

**TRADE MARKS ACT 1994.**

**IN THE MATTER OF:**

**OPPOSITION No. 44821**

**IN THE NAME OF NICHOLAS DYNES GRACEY**

**TO APPLICATION No. 2024326**

**TO REGISTER A TRADE MARK**

**IN THE NAME OF MEAT LOAF**

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**INTERIM DECISION**

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1. On 19th January 2001 I gave notice in writing under Section 76(3) of the Trade Marks Act 1994 that it appeared to me that the pending appeal by Mr. Gracey against the decisions issued in the above matter by Ms. Janice Smith (acting as Hearing Officer on behalf of the Registrar of Trade Marks) on 16th October 2000 and 27th November 2000 involved a point of general legal importance relating to the scope of the Registrar's power to correct irregularities in procedure under Rule 66 of the Trade Marks Rules 2000 (formerly Rule 60 of the Trade Marks Rules 1994).

2. The notice explained that I took that view for the reasons indicated in my decision dated 6th October 2000 in the matter of Application No. 10436 for rectification of the Register of Trade Marks in respect of Trade Mark No. 2013437

in the name of Andreas Stihl AG & Co (now reported as Andreas Stihl AG & Co's Trade Mark Application [2001] RPC 215).

3. The Registrar, Mr. Gracey and the registered proprietor of Application (now Registration) No. 2024326 were invited to make representations in writing as to whether the appeal should be referred to the Court.

4. In a letter dated 13th February 2001 the Registrar stated that she had no comment to make on the matter of a reference to the Court.

5. The agents of record for the registered proprietor responded in a letter dated 8th March 2001 stating:

“Our clients have no particular comment to make about the matter, save that this issue is between the opponent and the Registry, procedures having resulted in our client’s trade mark being on the Register for a considerable time.

Our clients will not wish to make submissions on the dispute between the opponent and the Registry and will not expect to be liable for any costs, irrespective of the outcome of that dispute.”

6. Mr. Gracey responded in a letter dated 10th April 2001 confirming that he wished to have his appeal heard by an Appointed Person.

7. I understand that the present position with regard to the reference to the Court in the Andreas Stihl case is as follows: (i) it is the intention of Andreas Stihl AG & Co to take its appeal to the Court; (ii) the Registrar accepts that her power

to rectify procedural irregularities is as wide as stated in my decision reported at [2001] RPC 215; (iii) the appeal by Andreas Stihl AG & Co will not be opposed by the Registrar; (iv) it is anticipated that the appeal will be brought forward with a request for it to be allowed on the application of both parties.

8. In the circumstances I am not unsympathetic to the suggestion that the present appeal may, after all, be suitable for hearing before an Appointed Person. However, it is not the practice of the Court to make an order allowing an appeal unless it is satisfied that the decision of the lower court was wrong: see para. 13.1 of the Practice Direction to CPR Part 52. I therefore think it would be premature, pending the determination of the appeal in the Andreas Stihl case, to rule out a reference of the present appeal to the Court.

9. With a view to maintaining the option of allowing the present appeal to proceed before an Appointed Person, I direct that the appeal be stayed pending whichever is the earlier of: (i) the determination of the appeal in the Andreas Stihl case; or (ii) the expiration of 12 weeks from the date of this interim decision. I will thereafter determine in the light of prevailing circumstances whether the appeal should be referred to the Court or allowed to proceed before an Appointed Person.

**Geoffrey Hobbs Q.C.**

11th May 2001