

TRADE MARKS ACT 1994

**IN THE MATTER of an application
(Rectification No. 9671) by
ALLIED DOMEQ RETAILING LIMITED
for the rectification of the Register
in respect of Trade Mark No. 518567
registered in Class 32
(schedule iv) in the name of A G BARR PLC**

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DECISION

20 ALLIED DOMEQ RETAILING LIMITED, formerly ALLIED-LYONS RETAILING
LIMITED, (hereinafter called “the applicants”) applied on 16 July 1997 for the rectification of
the register under Section 64(1) of the Trade Marks Act 1994 in respect of trade mark number
518567. The applicants claim they are the proprietors of this registered trade mark but as a
result of errors, the register shows A.G. BARR PLC as the registered proprietor.

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The applicants state that on 9 September 1993, the then registered proprietors, TIZER
LIMITED, assigned trade mark number 518567 to ALLIED DOMEQ RETAILING
LIMITED. There then followed a delay in filing the assignment documents with the Trade
Mark Registry to record the applicants as the registered proprietors on the register, (under the
30 Trade Marks Act 1938 (as amended)) as the consideration for the assignment was not paid
immediately.

The applicants go on to state that the appropriate documentation to record the assignment of
trade mark number 518567 to them was eventually filed at the Trade Marks Registry on 18
35 October 1996, but was returned on 7 November 1996 with the advice that another assignment
of trade mark registration number 518567 from TIZER LIMITED to A G BARR PLC had
been recorded on the register on 13 April 1995. The applicants subsequently applied to have
the register rectified by the substitution of their name on the register as proprietor of this
40 registration.

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The agents acting for A G BARR PLC, the existing registered proprietor, Murgitroyd and
Company, wrote to the Registrar on 24 October 1997 to inform him that their clients were
aware of the application for rectification and were content for the action to proceed as set out
in the Statement of Grounds. They explained that in 1995 this registration was mistakenly
45 included in an assignment of all of TIZER LIMITED’S intellectual property rights to A G
Barr PLC, just before the former ceased to trade. The assignment of this registration from
TIZER LIMITED to A G BARR PLC in 1995 was therefore in error as it had been in the
ownership of ALLIED DOMEQ RETAILING LIMITED at that time.

50 With these facts in mind I turn to consider the application for rectification which is made under
Section 64 of the Act, the relevant provisions of which state:

