O/0485/23

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION no.2599069

STANDING IN THE NAME OF
HORIZONS GROUP (LONDON) LTD

FOR THE TRADE MARKS

Royal Dragon Vodka
ROYAL DRAGON VODKA

IN CLASS 33

AND APPLICATION FOR RECTIFICATION THERETO
UNDER NO. 84836

BY

CAPITAL DISTRIBUTION & CONSULTING INC

Background

1. Dragon Spirits Limited ("Dragon Spirits") applied to register the series of two trade marks, shown on the front cover page, on 25 October 2011, under number 2599069 which became registered on 3 February 2012 in respect of '*vodka; vodka based products'* in class 33. The trade marks now stand registered in the name of Horizons Group (London) Ltd ("Horizons/the Proprietor"). I shall set out the history of how this came about later in my decision. Given that nothing turns on the assessment of the trade marks themselves I shall refer to them in the singular from hereon in.

2. Grant Thornton Recovery & Reorganisation Limited ("the Liquidators") were the original Applicants for Rectification who applied to record the change of ownership from Horizons into their name on 17 June 2021. Following the acquisition of all assets and IP rights from the Liquidators, the application for rectification ("application") now stands in the name of Capital Distribution & Consulting Inc ("CDC/the Applicant").

3. There is a complex history as to the ownership of the mark prior to this application, involving a number of different entities, various court proceedings (both here and in Hong Kong) and a previous rectification application before the Tribunal. These matters will be set out in greater detail below.

4. Throughout the majority of the proceedings both parties were professionally represented. The Applicant is represented by BDB Pitmans LLP. The Proprietor was represented by Sanderana, however in or about 10 August 2022 the Tribunal were notified that they were no longer representing the Proprietor. At the time of writing this decision it is understood that the Proprietor is unrepresented. During the currency of the proceedings both parties filed evidence and submissions which are voluminous. A hearing was requested which took place before me initially on 21 June 2022, but which was later adjourned to 29 September 2022. At the final hearing on 29 September 2022 Mr Nick Zweck, counsel, instructed by BDB Pitmans LLP appeared for the Applicant. Mr Chris Pearson counsel appeared by direct access for the Proprietor. It is useful to note at this stage that Mr Hiro Bharwani is the Proprietor's director and controlling mind and provides the witness statements for these proceedings. He is also a shareholder and creditor in Dragon Spirits. Mrs Joanne Bharwani was the former director and shareholder of the Proprietor. I do not believe that it is disputed that Mrs Bharwani is

Mr Hiro Bharwani's wife. Mrs Bharwani was also a signatory to the deed of assignment that forms the basis of this dispute.

Summary of the Issue to be determined

5. The issue before me turns simply on the ownership of the mark at the time a winding up petition was issued in the Hong Kong court on 12 July 2019 ("the relevant date"). In essence, the Applicant argues that as at the relevant date, the mark remained in the ownership of Dragon Spirits and therefore formed part of the insolvency assets which were later sold by the Liquidators to the Applicant. The Proprietor argues that prior to the filing of the winding up petition, the trade mark had already been assigned into its name, making it the rightful owner of the mark.

6. The validity of the deed which gave effect to this assignment and the status of the signatories to that document are central to the issue in the case. The deed of assignment relied upon by the Proprietor is dated 27 June 2019 ("the June Deed")[1] which it is argued complies with the requirements of section 24(3) of the Trade Marks Act 1994 ("the Act") and therefore can be accepted as the instrument by which title to the mark passed. The Applicant's case is that, in light of background events, the June Deed was nothing more than an agreement to assign (conditional on certain conditions being met), and was not in fact the instrument of the assignment itself. The Applicant also disputes the authority purported to be held by the signatories to the June Deed, arguing that they had neither actual, express, apparent or implied authority to bind Dragon Spirits, either by virtue of Hong Kong company law or the provisions of its own Joint Venture Agreement.

7. Notwithstanding the lengthy arguments advanced by both parties relating to the operation of Hong Kong company law on the validity of the June Deed, first and foremost my assessment is dependent on the effect and construction of the terms of the June Deed. If I find that the June document is a valid instrument upon which title to the trade mark passed, then the application in rectification fails.

[1] A copy of which is annexed to this decision.

Preliminary Issues

Case Management

8. At various times throughout the proceedings both parties made extension of time requests for filing their evidence which were ultimately granted. One such request made by the Applicant resulted in a Case Management Conference ("CMC") held before me on 25 January 2022. Following both parties' submissions I granted the request, but additionally at the CMC I proposed a direction, pursuant to my powers under Rule 65,[2] that the statement of Joanne Bharwani and accompanying exhibits dated 10 January 2020 (which were filed in the earlier rectification proceedings) be disclosed to the Applicant. No challenge was made to this proposed direction and the statement was duly admitted into the proceedings.

Adjourned Final Hearing June 2022

9. The matter was initially listed for final hearing on 21 June 2022. At that hearing the Applicant sought to introduce additional evidence relating to the governance of companies incorporated in Hong Kong, to support its case as to the invalidity of the June Deed. The Proprietor, in challenging the application, argued that this amounted to an amendment to the Applicant's pleadings and given the lateness of the application, it should be refused. Having considered both parties' submissions I took the view that the Applicant's case had always been based on a challenge to the validity of the June Deed and therefore evidence relating to the impact of Hong Kong law on it, was an extension of its pleaded case, rather than the introduction of a new argument. Even if I was wrong, the operation of Hong Kong law was relevant to the issue to be determined in order for me to come to a fair and just decision. Given that the governance of the company and the status of its officers, in particular the shareholders, were bound by the provisions of Hong Kong law, such material would provide me with important explanatory information. I, therefore, granted permission for the Applicant to introduce this evidence. Following this decision being given orally, the Proprietor applied to adjourn the hearing in order to make its own enquiries and to introduce its own evidence as to the impact of foreign law on the proceedings. The Applicant did not object to such an application and I acceded to the request to adjourn.

[2] Trade Mark Rules 2008

I directed that the parties were given time to file further evidence and the matter was relisted for a final hearing in September 2022.

Preliminary issue at the September 2022 hearing

10. Prior to hearing the substantive arguments, Mr Pearson made an application for the proceedings to be transferred to the Chancery Division of the High Court, in view of the volume of the evidence and the complexity of the issues to be determined, which related to insolvency and foreign company law, an assessment of the shareholders' authority, and issues relating to constructive trusts and beneficial interests. He considered that the issues might more appropriately be dealt with by a Chancery Judge as he did not see any real trade mark issues. The application was opposed by Mr Zweck who wished the hearing to proceed.

11. After considering both parties submissions, I refused the request. In coming to this decision, I determined that I was seized of the matter, the parties were fully aware of the issues to be determined and that neither the Tribunal nor the Applicant had been put on notice prior to the hearing itself that such an application would be made. Furthermore, the Proprietor had had ample opportunity to make the request during the intervening period from June 2022. I took the view that I had all the necessary information before me to determine the matter and that it would be unjust to transfer the proceedings at this late stage, causing undue delay and additional costs to the parties.

Additional evidence filed by Mr Bharwani

12. In December 2022 and January 2023, some 3 to 4 months after the final hearing, Mr Bharwani filed a number of emails, one of which was sent to my personal email address, consisting of further submissions and documents and a further counsel's opinion[3] setting out why it was possible for a beneficial entitlement to arise and why I should find in favour of the Proprietor. Mr Bharwani had not sought leave to file the additional material and the material filed was not in the correct format to constitute evidence, in so far as it was not accompanied by a statement of truth nor signed by the writer. [4] Counsel's opinion is just that and I have no way of telling what documents

[3] The author of the opinion was Ms Mina Heung, who as far as I can see has had no previous involvement with the case.
[4] In accordance with Rule 64 of the Trade Mark Rules 2008

were relied upon in giving this opinion. The contents of the material filed in any event did not relate to any new arguments over and above those that had already been submitted by Mr Pearson at the hearing. Furthermore, I take into account that up until fairly recently Mr Bharwani and the Proprietor were professionally represented and consider that they had ample opportunity to argue their case throughout the proceedings and more importantly at the final hearing. Given these factors the additional material and counsel's opinion has not been admitted into the proceedings and I have not taken them into account.

Evidence

13. The evidence is voluminous. It includes statements and affidavits prepared not only for these proceedings but also those held before the Hong Kong courts and previously the UKIPO. Mr Pearson and the Proprietor argue that I should disregard all material filed other than the June Deed, but I do not consider that this is the right approach to take. I must look at all the evidence before me so that I can properly determine the matter. Although the focus of my decision will ultimately be on the assessment as to the effect of the June Deed, it would not be right for me to only consider this document in isolation.

Applicant's evidence

14. The Applicant relies on the following statements:

(1). Ms Chow Tsz Nga's statement dated 20 January 2022 accompanied by exhibits marked GC1-20.

(2). Ms Pui Ying Yvette Yu's first statement dated 6 June 2022 accompanied by exhibits marked YPYY1-5.

(3). Ms Pui Ying Yvette Yu's second statement dated 20 September 2022 accompanied by exhibits marked YPYY6-11.

(4). Mr Sajjad Khan's witness statement dated 20 September 2022 accompanied by exhibits marked SK1-3.

(i) SK1 contains the 4th affidavit of Ms Sit Hoi Wai Nathalie dated 30 September 2019.

(ii) SK2 contains Deputy High Court Man's order dated 29 October 2019.

(iii) SK3 contains the affidavit of Ms Sit Hoi Wai Nathalie dated 6 September 2019 accompanied by exhibit SHWN 1 which contains the affirmation of Hiro Bharwani dated 5 September 2019 accompanied by exhibits marked HB1-18.

Proprietor's evidence and submissions

15. The Proprietor relies on the following statements and submissions:

(1). Mr Hiro Bharwani's first statement dated 29 November 2021 accompanied by exhibits marked Annex 1-4.

(2). Written submissions dated 2 March 2022

(3). Mr Hiro Bharwani's second statement dated 17 August 2022 accompanied by one exhibit marked HGB1.

(4). Mrs Joanne Bharwani's statement dated 10 January 2020 accompanied by exhibits marked JB1-JB8, filed in support of Horizon's earlier rectification application.

16. Given the volume of the evidence filed from both parties whilst I have read them in full, I do not propose to summarise their contents here but shall refer to the salient points as necessary later in my decision. In addition, both parties filed a number of authorities in support of their respective positions, which I have taken into account during my deliberations.

Previous Related Proceedings

17. It is useful at this stage to outline the various proceedings that took place in Hong Kong and the UK in relation to Dragon Spirits, involving the transfer of shares to Mr Bharwani and the other shareholders who were the signatories to the June Deed on behalf of Dragon Spirits

Previous Ownership of Dragon Spirits

18. It is not disputed by the parties that the trade mark was registered in the name of Dragon Spirits as at October 2011. At this time Dragon Spirits was under the control of Mr Michael Morren and Mr Pelzer in their capacity as directors. The operation and

management of Dragon Spirits and the Business[5] was and still is governed by a Joint Venture Agreement ("JVA") and Deed of Adherence dated 25 July 2011, originally entered into by Mr Morren and his associates as the founders and shareholders of the company. The JVA governed the relationship between the original parties to the JVA and also any future shareholders. The relevant terms and conditions of the JVA are set out in further detail later in my decision. As at 25 July 2011 the original founders and shareholders (Michael Morren and others) assigned all intellectual property rights relating to or connected with the Business to include the trade mark at issue into the name of Dragon Spirits.

Actions taken against Mr Morren and proceedings at the Hong Kong courts

19. On 12 January 2018 Mr Bharwani, Mr Deepak Pagarani and Accura Investments ("the Plaintiffs") as shareholders of Dragon Spirits issued High Court proceedings in Hong Kong against Mr Morren, Mr Pelzer and their associates, claiming that they were in breach of the JVA and their fiduciary duties owed to the company as directors, by misappropriating Dragon Spirits' assets in favour of another company controlled by Mr Morren and/or his associates. The Plaintiffs sought an order by way of specific performance of the JVA that Mr Morren and Mr Pelzer sell their shares to the Plaintiffs and/or their nominees.

20. The Plaintiffs sought summary judgment against Mr Morren and his associates, which following a court hearing was subsequently granted by Master Kot on 4 February 2019 (Master Kot's first order). In the transcript taken from that hearing, in finding in the Plaintiffs favour, Master Kot stated that as a result of being in breach of their fiduciary duties and the JVA "the Plaintiffs are entitled to ask for the shares held by the 1st and 2nd Defendants (ie Mr Morren and his associates) to be sold to them". The terms of Master Kot's first order, amongst other matters, was for Mr Morren and Mr Pelzer as the 1st and 2nd Defendants to:

> "1….sell their shares to the Plaintiffs pro-rated in accordance with the shareholdings of the Plaintiffs at the price of zero;

[5] Dragon Spirits was incorporated for the purposes of producing marketing and selling various Royal Dragon branded vodka products under various agreed trade marks and logos.

2… to execute all necessary documents for the transfer of their shares to the Plaintiffs and/or their nominees as directed by the Plaintiffs within 28 days from the date hereof…"

21. Despite repeated demands, Mr Morren and Mr Pelzer refused to comply with the terms of the order. The original application for summary judgment, however, did not claim any relief in the event that they failed to comply, and therefore on 16 May 2019 an application was made to vary the original order. This variation order was granted on 6 June 2019 (Master Kot's 2nd order) empowering the Plaintiff's solicitors "to sign and file the instrument of transfer [of shares], the bought and sold notes and all other documents to transfer the shares" of the 1st and 2nd Defendants in order to give effect to paragraph 1 of Master Kot's first order should the Defendants fail to transfer the shares within 14 days after being personally served with Master Kot's 2nd order.

22. Various attempts were made to effect personal service which were all unsuccessful. On 20 August 2019 an order for substituted service was granted which was duly complied with.

23. Whilst these proceedings were ongoing, on 25 June 2019 Mr Morren's representatives filed an application at the UKIPO, to record a change of ownership of the trade mark from Dragon Spirits to Lilium Enterprises SA ("Lilium") relying on an assignment deed dated 10 May 2019. This deed was signed by Mr Morren in his capacity as director of both entities and for both the assignor and assignee. The change of ownership was recorded in the name of Lilium as of 15 July 2019. It is agreed by both parties that this assignment and other actions undertaken by Mr Morren during this period were carried out fraudulently as he had no authority to assign the trade mark into Lilium's name in accordance with the terms of the JVA.

24. The Proprietor successfully applied to rectify the register by way of an application to the UKIPO on 31 January 2020 returning the trade mark into the ownership of Dragon Spirits. The documents relied upon in those proceedings (particularly Mrs Bharwani's witness statement dated 10 January 2020) is at odds with those relied upon by the Proprietor in the proceedings before me. I shall return to the earlier proceedings later.

25. On 30 August 2019, the transfer documents regarding the 'sale' of shares in Dragon Spirits was executed in accordance with Master Kot's orders and lodged at

the Hong Kong stamp office for stamping. The Instruments of Transfer and the Declarations of Trust were duly stamped on 13 September 2019. In accordance with documents filed by the Plaintiffs in proceedings before the Hong Kong courts, the Share Transfers could only be completed after particulars of the Plaintiffs and their nominees regarding the latest shareholdings were updated on the Register of Members of Dragon Spirits.

26. Various attempts were made to locate the Register of Members which was believed to still be under the control of Mr Morren as the "only person now acting as director of Dragon Spirits." In light of his non-compliance with previous court orders, an originating summons for rectification of a new blank Register of Members was sought, to insert the details of all the shareholders, to include the latest shareholdings of the Plaintiffs and their nominees, following the Share Transfers.

The Rectification of a new Blank Register of Members Application

27. Ms Nathalie Sit Hoi Wai is a solicitor and acted for Hiro Bharwani, Deepak Pagarani and Accura Investments (Plaintiffs/shareholders). She completed an affidavit dated 30 September 2019, made in the context of the Dragon Spirits winding up proceedings in support of the application (amongst other matters) for rectification of a new blank Register of Members and a validation order for the transfer of the shares in Dragon Spirits from Michael Morren and his associates to the three Plaintiffs/Shareholders and their nominees in accordance with Master Kot's first order dated 4 February 2019. The first call over hearing was fixed for 16 October 2019 and the matter was finally heard on 29 October 2019.

28. Ms Wai provides background information for those court proceedings. I note the following:

- It is said that Mr Bharwani, Mr Pagarani and Accura Investments alongside 11 other individuals were shareholders of Dragon Spirits as at 30 September 2019.
- Prior to 30 August 2019 Mr Morren and Mr Pelzer were also shareholders.
- The shareholders were bound by the provisions of the JVA.
- As at 30 September 2019 Mr Morren was still a director.
- As at 30 September 2019 Dragon Spirits had no company secretary the last having resigned on 4 March 2019.

- On 30 August 2019 the transfer documents regarding the shares were executed and lodged at the stamp office for stamping. The Instruments of Transfer and the Declarations of Trust were duly stamped on 13 September 2019.
- The Share Transfers could only be completed after particulars of the Plaintiffs latest shareholdings had been updated on the Register of Members of Dragon Spirits.

29. An order was made on 29 October 2019 by Deputy High Court Judge Man validating the transfer of shares from Dragon Spirits to Mr Bharwani, Mr Pagarani, Acura Investments and their nominees namely BK Prem Bahadur, Shamsuddeen Chodaveetil, Srinu Kodimyala, Ramesh Singh, Saby Mathew, Ramdeo Yadav, and Wahid Ali (the shareholders and signatories to the June Deed). At the same time the application for rectification of the Register of Members was granted

30. During this application Mr Bharwani's solicitors stated that "the shares being transferred are fully paid up shares and the Share Transfers will therefore have no impact on the creditor. If the validation order is refused or if leave is not granted the Plaintiffs' voting power at any contributories' meeting will be negatively impacted although they are legally entitled to the share transfers they cannot be completed because the rectification proceedings have been stayed".

Winding up proceedings for Dragon Spirits

31. It appears that the only relevance of the winding up proceedings to the issue in suit is the filing date of the petition and potentially the impact of the appointment of the Liquidator on the powers of the company's officers. Given that neither party has disputed the former and that no issue has been raised regarding the latter it is unnecessary for me to outline the history of the winding up proceedings in any great detail. The parties accept that the winding up petition was issued on 12 July 2019 and that any purported assignment of the trade mark after this date is void. It is noted however, that Mr Bharwani completed an affirmation dated 5 September 2019 for the purposes of those court proceedings, the contents of which are material.[6] His affidavit contains a statement of truth and was taken before a notary public. I note the following statements made by Mr Bharwani:

[6] Exhibited to Ms Nathalie Wai's statement SHWN 1.

- He made the application in his capacity as a creditor and shareholder of Dragon Spirits.
- He stated that he made a loan to Dragon Spirits in the sum of $150,000 plus interest on 11 May 2015 by way of a Loan Agreement dated 12 May 2015 which became due on 11 May 2018.
- He was also a shareholder having invested in the company, receiving 4,198 shares of the total issued share capital.[7]
- He accepted that each shareholder is bound by the JVA.
- Mr Morren was the current director.
- Following advice from his legal representatives he believed that for both legal and beneficial titles of the shares to pass to the shareholders, the Register of Members of Dragon Spirits needed to be updated. This was the reason for making the application.
- It was said that, once the Register of Members was updated, the Plaintiffs would then become majority shareholders and pursuant to the Articles of Association of the company, could then take steps to remove Mr Morren from the Board and appoint directors by way of ordinary resolution. This could only be done if the application for rectification of the Register of Members was granted.

First Rectification Application

32. On 31 January 2020 the Proprietor applied to rectify the UK Trade Marks Register requesting that the owner of the trade mark be amended from Lithium Ltd back to Dragon Spirits Ltd. Neither Lithium Ltd nor Mr Morren played any part in those proceedings and the matter proceeded undefended. During these proceedings a statement dated 10 January 2020 was filed by Mrs Joanne Bharwani in her capacity as director of the Proprietor. Her statement contained a statement of truth. In support of this application Mrs Bharwani relied on a deed of assignment dated 17 September 2019 ("the September Deed").

33. As part of these rectification proceedings it was claimed that all IP rights in the trade mark was assigned to the Proprietor as of 17 September 2019, such action being

[7] At least as at 23 August 2018 in accordance with the last Annual Return.

authorised by at least 71.4% of the shareholders in accordance with the JVA. Mrs Bharwani produced two letters dated 17 September 2019 to support the application. The first letter was addressed to "all shareholders of Dragon Spirits" and was signed by Mr Kodimyala and Mr Singh in their capacity as directors, requesting that the shareholders confirm the removal of Mr Morren as director. The other letter was addressed to Mrs Bharwani confirming the shareholders' approval of assigning the trade mark into the Proprietor's name. Relying on what was said by Mrs Bharwani in her statement, the application for rectification was granted on 21 March 2021. The register was updated on 23 March 2021 recording the owner of the mark as Dragon Spirits.

34. On the same day, the Proprietor filed an application on form TM16 to record a change of ownership from Dragon Spirits into its name, but on this occasion, it relied upon the June Deed. The Liquidators wrote to the Registry to declare an interest in the assets of Dragon Spirits as a result of the winding up petition having been issued in the Hong Kong courts in July 2019. Since the June Deed appeared to pre date the winding up petition filing date, the Registry wrote to the Liquidators representatives on 29 May 2021 stating that there appeared to be insufficient grounds to reject the TM16 request by the Proprietor. The trade mark was then duly transferred into the name of the Proprietor by the Registry.

The effect of Hong Kong law

Ms Pui Ying Yvette Yu witness statements dated 9 June 2022 and 20 September 2022

35. Ms Yu is a solicitor and partner in the firm of Hill Dickinson, based in Hong Kong, specialising in commercial litigation and has an understanding of Hong Kong insolvency and company law. Ms Yu's evidence sets out the position regarding the governance of companies incorporated in Hong Kong and particularly how this relates to Dragon Spirits. She was also asked to comment on the meaning and operation of the various statutory provisions. At the hearing Mr Pearson submitted that as far as the applicable law is concerned there was "no dispute that the law produced by the [Applicant] is the correct law, so the evidence of Hong Kong law is effectively agreed."

36. Given this concession, I have reproduced the applicable law as set out by Ms Yu below:

“The Companies (Winding Up Miscellaneous Provisions) Ordinance of Hong Kong (Cap.32) (the “Winding Up Ordinance”)

4. Section 197 of the Winding Up Ordinance provides that where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody, or under his control, all the property and things in action to which the company is or appears to be entitled. The effect of that section is that, subject to the operation of section 198 and any court orders made thereunder, the liquidator is legally in control of the company’s property.

5. Section 198 of the Winding Up Ordinance provides that where a company is being wound up by the court, the court may on the application of the liquidator by order, direct that all or any part of the property of whatsoever description belonging to the company shall vest in the liquidator by his official name, and thereupon the property to which the order relates shall vest accordingly. The liquidator is then empowered to bring or defend in his official name any action or other legal proceedings which relates to that property or which is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

6. Section 182 of the Winding Up Ordinance provides that, in a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares, or alteration in the status of the members of the company, made after the commencement of the winding up, shall, unless the court otherwise orders, be void.

7. Section 184(2) of the Winding Up Ordinance defines when the “commencement of the winding up” is for the purposes of section 182. …Section 184(2) provides that the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

8. The effect of sections 182 and 184(2) is that any disposition of company property made after the presentation of the petition to the Court (i.e. the date it is filed) is void, and that property is therefore deemed to remain the property of the company.

9. Section 244(2) of the Winding Up Ordinance provides that, on the appointment of a liquidator, all the powers of the directors of the company in liquidation shall cease. That includes their powers to execute documents for the company under sections 127 to 129 of the Companies Ordinance.

The Companies Ordinance (Cap. 622) of Hong Kong

10. The Companies Ordinance is the statute that governs companies and their functions in Hong Kong – it is the equivalent piece of legislation to the Companies Act 2006 in the United Kingdom.

11. […]

Execution of documents under the Companies Ordinance

12. Section 127 of the Companies Ordinance sets out the ways in which a company incorporated in Hong Kong under the Companies Ordinance is able to validly execute documents. Two mechanisms are provided for at section 127:

> (1) executing the document under its common seal, in accordance with the provisions of the company's articles (section 127(1) and (2); and
>
> (2) having the document signed by one director if the company only has one director (section 127(3)(a)) or, if the company has more than one director, having it signed by any two directors or by one director and the company secretary (section 127(3)(b)).

13. Section 127(6) of the Companies Ordinance provides that, in favour of a person specified in subsection 127(7), a document is to be regarded as having been executed by a company if the document purports to have been signed in accordance with subsection (3). By "purports to have been signed in accordance with subsection (3)", the section is understood as a matter of Hong Kong law to mean that the document has been purported to be signed by:

> (1) a director, if the company has only one director; or
>
> (2) any two directors, or one of the directors and the company secretary, if the company has two or more directors,

as the case may be, in accordance with the requirements of section 127(3).

14. Section 127(7) of the Companies Ordinance stipulates that the "person" in whose favour section 127(6) operates must be a purchaser in good faith for valuable consideration. There is no statutory definition of "good faith" under Hong Kong law. The concept of good faith is developed in case law. In the context of commercial transactions, a good faith purchaser would act in an honest and commercially acceptable manner, and would not engage in dishonest behaviour or sharp practices that fall short of outright dishonesty. On that basis, a purchaser who contracts with a company knowing that its directors are not validly appointed directors should not be considered to be acting in good faith for the purposes of sections 127(6) and (7).

15. Section 128 of the Companies Ordinance provides for the execution of documents by companies incorporated in Hong Kong as a deed. Section 128 provides that a company may execute a document as a deed by (a) executing it in accordance with section 127, (b) having it expressed (in whatever words) to be executed by the company as a deed, and (c) delivering it as deed. Section 128(2) further provides that unless the contrary is proved, a deed is presumed to have been delivered as a deed.

16. Section 129 of the Companies Ordinance provides a third mechanism for a company incorporated in Hong Kong to validly execute a document. It provides that companies may appoint an attorney via the execution of a deed in order to execute a deed or any other document on its behalf in Hong Kong or elsewhere. A deed or any other document executed by a validly appointed attorney on behalf of the company binds the company and has effect as if it were executed by the company.

Appointment of company directors under the Companies Ordinance

17. The mode of appointment of directors of a private company incorporated under the laws of Hong Kong is governed by the articles of association of the company.

18. I have obtained a copy of the Memorandum and Articles of Association of Dragon Spirits Limited[8] (formerly known as Golden Dragon Vodka Limited) from the Companies Registry in Hong Kong. According to its Articles of Association, Dragon Spirits Limited can appoint a director by election at the company's annual general meeting, by passing an ordinary resolution, or by the decision of existing directors of the company.

19. […]

20. After the appointment of a director, the company must inform the Companies Registry within 15 days of that appointment by filing a notice in the specified form.

Hong Kong Companies Registry information

21. I have been asked to perform searches of the Companies Registry in Hong Kong to ascertain who the directors of Dragon Spirits Limited were as at 27 June 2019 and 17 September 2019. Printouts of the relevant filings of the company are at Exhibit YPYY- 5.

22. They show that the directors of Dragon Spirits Limited at these times were:

(1) 27 June 2019: Michel MORREN; and

(2) 17 September 2019: (Nil), following the resignation of the sole director, Michel MORREN, on 17 September 2019."

36. As the Proprietor relies upon section 121 of the Companies Ordinance (cap 622 of Hong Kong) Ms Yu was asked to comment and explain the meaning and operation of the definition of members and various sections, which was duly done in her second statement dated 20 September 2022. She states as follows:

Section 121

5. I am informed that the Respondent relies upon Section 121(1)(b) and 121(3) of the Companies Ordinance (which I have exhibited for convenience at pages 11 and 12 of Exhibit YPYY-6). Subsection 121(1)(b) provides that section 121 applies to a contract that would be

[8] A copy of which is exhibited at Exhibit YPYY-3.

required by law to be in writing, and to be signed by the parties to the contract, if made between natural persons. Subsection 121(3) provides that in such a case, a contract may be made on behalf of a company in writing signed by any person acting with the company's authority (whether express or implied).

6. I have read the second witness statement of Mr Hiro Bharwani for the Respondent and understand that the Respondent relies upon both express (i.e. actual) and implied (i.e. apparent) authority in support of its position. I have been asked to explain the operation of the relevant principles governing express or implied authority in this area.

7. The question of express or actual authority is a straightforward one in Hong Kong law: one simply determines as a matter of fact whether the person or persons purporting to contract on behalf of the company in question were actually acting with the authority of the company, properly given within the scope of the company's powers to act under the Companies Ordinance and its articles of association.

8. With regard to implied or apparent authority, the relevant principles are set out at in the decision of Lord Neuberger in the Hong Kong Court of Final Appeal in *Akai Holdings Ltd (in liq) v Kasikornbank* [2011] 1 HKC 357.[9] …

9. The important principles to be drawn from the *Akai Holdings* decision are as follows:

(1) There are four conditions which have to be satisfied before a third party can enforce a contract against a company entered into by a purported agent with no actual authority. Those conditions are:

(i) that a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor;

[9] a copy of which is exhibited at YPYY-7. The relevant principles are discussed at [42] – [75].

(ii) that such representation was made by a person or persons who had 'actual' authority to manage the business of the company either generally or in respect of those matters to which the contract relates;

(iii) that he (the contractor) was induced by such representation to enter into the contract, that is, that he in fact relied upon it; and

(iv) that under its memorandum or articles of association the company was not deprived of the capacity either to enter into a contract of the kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent.

(See [43] of the judgment in *Akai Holdings*.)

(2) Apparent authority is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the 'apparent' authority, so as to render the principal liable [thereunder]: see [44] of the judgment in *Akai Holdings*.

(3) A third party cannot rely on apparent authority where that party has actual notice or is reckless (i.e. irrational) or turns a blind eye (i.e. is dishonest) as to the question of whether the purported agent of the other contracting party has actual authority: see [49]-[52] of the judgment in *Akai Holdings*.

(4) It would only be in very rare and unusual circumstances that a party could rely on the conduct of a purported agent (as distinct from the conduct of the agent's principal) as clothing the agent with apparent authority: see [63]-[71] of the judgment in *Akai Holdings*. In this regard, it would be necessary (i) for the court to be satisfied that the principal had given the agent apparent

authority, and (ii) for the representation by the agent to be "unequivocal": see [71] of *Akai Holdings*.

(5) The third party relying in apparent authority must establish that it relied upon that apparent authority before it can succeed in establishing its case: see [72] of the judgment in *Akai Holdings*.

10. **Exhibit YPYY-8** is a more recent practical instance of a Hong Kong Court applying the apparent authority principles from *Akai Holdings* in the case of 張侃*v* 尚品滙*(*香港*)*國 際貿易有限公司(*Cheung Hon v S.P.H (Hong Kong) International Trading Co., Limited*) [2022] HKDC 731.

Sections 548, 549, 631 and the definition of "members" in the Companies Ordinance

11. I understand that the Respondent relies upon a purported Shareholders' Resolution signed by 10 purported shareholders in June 2019 authorizing Mr Srinu Kodymyala to act for and on behalf of Dragon Spirits Limited (see Exhibit HGB1 to Mr Bharwani's second statement). I have been asked to explain the provisions of the Companies Ordinance relevant to such a resolution.

12. Subsection 548(1) of the Companies Ordinance provides that anything that may be done by a resolution passed at a general meeting of a company may be done without a meeting and without any previous notice being required, by a written resolution of the members of the company. Subsection 548(5) then provides that a written resolution has effect as if passed by a general meeting of the company.[10]

13. Section 549 of the Companies Ordinance stipulates that a written resolution may only be proposed by the directors of a company or by a member of the company.

14. "Members" is defined in section 2(1) (the definitions section) of the Companies Ordinance to mean (a) founding members of the company,

[10] Page 16 Exhibit YPYY-6

and (b) a person who agrees to become a member of the company and whose name is registered in the register of members.[11]

15. Accordingly, as a matter of Hong Kong law company law, only those whose names are on the company's register of members shall be able to exercise shareholder's rights in general meetings and via resolutions. The articles of association or a shareholders agreement (if any) may contain further covenants which govern shareholders' rights and proceedings including general meetings and shareholder resolutions: see section 86 of the Companies Ordinance.[12]

16. The register of members of Hong Kong companies are publicly available documents. Pursuant to section 631(2) Companies Ordinance, any person is entitled, on request made in the prescribed manner and on payment of a prescribed fee, to inspect the register and index in accordance with regulations made under section 657.[13]

Sections 562, 563 and 564 of the Companies Ordinance

17. These sections provide that a resolution of a company can be validly passed by way of an ordinary resolution (i.e. a simple majority of greater than 50% of voting members of the company) unless the Companies Ordinance or articles of association of the company require a higher majority to be met.[14]

Sections 158, 159 and 633 of the Companies Ordinance

18. Section 158 of the Companies Ordinance provides a mechanism by which a person to whom a right to shares has been transferred notifies the company, and pursuant to which the company must either register the transfer or issue a notice of rejection and provide a statement of reasons.[15]

[11] Page 6 Exhibit YPYY-6.
[12] Page 10 Exhibit YPYY-6.
[13] Page 20 Exhibit YPYY-6.
[14] Page 16 Exhibit YPYY-6.
[15] Page 13 Exhibit YPYY-6.

19. Section 159 of the Companies Ordinance provides a mechanism by which a person who has their application rejected under section 158 can apply to the Court for an order that a company register a transfer of shares, and provides that a court should order the company to register the person as a member if the court is satisfied that the application is well-founded.[16]

20. Section 633 of the Companies Ordinance provides a further mechanism by which a person aggrieved because their name has been omitted from the Register of Members without sufficient cause can apply to the court for an order for rectification of the Register of Members.[17]"

Hong Kong contract law

37. In so far as contract law Ms Yu states as follows:

25. I have been asked to comment on whether and to what extent the general principles of contractual construction in Hong Kong law reflect those in the United Kingdom set out in the leading authorities of *Wood v Capita Insurance Services* and *Arnold v Britton*[18]. In my view, the Hong Kong law follows the English law on construction. For example, see paragraph 16 of *Achieve Goal Holdings Ltd v Zhong Xin Ore-Material Holding Co* [2020] HKCA 51 (**Exhibit YPYY-9**) for general construction principles in Hong Kong law, where the Hong Kong Court of Appeal cited both *Wood v Capita Insurance Services* and *Arnold v Britton*.

26. I have also been asked to comment specifically on whether post-contractual conduct is considered relevant to contractual construction in Hong Know law. Again, the position is like that in the United Kingdom, so post-contractual statements and conduct are generally not relevant to questions of construction: see *Marble Holdings Ltd v Yatin Development Ltd* [2008] 11 HKCFAR 222, at para 22 and *Zhang Jizhi v Hong Kong TV International Media Group Ltd* [2022] HKCFI 308 from paragraph 221 onwards, both at **Exhibit YPYY-10**.

[16] Page 14 Exhibit YPYY-6.
[17] Page 21 Exhibit YPYY-6.
[18] [2015] UKSC 36; [2015] AC 1619.

27. I have also been asked to comment on whether post-contractual statements and conduct are relevant to the question of whether a contract has been entered into. These are considered relevant as a matter of principle. In this regard, I refer to the following cases, which are at **Exhibit YPYY-11 Part1 -3**: *Chen Jinhui (*陳金輝) *v Wong Kam Sam* (黃錦新) [2021] HKCFI 710 at [160], *Cosme De Net Co v Lam Kin Ming*（林 健明） [2021] HKCU 1848 at [79] and *Hui Sing Pan v Rose Knitting(Asia)* [2007] HKCU 1162 at [49]."

Terms of the JVA

38. The relevant sections of the JVA are reproduced as follows:

"**9. DIRECTORS**

9.1 The Board shall consist of a maximum of three Directors unless such maximum be varied by Shareholders approval. The Directors of the Board will appoint the Chairman. The Chairman shall have a casting vote.

9.2 Provided that a Shareholder continues to hold not less than 15% of the total issued Shares, then such Shareholder shall have the right to appoint one Director.

11. MATTERS REQUIRING APPROVAL OF SHAREHOLDERS

11.1 The following matters require the prior written consent of not less than 70% of the Shareholders:

11.1.2 if there is any issue or allotment of any new shares or any class of shares or any options over shares or other securities in Company and or its subsidiaries other than as provided herein;

…….

11.1.4 if there is any acquisition of any investment in another company or business or the incorporation of any subsidiary or the entry into or termination of any partnership or joint venture with any person;

……

11.1.7 if there is any sale, transfer, lease, assignment or otherwise disposal of a material part of the Company's undertaking, IPR, assets (or any interest in them) or entry into any contract to do so otherwise than in the ordinary and proper course of Business;

……

11.1.10 if there is any removal of a Director;

12. TRANSFER OF SHARES

12.4 No shareholder shall transfer any shares unless, as a condition precedent to such transfer, the transferee of such shares (the "Transferee") shall have executed and delivered to the Shareholders a Deed of Adherence and any shares held by such Transferee will be subject to the provisions of this Agreement.

…….

13.4 Within 5 business days after registering any transfer of shares pursuant to clause 12 and 13 on its books the Company shall send a notice to each Shareholder stating that such transfer has taken place and setting forth the name of the transferor the name of the transferee and the number and class of Shares involved**.**

14. EVENT OF DEFAULT

14.1 if a Shareholder commits or suffers an event of default the other shareholders shall be entitled within 28 days of becoming aware of the occurrence of the event of default, to require the defaulting shareholders to sell all of the shares held or beneficially owned by the defaulting shareholder at a discounted price….

24. SEVERABILITY

If any provisions of this Agreement is found by an arbitrator court or other competent authority to be void or unenforceable such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force.

25. THE TERMS OF THIS AGREEMENT TO PREVAIL

In the event of any ambiguity or conflict arising between the terms of this Agreement and those of the Articles, the terms of this Agreement shall prevail as between the Shareholders

26. INTERPRETATION

26.1 In this Agreement, in the recitals, and Schedules hereto and the following words and expressions shall have the following meanings unless the context requires otherwise:

Deed of Adherence	means the deed of adherence in the Agreed Form is attached as Schedule 5 to be executed by any intended allottee transferee and/or Subscriber.
Deed of assignment of background IPR	means the deed of assignment of background IPR to the Company in Agreed Form as is set out in Schedule 6.
Shareholder	means a registered shareholder of the company from time to time as shown on the Register of Members of the Company, including any person who has entered into a Deed of Adherence and has subsequently become a registered holder of Shares at the relevant time.
Transfer Notice	means a written notice served or deemed to be served on the Company under this agreement in connection with a transfer of shares as prescribed in Clause 13.

Chronology Summary

39. The relevant chronology of events is summarised as follows:

4 February 2019	Summary judgment by Master Kot against Michael Morren and his associates.

6 June 2019	Variation Order to empower Solicitors for Plaintiffs to sign and file instrument of transfer to give effect to the order of 4 February 2019 if Mr Morren and Mr Pelzer fail to do so within 14 days of personal service of order.
27 June 2019	June Deed headed Sale and Purchase agreement signed by shareholders and Mrs Bharwani.
12 July 2019	Winding Up petition filed at court.
7 August 2019	Ex parte application for substituted service, as Plaintiffs agents were unable to personally serve Mr Morren and his associates despite all efforts to do so.
20 August 2019	Order for substituted service granted.
30 August 2019	Share Transfer documents executed by the Plaintiff's solicitors and lodged.
2 September 2019	Summons issued for rectification of a new blank Register of Members by inserting latest shareholdings of all its members.
13 September 2019	Instrument of Share Transfer and Declaration of Trust fully stamped.
17 September 2019	Letter to shareholders requesting that they authorise the assignment of the trade mark to Horizons and remove Mr Morren as director. In the letter Mr Kodimyala and Mr Sing confirm that they are newly appointed directors.

30 September 2019	Affidavit Ms Nathali Wai in support of an application to rectify the Register Of Members and to validate the share transfers.
29 October 2019	Hearing before Judge Man validating share transfers and updating Register Of Members.

The Proprietor's case

40. The Proprietor's position is that the June Deed was valid and effective under Hong Kong law to assign the trade mark from Dragon Spirits to the Proprietor.

41. In so far as the validity of the June Deed it was signed by 10 out of 14 shareholders of Dragon Spirits (amounting to 71.4%) who had actual authority under clause 11 of the JVA to effect the transfer of the mark. Under clause 11 the approval of not less than 70% of the shareholders is required for any transfer of intellectual property. This requirement it is argued, has therefore, been satisfied.

42. I was referred to an undated Shareholders Resolution signed by Mr Bharwani and his associates between 17 June 2019 and 24 June 2019 which it is said gave Mr Srinu Kodimyala (one of the then shareholders) authority to act for and on behalf of Dragon Spirits. It is claimed that the shareholders (including Mr Kodimyala) had actual authority to enter into the June Assignment either because of the operation of clause 11 of the JVA or because of the residual power of the shareholders acting in General meeting as a matter of common law. It was said that Mr Kodimyala was one of the signatories of the June Deed and therefore even without relying on the provisions of the JVA, Mr Kodimyala alone had express authority to enter into the June Deed.

43. Whilst previously claiming that Mr Kodimyala was acting in his capacity as a Director this position is no longer maintained by the Proprietor as it is clear that he was not a director as at 27 June 2019, as it was only on 30 September 2019 that he filed form ND2A with the Companies Registry in Hong Kong seeking to register his position as a Director.

44. In the alternative, the Proprietor's position is that even if it was found that the shareholders or Mr Kodimyala did not have actual or express authority to enter into

the June Deed, then it is claimed that the shareholders had implied or apparent authority in accordance with section 121 (and in particular 121(3)) of the Companies Ordinance Cap 622 which states:

> "**121. Contracts made by or on behalf of company**
>
> (1) This section applies to-
>
> (a) a contracts that would be required by law to be in writing and under seal if made between natural persons;
>
> (b) a contract that would be required by law to be in writing and to be signed by the parties to the contract, if made between natural persons; and
>
> (c) a contract that though made orally and not in writing, would be law be valid if made between natural persons.
>
> (2)…
>
> (3) A contract specified in subsection (1)(b) may be made on behalf of a company in writing signed by any person acting with the company's authority (whether express or implied)."

45. In so far as the construction of the June Deed itself, as stated by Mr Bharwani,[19] the contract is in writing and is signed by the parties who are natural persons, and therefore it complies with the requirements of section 121. The shareholders were properly appointed subsequent to Master Kot's first order and had authority to sign the deed on behalf of the company.

46. Mr Pearson submitted that since the existence of the document had not been challenged by the Applicant, by extension, in so far as the status of the shareholders was concerned, the content of the document is not something that can be gone behind and that the ten signatories must be taken at face value that they were in fact shareholders. Mr Pearson argued that this was the case because "the shareholders, stated on the document, were shareholders in the sense of being beneficial shareholders and they did not need to be legal shareholders". Furthermore given that there is no allegation that the June Deed is a fraudulent document or that the

[19] Para 7, 2nd witness statement dated 17 August 2022.

signatures were not genuine, then it was said that its existence must be accepted and the only question is working out the effect of the document.

47. In terms of construction of the June Deed, Mr Pearson accepted that "it is not beautifully worded and it is ambiguous" but it complies with Section 24 of the Act, as it appears to be using language relating to acts to be done in the future and is consistent with what will happen when the assignment takes effect. It is said that it includes consideration which passes in the sum of 100 HK dollars and that this should not simply be dismissed as a down payment. It was submitted that in the absence of any allegation of fraud, that there is no evidence that either Mr or Mrs Bharwani understood that being a beneficial shareholder was insufficient in being able to act for the company in this agreement. It cannot be said therefore and no inference can be drawn that Mrs Bharwani was reckless or turned a blind eye or knew that there was no entitlement to enter into this agreement. Mr Pearson submitted that post contractual conduct and statements should not be taken into account in relation to the construction of the contract and therefore the September assignment should be disregarded in the assessment. Even if conduct of this kind can sometimes be relevant, it was argued that it tends to be in relation to the authenticity of a document and whether there was actually a transaction at all. The question in this case is simply whether the ten signatories, who were shareholders, had authority to bind Dragon Spirits.

48. In the alternative, if this is not accepted then it was argued by Mr Pearson that the shareholders' status can be established under equitable principles. Mr Bharwani and his associates believed they were shareholders in the proper sense and therefore they were entitled to enter into the June agreement and bind Dragon Spirits and make the transfer.

49. It was accepted by the Proprietor that the legal transfer of shares did not take effect until 29 October 2019 and therefore the shareholders were not legal shareholders when they signed the June Deed. However, Mr Pearson argued that at the point of Mr Morren and Mr Pelzer's breached their fiduciary duties, a constructive trust arose and that they held their shares on trust for the other shareholders. Whilst it is accepted that there is no certainty as to the actual date upon which the constructive trust arose Master Kot's order merely gives certainty as to the date from which those

circumstances existed. Master Kot's second order (the variation order) confirms the entitlement to the legal transfer.

50. In support of this position Mr Pearson drew my attention to the judgments in *Re CA Pacific Finance limited (in liquidation) and another,*[20] *Hunter v Moss,*[21] and *Re Harvard Securities Ltd (In Liquidation).*[22] It was said that the case of *CA Pacific* supports the view under Hong Kong common law of the concept of beneficial interest or equitable interest in shares. Furthermore it was argued under section 30(2) of the Trade Marks Ordinance of Hong Kong that "equities in respect of a registered trade mark may be enforced in like manner as in respect of other personal property". By the same token it was argued that the holders of those beneficial interests are entitled to rely on them fully as beneficial shareholders because they can be enforced.

51. In accordance with section 121, therefore, if it is accepted that the shareholders were or understood themselves to be shareholders by reason of holding a beneficial interest in the shares then if they acted with the company's authority (whether express or implied) then the June Deed is effective in law and binds Dragon Spirits.

52. In response to the Applicant's argument that the interest did not arise until the shareholders' names had been entered into the Register of Members, Mr Pearson argued at the hearing that they were frustrated in so doing by the actions of Mr Morren and Mr Pelzer which gave rise to the ability under clause 24 of the JVA to set aside that requirement and sever it from the rest of the agreement as having been frustrated. On this basis because they were prevented from being able to perform their contractual obligation, the ten shareholders would have had actual authority pursuant to the JVA as shareholders to exercise that requirement and to grant authority to Mr Kodimyala in the shareholders resolution. Given that Mr Bharwani was an actual member and shareholder at that time, he was entitled under the terms of the JVA to propose a resolution.

53. In answer to the position regarding Dragon Spirits not having a director and therefore that the company was left powerless Mr Bharwani referred to paragraph 6.038 of the Law of Companies in Hong Kong (third edition) which stated "*The implied*

[20] [2000] 1 BCLC 494
[21] [1994] 3 All ER 215
[22] [1998] B.C.C. 567 (1997)

term in the company's constitution that it should in no circumstances be left powerless, the juridical basis on which the general meeting has the power to make decisions with companies in want of an effective board is that there is an implied term in the company's constitution on the basis of business efficacy or necessity that the company should in no circumstances be left powerless."

54. In conclusion it was argued that the Plaintiffs achieved recognition in the courts in Hong Kong as beneficiaries of the shares accepting that the legal transfer would be made at some point in the future and that they acted in good faith in signing the June Deed as beneficial shareholders.

55. It is claimed that the real dispute is between the Applicant and the Liquidators since they had been aware of the existence the June assignment since March 2021 and therefore should not have purported to sell the mark as it did not form part of the realisable liquidation assets.

The Applicant's case

56. The Applicant primary case is that the June Deed was not valid because neither the shareholders nor Mr Kodimyala were in fact shareholders as at June 2019. They therefore had neither actual nor apparent authority to act on behalf of Dragon Spirits which invalidated the June Deed as an instrument of assignment.

57. In accordance with the provisions of Hong Kong company law and the JVA a shareholder is only a shareholder who can exercise shareholder's rights once that shareholder's name is entered into the company's Register of Members.[23] A shareholder is defined in the JVA as "a registered shareholder of the company from time to time as shown in the Register of Members of the Company." It was argued that the fact that the purported shareholders were not registered shareholders means that they were not able to pass a resolution or possess the requisite authority to enter into or create legal relations as at June 2019. Taking these factors into account against the backdrop of Mr Bharwani and his associates' conduct at this time, puts into question their ability to act for the company and bind it.

58. In so far as the position of apparent authority, it was argued that this would not assist the Proprietor. Mr Zweck submitted that in order to rely on this argument it is

[23] Ms Yu's second statement.

necessary for the contracting company to represent that the representative or representatives in question were acting with the company's authority. It is not enough for the alleged representative to represent that they have authority.[24] The only representations made by the Proprietor were those of Mr Bharwani and his associates holding themselves out to be shareholders. None of the signatories were Directors or authorised agents of the company or acting in that capacity. It cannot be said therefore that the company made any representations.[25]

59. Whilst Mr Zweck accepts from the decision in *Akai Holdings* that in certain exceptional circumstances a representation by a representative as to their own authority is sufficient, the court it is said made it clear that this could only be the case where the court is satisfied that (i) the principal had given the agent apparent authority, and (ii) for the representation by the agent to be unequivocal. It is said that this is not the position here and the Proprietor falls at the first hurdle since no validly appointed representative of Dragon Spirits had given any of the signatories the apparent authority that they represented they had.

60. Furthermore given her relationship to Mr Bharwani, Mrs Bharwani must have had actual knowledge or was reckless as to the fact that Mr Bharwani and his associates were not in fact shareholders or otherwise expressly authorised representatives of Dragon Spirits when signing the June Deed. It is claimed that Mrs Bharwani must have been aware of the steps that were being taken by her husband to put into effect Master Kot's first and subsequent order. It is inconceivable, therefore, that she would have been entitled to believe that Mr Bharwani's associates were registered shareholders, she would have known that they were not. In light of Mrs Bharwani's state of knowledge of Mr Bharwani and his associates' positions at that time there could not have been any doubt that she believed they were acting under any apparent authority. Accordingly Mrs Bharwani's state of knowledge must be attributed to the Proprietor given that she was its "directing mind and will"[26] as its sole Director and 100% shareholder. No evidence has been filed from Mrs Bharwani setting out her position regarding her knowledge of the shareholders' actual status. In absence of such evidence I am asked to take an inference that Mrs Bharwani knew the true position.

[24] *Akai Holdings* [44-45] and [63-71].
[25] Mr Zweck skeletons argument para 84.
[26] *Bilta (UK) Ltd (in liq) v Nazir* (No. 2) [2015] UKSC 23; [2016] AC 1.

Consequently the Proprietor could not have been said to have placed any reliance on the representation of Mr Bharwani and his associates given the state of knowledge Mrs Bharwani must have had.

61. Mr Zweck further submitted that the objective circumstances show that the parties had no intention to create legal relations. This is because given the steps Mr Bharwani and his associates were taking in the Hong Kong courts to effect the sale transfer of shares, they knew they had no authority to bind Dragon Spirits. Similarly, Mrs Bharwani must have been aware of the position in the background and therefore she also knew that the signatories were acting without authority. The June Deed only came to light after the Liquidators notified the Proprietor that the September Deed as relied upon previously was void by virtue of the winding up petition being filed.

62. In the winding up proceedings it is said that Mr Bharwani gave evidence on 5 September 2019 that Mr Morren had effected assignments of the trade mark in other jurisdictions during May and June 2019 with no mention that the contested mark by this time had been assigned to the Proprietor. The legal proceedings were being conducted on the basis that the mark was the rightful property of Dragon Spirits. Mr Bharwani's and the other Plaintiff's own legal representative Ms Wai made representations to the liquidators on 25 September 2019, that the mark was owned by Dragon Spirits and that any attempt by Mr Morren to assign it should be set aside. Again no mention was made that the mark had already been assigned. The mere existence of the September Deed undermines the June Deed as the instrument of assignment. I was asked to consider and take an inference from the fact that Mrs Bharwani relied on the September Deed in the earlier rectification proceedings when she knew she had already been a signatory to an earlier deed said to be the instrument to be relied upon. No statement has been filed by Mrs Bharwani to explain this inconsistency. On 4 May 2021 Mr Pagarani's solicitors wrote to the Liquidators asking to purchase the mark from Dragon Spirits. Given that Mr Pagarani was one of the signatories to the June Deed if he believed that the June Deed was a legally binding document he would have known that the asset had been already sold to the Proprietor and there would have been no reason to enquire as to purchasing the mark. No statement has been received from those acting for Mr Bharwani or the other shareholders to shed light on their understanding.

63. The objective evidence of the effect of the June Deed is overwhelmingly that the signatories to the deed did not consider that it was a document which had legal effect to assign, by virtue of their actions and the events taking place in the background.

64. Even if it is found that the shareholders had apparent authority to enter into the June Deed within the meaning of section 121 of the Companies Ordinance and that they had an intention to create legal relations, as a matter of construction, it was argued, that the document itself is nothing more than an agreement to assign at some future date for consideration as yet to be agreed.

65. It was argued that the June Deed, at best, was a preamble to the execution of an actual deed of assignment, purely setting out the obligations of the parties once certain conditions had been met. The actual Deed in this case was the one referred to by Mrs Bharwani dated September 2019. By the inclusion of the words 'all formalities will follow' the agreement was only a commitment to assign and not the instrument of assignment itself. As a matter of construction the document did not satisfy the requirements of section 24 of the Act.

66. In so far as the claim to a beneficial interest arising, Mr Zweck submits that this was not the Proprietor's pleaded case nor was there any evidence filed to support this contention. I was asked, therefore, to disregard this argument. In any event it was submitted that a beneficial interest formed no basis to resist the rectification application. It was said that the basis for Master Kot's order in ordering the sale of the shares was as a method of relief under the terms of the JVA. There could not be anything to suggest that a constructive trust arose as a result nor could a beneficial interest have arisen as claimed.

67. In so far as the suggestion that I should take the June Deed at face value and that it is impermissible for me to look behind it, because any attempt to do so was effectively an attempt to impugn the document, is not right as a matter of principle. In accordance with Hong Kong law it was said that one is allowed to look behind a document for the purposes of deciding whether it was a document that was entered into for the purposes of a contract, but one also can look at it for the purposes of deciding whether the people who were entering into it had actual or apparent authority to do so. In accordance with *Akai Holdings,* it is the nature of the inquiry that needs to

be considered as to whether the agents acting for the company were in fact authorised or not.

68. In response to the point raised about clause 24 of the JVA again, Mr Zweck stated that this is a completely unpleaded new point, which had not even been included in Mr Pearson's skeleton argument and was raised for the first time at the hearing. It was submitted that the relevance of clause 24 is to provide for some severability in the event of frustration. Nothing has been submitted from Mr. Pearson nor any evidence filed as to how the law of frustration works in Hong Kong, or as to why he says that this contract was frustrated in the manner that has been suggested. I was asked to disregard these submissions, therefore.

69. In conclusion I was asked to find that the June Deed could not be legitimately and legally accepted as the instrument of assignment in the context of the chronology of events and what was taking place in the background.

The law

70. Section 24 of the Act states as follows:

> (1) A registered trade mark is transmissible by assignment, testamentary disposition or operation of law in the same way as other personal or moveable property. It is so transmissible either in connection with the goodwill of a business or independently. (1A) A contractual obligation to transfer a business is to be taken to include an obligation to transfer any registered trade mark, except where there is agreement to the contrary or it is clear in all the circumstances that this presumption should not apply.
>
> (2) An assignment or other transmission of a registered trade mark may be partial, that is, limited so as to apply—
>
> > (a) in relation to some but not all of the goods or services for which the trade mark is registered, or
> >
> > (b) in relation to use of the trade mark in a particular manner or a particular locality.

(3) An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, a personal representative.

71. And furthermore rectification of the Register is provided for under section 64 of the Act which states:

64(1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register: Provided that an application for rectification may not be made in respect of a matter affecting the validity of the registration of a trade mark.

(2) An application for rectification may be made either to the registrar or to the court, except that— (a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(3) Except where the registrar or the court directs otherwise, the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.

(4) The registrar may, on request made in the prescribed manner by the proprietor of a registered trade mark, or a licensee, enter any change in his name or address as recorded in the register.

(5) The registrar may remove from the register matter appearing to him to have ceased to have effect

Decision

72. It is accepted that not all shareholders who are claimed to have authorised the June Deed were legal shareholders at the time the June Deed was signed and so it appears clear that the terms of the JVA were not satisfied. Consequently, it does not appear possible for the purported shareholders to have had actual authority in which to act for the company. My remit, however, is purely to assess, on the balance of probabilities as to whether there are sufficient grounds to rectify the Register as to the ownership of the trade mark, in favour of one party's entitlement as opposed to the

other. This in my view turns upon my interpretation of the construction of the June Deed, to which I shall focus my attention. If I do not accept that the June Deed can act as the actual instrument by which the trade mark was assigned, it matters not whether the agreement was also invalid by virtue of who signed it. I need only therefore consider the issue of beneficial interest, implied or apparent authority once I have firstly determined the effect of the June Deed.

73. Mr Zweck made brief submissions regarding the construction of the June Deed given that the Applicant's primary position was that it was invalid due to the signatories not having the requisite authority. He submitted that even if the signatories had apparent authority and could be said to have intended to create legal relations, the document itself, properly and fairly construed, is no more than an "agreement to agree" which does not amount to a binding contract to assign. He argued that the Deed is an agreement between the purported shareholders of Dragon Spirits and the Proprietor, to ensure that a validly executed assignment by Dragon Spirits takes place at some point in the future, for as yet an "unfinalised consideration."

74. Mr Pearson submitted that:

> "31….the June Assignment contains a clear and effective assignment as follows: "The Assignor hereby assigns to the Assignee the IPR, Title & interest in the Trademark together with the goodwill attached to the trademark & the Business in which the Trademark (sic) have been used by the Assignor. Agreed & Signed by…." The Assignor and Assignee are clearly defined ..as DSL and R respectively. It is submitted that "hereby assigns" means "by this instrument assigns". [The Proprietor] submits that no other construction exercise needs to be performed. The June Assignment speaks for itself."[27]

75. I shall bear in mind Lord Neuberger's comments in *Arnold v Britton*, in which he sets out the correct approach to be adopted in the interpretation or construction of contracts, namely:

> "15. When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would

[27] Skeleton Argument 26 September 2022.

have understood them to be using the language in the contract to mean", ..focussing on the meaning of relevant words,… in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions [of the lease], (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions." [28]

76. And in *Woods v Capita*, Lord Hodge stated in so far as contractual interpretation that:

"10. The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning.

11. Interpretation is, as Lord Clarke stated in *Rainy Sky* (para 21), a unitary exercise; where there are rival meanings, the court can give weight to the implications of rival constructions by reaching a view as to which construction is more consistent with business common sense. But, in striking a balance between the indications given by the language and the implications of the competing constructions the court must consider the quality of drafting of the clause …. and it must also be alive to the possibility that one side may have agreed to something which with hindsight did not serve his interest: *Arnold* (paras 20 and 77). Similarly, the court must not lose sight of the possibility that a provision may be a negotiated compromise or that the negotiators were not able to agree more precise terms.

12. This unitary exercise involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its

[28] *Arnold v Britton* para 14-15.

commercial consequences are investigated: *Arnold* para 77 citing *In re Sigma Finance Corp.*[29] To my mind once one has read the language in dispute and the relevant parts of the contract that provide its context, it does not matter whether the more detailed analysis commences with the factual background and the implications of rival constructions or a close examination of the relevant language in the contract, so long as the court balances the indications given by each."

77. It is clear from these authorities that the construction of the agreement is something to be determined from the terms and the language of the agreement itself taken in the context of the relevant background, rather than any subsequent events and statements. Under Hong Kong law as cited by Ms Yu it does not appear that future events can be relied upon to construe the meaning of the agreement. Consequently I shall begin by looking at the format of the document, its terms and the language used.

78. First of all whilst the document is in writing, I note that it is drafted by way of letter, addressed to Joanne Bharwani of Horizons Group, and is headed "Sale and Purchase Agreement, Assignment of the Trademark Agreement and Deed of Assignment confirmation" (my emphasis). To my mind this does not make it clear that it is intended to be construed as an actual deed of assignment. The formalities which one would normally expect to be included in a formal deed are absent. The document is not headed up Deed of Assignment, nor does it include words such as "this deed is made on …" or "this agreement is executed as a deed", at the beginning or the end of the document, so as to clearly identify it as a deed. In simple terms the document does not meet the "face value requirement" of being a formal deed. Simply describing it in the heading of the document as a "Deed of Assignment confirmation" or "Assignment of the Trade Mark Agreement", is not enough to infer an intention that it should take that form.[30] Whilst I accept that the document was intended to have some legal effect by the use of the clause "We the DSL shareholders confirm this is a legally binding commitment to assign", this is not enough to show that the parties intended the document to have extra status of being a deed of assignment. Moreover, the words "..commitment to assign" is key as to the parties' intentions, namely it is a commitment to assign and clearly not an actual assignment. The use of the language in the titles

[29] [2010] 1 All ER 571 para 10 per Lord Mance.
[30] *Katara Hospitality v Guez* [2018] EWHC 3063 (Comm).

of the document i.e. “Sale and Purchase Agreement”, “ Assignment …Agreement”, “..Assignment confirmation” and the operative parts of the agreement ie “We the DSL shareholders confirm this is a legally binding commitment to assign” indicates that it was intended to be construed as a letter of intent, an agreement in principle to assign but not the actual assignment deed itself.

79. The language used, as outlined above, does not convince me that the document was intended to take the form of a deed or constitute an instrument of assignment. Rather it appears to be an agreement to assign in the future.

80. Moving on to its execution. I note that the signatories have not had their signatures attested by witnesses nor are their signatures dated, as would be expected from any properly executed formal document in order for it to have legal effect. Given that the document is by way of letter, it is reasonable for me to infer that it was also sent to all the shareholders in this format as there is no evidence before me to suggest otherwise. I am not told how it came about that the document was signed by all the shareholders in turn, or whether a meeting was called for them to do so. It is unclear, therefore, as at what date they each signed the document in order to execute it and as to what date they therefore intended it to be executed. This in my mind is further proof that the document has not been executed as a deed and that it is an agreement by the shareholders that they agree in principle, to the assignment taking place. It appears from this that the shareholders in signing the document have done nothing more than approve/give their consent to an assignment rather than executing it.

81. In order to execute a document on behalf of a company, ordinarily the authority to enter into legal agreements sits with the board of directors or other company officer or if that authority has been granted to an agent then this would have been expressly stated on the deed. It is to be noted that Mr Morren was still a director at this time and there was no company secretary, the last having resigned in March 2019. It is accepted that Mr Kodimyala was not a director at this time either. When looking at paragraph two, it states the following:

> “I Srinu Kodimyala, the new DSL Shareholder with the consent of 10 shareholders combined, understands that the Horizons group has invested in the marketing of the brand.”

82. Whilst Mr Kodiymyala states that he has the consent of 10 shareholders, it does not stipulate for what. This clause does nothing more than set out his understanding and recognition of the investment made by Horizons in marketing the brand. There is nothing explicitly stipulated within this clause to say that Mr Kodimylala has authority to act for the company, other than an acknowledgment that he is a shareholder. He has not in fact executed the document himself as the Assignor and is just one of a number of shareholders to sign the document. If in fact Mr Kodimyala was given authority to act for the company, by way of the purported shareholders resolution, as submitted, and he believed he had authority, why did he not exercise that authority by executing the deed himself in this capacity? This again does not support the case pleaded by the Proprietor that Mr Kodimyala had authority to bind the company both expressly from the resolution or in his capacity as a shareholder. It has not been clearly communicated within the document that Mr Kodimyala was acting in any other capacity than as a shareholder.

83. Normally for any document to have legal effect, it must generally be delivered as a deed. A deed will only actually take effect when it is delivered i.e. when the parties indicate an intention to be bound by it. Usually this will be indicated by a clause that confirms that the deed is delivered on a particular date. There is no date within the June Deed as to when the 'deed' is to take effect.

84. Furthermore I note that the document acknowledges that "any transfers of the trade mark without written approval from DSL Shareholders holding a combined minimum of 70% of the voting rights of the DSL JVA is considered void". This acknowledges that the signatories were aware of the terms of the JVA and that they were bound by those terms. Given the background and the steps being taken by Mr Bharwani and his associates to effect the share transfers, the purported shareholders would have known that their names were not on the Register of Members when they signed the document and thus the terms of the JVA were not satisfied. I have no statement from any of the shareholders to further explain their understanding.

85. In so far as consideration is concerned this normally refers to the exchange of something of value between the parties. I do not accept Mr Pearson's contention that the payment of HK$100 can be construed as consideration of value. The paragraph referring to the payment of consideration is phrased as follows:

> "In consideration, Horizons Group agrees in principle pay to DSL HK the sum equal to 15% of the audited net profits made from the trademark for 5 years only for the IPR & an amount of HK$100 immediately, which DSL the Assignor acknowledges it has received. Horizons Group will rely on marketing support provided by DSL & may consider further consideration at a later date."

86. The language suggests to me that the consideration had not yet been finally determined and that as Mr Zweck suggested, the HK$100 (equivalent to approximately £10) was a down payment, a token payment, but did not truly represent the consideration to be paid. This again appears to support my interpretation that this was an agreement to sell and pay consideration at some point in the future once it had been properly assessed and determined. It does not strike me that definitive terms had been agreed or set, in so far as the consideration to be paid. An "agreement in principle" merely is an indication that the parties are serious, but have not finalised terms.

87. My view is further confirmed that the document relied upon is nothing more than an agreement by the shareholders to assign, by the use of the language used in the second paragraph namely:

> "As of 27 June 2019, the 10 DSL Shareholders listed & signed below confirm the Assignment, transfer of full ownership & the global Intellectual property Rights _ IPR of the Royal Dragon Vodka trademark to Horizons Group, all other formalities will follow & new Directors will be appointed soon."

88. The shareholders in my view do no more than confirm their agreement to the assignment, acknowledging that the formalities of a legally binding Deed will take place at some future date. In light of their knowledge as to the steps being taken by Mr Bharwani in the background, the reference to formalities is the removal of Mr Morren as a Director and the transferring of his shares. It would be necessary for these 'formalities' to be resolved first before the Assignment could be put into effect.

89. For these reasons I do not accept that the June Deed is capable of acting as the instrument by which the trade mark was assigned. At best it is an agreement to assign for future consideration as yet to be finally determined and conditional upon the share transfers being executed. The Proprietor's case and the capacity for the June Deed to

act as the instrument of assignment is undermined by the language used. This in my view would be the correct interpretation of the language used within the Document, from the understanding of what a reasonable person, having all the background knowledge, which would have been available to the parties, would have understood them to be.

90. Touching on the other matters raised by the parties briefly. In so far as the Proprietor's claim that the shareholders had a beneficial interest arising out of a constructive trust, I note that up until the final hearing this was not the Proprietor's pleaded case. Even if it were, I reject this argument. I agree with Mr Zweck that what was ordered by Master Kot was the sale of shares as a means of relief under the JVA for breaches incurred by Mr Morren and Mr Pelzer. Any entitlement arising from Master Kot's first order did not take effect in so far as giving the shareholders an entitlement to vote and pass a resolution until the sale of the shares actually took effect and the transfer documents were effected. I am fortified in this view in light of Master Kot's comments in the transcript taken from the hearing where he stated that the event of default "entitled the Plaintiffs to ask for the shares held by Mr Morren and Mr Pelzer to be sold to them." (my emphasis).

91. Whilst Mr Pearson states that there is no evidence to suggest that Mr Bharwani or his nominees were unaware that they could not exercise their rights as beneficial owners, I disagree. Mr Bharwani himself accepted in his affirmation dated 5 September 2019 that he had been advised by his solicitors that in order for both the beneficial and legal title to pass he needed the Register of Members to be updated and the share transfers validated before they could exercise their rights as shareholders and remove Mr Morren as a director. Even though this affirmation post-dates the June Deed I have no reason to believe that the advice given to Mr Bharwani by his solicitors would have differed over the period between February 2019 and September 2019. There is no evidence from Mr Bharwani that he was given wrong advice by his solicitors or that he acted under a misapprehension. The actions taken by Mr Bharwani and his associates in seeking court orders relating to the share transfers, corroborates my view that Mr Bharwani fully understood when the actual interest in the shares arose.

92. In any event even if I am wrong, whether or not the shareholders had a beneficial interest would make little difference, given that governance of the company is bound by the terms of the JVA. It is quite clear that in accordance with the JVA, Mr Bharwani's associates were not registered shareholders, as their names were not updated on the Register of Members until at the earliest September 2019 and not put into effect until October 2019 when Mr Pearson accepts the legal title passed. Until the Register of Members had been updated the shareholders could not pass a resolution.

93. My analysis and finding as to the effect of the June Deed, is consistent with the other material that is before me and the chronology of the background events. Mrs Joanne Bharwani's witness statement undermines the Proprietor's case. Mrs Bharwani's statement was relied upon in the first set of rectification proceedings where the September Deed was used to support the Proprietor's application to rectify the register. In addition I note that it is the September Deed that was also relied upon in subsequent proceedings before other trade mark jurisdictions. The timing of the September Deed in so far as its date of execution and the signatories to that document accords with and is corroborated by the chronology of the parallel court proceedings in Hong Kong. Exhibited to Mrs Bharwani's statement is what also appears to be a resolution requesting the removal of Mr Morren as a director. It is dated and signed on 17 September 2019; after the share transfer documents had been effected and stamped. Up until this time Mr Morren was still therefore a director. Mr Bharwani accepted in his 5 September 2019 affirmation that the transfer of the shares was essential so that steps could be taken to remove Mr Morren from the Board and to pass a resolution to appoint new directors which could only be done once the application for rectification of the Register of Members was granted. It does not seem credible, therefore, from the evidence before me that the shareholders could have passed a resolution assigning the trade mark to the Proprietor, whilst still engaged in court proceedings to place themselves in a position to legally register the transfer of Mr Morren and his associates' shareholding and thereby give themselves the power to remove Mr Morren as a director.

94. If the June Deed was in fact the actual deed of assignment, as suggested, rather than an agreement to assign, then I would have expected this document to be the one

relied on in the previous rectification proceedings and at the very least would have been referenced in the subsequent court appearances where Mr Bharwani's solicitors were trying to seek court orders to effect the transfer of shares and update the Register Of Members. In explanation as to the use of the September Deed Mr Bharwani states that it was "to reflect the assignment in a conventional format", however, I do not accept this; if this were true the September deed would include a reference to the June Deed within its terms, as reflecting the true date of assignment. The existence of the September Deed is consistent with the true series of events, which follow the effecting of the share transfer documents. Insufficient explanation has been put before me to clarify the discrepancy between the existence of two assignment documents. The Proprietor's own pleaded case is riddled with inconsistencies and I find that the true and logical series of events follows that as set out by Mrs Bharwani in her statement of 10 January 2020.

95. In relation to the shareholder's power of severance under clause 24 of the JVA there is no suggestion that this was in fact done or that any of the shareholders sought to exercise this right by passing a resolution. In reality this is not what they did. There was a remedy as a result of clause 11 by seeking summary judgment. No terms within the JVA were found to be void or unenforceable by any arbitrator, court or other competent authority nor was any application made for a resolution to be passed to effect such a clause. This argument therefore is not relevant to the decision. Similarly section 30(2) of the Trade Marks Ordinance of Hong Kong has no relevance to my decision and I shall disregard any submissions raised by Mr Pearson in this regard.

96. In conclusion my interpretation of the language of the June Deed leads me to find that it was not the instrument upon which the trade mark was assigned as claimed. In my view it is no more than a letter of agreement to assign at a future date, but is not the actual instrument by which the trade mark was assigned.

Conclusion

97. Taking these factors into account, in conclusion I find that in transferring the trade mark into the name of Horizons Group (London) Ltd stands in error and that that error stands to be corrected. The trademark should be returned into the name of Dragon

Spirits Limited and given that Capital Distribution & Consulting Inc have now become the lawful owners of the trade mark by virtue of the sale of all assets including the IP rights under the terms of the Insolvency I direct that the register is recorded in the name Capital Distribution & Consulting Inc as the Proprietor of the trade mark.

Costs

98. The above decision concludes my determination of the substantive issues in these proceedings. It will take effect as a decision when the question of costs is decided, and at that point but not before, the provisions relating to the right of appeal will come into operation. In line with the submissions at the hearing, the parties are invited to make submissions as to the costs of these proceedings and a letter accompanying this decision sets out the procedure for submissions in writing.

Dated this 26th day of May 2023

Leisa Davies

For the Registrar

Annex

Royal Dragon
SUPERIOR
VODKA

Sale and Purchase Agreement

Assignment of the Trademark Agreement

Deed of Assignment confirmation

Thursday 27th June 2019

DRAGON SPIRITS LTD
DSL - Hong Kong
Company no 1496418

To : Joanne Bharwani - Director

Joanne@Horizons-Group.co.uk

Horizons Group (London) Ltd
(Formerly known as RDV Spirits Ltd)
London , United Kingdom

Dear Joanne

Royal Dragon Vodka - Trademark Assignment Agreement

Reallocated shares of Dragon Spirits Ltd were awarded to Hiro Bharwani, Deepak Pagarani, Accura Investments Ltd & 7 Nominees by the HK Courts effective from on 4th February 2019, this Court Order was amended to empower the share transfer dated 6th June 2019, sealed on 26th June 2019.

I Srinu Kodimyala, a new DSL Shareholder with the consent of 10 Shareholder combined, understands that the Horizons Group has invested in the marketing of the brand. As of 27th June 2019, the 10 DSL Shareholders listed & signed below confirm the Assignment, transfer of full ownership & the global Intellectual Property Rights - IPR of the Royal Dragon Vodka Trademark to Horizons Group, all other formalities will follow & new directors will be appointed soon.

We the DSL Shareholders confirm this as a legally binding commitment to assign the IPR of the Royal Dragon Vodka Trademark + logo to Horizons Group, is hereby approved in writing by 10 DSL Shareholders holding the majority combined voting rights of 71.4%, as required in accordance with the rules of the DSL JVA 11.1.7.

Assignment Details

Trademark : Royal Dragon Vodka

ASSIGNOR: Dragon Spirits Ltd

ASSIGNEE : Horizons Group (London) Ltd

1, To transfer the IPR, Ownership & global distribution rights of the Royal Dragon Vodka brand & product range without limits.

2, Full sourcing rights to establish the supply chain for the Royal Dragon Vodka product range.

3, Global rights to take over the management & supply of the existing DSL Distributors in each country, free from any liabilities, at Horizons discretion.

4, To take over the current trademark listed in various countries & to have the trademark certificates updated in the name Horizons Group (London) Ltd in due time.

Any transfers of the Trademark in any territory without the written approval from DSL Shareholders holding a combined minimum of 70% of the voting rights is a violation of the DSL JVA and is considered as void.

DSL shareholders exonerate Horizons Group from any violations of competition which may be stated on the JVA. For the avoidance of any doubt, no claims of competitions will be made by DSL or any other entity including any other Shareholders.

In consideration, Horizons Group agrees in principle pay to DSL HK the sum equal to 15% of the audited net profits made from the trademark for 5 years only for the IPR & an amount of HK$100 immediately, which DSL the Assignor acknowledges it has received. Horizons Group will rely on marketing support provided by DSL & may consider further considerations at a later date

The Assignor hereby assigns to the Assignee the IPR, Title & interest in the Trademark, together with the goodwill attached to the Trademark & the Business in which the Trademark have been used by the Assignor.

Agreed & Signed by

ASSIGNOR / Shareholders of Dragon Spirits Ltd – Hong Kong

	VOTES	YES APPROVED
1, Tamara Bond	1	TB.....
2, Hiro Bharwani	1	HB.....
3, Accura Inv Ltd	1	AIL.....
4, Galid Lahdahda	1	GL.....
5, Carl McGann	1	CM.....
6, Prem Bahadur	1	PB.....
7, Sham Chodaveetil	1	SC.....
8, Srinu Kodimyala	1	SK.....
9, Wahid Shoukat	1	WS.....
10, Ramesh Singh	1	RS.....
11, Ramdeo Yadav	1	RY.....
12, Saby Mathew	1	SM.....
13, Deepak Pagarani	1	DP.....
14, James Smillie	1	JS.....

No of shareholders approving this Agreement out of 14 — 10 Shareholders
Percentage of voting rights to proceed & conclude — 71.4% Approved

Agreed & Signed by

date: 30 / JUNE / 2019

Joanne Bharwani – Director

ASSIGNEE / Horizons Group (London) Ltd – United Kingdom.....