

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 16013 BY
V&S VIN & SPRIT AKTIEBOLAG FOR A DECLARATION
OF INVALIDITY IN RESPECT OF PROTECTED
INTERNATIONAL TRADE MARK (UK)
No. M717635 STANDING IN THE NAME OF
CHAUDFONTAINE-MONOPOLE S.A.**

TRADE MARKS ACT 1994

IN THE MATTER OF Application No. 16013 by V&S Vin & Sprit Aktiebolag for a Declaration of Invalidity in respect of Protected International Trade Mark (UK) No. M717635 standing in the name of Chaufontaine-Monopole S.A.

BACKGROUND

1. The mark CHAUFONTAINE, L'EAU ABSOLUE is protected in the United Kingdom under No. M717635 in respect of a specification of goods in Class 32 that reads:

“Mineral and sparkling water from the springs of Chaufontaine, Belgium; non-alcoholic beverages, fruit drinks, fruit juices, syrups and other preparations for making beverages: all containing natural mineral waters from the springs of Chaufontaine, Belgium.”

2. It has an international priority date of 25 March 1999.

3. On 6 December 2000 V&S Vin & Sprit Aktiebolag applied for the protection of protected international trade mark No. M717635 to be declared invalid. The applicants are the proprietors of some nine UK registrations consisting of or incorporating the word ABSOLUT and a further three CTM registrations consisting of the word ABSOLUT and a device. Having regard to their filing dates and, in one case, a priority date they are all earlier trade marks. The applicants claim that they have traded in the United Kingdom since at least as early as 1985 under the trade mark ABSOLUT or marks within the 'ABSOLUT family'. On the basis of these claims they raise objections under Section 47(2)(a) of the Act and in terms which make it clear that, within the context of that provision, they rely on Section 5(2) and 5(3) of the Act. They ask that the protection be declared invalid.

4. The International Registration holders (for ease of reference hereafter I will refer to them as the proprietors) filed a counterstatement which denied the allegations and put the applicants to proof in relation to the assertions of use of the marks relied on.

5. Both sides have asked for an award of costs in their favour.

6. Thereafter the action was progressed by the filing of the applicants for invalidity's evidence, I will merely record that it consisted of four witness statements by Goran Lundqvist, Edwin Cedric Atkinson, William John Deacon and Clare Trusler. Mr Lundqvist is the President of The Absolut Company, a business area of V&S, the other three declarants are the Director General of The Gin & Vodka Association of Great Britain and representatives from an advertising and public relations firm. Collectively this evidence goes to the reputation of the ABSOLUT brand and the declarants' reaction to the mark under attack.

7. In response to the applicants' evidence the proprietors initially sought an extension of time to file evidence in support of their protected registration. In the event no evidence was filed within or after the extended period allowed.

8. On 24 January 2002 Humphreys & Co, Solicitors acting for the proprietors wrote to the Registry indicating that "our clients have decided not to pursue the defence of their trade mark". The papers were subsequently reviewed by a Registry Hearing Officer who noted the contents of the letter of 24 January 2002. The Hearing Officer indicated by letter dated 9 May 2002 that he took this to be a withdrawal of the proprietors' denial of the allegations against their protected registration and gave the preliminary view that the request for a declaration of invalidity would be held to be made out taking into account the applicants' evidence.

9. The parties were given an opportunity to request a hearing or to make written submissions having regard to the position as summarised above. Neither side has asked to be heard or filed written submissions. Acting on behalf of the Registrar I give this decision.

DECISION

10. Article 13(1) of The Trade Marks (International Registration) Order 1996 reads as follows:

"13.-(1) The provisions of section 46 (revocation of registration) and section 47 (grounds for invalidity of registration) shall apply, subject to the adaptations set out below, so as to permit the protection of a protected international trade mark (UK) to be revoked, or declared invalid."

11. The adaptations referred to are largely to do with matters of terminology. I do not need to dwell on them for present purposes. The effect of the Article is to apply the invalidity provisions of Section 47 to protected international trade marks (UK) and along with them the rules (as amended) relating to such actions. Thus the provisions of Section 47(2)(a)/5(2)(b) and 5(3) are applicable.

12. This case is unusual in that the proprietors, having initially sought to defend the protected status of their mark, have subsequently indicated that they "have decided not to pursue the defence of their trade mark". I note that they use those words rather than simply saying that they no longer intend to take an active part in the proceedings. These circumstances can, therefore, be distinguished from those pertaining in *Firetrace Trade Mark*, [2002] RPC 15, where the application for revocation was resisted by the registered proprietors. The Hearing Officer's review letter of 9 May 2002 gave a further clear indication as to how the proprietors' position had been interpreted by saying that they were taken to have withdrawn their denial of the allegations. It seems to me that the natural consequences of this state of affairs was plain for all to see. The proprietors have not suggested that they wish to contest that preliminary view of the matter. I, therefore, find that, in the light of the proprietors' position, the application for invalidity succeeds.

13. The consequence of the above is to be found in Article 13(5) of The Trade Marks (International Registration) Order 1996:

“(5) Where the protection of a protected international trade mark (UK) is revoked or declared invalid to any extent, the registrar shall notify the International Bureau, and

- (a) in the case of a revocation, the rights of the proprietor shall be deemed to have ceased to exist to that extent as from the date on which the revocation is recorded in the International Register;
- (b) in the case of a declaration of invalidity, the trade mark shall to that extent be deemed never to have been a protected international trade mark (UK);

Provided that this shall not affect transactions past and closed as at the date when the invalidity is recorded in the International Register.”

14. In accordance with Article 13(5)(b) the trade mark in suit will be deemed never to have been a protected international trade mark (UK).

15. The applicants for invalidity are entitled to a contribution towards their costs. Allowing for the fact that the change in the proprietors’ position occurred after the applicants filed their evidence I order the proprietors to pay them the sum of £1000. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 03 day of January 2003

**M Reynolds
For the Registrar
the Comptroller-General**