

TRADE MARKS ACT 1994

IN THE MATTER OF:

OPPOSITION No. 96143

IN THE NAME OF LIDL STIFTUNG & Co. KG

TO TRADE MARK APPLICATION No. 2413515

IN THE NAME OF STEPHEN PAUL QUINN

DECISION

1. On 10 February 2006, Stephen Paul Quinn ('the Applicant') applied under number 2413515 to register a series of two signs representing the word CUCINA as trade marks for use in relation to a wide range of goods and services in Classes 29, 30 and 43.

2. On 7 February 2008, Lidl Stiftung & Co. KG ('the Opponent') filed a Notice and Statement of Grounds of Opposition requesting refusal of the Application in its entirety under Section 5(2)(b) of the Trade Marks Act 1994. It relied on the rights to which it was entitled as proprietor of international trade mark registration number 678053 protected in the United Kingdom with effect from 22 January 2006 for various goods in Classes 29 and 30.

3. The Opposition succeeded in relation to most, but not all, of the goods and services listed in the Application for the reasons given in a decision issued by Mr. David

Landau on behalf of the Registrar of Trade Marks under reference BL O-001-10 on 5 January 2010. The Applicant was ordered to pay £1,800 to the Opponent as a contribution towards its costs of the proceedings in the Registry.

4. The Applicant appealed to an Appointed Person under Section 76 of the Trade Marks Act 1994 contending that the Hearing Officer's decision was wrong and should be set aside with an order for costs in his favour in respect of the proceedings at first instance and on appeal.

5. During the pendency of the appeal, the parties agreed terms for the disposal of the Opposition by consent. So far as relevant for present purposes, the terms were:

- (1) That the Hearing Officer's decision would be set aside, save in so far as it provided for the payment of costs by the Applicant to the Opponent in the sum of £1,800.
- (2) That there would be no order for costs in relation to the Applicant's appeal under Section 76 of the Act.
- (3) That upon Trade Mark Application No. 2413515 being amended at the request of the Applicant so as to delete the goods specified in Clause 29 and Class 30 and narrow the services specified in Class 43 to *'restaurant, takeaway, café and bar services; catering services; sandwich and snack bar services; contract food services; information, consultancy and advisory services including helpline*

services relating to all the aforesaid services', the Opposition would stand withdrawn by consent.

- (4) That the Opposition would be withdrawn by consent as provided for in paragraph (3) with no further order for costs in relation to the proceedings in the Registry.

6. The Registrar confirms that he has no objection to the making of an order by consent implementing the terms agreed between the parties.

7. With the consent of the parties I therefore order and direct:

- (1) that the Hearing Officer's decision be set aside save in so far as it provided for the payment of costs by the Applicant to the Opponent in the sum of £1,800;
- (2) that there be no order for costs in relation to the Applicant's appeal under Section 76 of the Trade Marks Act 1994;
- (3) that Trade Mark Application No. 2413515 be remitted to the Registrar for amendment at the request of the Applicant in accordance with the provisions of the Trade Marks Act 1994 and the Trade Marks Rules 2008 so as to delete the goods specified in Class 29 and Class 30 and narrow the services specified in Class 43 to those identified in paragraph 5(3) above;
- (4) that Opposition number 96143 shall stand withdrawn with no further order for costs in relation to the proceedings in the Registry upon completion of the

amendment to Trade Mark Application No. 2413515 specified in the preceding sub-paragraph.

Geoffrey Hobbs Q.C.

15 February 2012

Bison River Ltd represented the Applicant.

Urquhart-Dykes & Lord LLP represented the Opponent.