

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
APPLICATION NO: 2105549  
BY PSYGNOSIS LIMITED  
TO REGISTER A TRADE MARK  
IN CLASS 9**

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

On the 12th of July 1996, Psygnosis Limited of Napier Court, Stephenson Way, Wavertree Technology Park, Liverpool, L13 1EH, United Kingdom, applied under the Trade Marks Act 1994 for registration of the trade mark MONSTER TRUCK in respect of:

“Computer and video games; computer and video game programs”.

Objection was initially taken to the mark under paragraph (b) of Section 3(1) of the Act, on the grounds that it consisted of a sign which was devoid of any distinctive character for, computer games relating to large wheeled trucks.

At a Hearing at which the applicants were represented by Mr R Hill of Wilson Gunn M’Caw, their previous agents, I raised an additional objection under paragraph (c) of Section 3(1) of the Act, as in my view the mark may also serve in trade to indicate the intended purpose/other characteristics of the goods. At the Hearing the objections were maintained and 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 provide a statement of the reasons for my decision. No evidence of use has been put before me. I have, therefore, only the prima facie case to consider.

The relevant parts of Section 3(1) of the Act read as follows:

“The following shall not be registered-

- (b) trade marks which are devoid of any distinctive character,
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services or other characteristics of goods or services.”

The mark consists of the two common dictionary words “Monster” and “Truck”. The words have a number of meanings in their own right, as well as a meaning when placed together. The most pertinent references appearing in the Collins English Dictionary (third edition 1994) are as follows:

**MONSTER:** 4. a. a very large person, animal, or thing. b. (as modifier): a monster cake.

**TRUCK:** 2. another name (esp. U.S., Canadian, and Austral.) for lorry.

5. any wheeled vehicle used to move goods.

When placed together it is clear that the combination of the words “Monster” and “Truck” can simply mean a large truck. In addition, it is within the Registrar’s own knowledge (see “HEAVENLY” (1967) RPC 306), that the combination is now very well known in its own right, as a reference to a truck which has undergone a range of modifications. Typically these modifications take the form of very large tyres, a more powerful engine and an improved suspension. I shall not make anything further of this point, as this was not disputed by the agent at the Hearing.

At the Hearing, Mr Hill argued that the goods for which registration was sought were simply a range of data items in pre-recorded form. Without the console on which the goods operate, they serve no purpose, and as such could not be said to describe Monster Trucks. I do not accept this argument.

The Registrar’s practice in relation to this type of mark is set out in the Trade Mark Registry’s Work Manual. In relation to Section 3(1)(c) “other characteristics of goods or services”, it says:

**“Signs which describe the subject matter of a publication, computer programme etc would be open to objection under this heading”.**

With this in mind, it is clear that the application is debarred from prima facie registration by paragraphs (b) and (c) of Section 3(1) of the Act, as it is a term that other legitimate traders should be free to use in the normal course of business, to describe products within the specification claimed, which portray or simulate Monster Trucks.

Mr Hill also referred me to a number of other marks which had been accepted in the past which, in his view, were as distinctive as the applicant’s mark. These are shown below:

2102025D: ERC EUROPEAN RUGBY CUP

2032181: UEFA CUP WINNERS CUP (AND DEVICE)

B1491774: LEISURE FLIGHT

2032180: UEFA UNDER-21 CHAMPIONSHIP (AND DEVICE)

2022222: SUPER RALLY

1548921: WORLD RALLY

2032373 UEFA CUP (AND DEVICE)

I am not aware of all the circumstances surrounding the acceptance of these marks and, in any event, each case must be dealt with on its own merits.

That said, it is quite obvious that none of the marks mentioned above are on “all fours” with this current application. It would appear that the majority of the registrations mentioned have been accepted because they have within them a distinctive element, or in the absence of such an element, they only allude to the goods for which they have been registered. That is not the case in respect of this application.

In relation to the so called “precedents”, Mr Justice Jacob said in the TREAT trade mark case (1996) RPC 281:

**“In particular the state of the register does not tell you what is actually happening out in the market and in any event one has no idea what the circumstances were which led the Registrar to put the marks concerned on the Register. It has long been held that under the old act that comparison with other marks on the Register is in principle irrelevant when considering a particular mark tendered for registration, see MADAME trade mark (1966 RPC 541) and the same must be true of the 1994 Act. I disregard the state of the register evidence.”**

In this decision I have considered all the documents filed by the applicant and all the arguments submitted to me 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 paragraphs (b) and (c) of Section 3(1) of the Act.

Dated this      29      day of April 1998.

C J BOWEN  
for the Registrar  
the Comptroller General