

**O-389-19**

**TRADE MARKS ACT 1994**

**TRADE MARK APPLICATION No. 3279865**

**BY ROBOT ENERGY LIMITED**

**AND**

**OPPOSITION No. 412216**

**BY MONSTER ENERGY COMPANY**

## Background and pleadings

1. This is an opposition filed on 18<sup>th</sup> April 2018 by Monster Energy Company (“the opponent”) to an application filed on 1<sup>st</sup> January 2018 by Robot Energy Limited (“the applicant”) to register the following trade mark (“the contested mark”):



2. The applicant seeks to register the trade mark in class 32 in relation to a wide range of soft and non-alcoholic drinks, including energy drinks. A full list of the goods is at annex A.

3. The opposed application claims priority under s.35 of the Trade Marks Act 1994 (“the Act”) from an earlier filing of the same mark in Germany on 2<sup>nd</sup> July 2017 (“the priority date”).

4. The opponent’s grounds of opposition are:

- (i) It has acquired reputation and goodwill under the signs shown below as a result of the use of these signs in the UK since 2008 in relation to ‘drinks’.





- (ii) Use of the contested mark in relation to any of the goods listed in the application would constitute a misrepresentation to the public that the applicant is connected to the opponent.
- (iii) Such a misrepresentation would cause damage to the opponent's goodwill.
- (iv) At the priority and filing dates of the application, the applicant was aware that the opponent had applied in the USA on 17<sup>th</sup> December 2015 to register the trade mark ENERGY HYBRID in class 32.
- (v) Since 25<sup>th</sup> February 2016 the applicant and related companies have systematically filed applications in Spain, Germany and at the EUIPO to register marks in class 32 with the word HYBRID, including HYBRID ENERGY (Spanish TM 3601453) and ENERGY HYBRID (Spanish TM 3634343).
- (vi) The German trade mark application from which the opposed application claims priority, is one of these applications.
- (vii) The applicant cannot have any genuine intention to use the mark other than to block or otherwise disrupt the opponent's business.
- (viii) The application was filed in bad faith.

5. The application should therefore be refused because it is contrary to ss.5(4)(a) and 3(6) of the Act.

6. The applicant filed a counterstatement denying the grounds of opposition. I note the applicant's following points:

- (i) It accepts that the opponent has goodwill in the UK under what it calls the 'M Monster Energy' mark shown above, but not under the second

mark shown above, i.e. the green 'M' (or claw) logo without the words 'Monster Energy'.

- (ii) It denies that there is any similarity between the contested mark and the marks relied on by the opponent and, therefore, that use of the contested mark would constitute a misrepresentation to the public.
- (iii) It accepts that it registered a 'family' of HYBRID marks in several countries in the EU, mostly without opposition.
- (iv) It points out that the only the mark containing HYBRID that the opponent has in force in the EU is MONSTER HYBRID ENERGY (EU17014739), which the applicant opposed.
- (v) It claims that the opponent has not used any mark containing HYBRID in the UK.
- (vi) It claims that the only reason that the opponent has opposed the contested mark is because it opposed the opponent's EU trade mark application EU17014739.

## **Representation**

7. The applicant is represented by Sandra Santos of MAPA Trademarks, Bilbao, Spain. The opponent is represented by Bird & Bird, solicitors. Both sides filed evidence in support of their positions. Neither party requested a hearing. The opponent filed written submissions in lieu of a hearing.

## **Evidence**

8. The opponent's evidence consists of a witness statement by Mr Rodney Sacks, who is its Chairman and CEO, and Mr Peter Brownlow, who is partner at Bird & Bird. The latter statement was filed in reply to the applicant's evidence.

9. The applicant's evidence consists of a witness statement by Mr Ferdinand Kronschnabl, who is its Intellectual Property Director.

10. Mr Sacks' evidence is that the opponent sells energy drinks. Until June 2015 it also sold other beverages, but that side of the business was sold off. MONSTER ENERGY is the bestselling energy drink in the USA.

11. The MONSTER ENERGY drink was launched in the UK in 2008. It has been sold in the UK and the rest of the EU since then. It is the second bestselling energy drink in the EU when measured by dollar value. In the UK, MONSTER ENERGY has more than 10% of the energy drinks market.<sup>1</sup> The opponent's MONSTER products were therefore the third biggest selling brand of energy products in the UK market in 2016.

12. In 2015, the products were sold to the public for around £1.60 per can.

13. The green 'M' or claw device featured in the opponent's claimed earlier rights was used prominently on cans of the energy drink from the start of UK sales in 2008. It is used on many, but not all, of the MONSTER ENERGY products. The opponent sold the following number of energy drinks bearing the 'M' or claw device in the UK between 2014 to 2017:

2014: over 9 million

2015: over 69 million

2016: over 62 million

2017: over 68 million

14. I note that the 'M' or claw device is used in several colours, including green<sup>2</sup>. The green 'M' or claw device appears more than any other colour in advertisements for the products, such as on in-store displays.

15. The opponent does not use direct advertising on TV or radio to promote its MONSTER marks. Rather, it spends the majority of its promotional budget on sponsoring athletes, athletic competitions and other sporting events. Mr Sacks says that this brings substantial exposure to the opponent's marks on TV, the internet, in magazines and at live events.

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<sup>1</sup> See exhibit RCS-7

<sup>2</sup> See exhibit RCS-5 and RCS 9

16. The opponent sponsors various MotoGP events, including the GP Monster Energy de Catalunya, Monster Energy Grand Prix Czech Republic and previously the Grand Prix de France. It also sponsors individual MotoGP teams, the Mercedes F1 racing team (which includes Lewis Hamilton), and the Yamaha motocross teams. Additionally, the opponent sponsors the AMA Supercross Series and the Ultimate Fighting Championship. The MONSTER marks, including the green 'M' or claw device, are prominently displayed at these events and/or by these teams.

17. The opponent sponsorship extends to other sports, such as the Speedway Grand Prix, World Superbike, British Superbike Series, and the Isle of Man TT races. In the recent past it also sponsored the MSA British Rallycross Championship. The opponent sponsors a significant number of professional sportsmen and women, with an emphasis on racing drivers and winter sports.

18. Mr Sacks says that the opponent chooses to promote its products mainly through such sponsorships because:

- (i) the MONSTER marks are all about 'image' and the projected image of the products sold under the marks is "*edgy and aggressive*";
- (ii) the athletes and events the opponent sponsors tend to fit with and project this image;
- (iii) the target audience for the opponent's goods consist of millennials;
- (iv) millennials tend to be sceptical about traditional advertising but are more receptive to indirect marketing associated with sports events and athletes with whom they have a positive association.

19. The opponent also uses social media and a website to promote its products. Between 2010 and September 2017, the website [www.monsterenergy.com](http://www.monsterenergy.com) received over 10m visits from people based in the EU (almost 2m of which were from the UK). The MONSTER ENERGY Facebook page has 1.1m 'likes' from account holders based in the UK.

20. Between 2011 and June 2018, the opponent spent over \$370m promoting its products in the UK.

21. As regards the applicant's motive in making the contested application, Mr Sacks gives evidence that:

- (i) The applicant was incorporated in Ireland in June 2016;
- (ii) Its sole director is Sandro Tietz of Spain;
- (iii) Sandro and Manuela Tietz are directors of Tietz Beverage S.L. and Peace Beverage S.L. (Spanish companies incorporated in September 2016);
- (iv) The same individuals are also directors of Robot Energy S.L. (a Spanish company incorporated in 2013);
- (v) Robot Energy Europe Limited is in the same place in Spain as the applicant – Mijas, Malaga - and appears to be related to the applicant.

22. According to Mr Sacks, these companies have filed 300 trade mark applications in Spain, Germany, the UK and the EU over the previous 5 years, many of which he considers imitate the opponent's trade marks. He provides a schedule showing 29 applications to register marks including the word HYBRID since February 2016, i.e. after the opponent applied to register ENERGY HYBRID as a US trade mark for beverages in December 2015<sup>3</sup>.

23. The opponent filed an application to register ENERGY HYBRID as an EU trade mark on 10<sup>th</sup> June 2016. This appears to have been rejected on the grounds that the mark is descriptive/non-distinctive for drinks<sup>4</sup>. The opponent subsequently applied to register MONSTER ENERGY HYBRID on 21<sup>st</sup> July 2017, but this application is opposed by the applicant on relative grounds.

24. Mr Sacks says that the applicant and its associated companies do not market any products. He provides the following information in support of this claim:

- (i) The applicant registered the domain name robotenergy.com in March 2017;

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<sup>3</sup> I note from exhibit RCS-55 that the US application was abandoned after initial refusal by the US Examiner. It is not clear why the application was rejected.

<sup>4</sup> See exhibit RCS-55





- (ii) The website gives the impression that Robot is an established company with drinks and merchandise available for sale;
- (iii) However, it is not possible to purchase ROBOT beverages;
- (iv) The website's Shop section does not have a payment platform or any shipping information;
- (v) Until shortly before Mr Sacks' statement in September 2018, the website contained a link to an eBay page which purported to offer for sale packs of 24 cans of Robot Energy Drink for €18.90;
- (vi) However, the page states (in Spanish) "*this offer is no longer available*" and the number of products available for sale is shown as zero;
- (vii) Manuela Tietz registered the domain name [hybriddrinks.com](http://hybriddrinks.com) on 16<sup>th</sup> November 2016, but to Mr Sacks' knowledge no products have ever been available for sale on that website either;
- (viii) Prior to the opponent bringing an action in Spain for unfair competition against the applicant its associated companies and their directors in February 2018, the [hybriddrinks.com](http://hybriddrinks.com) web site contained a page which referred to beverages "*coming soon*", but this has since been removed;
- (ix) On the other hand, the [robotenergy.com](http://robotenergy.com) website contains a *licensing* web page appearing to offer licences to use the marks HYBRID and HYBRID ENERGY (among others).


25. Mr Sacks draws attention to the fact that one of the products that were at one time apparently being marketed from the applicant's website and Facebook page "*copied*" the packaging of the opponent's HYBRID ENERGY product. The respective products are shown below.





26. Mr Sacks also draws attention to the similarity between a range of other trade marks applied for by the applicant, or associated companies, and earlier marks owned by the opponent. The following examples are sufficient to illustrate Mr Sacks' point.

Where/when applied for	Mark(s)	Opponent's earlier mark(s)	Place/date
Spain 05/12/16			UK 2008
Germany 31/01/14	RELEASE THE BEAST	UNLEASH THE BEAST!	EU 24/05/06
Spain 15/05/15	UNLEASH	UNLEASH THE BEAST!	As above
Spain 24/06/17	UNLEASH THE ROBOT POWER	UNLEASH THE BEAST!	As above
Spain 19/10/16			JAVA MONSTER registered in EU in 2007. Get-up shown used in the USA.
Spain 14/06/17	AWAKEN THE ROBOT MONSTER	MONSTER	UK 2008
Spain 05/10/16	ROBOT SUPERNATURAL	MONSTER SUPERNATURAL	EU 11/10/13

Spain 18/10/18	HYBRID MUTANT		11/05/16
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27. Additionally, Mr Sacks says that since at least 2004 the opponent has maintained an amateur athlete development program called THE MONSTER ARMY. In this connection, he points out that the applicant registered 'monster.army' as a domain name.

28. Further, since 2008 the opponent has sponsored a team of 'Monster Girls' that appear at events to promote its MONSTER products. In this connection, Mr Sacks points out that the applicant applied in Germany on 24<sup>th</sup> November 2015 to register monstergirls.club as a trade mark.

29. Mr Sacks also says that in August 2017 the opponent announced an agreement with software developer Ubisoft to promote a new video game called Assassin's Creed by including images from the video game on cans of the opponent's energy drinks. The applicant applied to register Assassin themed trade marks in Spain and Germany. The mark applied for in Germany is shown below.



30. For the applicant, Mr Kronschnabl's evidence is that the applicant markets beverages. To protect its intellectual property, he is responsible for filing trade mark applications "worldwide". He says that the applicant's "main brand" is a logo comprised of two fists with the words ROBOT ENERGY beneath. This TM is protected under several registrations, one being EUTM 11138526, registered on 26th July 2014.

31. I note the following extract from Mr Kronschnabl's statement of 12<sup>th</sup> November 2018:

*"3. ROBOT has made a big effort to create a brand and has invested a great deal of money not only with the registration of its trademarks, but also creating original recipes with the company Doebler Espana N.B.I. S.L*

*4. ROBOT markets its products (drinks) in shops and also online (not yet in the UK). Enclosure FNK- 1 contains samples of orders of Robot products and Enclosure FNK-2 contains pictures of ROBOT cans in the market (and also transported by lorry).*

*5. ROBOT promotes its products in fairs and exhibitions (Enclosure FNK - 3) and also through sponsorships (Enclosure FNK - 4)."*

32. Enclosure KNK- 1 consists of 8 invoices for 'Robot Energy' products. They are dated between 31<sup>st</sup> August 2018 and 11<sup>th</sup> September 2018. The applicant is shown as the provider of the products. The orders appear to have come from small businesses in Southern Spain, such as petrol stations. They are for 2 or 3 units of products at a cost of €24 or €36.

33. Enclosure KNK – 2 consists of undated photographs of ROBOT ENERGY drinks on display in chiller cabinets, pallets of the products, ROBOT ENERGY advertisements on shop fronts in Spain, and pictures of a delivery lorry dressed up in ROBOT ENERGY advertising.

34. Enclosure KNK – 3 consists of a copy of a confirmation dated 17<sup>th</sup> October 2018 that the applicant took a stand to advertise ROBOT ENERGY at a Morocco FoodExpo at a cost of €1140.

35. Mr Kronschnabl also says:

*“10. The Opponent claims that ROBOT registers trademarks with no intention to use them. This statement has been duly refuted in this writing and with annexes, so I will not spend more time on it.*

*11. Yet, the Opponent registered JAVA MONSTER in the European Union in 2007 and has not used it so far except for the United States (the Opponent admits this on p.153 of the Witness Statement).”*

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*“14. Robot Energy Limited filed on 25th February 2016 the Spanish TM 3601453(3) HYBRID ENERGY, word, in class 32. This TM was registered on 26th September 2016 with no opposition of Monster. Afterwards, ROBOT has registered many HYBRID trademarks within the European Union (mainly in Spain and Germany).*

*15. I declare that when Spanish TM application 3601453 HYBRID ENERGY was filed, My Company had no knowledge on the application filed by the Opponent in the USPTO above-mentioned. ROBOT has filed no application to register a TM in the United States and, hence, is not interested in checking the USPTO public database. My Company filed Spanish TM 3601453 HYBRID ENERGY nearly four months before the Opponent filed EUTM application 015523228 in EUIPO.”*

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*“17. On 21st July 2017, the Opponent filed EUTM application No 017014739 MONSTER ENERGY HYBRID, word, in class 32. My Company protects the distinctive character of its trademarks and, therefore, on 1st Nov 2017 ROBOT filed a notice of opposition against EUTMA 017014739 based on its family of HYBRID trademarks (opposition 002985987). Enclosure FNK- 7*

*contains the particulars of this opposition, still pending, from EUIPO official database.”*

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*“20. On the allegations made by the Opponent against My Company with respect to the sign ASSASSIN, I will only list the facts in chronological order:*

*21. On 11th June 2015, ROBOT filed the Spanish TM application ASSASSIN in class 32. This application was registered in December 2015. Afterwards, ROBOT registered other TM that contain or consist of the word ASSASSIN within the European Union (Enclosure FNK - 9 consists of a list of these trademarks). None of these registrations has been opposed.*

*22. Ubisoft is owner of the videogame ASSASSIN'S CREED. Ubisoft filed the EUTMA 016766206 "ASSASSIN'S CREED" in class 32, among others, on 24th May 2017 (Enclosure FNK - 10).*

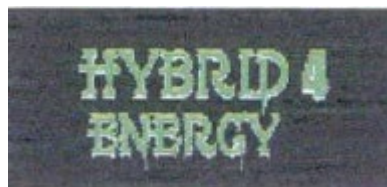
*23. My Company informed Ubisoft on the prior existence of its ASSASSIN trademarks in class 32 and tried to reach an agreement. As several cease and desist letters sent by My Company to Ubisoft were ignored, it was impossible to reach an agreement and, therefore, My Company filed a notice of opposition against EUTMA 016766206 ASSASSIN'S CREED based on its prior ASSASSIN trademarks. This opposition, No. 002958307, is still pending (Enclosure FNK- 11).*

*24. According to the Opponent's Witness Statement, in August 2017 Monster announced an agreement with the videogame developer Ubisoft to promote the new video game Assassin's Creed. My Company registered ASSASSIN as trademark in class 32 two years before the Opponent and Ubisoft began their collaboration.”*

36. In his evidence in reply, Mr Brownlow provides a copy of an English translation of a hearing on 11 December 2018 of the opponent's unfair competition claim against the applicant in Spain. This includes a record of the oral examination of Manuela and Sandro Tietz. I note the following points:

- (i) The proceedings were between the opponent as claimant and applicant and Tietz Beverages Limitada as defendants
- (ii) Sandro Tietz said that he was responsible for “*marketing and events*”;
- (iii) When asked whether he knew that the defendants had applied for 300 trade marks he said that he did not know because he did not manage that department – “*Ferdinand*” did;
- (iv) When asked whether the defendants had launched any products on the market, he answered that it had marketed “*Robot*”;
- (v) He later said that “*the rest [of the marks] are still in process*”;
- (vi) When asked when the Robot product had been marketed he said he could not give an exact date but it was “*this summer, before this summer*”;
- (vii) He later clarified that sales began shortly before summer 2018;
- (viii) When asked if the defendants intended to use the 300 trade marks they had applied for, he initially said he did not know because he did not manage that department, but after the judge intervened accusing him of evasiveness, he said “*yes*”;
- (ix) He accepted that he knew of the opponent and some of its trade marks, particularly the “*green Monster*”;
- (x) He accepted that he knew that one of the defendants had applied to register a trade mark which included the word Monster.

37. Mr Brownlow also provides information about the outcome of opposition proceedings before the Spanish Trade Mark Office in which the opponent successfully opposed two applications by the applicant. The first trade mark corresponds to the mark shown at paragraph 25 above on a can of drinks, i.e. the words Hybrid Energy, below a stylised letter H, both in green on a black background. The second trade mark is shown below.



38. The Spanish Office found that these marks were confusingly similar to the opponent's earlier mark as shown at paragraph 4(i) above, i.e. one of the two earlier rights relied on in these proceedings. It also held that the applicant's marks took unfair advantage of, or were detrimental to, the reputation of the opponent's earlier mark. Mr Brownlow says that the decisions of the Spanish Office were not appealed and are now final.

39. Finally, Mr Brownlow says that since these proceedings began the applicant has continued to file applications to register marks mimicking the opponent's marks. For example, the applicant applied on 22<sup>nd</sup> February 2018 to register MEAN BEAN as a trade mark in Spain. He points out that the opponent is the proprietor of EU trade mark MEAN GREEN, which it applied for on 22<sup>nd</sup> November 2016 in class 32.

### **The s.5(4)(a) ground of opposition**

40. Section 5(4)(a) states:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b) [.....]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

41. In *Discount Outlet v Feel Good UK*<sup>5</sup> Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

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<sup>5</sup> [2017] EWHC 1400 IPEC

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the Jif Lemon case (Reckitt & Colman Product v Borden [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether “*a substantial number*” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

42. It is obvious that the opponent has established a substantial goodwill under the signs it relies on. Although it has generally used the composite mark (including the words MONSTER ENERGY), I have no doubt that the M or claw device is distinctive (by itself) of the opponent’s goodwill.

43. The goodwill resides in a business selling drinks, particularly energy drinks.

44. The opposed application covers energy drinks and many similar products. The goods are therefore, at least in part, identical.

45. The key issue under this heading is whether the contested mark is sufficiently similar to either of the opponent’s signs for use of the mark to constitute a misrepresentation to the public. This depends on whether use of the contested mark would deceive a substantial number of the opponent’s customers, or potential customers, into believing that there is an economic connection of some sort between the opponent and the user of the contested mark, or that such use is authorised or endorsed in a relevant way by the opponent.

46. The opponent submits that the contested mark consists of stylised bright green lettering on a black background, with the bottom of the lettering extending



downwards. The opponent argues that this mark creates a highly similar impression to the opponent's signs.

47. The applicant says that its mark is not similar at all to the opponent's signs.

48. I find that the use of green lettering on a black background creates a certain degree of similarity between the contested mark and the opponent's signs. This is enhanced to a very small degree by the fact that the vertical stroke in the letter 'D' in HYBRID extends downwards in a way that is slightly reminiscent of the 'M' or claw device. However, the word HYBRID bears no resemblance at all to MONSTER, and the 'M' or claw device is not a part of the contested mark. Consequently, there is only a low degree of overall similarity between the mark and the signs.

49. The goods at issue are liable to be low cost everyday purchases. It is therefore possible that relevant consumers – in this case the general public – will pay a below average degree of attention when selecting the goods. Even so, I find it very unlikely that a substantial number of consumers could directly confuse the contested mark with the signs. Further, I consider that the differences between the mark and the signs are so pronounced that the similarities I have identified are unlikely to result in consumers imperfectly recalling the mark as the signs, or vice versa.

50. I must also consider the possibility that, although they are recognisably different, the similarities between the contested mark and the signs will deceive consumers into thinking that the user of the contested mark is connected to the opponent. I find that the degree of similarity between the mark and signs is not sufficient to deceive a substantial number of consumers in this way. I accept that the degree of similarity is sufficient to cause a section of the public to call the opponent's well-known signs to mind. And I accept that, on the evidence, the resemblance between the contested marks and the signs is unlikely to be accidental. However, I find that, at most, the resemblance is sufficient to cause some consumers to wonder whether there might be a connection with the opponent. However, as Jacob L.J. noted in *Phones 4U Ltd*

*v Phone 4U.co.uk Internet Ltd*<sup>6</sup>, that is not sufficient to establish misrepresentation and passing off.

51. To the extent that my decision on this point differs from that of the Spanish Trade Mark Office, I do so with regret. I must point out, however, that I have not seen the detailed reasons of the Spanish Office, and those decisions were made under trade mark law rather than passing off law. In this connection, I note that the different meanings of the English words used in the contested mark and in the opponent's signs would be more apparent to UK consumers than to those in Spain. It cannot therefore be assumed that a likelihood of confusion amongst Spanish consumers is a reliable pointer as to the likelihood of confusion in the UK.

52. For the avoidance of doubt, I have considered whether the applicant's behaviour in adopting a mark that in some respects imitates the get-up of the opponent's signs should cause me to find a misrepresentation. After all, it has long been held that an intention to deceive should not be lightly overlooked because the tribunal considers that it would probably have failed. However, I do not consider that the evidence establishes that the contested mark was adopted with an intention to deceive. Rather, it shows an intention to use a look-alike mark which reminds consumers of the opponent's signs. This is not the same as "living dangerously" by recklessly disregarding the likelihood of deception. On the contrary, it appears to me that the applicant has thought quite carefully about how close it can get to the earlier signs without causing deception.

53. For these reasons I find that use of the contested mark at the date of the application for registration would not have constituted a misrepresentation to the public. The passing off right claim fails accordingly.

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<sup>6</sup> [2007] RPC 5 at 16–17

## The s.3(6) ground of opposition

54. Section 3(6) of the Act states:

*“(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”*

55. I am aware that in *Sky Plc v Skykick UK Ltd*<sup>7</sup> Arnold J. referred questions of EU law to the CJEU, one of which was about whether a lack of intention to use the applied-for trade mark is sufficient, by itself, to constitute bad faith. For reasons which will become clear, I do not consider that the outcome of this case is likely to turn on the CJEU’s answer to that question. I will therefore apply the law under s.3(6) of the Act as it is currently understood. The law in relation bad faith was summarised by Arnold J. in *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited*<sup>8</sup> and further summarised by Mr Thomas Mitcheson QC as the Appointed Person in *Loch Employment Law Limited V Philip Adamson Hannay*<sup>9</sup> as follows:

- 1) The relevant date for assessing bad faith is the application date;
- 2) Later evidence may be relevant if it casts light backwards on the position as at the application date;
- 3) A person is presumed to have acted in good faith unless the contrary is proved – given that an allegation of bad faith is a serious allegation, it must be distinctly proved;
- 4) Bad faith includes not only dishonesty, but also "some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined";
- 5) The provisions against bad faith are intended to prevent abuse of the trade mark system, either via the relevant office or via third parties;
- 6) The tribunal must make an overall assessment, taking into account all the factors relevant to the particular case;

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<sup>7</sup> [2018] EWHC 155 (Ch)

<sup>8</sup> [2012] EWHC 1929 (Ch)

<sup>9</sup> BL O/786/18

7) The tribunal must first ascertain what the defendant knew about the matters in question and then decide whether, in the light of that knowledge, the defendant's conduct is dishonest (or otherwise falls short of the standards of acceptable commercial behaviour) judged by ordinary standards of honest people i.e. objectively.

8) Consideration must be given to the applicant's intention.

56. The opponent's case is essentially that the applicant has (1) systematically applied for registration in the EU of trade marks which imitate to varying degrees the trade marks and trade names registered and/or used by the opponent, (2) no genuine intention to use these marks, and (3) filed the application with the real purpose of blocking or otherwise disrupting the opponent's business.

57. Regarding point (2) above, I do not understand the opponent's claim to mean that it disputes that the applicant filed the application without intending to make any use at all of the contested mark. Rather, the claim appears to be that any use the applicant intends to make of the mark will be token or sham use, to conceal and further the real purpose of the application, as set out in point (3) above.

58. The applicant denies these claims. In support of its position the applicant filed evidence purporting to show that it has used the trade mark ROBOT ENERGY in Spain in relation to energy drinks. According to the applicant, this shows that it is in the drinks business and it can therefore be inferred that the applicant does indeed intend to use the contested mark for the purpose stated in its application, i.e. as its own UK trade mark. Responding to the opponent's suggestion that the timing of the applicant's first filing of an application to register HYBRID ENERGY in Germany<sup>10</sup> shows that such EU applications, including the opposed application, were motivated by the applicant's knowledge of the opponent's US filing of ENERGY HYBRID in class 32, the applicant's witness – Mr Ferdinand Kronschnabl - denies any knowledge of the US trade mark filing at the time it first applied to register HYBRID ENERGY in Germany.

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<sup>10</sup> In February 2016, two months after the opponent applied for ENERGY HYBRID in the US

59. The opponent has not applied to cross examine Mr Kronschnabl on the evidence he has given on behalf of the applicant. Although Mr Kronschnabl does not appear to be registered as a director of the applicant company, he describes himself as its Director of Intellectual Property. Further, I note that according to the translation of the oral examination of Mr Sandro Tietz (the registered director of the applicant) in the unfair competition proceedings in Spain, he said that “*Ferdinand*” was responsible for trade mark filings. I take this to mean Mr Ferdinand Kronschnabl. Accordingly, the absence of a request to cross examine Mr Kronschnabl on his evidence is a factor which I must take into account in deciding how much weight it should be given. For example, in the absence of appropriate questions having been put to him in cross examination, it would be improper for me to draw an adverse inference from my initial surprise that a small business in Southern Spain which appears to have, at most, only a limited local market for one product under one trade mark, requires an Intellectual Property Director with responsibility for “*worldwide*” trade mark filings.

60. The position is different when it comes to Mr Kronschnabl’s denial that the applicant had any knowledge of the opponent’s US application to register ENERGY HYBRID when it started filing HYBRID marks in the EU. This is not a case like *Extreme Trade Mark*<sup>11</sup> where a party asked for the other side’s evidence to be disbelieved without having previously challenged the truth of the witness statement. In this case it was clear from the opponent’s evidence in reply to Mr Kronschnabl’s evidence that it disputed his evidence that there was no connection between the opponent’s US filing for HYBRID ENERGY and the applicant’s subsequent application to register ENERGY HYBRID in Germany and, by extension, its subsequent applications to register HYBRID trade marks in the EU. Specifically, by filing a copy of a translation of the oral examination of the applicant’s director in the Spanish litigation, and by drawing attention to the applicant’s continued practice of filing applications to register marks which imitate the opponent’s marks, the opponent made it abundantly clear that it challenged Mr Kronschnabl’s evidence. I will therefore determine the applicant’s state of knowledge at the time of the application by considering the evidence as a whole.

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<sup>11</sup> [2008] RPC 2

61. I accept the applicant's argument that its registration of marks containing the word ASSASSIN and/or images of a cloaked assassin, is irrelevant to these proceedings. This is because the applicant registered the first such mark in class 32 before it became public that the opponent had a commercial interest in the (third-party) Assassin Creed computer game.

62. However, I find that the evidence set out in paragraphs 26 to 28 above is sufficient to establish at least a *prima facie* case that the applicant is engaged in the practice of systematically registering trade marks which imitate, to varying degrees, the trade marks and/or trade names registered and/or used by the opponent. This is because the number of the applicant's marks exhibiting similarities and/or shared words/features with the opponent's marks or trade names appears to be too great for the similarities to be merely coincidental. As Mr Justice Carr observed in *Trump International Limited V DTTM Operations LLC*<sup>12</sup>:

*"42. ....In relation to allegations of copyright infringement, it is necessary to decide, as a matter of fact, whether copying has occurred. As with claims of bad faith, direct evidence of copying is rarely available. In this context, it is well established that similar fact evidence may be admissible. The case law is considered in Copinger and Skone James on Copyright , Vol 1, 17th Edition at [21-393]:*

*"...where the issue in a copyright case is whether the similarity between the claimant's work and the defendant's work is due to copying or is a coincidence, it is relevant to know that the defendant has produced works which bear a close resemblance to works other than the work in question which are the subject of copyright. Whereas similarity between two works might be mere coincidence in one case, it is unlikely that there could be coincidental similarity in, say, four cases. The probative force of several resemblances together is much better than one alone."*

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<sup>12</sup> [2019] EWHC 769 (Ch)

*43. This reasoning may well apply, depending on the facts, to an allegation that a third-party trade mark has been applied for in bad faith. The probative force of several instances of such applications, by the same or a connected party who has applied to register a third-party trade mark, is obvious. Such instances, if based on solid grounds, are likely to require evidence from the applicant to refute the inference of bad faith that may otherwise be drawn from them.”*

63. In this case, the applicant’s specific interest in the market for energy drinks, coupled with the fact that the opponent is a leading player in that market in the US and the EU, makes it even harder to accept that the choice of similar words and devices for the applicant’s trade marks is just a coincidence. I find that the applicant intentionally imitated the opponent’s US HYBRID ENERGY word trade mark and elements of the opponent’s get-up when filing the contested mark. I am fortified in this view by the applicant’s failure to offer any alternative explanation for its choice of trade mark. In this connection, the opponent’s representatives draw my attention to Mr Sandro Tietz’s answer to the following final question put to him in the oral stage of the Spanish proceedings.

*“More than 40 applications for trade marks have been identified that include some element of a previous Monster trade mark or product, would you like to provide some kind of explanation of how that could happen, whether it is just a coincidence or there is some explanation for that?”*

Mr Tietz’s answer to this question was simply “No”. Mr Kronschnabl’s evidence takes that matter no further.

64. I turn next to the opponent’s claim that the applicant does not market any drinks products, but simply gives the impression that it is a trader in such products. I note Mr Sacks’ evidence that it is not possible to purchase energy drinks from the applicant. I find that this, coupled with my finding that the applicant is systematically filing applications which imitate the opponent’s marks, is sufficient to raise a *prima facie* question as to whether the applicant had a real intention to use the contested mark at the date of filing the opposed application.

65. The applicant accepts that it has not yet used the contested mark in the UK. Mr Kronschnabl provides no evidence that it has used it anywhere else. This is consistent with Mr Tietz's answer to a question put to him during the oral stage of the Spanish litigation about the use of marks other than ROBOT. In response to this question Mr Tietz said (in December 2018): "*the rest [of the marks] are still in process.*"

66. The only evidence of use of a mark incorporating the contested mark was filed by the opponent: see paragraphs 24(viii) and 25 above. It appears from this that at some time prior to February 2018 the applicant used the mark shown at paragraph 25 above on a website and on its Facebook page. It was accompanied by an indication that beverages were "*coming soon.*" These pages were later taken down. Nevertheless, it might be thought that such use indicates an intention to use the contested mark, at least in Spain. However, if the applicant has already taken preparatory steps to market beverages under the contested mark it is remarkable that Mr Kronschnabl says nothing about that in his evidence. And there is no evidence that any beverages were subsequently marketed anywhere under the contested mark. In these circumstances, the temporary use of the contested mark on a website and on the applicant's Facebook page is consistent with the opponent's claim that such use was not genuine.

67. Mr Kronschnabl's evidence does show use of the ROBOT ENERGY mark in Southern Spain from late August to September 2018. I note that this was after the commencement of these proceedings and during the litigation between the parties in Spain. The sales of ROBOT ENERGY drinks shown in Mr Kronschnabl's evidence are very modest in volume and the established duration of such sales is very short. All of this would be consistent with token use of that mark. However, there are also (1) undated pictures of what appear to be pallets of ROBOT ENERGY drinks, (2) undated pictures of a delivery lorry dressed up in ROBOT ENERGY branding, and (3) confirmation that the applicant booked a slot to promote ROBOT ENERGY at a Moroccan trade exhibition. This seems to point to either genuine use of that mark or an elaborate attempt to conceal that the token nature of the use of ROBOT ENERGY. Whilst I have my doubts about Mr Kronschnabl's evidence on this point, in the absence of a request to cross examine him on it, I do not think it would be fair to



dismiss this part of his evidence as false. I will therefore proceed on the basis that the applicant has made ordinary commercial use of its ROBOT ENERGY mark, albeit on a small scale and mostly localised to an area in Southern Spain.

68. This finding necessarily requires me to accept that the applicant has the capacity to trade in energy drinks in the UK. And this makes it harder for me to accept that the applicant's application to register the contested mark in the UK for energy drinks was filed without any real intention to use it. However, I do not consider that this excludes the possibility that the applicant is both a small-scale trader in beverages under its ROBOT mark, but also systematically registers trade marks which copy or imitate the marks it knows are registered and/or used elsewhere by market leaders in the beverages market, without any genuine intention to use those marks. In my view, the evidence as a whole supports such a conclusion. I find accordingly. It is true that there is no evidence that the opponent has used its HYBRID mark in the EU. And the extent of any use of this mark in the USA is not clear. However, given the opponent's reputation and international business, the opponent's application to register HYBRID ENERGY in the USA in December 2015 would have been sufficient to put the applicant on notice that the opponent may wish to register and/or use this mark in the EU (including the UK) in future. In my view, the opposed application is part of a plan to exploit this possibility to the applicant's advantage.

69. As to the mechanism for achieving this, I note that the applicant has used its HYBRID trade mark registrations to oppose the opponent's application to register MONSTER ENERGY HYBRID as an EU trade mark. I also note Mr Sacks' evidence that although it is not possible to purchase beverages from the applicant's website robotenergy.com, there is a *licensing* page which appears to offer licences to use the marks HYBRID and HYBRID ENERGY (among others). This leads me to believe that the real purpose of the opposed application is to block or otherwise disrupt the opponent's business in the UK by, for example, preventing the opponent from registering in the UK the HYBRID trade mark applied-for in the USA and/or compelling the opponent to take a trade mark licence from the applicant to enter the UK market under that mark.

Would this be bad faith as a matter of law?

70. In *Lindt v Hauswirth*<sup>13</sup> the CJEU held that:

*“43. .... the intention to prevent a third party from marketing a product may, in certain circumstances, be an element of bad faith on the part of the applicant.*

*44. That is in particular the case when it becomes apparent, subsequently, that the applicant applied for registration of a sign as a Community trade mark without intending to use it, his sole objective being to prevent a third party from entering the market.*

*45. In such a case, the mark does not fulfil its essential function, namely that of ensuring that the consumer or end-user can identify the origin of the product or service concerned by allowing him to distinguish that product or service from those of different origin, without any confusion (see, inter alia, Joined Cases C-456/01 P and C-457/01 P Henkel v OHIM [2004] ECR I-5089, paragraph 48).”*

71. In *Malaysia Dairy Industries Pte Ltd v Ankenævnet for Patenter og Varemærker*<sup>14</sup>, the CJEU held that merely knowing that a trade mark was in use by another in another jurisdiction did not amount to bad faith under Article 4(4)(g) of the Directive (s.3(6) of the Act). However, in *Daawat Trade Mark*<sup>15</sup>, Mr Geoffrey Hobbs QC, as the Appointed Person, upheld a decision to invalidate a registration under s.47 and s.3(6) of the Act. He did so on the basis that it had been established that the application for registration was motivated by a desire to pre-empt the applicant’s entry into the UK market to secure a commercial advantage in negotiations with the trade mark holder about the distribution of the applicant’s products in the UK.

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<sup>13</sup> Case C- 529/07

<sup>14</sup> Case C-320/12

<sup>15</sup> [2003] RPC 11

72. In *Copernicus-Trademarks v EUIPO (LUCCEO)*<sup>16</sup> the EU's General Court found that the filing of EU trade marks for the purposes of blocking applications by third parties, and without an intention to use the mark, was an act of bad faith<sup>17</sup>.

73. In *Alexander Trade Mark*<sup>18</sup> Mr Geoffrey Hobbs QC, as Appointed Person, upheld the registrar's refusal of an application on the grounds that it formed part of a wider strategy to register multiple trade marks and companies in numerous jurisdictions in order to gain commercial benefit from blocking the use of identical or similar trade marks by (mostly unidentified) third parties and/or acquiring domain names with commercial value. This practice was held to constitute systematic abuse of the trade mark registration system.

### Finding

74. I find that the applicant's objective of blocking or hindering the opponent's registration and/or use of HYBRID marks in the UK is an illegitimate one. Making such an application falls below the standards of commercial behaviour observed by honest traders. It follows that the application was made in bad faith insofar as energy drinks are concerned.

75. The application covers many more beverages than energy drinks. However, I find that all the goods covered by the application were included for the same purpose as energy drinks. It is likely that they were included simply to obscure the fact that the application was all about energy drinks. Consequently, the application will be refused in total.

### **Costs**

76. The opponent has been successful and is entitled to a contribution towards its costs. I calculate these as follows:

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<sup>16</sup> Case T-82/14

<sup>17</sup> The CJEU rejected an appeal against this decision: see case C-107/17P.

<sup>18</sup> BL O/036/18

£200 official filing fee for Notice of Opposition (TM7);  
£400 for completing TM7 and considering the applicant's counterstatement;  
£1900 for filing evidence in support of the opposition and considering the  
applicant's evidence;  
£200 for filing written submissions in lieu of a hearing.

77. I therefore order Robot Energy Limited to pay Monster Energy Company the sum of £2700. The above sum should be paid within 14 days of the expiry of the appeal period or, if there is an appeal, within 14 days of the conclusion of the appeal proceedings (subject to any order of the appellate tribunal).

**Dated 11th July 2019**

**Allan James**  
**For the Registrar**

## Annex A

Aerated mineral waters; Aerated water; Aerated water (Preparations for making); Aerated water [soda water]; Aerated waters; Alcohol free aperitifs; Alcohol free beverages; Alcohol free cider; Alcohol free wine; Alcohol-free beers; Ale; Ales; Aloe juice beverages; Aloe vera drinks, non-alcoholic; Aloe vera juices; Aperitifs, non-alcoholic; Apple juice beverages; Apple juice drinks; Barley wine [Beer]; Barley wine [beer]; Beer; Beer and brewery products; Beer wort; Beer-based beverages; Beer-based cocktails; Beers; Beers enriched with minerals; Beverages consisting of a blend of fruit and vegetable juices; Beverages consisting principally of fruit juices; Beverages containing vitamins; Beverages (Non-alcoholic -); Beverages (Preparations for making -); Beverages (Whey -); Bitter lemon; Black beer; Black beer [toasted-malt beer]; Blackcurrant cordial; Blackcurrant juice; Bock beer; Bottled drinking water; Bottled water; Brown rice beverages other than milk substitutes; Carbonated mineral water; Carbonated non-alcoholic drinks; Carbonated water; Carbonated waters; Cider, non-alcoholic; Cocktails, non-alcoholic; Coconut juice; Coconut water; Coconut water as a beverage; Coconut water as beverage; Coconut-based beverages; Coffee-flavored ale; Coffee-flavored beer; Coffee-flavored soft drinks; Cola; Cola drinks; Colas [soft drinks]; 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; Condensed smoked plum juice; Cordials; Cordials [non-alcoholic]; Cordials (non-alcoholic beverages); Craft beer; Craft beers; Cranberry juice; Cream soda; De-alcoholised beer; De-alcoholised drinks; De-alcoholised wines; De-alcoholized beer; De-alcoholized drinks; De-alcoholized wines; Dilutable preparations for making beverages; Distilled drinking water; Douzhi (fermented bean drink); Drinking mineral water; Drinking spring water; Drinking water; Drinking water with vitamins; Drinking waters; Dry ginger ale; Effervescing beverages (Pastilles for); Effervescing beverages (Powders for -); Energy drinks; Energy drinks containing caffeine; Energy drinks [not for medical purposes]; 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; Extracts of hops for making beer; Extracts of unfermented must; Flavor enhanced water; Flavored beer; Flavored beers; Flavored mineral water; Flavored waters; Flavoured beers; Flavoured carbonated beverages; Flavoured mineral water; Flavoured waters; Frozen carbonated beverages; 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 juice; Fruit juice bases; Fruit juice beverages; Fruit juice beverages (Non-alcoholic -); Fruit juice concentrates; Fruit juice for use as a 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 ale; Ginger beer; Ginger juice beverages; Glacial water; Grape juice; Grape juice beverages; Grape must, unfermented; Grapefruit juice; Green vegetable juice beverages; Guarana drinks; Guava juice;

Honey-based beverages (Non-alcoholic -); Hop extracts for manufacturing beer; Hop extracts for use in the preparation of beverages; Hops (Extracts of -) for making beer; Iced fruit beverages; Imitation beer; India pale ales (IPAs); IPA (Indian Pale Ale); Isotonic beverages; Isotonic beverages [not for medical purposes]; Isotonic drinks; Isotonic non-alcoholic drinks; Juice (Fruit -); Juices; Kvass [non-alcoholic beverage]; Kvass [non-alcoholic beverages]; Lager; Lagers; 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; Liqueurs (Preparations for making -); Lithia water; Low alcohol beer; Low calorie soft drinks; Low-alcohol beer; Low-calorie soft drinks; Malt beer; Malt syrup for beverages; Malt wort; Mango juice; Melon juice; Mineral enriched water [beverages]; Mineral water; Mineral water [beverages]; Mineral water (Non-medicated -); Mineral water (Preparations for making -); 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 beer; Non-alcoholic beer flavored beverages; Non-alcoholic beers; 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; Orange barley water; Orange juice; Orange juice beverages; Orange juice drinks; Orange squash; Orgeat; Pale ale; Part frozen slush drinks; Pastilles for effervescing beverages; Pineapple juice beverages; Pomegranate juice; Porter; 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; Preparations for making mineral water; 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; Saison beer; Sarsaparilla [non-alcoholic beverage]; Seltzer water; Shandy; 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; Aerated mineral waters; Alcohol free aperitifs; Alcohol free beverages; Alcohol free wine; Alcohol-free beers; Aloe vera juices; Aperitifs, non-alcoholic; Beer and brewery products; Beer-based beverages; Beer-based cocktails; Beers; Beverages consisting of a blend of fruit and vegetable juices; Beverages containing vitamins; Beverages (Non-alcoholic -); Beverages (Whey -); Bottled water; Carbonated non-alcoholic drinks; Cocktails, non-alcoholic; Coconut water as a beverage; Coffee-flavored ale; Coffee-flavored beer; Coffee-flavored soft drinks; Cola drinks; Concentrates used in the preparation of soft drinks; De-alcoholised drinks; Dilutable preparations for making beverages; Drinking water with vitamins; Energy drinks; Essences for making beverages; Extracts for making beverages; Flavored beer; Flavored mineral water; Flavoured carbonated beverages; Fruit beverages and fruit juices; Fruit-based soft drinks flavored with tea; Honey-based beverages (Non-alcoholic -); Isotonic beverages; Liqueurs (Preparations for making -); Mineral enriched water [beverages]; Mineral water [beverages]; Non-alcoholic beverages; Non-alcoholic beverages flavored with tea; Non-alcoholic beverages flavoured with coffee; Non-alcoholic beverages with tea flavor; Non-alcoholic cocktails; Non-alcoholic cordials; Non-alcoholic drinks; Non-alcoholic honey-based beverages; Non-alcoholic soda beverages flavoured with tea; Non-alcoholic vegetable juice drinks; Non-alcoholic wines; Non-carbonated soft drinks; Nutritionally fortified beverages; Pastilles for effervescing beverages; Powders for the preparation of beverages; Preparations for making beverages; Protein-enriched sports beverages; Smoothies; Soft drinks; Sparkling water; Sports drinks; Syrups for beverages; Vegetable drinks; Vitamin enriched sparkling water [beverages]; Vitamin fortified non-alcoholic beverages; Water; Water-based beverages containing tea extracts; Waters [beverages].