

TRADE MARKS ACT 1938 (AS AMENDED) AND THE TRADE
MARKS ACT 1994

IN THE MATTER OF APPLICATIONS 7980, 7981, 7982, 7983, 7984
AND 8072 BY SODA-CLUB (HOLDINGS) NV
FOR RECTIFICATION OF THE REGISTER OF TRADE MARKS
IN RESPECT OF REGISTRATIONS 13124, 573056, 76876, 1017971, 1056537
AND 1028476 IN THE NAME OF
CANTRELL & COCHRANE (BELFAST) LIMITED


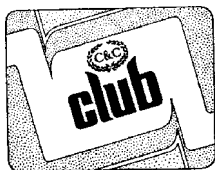
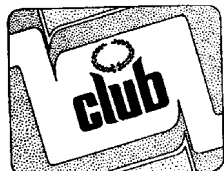
TRADE MARKS: **CLUB & CLUB SODA**

TRADE MARKS ACT 1938 (AS AMENDED) AND THE TRADE MARKS ACT 1994

IN THE MATTER OF Applications 7980, 7981, 7982, 7983, 7984 & 8072
 by Soda-Club (Holdings) NV for rectification
 of trade marks 13124, 573056, 76876, 1017971, 1056537 & 1028476
 5 in the name of Cantrell & Cochrane (Belfast) Limited

DECISION

The following trade marks are registered in Class 32 in the name of Cantrell & Cochrane (Belfast) Limited.

	<u>Mark</u>	<u>Number</u>	<u>Date</u>	<u>Goods</u>
10		13124	11 September 1877	Aerated waters
	CLUB SODA	573056	16 November 1936	Aerated soda water
	CLUB	768762	29 August 1957	Non-alcoholic drinks and preparations for making such drinks, all included in Class 32
	CLUB	1017971	24 September 1973	Beverages included in Class 32 containing not more than 2% (by volume) of alcohol
		1028476	24 April 1974	Non-alcoholic drinks and preparations for making such drinks, all included in Class 32; tonic water containing quinine
15		1056537	17 December 1975	Non-alcoholic drinks and preparations for making such drinks, beverages containing not more than 2% by volume of alcohol, all included in Class 32 and shandy

In five applications dated 4 March 1994, and a further application dated 4 May 1994 (in respect of registration 1028476), Soda-Club (Holdings) NV applied to rectify the register of trade marks by the cancellation of the above registrations under the provisions of section 26 of the Act; claiming that the marks have not been used at any time during a continuous period of

five years up to the date one month prior to the respective filing dates of the applications to rectify.

In August 1995, the applicant again applied to revoke these registrations, this time under section 46 of the Trade Marks Act 1994.

5 The six applications for revocation under the 1938 Act were subsequently consolidated (with each other), as were the corresponding six applications for revocation under the 1994 Act. At an interlocutory hearing held on 23 November 1995, the Registrar's hearing officer agreed that both sets of revocation proceedings should be heard together.

10 The hearing took place on 7 October 1998. At the hearing, the registered proprietor was represented by Mr Michael Silverleaf, Queens Counsel, instructed by the trade marks department of Allied Domecq Plc. The applicant for rectification was represented by Mr Henry Carr, Queens Counsel, instructed by R G C Jenkins & Co.

15 Both Mr Carr and Mr Silverleaf agreed that the applications made under the 1938 Act (7980, 7981, 7982, 7983, 7984 and 8072) had effectively been overtaken by the later applications made under the 1994 Act. The material date in relation to the applications made under the 1938 Act is just over a year *earlier* than the material date in the later, new-Act applications. Nevertheless, both Counsel agreed that the difference was not an issue between the parties, and that my decision in the matter of the six consolidated new-Act revocations would effectively void these earlier proceedings. I have today issued my decision in the matter of the
20 new-Act applications to revoke the six registrations (SRIS m O-230-98). Consequently I consider that these old-Act applications have abated, and that there are no issues which remain to be decided.

Costs

25 In all the circumstances I choose not to make any award for costs in relation to these proceedings.

Dated this 17th day of November 1998

**Mr S J Probert
Principal Hearing Officer
For the Registrar, the Comptroller-General**