

BL O/0570/24

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK00003499471

IN THE NAME OF VENTURE DISTRIBUTION LTD

FOR THE FOLLOWING TRADE MARKS

Pote Plus

POTE PLUS

(SERIES OF TWO)

IN CLASSES 16, 21 & 35

AND AN APPLICATION FOR A DECLARATION OF INVALIDITY UNDER NO. 505402

BY OAKSTRONG INTERNATIONAL LIMITED

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF ARRAN COOPER (O/1069/23) DATED 10 NOVEMBER 2023.

DECISION

Introduction

1. This was to have been an appeal by Venture Distribution Limited ("**Appellant**") from decision O/1069/23 of Mr A. Cooper ("**Decision**") concerning the application for a declaration of invalidity by Oakstrong International Limited ("**Respondent**") to the Appellant's registration for the word mark Pote Plus / POTE PLUS ("**Registration**") in classes 16, 21 & 35.
2. In the Decision, A. Cooper for the Registrar held that the application was largely successful, and that the Registration should be cancelled for the following goods and services:

Class 16: Liners, made from plastic; disposable bags, made from plastic; Liners, made from bio-degradable materials; Disposable bags, made from bio-degradable materials.

Class 21: Potties and toilet potties; toilet seat trainers; travel potties; parts and fittings for all the aforesaid goods included in Class 21.

Class 35: Retail and wholesale services connected with the sale of potties and toilet potties, toilet seat trainers, travel potties, liners, made from plastic, disposable bags, made from plastic, Liners, made from bio-degradable materials, Disposable bags, made from bio-degradable materials. parts and fittings for all the aforesaid goods enabling customers to conveniently view and purchase those goods from a mail order catalogue, by means of telecommunication or via an internet website specialising in the aforesaid.
3. The Appellant filed a Notice to Appeal to the Appointed Person against the Decision under Section 76 of the Trade Marks Act 1994. The hearing of the appeal was scheduled to take place

on 29 May 2024. On 22 May 2024 the Appellant's representatives, Roger Moore & Associates, wrote to the Appointed Persons Secretariat as follows: "Our client, Venture Distribution Ltd have just informed us that they are shortly going into liquidation. As a result of this we are instructed to withdraw the appeal against the decision given in relation to Trade Mark Application No UK00003499471 with apologies for the late notice".

4. On 10 June 2024, the Respondent's representatives, Maguire Boss, wrote to the Appointed Persons Secretariat requesting an award of costs in the Respondent's favour.

Costs award

5. Although any costs award in the Respondent's favour may be only of hypothetical value given that the Appellant is now in liquidation, the Respondent is nonetheless entitled to an award of costs in the appeal.
6. The Respondent seeks a costs award "in relation to the work carried out in relation to the appeal (in particular in reviewing the appeal, preparing the Respondent's Notice and preparing for the Hearing)". Based upon the scale published in Tribunal Practice Notice 2/2016, I award the Respondent the sum of £1,000, calculated as follows:
 - Reviewing the appeal: £200
 - Preparing the Respondent's Notice: £300
 - Preparation for abortive hearing: £500
7. The Hearing Officer's order that the Appellant should pay the Respondent £900 by way of costs of the hearing below still stands, and both sums should be paid within 21 days of this decision.

Conclusion

8. The appeal being dismissed, the Registration remains registered for the following services:

Class 35: Advertising, marketing and promotional services; distribution of advertising, marketing and promotional materials; marketing campaign services; promotion of products; advertising and promotion using social media platforms; product demonstration services and advisory and consultancy services in connection with all the aforesaid services.

Dr. Brian Whitehead

15 June 2024

Representation

Roger Moore & Associates for the Proprietor / Appellant

Maguire Boss for the Applicant / Respondent