

TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No 2220417
BY MARS UK LIMITED
TO REGISTER A TRADE MARK IN CLASS 31

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DECISION AND GROUNDS OF DECISION

1. On 26 January 2000, Mars UK Limited of 3D Dundee Road, Slough, Berkshire, SL1 4LG applied to register the mark GRAVY BONES and device in Class 31 in respect of "Agricultural, horticultural and forestry products, grains and seeds, all included in Class 31; live animals, birds and fish; foodstuffs for animals, birds and for fish and preparations included in Class 31 for use as additives to such foodstuffs; malt; cuttlefish bone; bones for dogs; litter for animals; fresh fruit and fresh vegetables."

2. The mark is represented below:



3. Objection was taken to the mark under Sections 3(1)(b) and (c) of the Act because it consists of the words GRAVY BONES and a device of a bone, the whole being devoid of any distinctive character and a sign which may serve in trade to designate the characteristics of the goods e.g. bones which contain gravy.

4. At a hearing at which the applicants were represented by Ms C Hutchinson of Grant, Spencer, Caisley & Porteous their (then) trade mark attorneys, the objections were maintained. Following refusal of the application under Section 37(4) of the Act a form TM33 was received appointing Clifford Chance as the applicants' trade mark attorneys. I am now asked under Section 76 of the Act and Rule 62(2) of the Trade Marks Rules 2000 to state in writing the Grounds of Decision and the materials used in arriving at it.

5, Sections 3(1)(b) and (c) of the Act read as follows:

"Section 3(1) The following shall not be registered -

- (b) trade marks which are devoid of any distinctive character,
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it."

No evidence of use has been put before me, therefore the proviso to this Section of the Act does not apply and I have only the prima facie case to consider.

6. The mark consists of the word Gravy written in a flowing style and the word BONES in capital letters placed on a device of what appears to be a bone-shaped biscuit. Both of the words are ordinary dictionary words which, individually, are so well known that I do not believe I need to set out their individual dictionary meanings here. I am, in any case, bound to accept or reject the mark in its totality.

7. In my view, the words, in combination, describe gravy-flavoured bone-shaped dog biscuits. I am fortified in this view by information received from the original agents after their hearing, requested under Rule 57 of the Trade Marks Rules 2000. This consisted of packaging showing the mark applied for in use. Photocopies of the packaging are reproduced as Annex A to this decision. The packaging refers to "Crunchy Biscuits Coated in a Delicious Gravy" and "Pedigree Gravy Bones are tasty crunchy biscuits coated with a delicious gravy that your dog will love." The packaging also shows representations of bone-shaped biscuits, which I am aware from my own knowledge is a common shape for dog biscuits. Therefore, the words appear to describe the flavour and non-distinctive shape of the goods.

8. I must, of course, also consider the way the mark is presented since it does not consist of the plain words alone. Firstly, I consider the bone-shaped background to the word BONES simply reinforces the descriptiveness of that word ie. bone-shaped biscuits, when used in connection with the goods. I also note the flowing, almost liquid, style of presentation of the word "Gravy". However, I bear in mind the comments of Mr Justice Jacob in the British Sugar PLC and James Robertson and Sons Ltd (TREAT) decision 1996 RPC 281 at page 300 lines 10-13

"I am, of course, aware that the words "Toffee Treat" are written in a fancy way. But then so are many other mere descriptors. One only has to look at how British Sugar write such words as "meringue mix" or "Golden syrup" to see parallel sorts of use. I do not think this affects the matter one way or the other".

9. Therefore, I do not consider the stylisation of the word "Gravy" or the use of a representation of a bone-shaped biscuit as background to the word "BONES" provide sufficient "surplus" to the descriptive words. I consider that the mark consists exclusively of a sign which may serve in trade to designate the kind or quality of the goods and is, therefore, excluded from registration by Section 3(1)(c) of the Act. For the same reasons I consider the mark to be devoid of any distinctive character and therefore not acceptable for registration under Section 3(1)(b) of the Act.

10, In this decision I have considered all the documents filed by the applicant and all the arguments submitted to me in relation to this application and, for the reasons given, it is refused under the terms of Section 37(4) of the Act because it fails to qualify under Sections 3(1)(b) and (c) of the Act.

Dated this 5TH day of July 2001

**R A JONES
For the Registrar
the Comptroller-General**

Annex in paper copy