

O/916/21

**SUPPLEMENTARY DECISION**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3513610  
IN THE NAME ACE PIZZERIA LIMITED FOR THE TRADE MARKS**



**IN CLASS 43**

**AND**

**OPPOSITION THERETO UNDER NO. 422194  
BY ACE CAFE LONDON LIMITED**

## BACKGROUND

1. On 19 October 2021, I issued a decision on behalf of the Registrar in the above identified proceedings.<sup>1</sup>
2. On the 23 November 2021, Wilson Gunn, the representative for the applicant in the aforementioned decision, wrote to the Tribunal via email. The purpose of this email was to identify three areas of error within the decision that they believed required correction. The representative for the opponent was copied into this correspondence.
3. By way of a letter dated 26 November 2021, I responded to the parties as follows:

“I write following the email received from the applicant’s representative regarding decision O/779/21 of the 19 October 2021, concerning opposition no. 422194.

The following errors were addressed in the email:

- Paragraph 7 of the decision refers to the applicant’s representative contacting the Tribunal to confirm the deadline to file its written submissions, in light of the cancellation action filed against one of the earlier marks.
- Paragraph 35 refers to the screenshots filed as being dated 7 December 2021.
- The word ‘border’ was spelt as ‘boarder’ at paragraphs 58 and 61.

Having reviewed the decision and the file, it appears as follows:

- It was the opponent’s representative that contacted the Tribunal to confirm the date for filing its written submissions.

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<sup>1</sup> BL O/779/21

- The date of 7 December 2021 is incorrect and should have been noted as 12 July 2021.
- The word 'boarder' should have been spelt 'border'.

These errors are administrative and make no material difference to the outcome of these proceedings. However, in order to ensure that events are represented accurately, I propose to correct these errors by issuing a supplementary decision addressing the same.

When reviewing the decision on the website, I also note the text in the initial paragraph is not showing. This appears to be due to a technical issue. I will raise this with our decisions team, who will investigate this via the appropriate channels. If this cannot be corrected, I intend to copy this paragraph into my supplementary decision.

If either party object to this approach, they should confirm as such within 14 days, namely by **10 December 2021.**"

4. The technical issue concerning the initial paragraph of the decision of 19 October 2021 has now been rectified. No objection to the approach set out in my letter of 26 November 2021 was received, and so I write this supplementary decision to correct the highlighted errors.

### **Supplementary decision**

5. Paragraph 7 as expressed in my decision of 19 October 2021 is to be replaced as follows:

"7. On 7 September 2021, the representative for the opponent contacted the Tribunal to confirm that a cancellation action had been filed against one of the earlier EU registrations relied upon within these proceedings, namely the earlier word mark. The representative for the opponent asked

if the opponent should still meet the deadline to file its written submissions in this case, which fell that day, and was informed by the Tribunal that it should meet the deadline, and may provide the information relating to the cancellation action within its written submissions. The representative for the opponent was told it may request that proceedings be suspended pending the outcome of the European Union Intellectual Property Office (“EU IPO”) proceedings, but that the decision on this would be at the discretion of the Hearing Officer.”

6. Paragraph 34 as expressed in my decision of 19 October 2021 is to be replaced as follows:

“34. In her witness statement, Ms Jones provides screenshots of Google searches for ACE PIZZA which show a list of several results. The results do not show if the businesses are still trading, or much information about each of the same other than an address for some of the results. Exhibit RJ9 is a Companies House results page for businesses with ACE in their name. The date appears on the screenshot as 7/12/2021. As the date of 7 December 2021 has not yet passed, it is reasonable to assume this date is presented in the American format, and that it is dated 12 July 2021, that being the date of the witness statement.”

7. The references to the “circular boarder” as expressed in paragraphs 58 and 61 of my decision of 19 October 2021 are to be replaced with “circular border”.
8. My original decision of 19 October 2021 was issued as a provisional decision pending the outcome of the proceedings at the EU Intellectual Property Office. For this reason, no appeal deadline was set. Further, these amendments make no material difference to outcome of that provisional decision. For these reasons, there is no requirement to set or amend any deadlines within this supplementary decision.

**Dated this 16th day of December 2021**

**Rosie Le Breton  
For the Registrar**