

## **TRADE MARKS ACT 1994**

**IN THE MATTER OF  
APPLICATION NO.  
BY LIDL STIFTUNG & CO. KG  
TO REGISTER A TRADE MARK  
IN CLASS**

### **DECISION AND GROUNDS OF DECISION**

On 1 October 1996, Lidl Stiftung & Co. KG of Heiner-Fleischmann-Strasse 2, 74172 Neckarsulm, Germany applied under the Trade Marks Act 1994 for registration of the trade mark "CAMORIS" in Class 3 in respect of the following goods:

Soaps; perfumery; essential oils; cosmetics; make-up; deodorants and anti-perspirants; hair lotions, preparations for cleaning, care, treatment and improvement of hair and scalp. Brushes, applicators, sponges, powder puffs, all for use with make-up.

Objection was taken to the application under paragraph 5(2) of the Act in respect of the following registered mark:

<b>Number</b>	<b>Mark</b>	<b>Class</b>	<b>Specification</b>
2061424	AVON COMORES	3	Non-medicated toilet preparations; cosmetics; soaps; preparations for the hair; preparations for cleaning the teeth; perfumes, toilet waters, eau de colognes; deodorants for personal use; toilet articles; essential oils.

A hearing took place before Miss Douglas on 24 November 1997. At the hearing at which the applicants were represented by Ms Simpson of Urquhart-Dykes & Lord, their trade mark agents, the objections under Section 5(2) of the Act was maintained. Miss Douglas has now left the Registry and responsibility for this application has now passed to me.

Following refusal of the application under Section 37(4) of the Act I am now asked under Section 76 of the Act and Rule 56(2) of the Trade Marks Rules 1994 to state in writing the grounds for refusal and the materials used in arriving at it. I have done this from a careful examination of the official file, including the hearing record, and Miss Douglas's notes.

Section 5(2) of the Act reads as follows:-

- (2) A trade mark shall not be registered if because -
- (a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or
  - (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

The earlier trade mark is for the words "AVON COMORES" in plain type and in upper case. The applicants' mark is the word "CAMORIS", again in plain type and in upper case. I have to consider if the totality "AVON COMORES" is similar to the mark of this application, whether the goods are identical with or similar to those for which the earlier trade mark is protected, and (if so) whether there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

It is immediately apparent that the goods within the specification of the earlier trade mark are contained within the specification of this application.

Since the mark of this application is not identical to the cited registered mark, I must address the issue of whether it is similar enough to it for there to exist a likelihood of confusion on the part of the public. Although this matter is governed by the Trade Marks Act 1994 the principles of comparison of marks remain unchanged and I have considered the matter primarily by reference to the principles enunciated by Parker J in the PIANOTIST case (1906) 23 RPC at Page 777, line 26 et seq:

"You must take the two words. You must judge of them both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of these trade marks is used in the normal way as a trade mark for the goods of the respective owners of the marks. If, after considering all those circumstances, you come to the conclusion that there will be confusion - that is to say - not necessarily that one will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public, which will lead to confusion in the goods - then you may refuse the registration, or rather you must refuse the registration in that case".

It is my view that one mark is similar to another if an element (or something very similar to that element) of the earlier mark is included in the later mark with the result that the relevant public are likely to assume that the marks are associated and that the respective goods originate from the same source.

I have also born in mind the well established principle that although two marks, placed side by side, may exhibit many and various differences, the main idea left in the mind by both of them might be the same. As Lord Ratcliffe stated in the case of De Cordova and others v Vick Chemical Company (1951) 68 RPC at page 106, lines 17-23:

“The likelihood of confusion or deception in such cases is not disproved by placing the two marks side by side and demonstrating how small is the chance of an error in any customer who places his order for goods with both marks clearly before him, for orders are not placed or are often not placed, under such conditions. It is more useful to observe that in most persons, the eye is not an accurate recorder of visual details, and that marks are remembered rather by general impressions or by some significant details than by any photographic recollection of the whole”.

At the hearing the agent argued that the marks in question could be differentiated and were not similar in totality because of the presence of the additional word “AVON” in the earlier trade mark and because the word “COMORES” would be recognised as a geographic location and would not, therefore, be confused with the applicants’ mark “CAMORIS”. These arguments were rejected by the Hearing Officer who maintained that the addition of the word “AVON” does not remove the likelihood of confusion as members of the public would see such a word as merely being the addition of a housemark. This is a similar situation to the “BULOVA ACCUTRON” case, 1969 RPC 102 where “BULOVA” was held to be incapable of distinguishing between “ACCUTRON” and “ACCURIST”. The combination of “AVON” and “COMORES” does not hold together as a phrase, nor does it present a wholly different meaning to the separate components. In my opinion their combination will be taken by many members of the public, on first impression, as an indication that the manufacturer of the goods in question is using two separate trade marks in connection with his products. The word “AVON” is an element of the mark that will be seen as a house mark and members of the public are likely to confuse the words “COMORES” and “CAMORIS” with the result that the respective trade marks are likely to be regarded as identifying goods emanating from the same source. I therefore hold that the presence, in this application, of the word “AVON” is not sufficient to find that the marks are dissimilar.

I am fortified in this view by the fact that the words “COMORES” and “CAMORIS” are very similar in appearance, both having an equal number of letters and both have identical consonants appearing in some position in each of the words. Pronunciation of the marks may also be very similar. The word “CAMORIS” is likely to be pronounced as a 3 syllable word (CAM-OR-IS). The pronunciation of the word “COMORES” is not so clear. Some members of the public may pronounce it as a two syllable word (COM-ORES) but I consider it equally valid to assume that other members of the public may well pronounce it as a 3 syllable word (COM-OR-ES).

As I have already indicated the agent has claimed that the marks are not confusable because whilst “CAMORIS” is an invented word, “COMORES” is a geographical location. In support of this the agent submitted copies of travel brochures which provide details of holidays which are available in a variety of locations including The Comores. The brochures are identified as being those providing holidays by Sunset Travel Limited and Hayes & Jarvis (Travel) Ltd. It is clear from these brochures that The Comores are a small group of islands situated in the Indian Ocean between the East Coast of Africa and Madagascar. The Sunset brochure is for

1998 and shows the basic price per person for a 7 night all inclusive holiday to be from £1221 to £1768. The later of two brochures from Hayes and Jarvis is also for 1998 and shows that the basic price per person for a 7 day all inclusive holiday to be from £1225 to £1388.

Whilst it is clear that a number of people from this country have travelled to The Comores group of islands it is, in my opinion, the sort of destination that would be visited by relatively few in number. The holidays referred to in the brochures provided are relatively high in price and would be beyond the reach of the majority of members of the public. In such circumstances it seems unlikely that a significant number of people in this country would have visited The Comores and consequently they would not recognise the word "COMORES" as being the name of a geographical location.

The agent also claims that part of the grand prize in the most recent series of the television programme "Gladiators" was a holiday in The Comores. That may well be true but I have no evidence that this was before the relevant date - 2 October 1996 - and I do not think it establishes that the public at large would now recognise "COMORES" as a geographical location.

The mark in question is, of course, "AVON COMORES". The addition of the word "AVON" clearly identifies the sign as a whole as a trade mark and this serves to reduce the potential for "COMORES" being identified as the geographical origin of the goods.

I also note that the goods in conflict are not expensive consumer items to which members of the public would give a great deal of consideration before making a purchase. Although some of the goods may be relatively expensive there are many goods contained in both specifications eg "Soap" to which hardly a thought is given at the moment of purchase. In such circumstances the probability of confusion between the two marks is increased.

This application may, of course, proceed if the owner of the earlier registered mark were to provide their consent. At the hearing the agent stated that a request for such consent had already been made to the owner of the prior registration but this request had been refused. Therefore, I consider the prior registration to be a fatal barrier to the progress of this application. This application is, therefore, debarred from registration by Section 5(2) of the Act.

In this decision I have considered all the documents filed by the applicant and all the arguments submitted in relation to this application and, for the reasons given, it is refused under the terms of Section 37(4) of the Act because it fails to qualify under Section 5(2) of the Act.

Dated this 26<sup>th</sup> day of August 1998

A J PIKE  
For the Registrar  
The Comptroller General