

TRADE MARKS ACT 1994
IN THE MATTER OF Application No. 3010917
by Nicolai Global Beverages Limited to register a
Trade Mark in Class 32
and
IN THE MATTER OF Opposition thereto under
No 401306 by Mr John Cunningham

SUPPLEMENTARY DECISION

1. On 31 October 2014 I issued a provisional decision in relation to the above opposition proceedings. The opposition succeeded under section 5(2)(b) of the Act on the basis of an earlier Community trade mark application number 11790276 in the name of the opponent, Mr John Cunningham. Although I found the opposition to have been successful, the final outcome was dependent upon the earlier Community trade mark owned by Mr Cunningham proceeding to registration, and thus the decision was provisional. Further, I made no order for costs at that time. I directed Mr Cunningham to inform the Tribunal as and when the CTM application was registered or refused. I would then issue a supplementary decision confirming the outcome of the subject proceedings, and would issue my decision on costs at that point too.

2. In a letter of 16 February 2015 the Tribunal was informed by Mr Cunningham's representatives that Community trade mark application number 11790276 in the name of John Cunningham has been refused, following opposition.

3. In the light of the above, Community trade mark application number 11790276 cannot be relied on as an earlier mark for the purposes of opposition under section 5(2)(b) in the present proceedings, and my provisional decision that the opposition succeeded on the basis of that application cannot be confirmed. Accordingly, **the opposition in the present proceedings fails in its entirety, the opposition on the basis of the other grounds pleaded having failed.**

4. Nicolai Global Beverages Limited has been successful and is entitled to a contribution towards its costs. I hereby order Mr John Cunningham to pay Nicolai Global Beverages Limited the sum of £700. This sum is calculated as follows:

<i>Preparing a statement and considering the other side's statement</i>	£200
<i>Preparing evidence and considering the other side's evidence</i>	£500

The above sum should 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 27th day of February 2015

Martin Boyle
For the Registrar,
The Comptroller-General