

O/576/21

TRADE MARKS ACT 1994

SUPPLEMENTARY/CORRECTIVE DECISION

IN THE MATTER OF APPLICATION NO. UK00003516333

BY ALISTAIR TROTMAN

TO REGISTER THE FOLLOWING MARK:

Trillion Trees

**IN CLASSES 11, 25, 32, 44
AND 45**

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 600001507

BY RESTORE U.K

1. On 14 June 2021, I issued a decision which erroneously stated that the opponent opposed all of the applicant's goods and services. In fact, its opposition was limited to the following Class 44 services:

Agricultural services; Agricultural services relating to environmental conservation; Agriculture, aquaculture, horticulture and forestry services; Agriculture, horticulture and forestry services; Agriculture, horticulture and forestry services relating to the recultivation of industrial wastelands; Agriculture services; Consultancy and advisory services relating to agriculture, horticulture and forestry; Consultancy in the field of viticulture; Consultancy relating to agriculture, horticulture and forestry; Consultancy relating to landscape design; Consultancy relating to the cultivation of plants; Consultancy relating to tree planting; Cultivation of plants; Design of gardens and landscapes; Destruction of parasites for agriculture, horticulture and forestry; Forestry services; Planning [design] of gardens; Plant care services [horticultural services]; Plant nurseries; Plant nursery services; Planting of flora; Planting of trees; Providing information about agriculture, horticulture, and forestry services; Providing online information about agriculture, horticulture, and forestry services; Reforestation services; The planting of trees for carbon offsetting purposes; Tree nursery services; Tree nurseryman services; Tree planting; Tree planting for carbon offsetting purposes; Tree surgeons' services; Tree surgery; Vermin exterminating for agriculture, horticulture or forestry, and providing information relating thereto; Weed killing for agriculture, horticulture and forestry.

2. The error having been brought to the attention of the Tribunal by the opponent on 15 June 2021, the Tribunal wrote to the parties on 17 June 2021.
3. The Tribunal accepted that an error had clearly occurred and apologised for this. It noted that this procedural irregularity needed to be corrected. It considered the most appropriate course of action in this case was for me to issue a supplementary/corrective decision which:

- i) Accepts and notes the irregularity that has occurred.
 - ii) But confirms that the decision for the services that were the subject of the partial opposition still stands.
 - iii) Sets aside the decision on costs, with the supplementary decision giving a fresh costs decision based on the overall outcome.
 - iv) Resets the appeal period, for both costs and the substantive decision.
4. The parties were entitled to be heard on this matter and were given until 1 July 2021 to request a hearing.
5. No response was received from the opponent. While there was correspondence from the applicant, it did not constitute a request for a hearing, but sought to come to some form of agreement with the opponent (including that there should be no award of costs). As this was a matter for the parties and not for the Registrar to consider and, given that there did not appear to have been an agreement, I now move forward with issuing my supplementary/corrective decision.
6. The decision in relation to the services that were actually opposed has been made, and there is no reason that this should be set aside. Consequently, this supplementary/corrective decision confirms that the original decision for the services that were subject to the partial opposition still stands. However, the findings made in relation to the other (non-opposed) goods and services are set aside and should be ignored.
7. This supplementary/corrective decision does, however, also set aside the decision on costs given that it was based on an outcome which was not wholly accurate and the balance of success has changed. Therefore, paragraph 67 onwards of my original decision is set aside and is replaced with:

CONCLUSION

8. The opposition has succeeded in relation to the following services, for which the application is refused:

Class 44 Agricultural services; Agricultural services relating to environmental conservation; Agriculture, aquaculture, horticulture and forestry services; Agriculture, horticulture and forestry services; Agriculture, horticulture and forestry services relating to the recultivation of industrial wastelands; Agriculture services; Consultancy and advisory services relating to agriculture, horticulture and forestry; Consultancy relating to agriculture, horticulture and forestry; Consultancy relating to tree planting; Forestry services; Planting of flora; Planting of trees; Providing information about agriculture, horticulture, and forestry services; Providing online information about agriculture, horticulture, and forestry services; Reforestation services; The planting of trees for carbon offsetting purposes; Tree nursery services; Tree nurseryman services; Tree planting; Tree planting for carbon offsetting purposes.

9. The application will proceed to registration, subject to appeal, in respect of the following services which were opposed but I have not upheld (in addition to the goods/services that were not opposed):

Class 44 Consultancy in the field of viticulture; Consultancy relating to landscape design; Consultancy relating to the cultivation of plants; Cultivation of plants; Design of gardens and landscapes; Destruction of parasites for agriculture, horticulture and forestry; Planning [design] of gardens; Plant care services [horticultural services]; Plant nurseries; Plant nursery services; Tree surgeons' services; Tree surgery; Vermin exterminating for

agriculture, horticulture or forestry, and providing information relating thereto; Weed killing for agriculture, horticulture and forestry.

COSTS

10. The level of success between the parties when considering the opposed services that were successfully opposed and those that will proceed to registration is finely balanced. Each party will therefore bear their own costs.
11. I confirm that the appeal period for both costs and the substantive decision is reset and begins from the date of this supplementary/corrective decision.

Dated this 3rd day of August 2021

JOHN WILLIAMS
For the Registrar