

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

IN THE MATTER OF APPLICATION No 1373178
BY THE WEST COAST BREWING COMPANY LIMITED
TO REGISTER A TRADE MARK
DOBBINS GUILTLESS STOUT AND DEVICE
IN CLASS 32

AND IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 27608
BY GUINNESS BREWING WORLDWIDE LIMITED

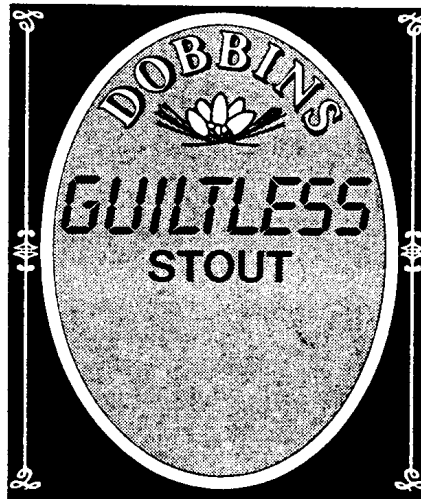
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BACKGROUND

15 On 17 February 1989, The Guiltless Stout Co. Ltd of King's Arms Hotel, 4A Helmshore Walk,
Chorlton-on-Medlock, Manchester 13 applied under the Trade Marks Act 1938 for registration
of the following trade mark:



30 In respect of:




"Beers included in Class 32"

35 On 10 September 1990 the mark was assigned to The West Coast Brewing Company Limited also
of King's Arms Hotel, 4A Helmshore Walk, Chorlton-on-Medlock, Manchester 13.

40 On 19 July 1991, Guinness Brewing Worldwide Limited of Park Royal Brewery, Cumberland
Avenue, London, NW10 7RR, filed notice of opposition to the application. The grounds of
opposition are:

1) The opponents are Brewers of international repute with its principal trade mark being
GUINNESS and together with its predecessors has in fact sold stout in the United
Kingdom under the brand name GUINNESS since 1759.

45 2) The opponents are the proprietors of inter alia, the following registered trade marks in
the United Kingdom:

Trade Mark	Date Registered	Number	Class	Specification
GUINNESS	2/3/1889	87294	43	Beer for manufacture and sale in England, Scotland, Wales and the Isle of Man and for export to the Channel Islands.
5 10 	24/7/1909	315110	43	Stout for manufacture and sale in England, Scotland, Wales and the Isle of Man and for export to the Channel Islands.
15 20 	21/1/1945	634495	32	Stout for manufacture and sale in England, Scotland, Wales and the Isle of Man and for export to the Channel Islands.
GUINNESS	5/3/1980	1129738	32	Beverages included in Class 32 containing beer; shandy; and preparations for making all the aforesaid goods; all for sale in England, Scotland, Wales and for export to the Isle of Man and the Channel Islands.
25 30 	1/7/1986	1270328	32	Stout for sale in England, Scotland, Wales and the Isle of Man and for export to the Channel Islands.

GUINNLESS	15/3/1983	1192206	32	Stout, porter, ale, lager, beer and shandy; non-alcoholic beverages containing not more than 2% (by volume) of alcohol; preparations for use in making all the aforesaid beverages; fruit juices for use as beverages; all for sale in England, Scotland and Wales and for export to the Isle of Man and the Channel Islands
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5 3) The trade mark GUINNLESS has been extensively used throughout the United Kingdom for a number of years and has become synonymous with the stout of the opponents. The trade mark GUINNLESS has also been the subject of a major advertising campaign incorporating the distribution of promotional material throughout the United Kingdom. Attached is a selection of 40 extracts from newspapers published during 1983. These include publications within the trade. The opponents have acquired a valuable
10 goodwill in the trade mark as indicating to the trade and the public the opponents' goods exclusively.

15 4) The trade mark GUILTLESS number 1373178 so nearly resembles the opponents' mark GUINNLESS as to be likely to deceive and cause confusion if used in relation to the goods applied for which are the same goods and/or goods of the same description as the goods covered by the opponents' mark.

20 5) The trade mark applied for is not distinctive of the applicants' goods and is not adapted to distinguish within the meaning of Sections 9 and 10 of the Act.

25 6) By reason of the facts and matters herein set out, registration of the trade mark applied for would offend against Sections 11 and 12 of the Trade Marks Act 1938.

30 7) The applicants cannot properly claim to be the proprietors of the word GUILTLESS within the meaning of Section 17(1) of the Act, by reason of the opponents' existing reputation in the trade marks GUINNESS and GUINNLESS.

35 8) The opponents put the applicants on written notice on 6 July 1989 and on 1 November 1989 that in the event of the Registrar allowing the applicants' trade mark application to proceed to advertisement, the opponents reserved their right to file opposition. The opponents therefore ask that this application be refused in the exercise of the Registrar's discretion under Section 17(2) of the Act, and asks for an award of costs in their favour.

The applicants filed a counterstatement denying all the grounds of opposition. The applicants also
35 claim that the opponents have never used the registered mark GUINNLESS as a trade mark and have filed for rectification of this mark on the grounds of non-use. The applicants ask the Registrar to exercise his discretion in their favour and also seek an award of costs in their favour. Both sides filed evidence in these proceedings and the matter came to be heard on 14 July 1999,

when the applicants were represented by Mr David Goldring of J E Evans-Jackson, Trade Mark Attorneys. The opponents were neither represented or present.

By the time this matter came to be decided the Trade Marks Act 1938 had been repealed in accordance with Section 106(2) and Schedule 5 of the Trade Marks Act 1994. In accordance with the transitional provisions set out in Schedule 3 to that Act, however, I must continue to apply the relevant provisions of the old law to these proceedings. Accordingly, all references in this decision are references to the provisions of the Trade Marks Act 1938 (as amended) unless otherwise indicated.

OPPONENTS' EVIDENCE

The opponents filed four statutory declarations. The first, dated 21 May 1992, is by Mr Brian Beanland the secretary of Guinness Brewing Worldwide Limited, the opponents.

Mr Beanland states that the opponents have been brewers since 1759, since when they have sold beer under the name of Guinness. He states that the opponents are the registered proprietors of a number of trade marks in the UK consisting of or incorporating the word GUINNESS, and also hold one registration for GUINNLESS in Class 32. He provides sales volumes, turnover and advertising for beer sold under the GUINNESS label as follows:

Year	Sales volume in bulk barrels (36 gallons)	Turnover	Advertising £million
1980	876,915	over £100 million	2.3
1981	810,047	over £100 million	2.3
1982	765,938	over £100 million	1.1
1983	792,645	over £100 million	8.9
1984	786,864	over £100 million	3.9
1985	836,352	over £100 million	4.4
1986	968,481	over £100 million	2.8
1987	1,003,866	over £116 million	5.3
1988	1,116,092	over £116 million	6.9
1989	1,129,431	over £116 million	6.5
1990	1,186,000	over £116 million	7.0
1991	1,171,000	over £116 million	8.1

Examples of the type of advertising are provided at exhibit GBW3 and show advertisements from 1929 to 1985 ranging from newspaper advertisements to posters on hoardings and buses. They

all show the use of the mark GUINNESS, although there are single instances of use of the following adaptations: GENNIUSS, AGUINNESS & GUINNESSNESS. Mr Beanland claims that as a result of their sales and advertising the opponents have established a massive reputation in the UK in the trade mark GUINNESS.

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Mr Beanland states that the opponents used a slogan “Guinness is good for you”. In 1983 a new advertising slogan was coined “Guinnless isn’t good for you” which he claims gives the message that to be without Guinness stout was not good for you. He claims that the GUINNLESS mark appeared in the same distinctive typeface as the word GUINNESS.

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Mr Beanland claims that “considerable sums” were expended on the promotion of GUINNLESS and that this “caused considerable recognition and comment in the press which served to increase the general awareness of the GUINNLESS name”. At exhibit GBW4 is an article explaining the adoption of the GUINNLESS name together with examples of advertising and extracts from the press showing the use of the mark as part of various advertising slogans. These are all dated in January 1983 although ideas for a 1984 calender are also shown. Mr Beanland states that by virtue of the use the opponents established “a very wide reputation in the United Kingdom in the trade mark GUINNLESS in relation to the sale of its stout”.

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Mr Beanland states that in 1989 the opponents became aware that a dark stout was being sold under the name of GUILTLESS in Manchester. He claims that the words are similar and that the applicants also used digitalized lettering which resembled that used on the opponents trade mark. He states that discussions were held with Mr Brendan Dobbin and because of the low volume of sales, it was decided not to take action provided that the name and logo remained in the same colour, size, style of lettering as at that time, so long as sales would only be made at the Kings Arms Public House and provided the trade mark application number 1373178 was withdrawn. Nothing was heard on the matter until publication of the application in suit.

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Mr Beanland claims that if the mark were to proceed to registration then there would be confusion. He also states that the mark was chosen in order to benefit from the opponents’ reputation. The adoption of a word beginning with the same three letters and ending in the same three letters as GUINNESS and ending in the same four letters as GUINNLESS is he claims “a clear indication that a connection with the trade marks GUINNESS and GUINNLESS was to be inferred”.

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The applicants’ claim that DOBBINS is the dominant feature of the mark in suit, DOBBINS GUILTLESS STOUT, is denied. Mr Beanland states that the word GUILTLESS is “the single largest element in the mark in the middle of the label in a similar fashion to GUINNESS and the eye of the intending purchaser would clearly be drawn to that word”.

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Finally he claims that in their counterstatement the applicants “admit that their goods are produced and brewed at the Kings Arms Hotel and sold only in the Manchester area. Accordingly it would seem that the applicants have no bona fide intention to use their mark other than in the Manchester area”.

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The second statutory declaration, dated 2 June 1992, by Mr Alan David Goldring a trade mark lawyer employed by J.E. Evans-Jackson & Co., the trade mark agents acting on behalf of the

opponents.

5 Mr Goldring states that he sent a questionnaire to seventy individuals and companies who are involved in the distribution, wholesale and retail sale of alcoholic drinks in the UK. The questionnaire asked the respondent if the name GUILTLESS meant anything to them, who they thought would use the name, whether they were aware of a beer being sold under the name, who they thought would produce a beer under this name and whether they would stock a beer with the name.

10 He states that twenty-four replies were received of which half (12) contained no specific responses. The responses are at exhibit ADG2 and show four replies which mention that the opponents might use the mark and suggesting a connotation with the name GUINNESS, and one which says it “sounds synonymous with GUINNLESS”.

15 The third statutory declaration is dated 14 May 1992 and is by Mr Gerald Atkinson. Mr Atkinson is the Managing Director of Winerite Ltd, a company of wine and spirit merchants. He states that he has been involved in the wine, spirit and beer trade for thirty years and has a wide knowledge of all aspects of the trade. Mr Atkinson was one of the respondents to the questionnaire referred to above. He states his belief that the mark is suit is so close to the opponents’ GUINNESS mark that it would cause confusion amongst the customers of his company who would think that there was a connection between GUILTLESS and GUINNESS.

20 The fourth statutory declaration, dated 15 May 1992, is by Mr Christopher Thomas Rose. Mr Rose is the Marketing Director of A F Blakemore and Sons Ltd “a company operating cash and carry outlets selling various goods including beers through many outlets all around the country”. Mr Rose states that he has been involved in the wine, spirit and beer trade for twenty years. Mr Rose was also a respondent to the questionnaire sent out by Mr Goldring. He too states his belief that customers would be confused and assume an association between the applicants’ mark and the opponents.

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APPLICANTS’ EVIDENCE

35 The applicants filed three statutory declarations. The first, dated 30 November 1992, by Mr Brendan Dobbin who is the Principal Shareholder and Managing Director of The West Coast Brewing Company Limited and an associated company The Guiltless Stout Company Ltd.

40 Mr Dobbin states that the brewing is carried out by the Guiltless Stout Co. Ltd, under licence from The West Coast Brewing Co., in the basement of the King’s Arms Hotel. He states that the hotel is also the main retail outlet for the beers, although there is, he claims, a “small, mainly local to Manchester trade in the various beers and lagers and to some extent the stout”.

45 Mr Dobbin states that he holds degrees (BSc & MSc) and is a consultant to a “world-wide group of independent brewers”. Since taking over the King’s Arms and establishing his own brewery Mr Dobbin claims that he has developed a stout which, unlike major breweries, has no artificial sweeteners or preservatives, although some of his other beers do have such additives in them.

Mr Dobbin states:

5 “ The man in the street, asked to name as many stouts as he could think of, would probably come up with Mackeson, Murphys and Guinness and undoubtedly the greatest of these is Guinness to such an extent that in the minds of many people Guinness is the name of the drink, not the name of the brewer. I felt that my name GUILTLESS, beginning and ending with the same letters as Guinness, would suggest to people that the product was, like Guinness, a stout, but that GUILTLESS had a specific meaning, which I could explain in more detail on the label that would mark it out as being quite different to GUINNESS.”

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15 “My stout was, as I have said, just one of a range of beers and lagers and I wanted to promote them all under the Dobbins name. Dobbin is the name of an old Irish brewing family still well remembered in parts of that country and I am related to that family and wanted to perpetuate its name. The full name of my product by which it is always referred to is DOBBINS GUILTLESS STOUT and the Guiltless aspect is explained on the bottle label by the words:

20 ‘Made from malted barley, barley, oats, roasted malted barley, roasted malt, hops, yeast and water. Free from additives and preservatives’
(Roasted Malt appears on there by accident but I don’t wish to incur the expenses of changing my label just to correct that.)”

25 Mr Dobbin goes on to state that he has registered DOBBINS NORTH COUNTRY BEERS and claims that both labels define a ‘house’ style. Mr Dobbin states his view that the mark in suit is sufficiently distinguished from Guinness. He states that customers “ would also know that they were not getting the old familiar GUINNESS but a new and different product, that would make them ask the question ‘Guiltless of what?’ and read the label to find the answer.”

30 With regard to the opposition based on the GUINNLESS mark, Mr Dobbin states that this word has never been used as a trade mark as such but only as part of an advertising campaign for GUINNESS. There has never been a GUINNLESS stout sold. He states that the advertising campaign made this clear stating that the Guinnless were those who had gone too long without a Guinness. So the customer would never expect to find a stout being sold under the
35 GUINNLESS label. He points out that the sales quoted by the opponents all relate to GUINNESS and none relate to GUINNLESS.

40 Mr Dobbin also comments that the dates attached to the GUINNLESS exhibits are all for 1983 other than the 1984 calendar. He claims that the company never referred to Guinnless in any advertising after 1983.

Mr Dobbin comments on the style of label and type face:

45 “Mr Beanland suggests that the digitalized lettering used on my label resembled his company’s distinctive type style used on both the words GUINNESS and GUINNLESS. None of the type faces used by Guinness as exemplified in Mr Beanland’s exhibits GBW2, 3 & 4 could remotely be described as digitalized and there is something clearly wrong with

Mr Beanland's understanding of the term distinctive if he characterises his company's type faces as such yet says they resemble mine. The Guinness type faces are traditional printing type faces; mine is not really a type face at all, rather it is a reproduction of the seven segment display devices of modern watches and computers. I chose the style to emphasise that the product was new, and that is exactly what it does. Short of inventing a whole new alphabet, I couldn't have got further from the traditional Guinness type faces".

Mr Dobbin disputes the comments of Mr Beanland regarding the meeting between himself and representatives of the opponents. Mr Dobbin states that there was no suggestion that he should withdraw his trade mark application and he provides various correspondence (at exhibit BD1) between the parties. In particular reference is made to the letter dated 1 November 1989 from Mr Baker. This letter states that the opponents decided not to take the matter further at that time but they did reserve the right to review that decision if the label were changed or if Mr Dobbin ceased to retain personal ownership and control of the company responsible for brewing and marketing DOBBINS GUILTLESS STOUT. The letter also states that it is the opponents' view that the trade mark application would not succeed. However, if it did then the opponents reserved the right to file an opposition.

Mr Dobbin points out that the opponents have since November 1989 acquiesced or consented to the applicants use of the mark, by dint of their letter from Mr Baker. He states that "Confusion cannot be caused by marks appearing on the Register - confusion is caused by similar marks appearing at point of sale and customers care little or nothing about whether a mark is registered or not".

Mr Dobbin also refutes Mr Beanland's claim regarding confusion by customers. Mr Dobbin states that if a customer comes into his pub and asks for a Guinness, it is not because he is confused but because he is not aware that the pub does not sell it. He states that he has never had a customer return to the bar and ask for "another GUINNESS" after having had a pint of the applicants brew.

Finally he states that some limited quantities have been sold in places such as Brighton and also Mr Dobbin has exhibited at several beer festivals and intends to use the mark other than in the Manchester area.

The second statutory declaration, dated 17 November 1992, is by Mr John Gordon Lawrence. Mr Lawrence is a Partner in the Trade Mark agents of McNeight and Lawrence. He comments on the questionnaire carried out for the opponents by Mr Goldring. Firstly he questions the use of the opponents' records to form a list to whom the questionnaire was sent, and states that an independent list would have been more proper.

However he recognises that Guinness is so well known that everyone in the trade that it is unlikely to be confused with something which has a "closely similar name". This is borne out by the fact that all the respondents answered 'No' to the question "does the name GUILTLESS mean anything to you?" He also points out that the applicants full mark was not used in the questionnaire but only a part of it (guiltless).

The third statutory declaration, dated 30 November 1992, is by Mr Robert Harston the Managing Director of both the Wigan Pier public house, and also Rowen Inns Ltd a public house, nightclub

and hotel business.

Mr Harston states that he has worked in the brewing industry for twenty-five years, including nine years as the Regional Managing Director of Mann's Northampton Brewery. Mr Marston states that at both his establishments has stocked GUINNESS and DOBBINS GUILTLESS STOUT for the past two years. He claims that:

“To my knowledge, on no occasion has any customer given the slightest impression that when he was buying GUILTLESS he was getting GUINNESS. I stock both stouts, in fact, and my experience is that far from confusing them, customers recognise that they are different products. They are interested and amused by the GUILTLESS name and want to know why it is called that. When it is explained that it means it is free from the usual additives, they want to try it, and they frequently repurchase”.

Mr Harston comments that the GUINNLESS campaign in 1983 did not assist sales of GUINNESS in his outlets, and he claims that he did not see any GUINNLESS promotion after 1983. He also states that there was never a product called GUINNLESS, it was a word used to promote GUINNESS.

OPPONENTS' EVIDENCE IN REPLY

This consists of a statutory declaration by Mr Beanland, dated 21 January 1994. Mr Beanland notes that the applicants' evidence contains a statement by Mr Dobbin which states “I felt that my name GUILTLESS, beginning and ending with the same letters as GUINNESS, would suggest to people that the product was, like GUINNESS, a stout...”. This, claims Mr Beanland, contains the whole essence of the case. He also disputes Mr Dobbins claim that the addition of other material to the trade mark and label of the product sufficiently distinguishes it from the opponents' mark or product. Mr Beanland claims that customers will refer to the applicants' product as GUILTLESS and not DOBBINS GUILTLESS STOUT. He also claims that as Mr Dobbins also sells DOBBINS NORTH COUNTRY BEER that customers will refer to one as GUILTLESS and the other as NORTH COUNTRY in order to distinguish between the products.

Mr Beanland states that the claim the mark in suit refers to the lack of additives (as stated on the bottle), cannot assist customers of the draft product.

Further Mr Beanland claims that, at the time, the mark in suit was chosen, officers of the opponents were undergoing trial for fraud.

The applicants' version of the meeting on 3 August 1989 with Mr Baker is disputed. At exhibit BB1 is a file note prepared by Mr Baker following the meeting. It is clear from the note that Mr Baker was concerned that the mark in suit could be “the tip of the iceberg” but at the same time aware that the opponents could be viewed as taking a “sledgehammer to a nut” approach.

Mr Beanland reiterates his view that customers will associate the mark in suit with the opponents, particularly given that the opponents have, he claims, advertised their stout under different names such as PURE GENIUS, GUINNLESS and “many other names based on the Guinness name”.

Mr Beanland questions where the applicants' product is sold as he states that the declaration by Mr Dobbins is contradictory on this point.

5 Mr Beanland then comments on the declaration by Mr Harston. He comments that Mr Harston refers to customers' interest in the GUILTLESS name, not to interest in the DOBBINS GUILTLESS STOUT name. This, claims Mr Beanland, proves that customers rely on the name GUILTLESS not DOBBINS.

10 Referring to the declaration by Mr Lawrence, Mr Beanland states that the seventy names to whom questionnaires were sent were taken from a list of several hundred names and chosen randomly by Mr Goldring. He also claims that anyone in the drinks trade would be a customer of the opponents and so an "independent list" would be virtually impossible.

15 That completes my review of the evidence.

DECISION

The grounds of opposition under Sections 9 & 10 were withdrawn by Mr Goldring at the hearing.

20 The next grounds of opposition are under Sections 11 & 12 of the 1938 Act. These read:

25 *"11. - It shall not be lawful to register as a service mark or part of a service mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design."*

30 *12. - (1) "Subject to the provisions of subsection (2) of this section, no trade mark shall be registered in respect of any goods or description of goods that is identical with or nearly resembles a mark belonging to a different proprietor and already on the register in respect of*
(a) the same goods,
(b) the same description of goods, or
(c) services or a description of services which are associated with those goods or goods of that description."

35 The reference in Section 12 to a near resemblance is clarified by Section 68(2B) of the Act which states that references in the Act to a near resemblance of marks are references to a resemblance so near as to be likely to deceive or cause confusion.

40 The established tests for objections under these provisions are set down in Smith Hayden & Co. Ltd's application [1946] 63 RPC 97 at 101, later adapted by Lord Upjohn in the BALI trade mark case (1969 RPC 496). Adapted to the matter in hand these tests may be expressed as follows:

45 (Under Section 11) Having regard to the user of the opponents' marks GUINNESS / GUINNLESS, is the tribunal satisfied that the mark applied for, DOBBINS GUILTLESS STOUT, if used in a normal and fair manner in connection with any goods covered by the

registration proposed will not be reasonably likely to cause deception and confusion amongst a substantial number of persons?

5 (Under Section 12) Assuming user by the opponents of their trade marks GUINNESS and GUINNLESS, in a normal and fair manner for any of the goods covered by the registrations of those trade marks, is the tribunal satisfied that there will be no reasonable likelihood of deception amongst a substantial number of persons if the applicants use their trade mark DOBBINS GUILTLESS STOUT normally and fairly in respect of any goods covered by the proposed registration?

10 The goods of the applicants are clearly encompassed by the specifications of more than two of the opponents' marks. The matter therefore falls to be considered by a comparison of the marks taking account of all the surrounding circumstances as per Parker J. in Pianotist Co.'s application [1906] 23 RPC 774 at page 777.

15 Putting the marks side by side and comparing them as wholes it is difficult to see how there is any likelihood of confusion. However, as Lord Radcliffe stated in the case of De Cordova and Others v. Vick Chemicals Co. [1951] 68 RPC 103 at 106, lines 17 - 23:

20 " 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 error in any customer who places his order for goods with both the 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 detail, and that

25 marks are remembered rather by general impressions or by some significant detail than by any photographic recollection of the whole."

The opponents have claimed that the largest element of the applicants' mark is the word GUILTLESS and that this shares many similarities with the opponents' marks GUINNESS and

30 GUINNLESS. They point out that the applicants sell other beers under the DOBBINS label and so customers would refer to the mark in suit as GUILTLESS to distinguish it from other beers from the applicants. In SAVILLE PERFUMERY 58 [1941] RPC 147 Sir Wilfred Greene M. R said "In such cases the mark comes to be remembered by some feature in it which strikes the eye and fixes itself in the recollection. Such a feature is referred to sometimes as the distinguishing

35 feature, sometimes as the essential feature, of the mark."

In my opinion the primary distinguishing feature of the applicants' mark is the word GUILTLESS. When comparing this with the opponents' marks there is clearly a likelihood of confusion both visually and aurally. This is compounded by the notion of imperfect recollection and the slurring

40 of words referred to in TRIPCASTROID [1925] 42 RPC 264.

The opponents have shown that they have a huge reputation in the mark GUINNESS. They have also shown that they carried out a substantial advertising campaign in 1983 / 1984 using the GUINNLESS mark. Whilst I do not accept that GUINNLESS and GUINNESS are synonymous

45 I believe that the public has been educated into recognising these as advertisements for the opponents' GUINNESS stout. The opposition therefore succeeds under Section 11.

In the evidence filed by the applicants Mr Dobbins states, "I felt that my name GUILTLESS, beginning and ending with the same letters as GUINNESS, would suggest to people that the product was like GUINNESS, the stout". In my opinion the applicant having set out to deliberately associate his product with that of the opponents has aped their marks too closely.

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The opponents have filed trade survey evidence, showing some confusion that the applicants' mark would indicate a trade connection with the opponents', even among the trade. The relevant class of persons consists primarily of the purchasing public who are more likely to mistake one brand for another than a person whose business it is to sell or distribute the goods.

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Further, I also find that the applicants' mark is confusingly similar to the opponents' registered mark number 1270328 which consists of the word GUINNESS in a similar oval shaped device to the applicants' mark. The likelihood of visual confusion in a crowded bar is clear. The opponents' have filed evidence which shows extensive use of this mark for many years prior to the relevant date, 17 February 1989.

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I note that it is also well established that the onus is on the applicants to show that there is no likelihood of confusion. In my view the applicants have not discharged that onus.

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The opposition based on registration numbers 87294, 1129738, 1270328 & 1192206 therefore succeeds under Sections 11 & 12.

The matter having been decided I do not need to consider the grounds of opposition under Section 17.

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As the opposition has succeeded, the opponents are entitled to a contribution towards their costs. I order the applicants to pay the opponents the sum of £866.

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Dated this 17 Day of September 1999

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George W Salthouse
For the Registrar
The Comptroller General

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