colour retention and improve palatability. Whilst, therefore, at first glance an animal feed additive might appear to be a rather different product to an ensiling agent, in practice they are or can be similar (and perhaps even the same) products. I have therefore concluded that, although the opponents’ evidence could have been more specific in some areas, the reputation arising from their trade in their core product range reinforces the clash between the parties’ respective specifications (that is to say based on a notional comparison). It follows that the matter is likely to turn on the marks themselves. For that purpose I base my consideration primarily on registration No 1319254 for the mark KEMIN in plain block capitals.

Mr Johansson in his declaration for the applicants has contended that KEMI in Swedish represents the equivalent to the English word ‘chemistry’ and, therefore, has some significance for the goods. He also exhibits (KA2) a list of UK registered trade marks in Class 1 (the chemicals class) bearing the prefix KEM or CHEM. He says that it is apparent that these trade marks are all owned by different companies and all co-exist on the UK Trade Marks register. Mr Minto quite properly reminded me at the hearing that it is not known on what basis these marks were accepted for registration and, more importantly, there is no evidence to show whether all or any of the marks are in use. The most that can be said in my view is that this part of the applicants’ evidence suggests that a number of different traders are interested in marks containing the prefix KEM or CHEM. It says nothing about what customers make of such marks.

Turning to the marks, from a visual standpoint there is self evidently some similarity between KEMIN and KEMIFERM in as much as they have the first four letters in common. However the words are of unequal length and different in appearance in other respects. Taken as a whole I do not consider there is any serious likelihood of visual confusion. The same point of similarity will be present in oral use but KEMIN is a two syllable word whereas KEMIFERM is three syllables. The overall sound of the words is quite different. I also see no risk of confusion arising from slurring of word endings or imperfect pronunciation. On the basis that customers, actual or potential, will regard the respective marks as invented words there is no basis for finding conceptual similarity. If on the other hand any allusion to ‘chemical’ was seen that would reduce the impact of the first element of the marks and further highlight the other differences. In short the high point of the opponents’ case is the similarity in the first syllable of the words but bearing in mind that the average consumer perceives a mark as a whole and does not analyse its parts I see no likelihood of confusion on this account.

The opponents’ other marks in Classes 1 and 31 (which are the most relevant of the earlier trade marks) do not in my view place the opponents in any better position. I should, perhaps, single out the mark KEM LAC which in terms of particularised goods (mixtures of bacterial concentrates for addition to silages) as distinct from the more broadly based specification of 1319254 clearly does cover the same goods as the applicants’ ‘ensiling agents’. However I regard this mark as being quite dissimilar to KEMIFERM. It is presented (both as registered and used) as separate words and is thus easily distinguishable from KEMIFERM.

Before coming to an overall view of the matter I must take into account the opponents' claims about the risk of confusion based on Exhibits MN6 to MN10 which cross reference to and are backed up by Mr Portsmouth and Dr Marangos' declarations.

5 Mr Portsmouth is a consultant specialising in the animal and poultry nutrition industry. He does not say whether he acts for or has any connection with the opponents. He gives evidence that "a number of my company's UK clients have brought to my attention the confusion existing between a product marketed by Kemin UK and a product sold as KEMIFERM by a company called Kemira Kemi". I note that Mr Portsmouth does not say that he himself would
10 be confused. His statement also suffers from failing to say how many of his clients had contacted him, who they were or in what circumstances or on what basis they consider confusion exists. Moreover, whilst the applicants' mark is specified Mr Portsmouth merely reports confusion arising in respect of a 'product' marketed by the opponents. I am not clear, therefore, what mark is involved or whether it is the same mark in each case.

15 Although Mr Portsmouth himself does not identify his clients one of them appears to be Dr Marangos, who is the Technical Director of a company involved in animal feeds. Dr Marangos confirms that he wrote to Mr Portsmouth. It is not clear whether Dr Marangos considers that he would be confused. Rather he expresses the belief that there will be
20 confusion amongst the industry as a result of the applicants using a KEM prefixed mark. The basis for this broad claim is not explained and it is not clear whether it rests on the opponents' use of KEMIN or other of their marks (and if so which ones). I note that in his letter to Mr Portsmouth (TM1) he says "In the worst possible situation potential customers purchasing in error products from the other company and thus incorporating the products incorrectly in
25 animal feed could result in very serious repercussions in livestock performance". I do not entirely accept those concerns. The opponents themselves claim to use a number of KEM prefixed marks both in relation to animal feed additives and other products such as silage inoculants, sanitizers etc. If there is a risk at all it will exist in respect of the opponents marks as well. In practice I doubt whether animal feed companies, farmers etc. will be so incautious
30 that they would inadvertently buy or misuse a product without establishing its intended purpose from other labelling/packaging information.

The remaining exhibits are not in my view of particular assistance. MN8 is an extract from International Milling Flour and Feed magazine which wrongly captions a photograph of Kemin
35 staff in (I think) Singapore. The caption refers to Kemira Industries but not KEMIFERM. MN9 is a customer service call log from the USA indicating the customer's belief that the KEM prefix related to Kemin Industries. It is not evidence of the position in this country or even of confusion at all. MN10 is a letter from one of the opponents' own consultants written to the opponents' trade mark attorneys expressing his belief that "the name Kemiferm is very
40 similar to the Kemin products that are sold in the UK. I think it would cause a lot of confusion to my clients and I recommend that it should be opposed". It seems unlikely that the letter was spontaneously generated. Rather it appears to be of a partial nature supplied in support of the then existing action. (The letter was written some seven months after the opposition was filed).

45 There is a further general point about the evidence which concerns me. Both Mr Portsmouth and Dr Marangos raised their concerns in 1997 that is over two years after the application

5 filing date of 25 November 1994. I do not criticise them on that account. However Ms Nelson's evidence shows that the value of the opponents' sales under the 'other' KEMIN marks which stood at US \$ 9,700 in 1994 (and US \$ 9,900 in 1995) suddenly grew to US \$ 500,000 in 1996. It may be, therefore, that if confusion has arisen (and I have said that the reported claims commented on above lack contextual or specific explanation) it is as a result of significantly increased use by the opponents of other marks after the relevant date. That is not a matter that should be held against the applicants.

10 It is relatively unusual for instances of confusion to be reported in trade mark opposition proceedings. I have, therefore, felt it necessary to consider the opponents' evidence with some care. Having done so and for the reasons given above I am not persuaded that it changes my view on the likelihood of confusion. The opposition fails under Section 5(2)(b).

15 Section 5(3) reads:

“(3) A trade mark which-

(a) is identical with or similar to an earlier trade mark, and

20 (b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected,

25 shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark, in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

30 An objection under Section 5(3) must be based on an earlier trade mark but can only be brought to bear if or to the extent that the earlier trade mark has a reputation in the United Kingdom and the goods of the mark proposed for registration are not similar. I have already indicated that the only mark for which a reputation has been substantiated by the material date is KEMIN. Because it is the opponents' housemark I accept that it features on most if not all of the products offered for sale. I have found in relation to Section 5(2) that the goods in respect of which the mark is used and has a reputation are substantially those referred to in Ms Nelson's declaration. For reasons which I have also explained above I take the view that these are either the same or similar goods to those of the mark applied for. The opponents' evidence, rightly I think, concentrates on the similarity of goods and the question of likelihood of confusion (that is to say the Section 5(2) ground). As a consequence neither the evidence nor Mr Minto's submissions at the hearing sought to develop a case under Section 5(3) though I understand the opponents' position to be that they have not given up the ground.

45 For my part I cannot see that the opponents have established a reputation in goods which can be regarded as dissimilar to the goods applied for (the spraying apparatus of registration No 1059653 would for instance fall into the category of 'not similar' goods but the evidence does not establish a reputation). Still less has a case been made out that the mark applied for would take unfair advantage of or cause detriment to the distinctive character or repute of the


opponents' earlier trade mark. I have in any case concluded that there is some distance between the parties' marks. The opposition, therefore, fails under Section 5(3).

5 As the applicants have been successful they are entitled to a contribution towards their costs. At the hearing Mr Minto asked me to bear in mind that the applicants' counterstatement consisted mainly of denials and failed to acknowledge facts such as the opponents' proprietorship of various trade mark registrations. Ms Nelson's declaration therefore had to address this issue. Equally it seems to me that the opponents' statement of grounds contained a number of objections which were not sustainable and in the event not pursued in evidence or 10 submissions. Taking an overall view of the matter I order the opponents to pay the applicants the sum of £435. This sum to be paid within one month of the expiry of the appeal period or within one month of the final determination of this case if any appeal against this decision is unsuccessful.

15
Dated this 12 day of April 2000

20
M REYNOLDS
For the Registrar
25 **The Comptroller General**

ANNEX A

No	Mark	Class	Journal	Specification
5	KEM-WET	01	5037 Page 00486	Chemical products for use as surfactants.
10	KEMIN MYCO CURB	01	5749 Page 03332	Preservatives for animal foodstuffs, all being mould inhibitors and all included in Class 1.
15	1220727	01	5622 Page 01369	Surfactants, anti-oxidants and preservatives included in Class 1, all for use in the manufacture of animal feedstuffs.
20				
25	KEMIN	01	5904 Page 07387	Chemical products for use in agriculture and horticulture; surfactants, antioxidants and preservatives all for use in the manufacture of animal feedstuffs; all included in Class 1.
30				
35	KEM LAC	01	5902 Page 07078	Mixtures of bacterial concentrates for addition to silages; all included in Class 1.
40	KEMIN	02	5777 Page 02988	Colouring matters; (not for laundry or toilet use); pigments; all included in Class 2.
45	KEMIFLO	07	5168 Page 01833	Spraying apparatus (not being hand implements) for agricultural purposes.
	KEMIN	31	4642 Page 01244	Additives for animal feeding stuffs, all included in Class 31.

1388965 KEM GLO 31 5944 Additives for foodstuffs
Page 07339 for animals; additives for
5 processed feeds for
improving the
pigmentation of eggs,
poultry skin and fish flesh;
all included in Class 31.

Note

10 A further two registrations (with earlier dates) are contained in Exhibit MN2 but have not
been referred to in the statement of grounds. They do not appear to be critical to the outcome
of the case. Details are not, therefore, included above. There is also a reference to another
15 mark (No 2105117) which was filed after the material date and so is, likewise, not included
above.