

O-403-18

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF:

MANA Y.A. LIMITED'S APPLICATIONS (NO. 501590 & 501602)

TO REVOKE ON THE GROUNDS OF NON-USE

REGISTRATION NOs. 2596542 & 2596545

BOTH IN RESPECT OF THE MARK

MASTERCHEF

OWNED BY SHINE TV LIMITED

Background and pleadings

1. These proceedings concern two trade mark registrations owned by Shine TV Limited (“the proprietor”), both of which consist of the word **MASTERCHEF**. They were filed on 3 October 2011 and registered on 9 March 2012. They stand registered for the following goods:

Registration 2596542 (“mark 1”)

Class 30: Coffee, tea, cocoa, sugar, rice, risotto, tapioca, sago, couscous, artificial coffee; flour and preparations made from cereals, pasta, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); chutneys; spices; ice; sandwiches; prepared meals; semi prepared meals; pizzas, pies and pasta dishes; Puddings [desserts]; Frozen desserts; Non-dairy frozen dessert products; Preparations for making desserts; Ice cream desserts; Prepared desserts [pastries]; Mixes for making bakery products; Mixes for making breakfast foods; Mixes for making cakes; Mixes for making puddings; Mixes for preparing sauces; Mixes for the preparation of bread; Sauce mixes; Seasoning mixes; Garden herbs, preserved [seasonings]; Spice mixes; Preparations for making gravy.

Registration 2596545 (“mark 2”)

Class 11: Barbeques, charcoal grills, kettle grills, outdoor gas barbeques, parts, fittings and accessories therefor.

Class 29: Meat, fish, poultry and game; meat extracts; vegetable extracts; preserved, dried and cooked fruits and vegetables; Dried herbs; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; prepared meals; semi prepared meals; granulated stock; stocks; preparations for making stocks; meat jus; broths; broth concentrates; soups, preparations for making soups and potato crisps; Desserts made wholly or principally of dairy products; Fruit desserts; Meat products containing sauces; Preparations for making sauces.

Class 31: Agricultural, horticultural and forestry products; live animals; fresh fruits and vegetables, Fresh herbs seeds, natural plants and flowers; foodstuffs for animals; malt; food and beverages for animals.

Class 32: Beers; mineral and aerated waters; non-alcoholic drinks; fruit drinks and fruit juices; syrups for making beverages; shandy, de-alcoholised drinks, non-alcoholic beers and wines.

Class 33: Alcoholic wines; spirits and liqueurs; alcopops; alcoholic cocktails.

2. Mana Y.A. Limited (“the applicant”) seeks revocation of the marks on the grounds of non-use. The claim is made against all of the goods covered by mark 1, but only the goods in class 29 of mark 2. The applicant relies on section 46(1)(a), which constitutes an allegation that the marks have not been put to genuine use in the five year period following the registration of the marks. Consequently, the relevant period for consideration is 10 March 2012 to 9 March 2017.

3. The proprietor filed counterstatements defending its registrations. The proceedings were consolidated. The proprietor filed evidence, which was responded to with a set of written submissions from the applicant. Neither side requested a hearing. The proprietor filed written submissions in lieu of a hearing, the applicant did not. Both sides have been professionally represented during the proceedings, the proprietor by Simmons & Simmons, the applicant by Pinsent Masons LLP.

Legislation and leading case-law relating to revocation

4. The pertinent legislation is contained in section 46 of the Act, the relevant parts of which read:

“(1) The registration of a trade mark may be revoked on any of the following grounds-

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b).....

(c).....

(d).....

(2) For the purpose of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made: Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4)

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from –

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date.”

5. Section 100 is also relevant; it reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

6. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Anor*, [2016] EWHC 52, Arnold J. summarised the case-law on genuine use of trade marks:

“217. In *Stichting BDO v BDO Unibank Inc* [2013] EWHC 418 (Ch), [2013] FSR 35 I set out at [51] a helpful summary by Anna Carboni sitting as the Appointed Person in *SANT AMBROEUS Trade Mark* [2010] RPC 28 at [42] of the jurisprudence of the CJEU in Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159 and Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759 (to which I added references to Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237). I also referred at [52] to the judgment of the CJEU in Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16 on the question of the territorial extent of the use. Since then the CJEU has issued a reasoned Order in Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089] and that Order has been persuasively analysed by Professor Ruth Annand sitting as the Appointed Person in *SdS InvestCorp AG v Memory Opticians Ltd* (O/528/15).

[218] ...

219. I would now summarise the principles for the assessment of whether there has been genuine use of a trade mark established by the case law of the Court of Justice, which also includes Case C-442/07 *Verein Radetsky-Order v Bunderversammlung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223 and Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR 7, as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet

for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

The evidence & submissions

The proprietor’s evidence

7. A witness statement was filed by Mr Darren Meale, a representative of the proprietor who works for Simmons & Simmons. He states that his evidence comes

from his own knowledge, except where he indicates otherwise, in which case he confirms that the relevant information was received by him in good faith, evidence which he believes to be true. The source of much of the information Mr Meale attests to was provided to him by Veerle van Vilet, IP Legal Counsel at the Endermol Group, of which the proprietor is a subsidiary.

8. Mr Meale was informed that between “at least” 2 February 2014 and 8 June 2014 the MASTERCHEF mark was applied to at least 8 different products offered for sale in between 172 and 655 branches of the well-known supermarket Tesco. The products are identified below, together with further information I have extracted from a sales spreadsheet provided in Exhibit DM1:

Cotswold rapeseed oil – sold in 655 Tesco stores with unit sales just over 12k

Beef gravy – sold in 464 Tesco stores with unit sales just under 6k

Chicken stock – sold in 476 Tesco stores with unit sales just under 6k

Beef stock - sold in 476 Tesco stores with unit sales just under 6k

Chicken gravy - sold in 464 Tesco stores with unit sales just over 5k

Spanish Hojiblanca extra virgin olive oil - sold in 218 Tesco stores with unit sales just under 5k

Chilli infused oil - sold in 464 Tesco stores with unit sales just over 3.5k

Onion gravy - sold in 172 Tesco stores with unit sales just over 1.5k

9. Mr Meale notes that the total sales of all of the products equates to 45k units. He also notes, from the content of the spreadsheet, that the goods were proposed to be sold in Asda supermarkets and, also, a wider range of goods were to be sold in other supermarkets too. Whilst I accept that the spreadsheet does appear to indicate this, there is no evidence to show that any goods other than those detailed in the preceding

paragraph have been stocked or sold. I also note from the spreadsheet that whilst sales were made in the (just over) four month period 2 February 2014 to 8 June 2014, they were heavily concentrated in a shorter period, roughly a three to four week one. To illustrate the point, the biggest seller of all of the products was Cotswold rapeseed oil, and, of its total unit sales of 12664, 11312 were sold in the three week period commencing on 27 April 2014. The exhibit also refers to certain promotions that were run at particular points in time but no evidence is given about the promotions themselves.

10. Mr Meale then refers to Exhibit DM2 which contains photographs showing in-store positioning and branding of seven of the products in a Tesco store. The photographs are said to date from around 17 April 2004. The seven products are depicted in the following five photographs:

Spanish extra Virgin olive oil



Cotswold rapeseed oil



TESCO

All About Food

Chilli infused oil



TESCO

**All
About
Food**

Gravy (beef and chicken)



Stock (beef and chicken)



11. Exhibit DM2 also contains a photograph showing in-store positioning and branding of a MASTERCHEF “tomato ragu with Chianti meal kit” in an Asda store on or around 4 February 2014. No information regarding sales is given:



12. Exhibit DM3 contains a press release relating to the launch of MASTERCHEF branded food products (including two Italian cooking kits which, Mr Meale says, were launched in Asda stores). The press release, issued by finn pr in June 2014, mentions the new cooking kits and how they have been developed. Reference is made to the existing products (the oils, stocks and gravy) launched in Tesco in January 2014 and that the food kits are to be launched on 9 June 2014 in Asda.

The applicant's submissions

13. In its submissions, the applicant makes a number of criticisms of the proprietor's evidence, notably:

- That much of the evidence is second hand as it is given by a legal representative as opposed to an officer of the proprietor. It is submitted that the evidence should be given little weight.

- A submission is made that the use does not satisfy the *de minimus* threshold, and, even then, it does not cover all of the goods the subject of the non-use allegation.
- That the use is deficient in respect of its nature, time, place and extent.
- In terms of nature, reference is made to the insufficient resolution/clarity of the exhibits, that they simply indicate the get-up of the products, their product type and RRP, and their placement upon a shelf.
- That sales have only been made for around four months and that the sales are minute (perhaps, it is stated, with the exception of the Cotswold Rapeseed oil) and that the products must have been unpopular given their removal from sale. It is stated that there is no evidence that sales continued after the four month period. Reference is made to this as a “failed trial” which fails to satisfy the *de minimus* threshold, let alone genuine use.
- That the sales are largely through one store, Tesco, and there is no evidence of the geographical location or spread of the branches and, thus, they may not have been sold throughout the UK.
- That the product sold in Asda has no sales figures and there is no evidence of it being stocked in any other store than the one depicted in the relevant photograph.
- Reference is made to the huge scale of the grocery business in the UK.
- That it is unclear if the sales represent sales to the consumer or simply goods delivered to Tesco.
- That in the sales spreadsheet, other launch products are mentioned, but the goods actually sold represent only half of such products.
- No marketing data has been provided.

The proprietor's submissions in lieu of a hearing

14. In its submissions, the proprietor makes a number of points, notably:

- That use has been accepted by the applicant. However, my summary of the applicant's submissions show that it clearly has not.
- Use has been made against a broader range of goods than the products listed, on account of them falling within other broader terms (such as broths) in the specification.
- That Mr Meale's evidence is accompanied by documentary and supporting evidence so the fact that the evidence is second hand should not diminish or weaken his evidence.
- That there is no case-law which sets out a *de minimus* threshold that must be met.
- That whilst some of the photographs are a little blurry in places, the products can clearly be seen. It also provides close-ups of some of the products depicted in the photographs.
- There is no requirement for the use to cover all of the relevant period.
- There is no requirement for market success.
- That the number of outlets through which the goods are sold is significant.
- That it is unfair to contextualise the proprietor's use against the whole grocery market
- The proprietor concludes by submitting that there has been actual use, that it is not token use, and that it is consistent with the essential function of a trade

mark. It highlights that the evidence shows goods in situ and, also, preparations to secure use via the press release. It submits that the use is consistent with real commercial exploitation.

Decision

15. I begin by observing that the applicant's reference to a *de minimus* threshold is not supported in law. As the proprietor submits, there is no *de minimus* level the use must reach, nor is it a requirement that the use be quantitatively significant. The question relates solely to the existence of genuine use.

16. The applicant also submitted that the proprietor's evidence be given little weight because it was given by its legal representative as opposed to someone who works for the proprietor and, therefore, much of it is second hand. Whilst I accept that it is preferable for evidence to come straight from the horse's mouth, and whilst first hand evidence is clearly better than second hand evidence, I am conscious that the evidence was supported by documents which must have come from the proprietor's records. There is nothing to doubt their veracity. Therefore, I am prepared to give the evidence reasonable weight and, further, I am prepared to accept as fact, the primary points set out in the evidence with regard to sales etc.

17. The applicant also highlighted that the clarity of the product photographs provided in the evidence was very unclear. This is not an unfair criticism to make. From my own observation of the evidence, I can see that the various products carry a label which contain a stylised letter M, above which is a word in what appears to be plain font, but it is not possible to decipher what that word is. However, on the basis that i) the labels on the shelf inserts describe the product as MASTERCHEF, ii) that all the sales data and, indeed, the press release, refer to the products as MASTERCHEF products, and iii) in one of the photographs (the gravy photos, bottom right of the three) there is a display sign which shows, in a similar get-up to the product labels, the stylised M with the word MASTERCHEF above, I am prepared to accept that all of the goods in the product photographs were labelled as MASTERCHEF products (above the stylised M) and that this constitutes actual use of the registered mark.

18. Given the above finding, my view is that the mark has been the subject of actual use within a commercial setting. There is nothing to suggest, and no submission has been made to the contrary, that the use was token use merely to preserve the registration of the mark. However, it does not follow that every proven commercial use constitutes genuine use. In *Reber Holding GmbH & Co. KG v OHIM*, Case T-355/09, the General Court found that the sale of 40-60Kg per annum of specialist chocolate under a mark was insufficient to constitute genuine use of a national trade mark, which was registered in Germany. On further appeal in Case C-141/13 P, the CJEU stated, at paragraph 32 of its judgment, that:

“not every proven commercial use may automatically be deemed to constitute genuine use of the trade mark in question”.

19. The CJEU found that:

“the General Court conducted an overall assessment of that trade mark, taking into account the volume of sales of the goods protected by the trade mark, the nature and characteristics of those goods, the geographical coverage of the use of the trade mark, the advertising on the website of Paul Reber GmbH & Co. KG and the continuity of the trade mark’s use. It thus established a certain degree of interdependence between the factors capable of proving genuine use. The General Court therefore correctly applied the concept of ‘genuine use’ and did not err in law in its assessment of that use” (paragraph 34 of the judgment CJEU).

20. This means, in my view, that proven use of a mark which fails to establish that “*the commercial exploitation of the mark is real*” because the use would not be “*viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark*” is, therefore, not genuine use.

21. The applicant submits that genuine use has not been established due to a number of reasons, including the short period of use during the relevant period, that the goods have been sold through just one outlet (Tesco) and the geographical spread of such stores is not explained. It further submits that there is nothing to show if actual sales

have been made as opposed to just sales made to Tesco and, in any event, the sales are low compared to the grocery market in the UK.

22. In terms of the period of use, I accept the proprietor's submission that use does not need to have been made throughout the whole of the relevant period to constitute genuine use. However, frequency and duration is in my view nevertheless a factor in assessing the genuineness of the use made. In terms of geographical spread, this is also a factor, however, the number of Tesco stores in which the goods were stocked is fairly large, so this is not indicative of a very limited spread. In any event, there is no requirement that the use cover all of the UK for it to be deemed genuine. In terms of sales, they are identified in the evidence as unit sales. Given that they are broken down by week, it is unlikely to be the case that these are simply sales to Tesco, otherwise why would it buy more of the product if sales had not been made. In terms of actual sales, I accept that they are not overly significant (but they are not insignificant either), but as the proprietor points out, there is no requirement for commercial success.

23. The one aspect of the evidence that troubles me somewhat is the lack of any explanation as to why sales did not continue after the four month period. The proprietor refers to the situation as a "failed trial". However, despite the absence of an explanation, there is evidence in the form of the press release which demonstrates that the products sold in Tesco were part of what strikes me as a normal product launch, and that more goods were to come. The sales spreadsheet also identifies other products that were to be launched in other supermarkets. Whilst the other products do not constitute use in and of itself, the overall picture painted is that the use made in 2014 constitutes a launch of a range of MASTERCHEF food products, launched and sold in a large number of Tesco stores, with a number of, not wholly insignificant, sales being made. Whatever the reasons for the discontinuation of sales, there is nothing to suggest that the use was anything other than a traditional form of use which would be viewed as warranted in the economic sector as attempting to create a market for the goods. This is my finding, genuine use has been made.

24. For clarity, I should add that whilst genuine use has been made in respect of the various oils, gravies and stock, I do not extend this finding to the cooking kit displayed

in Asda. This is because there is no evidence of any sales or that the product appeared in anything beyond the single Asda store in which the photograph was taken.

Fair specification

25. In terms of the fair specification, in *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

26. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows.

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) (“Thomas Pink”) at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average

consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46".

27. The allegation of non-use relates to the following:

Registration 2596542

Class 30: Coffee, tea, cocoa, sugar, rice, risotto, tapioca, sago, couscous, artificial coffee; flour and preparations made from cereals, pasta, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); chutneys; spices; ice; sandwiches; prepared meals; semi prepared meals; pizzas, pies and pasta dishes; Puddings [desserts]; Frozen desserts; Non-dairy frozen dessert products; Preparations for making desserts; Ice cream desserts; Prepared desserts [pastries]; Mixes

for making bakery products; Mixes for making breakfast foods; Mixes for making cakes; Mixes for making puddings; Mixes for preparing sauces; Mixes for the preparation of bread; Sauce mixes; Seasoning mixes; Garden herbs, preserved [seasonings]; Spice mixes; Preparations for making gravy.

Registration 2596545

Class 29: Meat, fish, poultry and game; meat extracts; vegetable extracts; preserved, dried and cooked fruits and vegetables; Dried herbs; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; prepared meals; semi prepared meals; granulated stock; stocks; preparations for making stocks; meat jus; broths; broth concentrates; soups, preparations for making soups and potato crisps; Desserts made wholly or principally of dairy products; Fruit desserts; Meat products containing sauces; Preparations for making sauces.

28. All of the goods for which genuine use has been made fall in class 29. Consequently, there is no fair specification applicable to the registration in class 30, so meaning that it is to be revoked in its entirety. In relation to class 29, I consider that a fair specification should read:

“Edible oils; gravy; stock”.

29. The following points explain why I come to this view:

- i) Whilst specific forms of oil, gravy and stock have been sold, it would be pernicky to restrict the specification further.
- ii) The terms I have used represent a fair sub-category in which the used goods fall.
- iii) The proprietor’s submission that stock is a type of broth and, therefore, broth should be retained in the specification, is rejected; broth is a wider term including goods similar to soup.

- iv) The proprietor's submissions that the goods are, and fall within, meat extracts, edible fats, semi prepared meals, preparations for making stocks, meat jus, preparations for making sauces, vegetable extracts, preparation for making soups and meat products containing sauces (and thus the terms can remain) is rejected as this is an artificial approach and would not be considered a fair specification to reflect the use. Further, I have not included granulated stock, because there is no evidence that the stock is granulated (in any event, it falls within the permitted stock anyway).
- v) Although gravy is not specifically listed in the specification as registered, it falls within other terms (meat/vegetable extracts, meat jus) so its inclusion is permissible.

Conclusion

30. Registration 2596542 is revoked in its entirety, with effect from 10 March 2017.

31. Registration 2596545 is revoked in part, also with effect from 10 March 2017, but, bearing in mind my findings, and bearing in mind that only class 29 was attacked, it may remain registered for:

Class 11: Barbeques, charcoal grills, kettle grills, outdoor gas barbeques, parts, fittings and accessories therefor.

Class 29: Edible oils; gravy; stock

Class 31: Agricultural, horticultural and forestry products; live animals; fresh fruits and vegetables, Fresh herbs seeds, natural plants and flowers; foodstuffs for animals; malt; food and beverages for animals.

Class 32: Beers; mineral and aerated waters; non-alcoholic drinks; fruit drinks and fruit juices; syrups for making beverages; shandy, de-alcoholised drinks, non-alcoholic beers and wines.

Class 33: Alcoholic wines; spirits and liqueurs; alcopops; alcoholic cocktails.

Costs

32. The applicant has won more than it has lost. I therefore consider that it is entitled to an award of costs in its favour, although reduced slightly to represent that some of the attacked goods remain. My assessment is as follows:

Official Fees - £200 x 2

Statements of case and considering the counterstatements - £250 x 2

Filing evidence - £500

Written submissions - £300

Total - £1700

33. I order Shine TV Limited to pay Mana Y.A. Limited the sum of £1700 within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 03rd day of July 2018

Oliver Morris

For the Registrar,

The Comptroller-General