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UK INTELLECTUAL PROPERTY OFFICE
(BY TELEPHONE LINK)

One Essex Court,
Temple,
London EC4Y 9AR

Tuesday, 20th December, 2016

Before:

MR. GEOFFREY HOBBS Q.C.
(sitting as the Appointed Person)

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In the Matter of the Trade Marks Act 1994

-and-

In the Matter of Trade Mark Application Nos. 3008196
and 3008197 for two series of two trade marks VAUX and Vaux in
Class 32 by VAUX BEERS LIMITED

-and-

In the matter of Opposition thereto under
Nos. 401240 and 401239 by VSES PROJECTS LIMITED

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(Appeal of the Applicant from the decision of Mrs. Judi Pike,
acting on behalf of the Registrar, dated 8th June 2016.)

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(Transcript of the Shorthand Notes of Marten Walsh Cherer
Ltd., 1st Floor, Quality House, 6-9 Quality Court,
Chancery Lane, London, WC2A 1HP.
Tel No: 020-7067 2900. Fax No: 020-7831 6864.
email: info@martenwalshcherer.com. www.martenwalshcherer.com)

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MR. HASSAN WEBB appeared on behalf of the Applicant (Appellant).

MR. IAN BYWORTH (of Urquhart-Dykes & Lord LLP) appeared
on behalf of the Opponent (Respondent).

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DECISION

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1 THE APPOINTED PERSON: I will now make some observations in
2 relation to the Grounds of Appeal in this case. The starting
3 point, in my view, has to be that the Hearing Officer decided
4 in her decision issued under reference BL O-281-16 on 8th
5 June 2016, that there was a well-founded objection under
6 section 5(1) of the Trade Marks Act 1994 based on the
7 principle of the primacy of the earlier registered right
8 afforded to the Opponent by United Kingdom Trade Mark
9 No. 2621892.

10 Turning then to the Grounds of Appeal which have been
11 discussed, in relation to the first ground the position, in
12 my view, must be that the Registrar has no power to alter or
13 dispense with the provisions of section 5 of the 1994 Act,
14 still less to do so by administrative action to the detriment
15 of the Opponent as proprietor of the earlier registered trade
16 mark upon which it relies in the present proceedings. To put
17 it another way, there is no room for an estoppel against the
18 operation of a statutory provision such as section 5 on the
19 grounds put forward by the Applicant in the circumstances of a
20 case such as the present.

21 It is not the role or remit of the Registrar in
22 adversarial proceedings to act of his own motion so as to
23 intervene to prevent an applicant for registration from
24 proceeding with its application for registration in the
25 face of an objection to registration filed by an opponent in

1 circumstances such as these. Moving forward from there,
2 the order for revocation of the Applicant's registered trade
3 mark no. 2416552 on the ground of non-use has become final
4 following the decision of the Appointed Person, Miss Emma
5 Himsworth Q.C., delivered under reference BL O-420-15 on 14th
6 July 2015. That matter is past and closed and it is not open
7 to the Applicant to go behind that decision or mount a
8 collateral challenge to it.

9 If it was thought that there was a legitimate basis
10 available for invalidating the Opponent's earlier trade mark,
11 proceedings would need to have been brought for that purpose.
12 None have been brought. I do not need to say anything as to what
13 the position would, or might, be if any such proceedings were
14 to be brought.

15 Drawing together those propositions, it is clear to me
16 that the Grounds of Appeal disclose no viable basis for
17 securing a reversal or setting aside on procedural grounds of
18 the Hearing Officer's decision. It is therefore my view that
19 the appeal should be dismissed and, on the short basis on which we
20 have conducted this hearing today, that is now my decision.

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