

**BL O/0333/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK4222151  
IN THE NAME OF ANGELS DARE COCKTAILS LTD  
TO REGISTER THE TRADE MARK:**

**Raspberry Rascal**

**IN CLASSES 33 AND 35**

**AND**

**THE LATE FILING OF FORM TM8 AND COUNTERSTATEMENT  
FILED IN DEFENCE OF THAT APPLICATION  
IN OPPOSITION PROCEEDINGS UNDER NO. 457712  
BROUGHT BY THATCHERS CIDER COMPANY LIMITED**

## **BACKGROUND**

1. On 20 June 2025, Angels Dare Cocktails Ltd ('the Applicant') applied to register the trade mark shown on the cover page of this decision in the UK. The application was accepted and published for opposition purposes on 25 July 2025 in respect of the following goods and services in Classes 33 and 35:

Class 33: Prepared alcoholic cocktails; Cocktails; Alcoholic beverages, except beer.

Class 35: Retail services in relation to alcoholic beverages (except beer); Retail services in relation to preparations for making alcoholic beverages; Mail order retail services related to alcoholic beverages (except beer).

2. On 9 September 2025, Stephens Scown LLP filed a notice of threatened opposition (Form TM7A) on behalf of Thatchers Cider Company Limited ('the Opponent') a copy of which was emailed to the Applicant on the same date.
3. On 24 October 2025, Stephens Scown LLP filed a Form TM7 Notice of Opposition on behalf of the Opponent. The opposition is based upon Section 5(2)(b) of the Trade Marks Act 1994 ("the Act"), and is directed against all of the goods and services in the application.
4. On 3 November 2025, the Registry served the TM7 on the Applicant, via its representative, Alan A G Rae, to the email address and to the postal address for service held on record.
5. The serving letter provided the Applicant with a deadline of 5 January 2026 by which to file its Form TM8. The relevant paragraphs from the letter are shown below (original emphasis):

“This letter is to inform you that your trade mark application has been opposed.

Please find enclosed a copy of the notice of opposition - Form TM7.

### **Your options**

#### **1. Defend your application**

Complete and send to us Form TM8 and counter-statement.

This must be filed (i.e. received by us) within **two months** from the date of this letter; that is on or before **05 January 2026**.

When completing the counter-statement you must admit (agree) or deny (disagree) each of the grounds of opposition.

**It is important to understand that if the deadline date is missed then, in almost all circumstances, the application will be treated as abandoned** in accordance with Rule 18(2) of the trade mark Rules 2008: *“where the applicant fails to file a Form TM8 and counter-statement within the relevant period, the application for registration, insofar as it relates to the goods and services in respect of which the opposition is directed, shall, unless the registrar otherwise directs, be treated as abandoned.”*

[...]

#### **2. Negotiate with the opponent**

If both parties agree to negotiate to resolve the dispute, they may request a “cooling off period” by filing Form TM9C. This will extend the two month period in which to file Form TM8 by up to a further seven months.

Please note that both parties must agree to enter into cooling off, but either party can file Form TM9C.

Under Rule 18, the deadline for filing Form TM9C is also two months from the date of this letter.

Failure to choose either option 1 or option 2 will, in almost all circumstances, result in your application being deemed abandoned.

[...]

### **3. Withdraw your application in full or in part**

You can withdraw your application at any time, this can be done in writing to the above email address.

If the opposition is directed against only some of the goods and/or services in your application, you can delete them by filing Form TM21B.”

6. On 31 December 2025 the Applicant filed a TM21B to limit its specification following correspondence with the Opponent. This form was filed directly by the Applicant and not by its recorded representative. Further, on 5 January 2026 the Opponent wrote to the Registry requesting to withdraw the opposition once the TM21B form had been actioned. Moreover, on 9 January 2026 Mr Rae, the Applicant’s representative, filed an amended TM21B after it was noted that the original TM21B form contained errors. Again, following this, the Opponent requested that the opposition be withdrawn once the amended TM21B had been actioned.
7. On 16 January 2026 the Registry wrote to the parties acknowledging the TM21B forms and also stating that the limitations were deemed unacceptable for the following reasons, as well as suggesting an acceptable alternative limitation:

“The proposed limitations in classes 33 and 35 are not acceptable:

Restrictions should be drafted with sufficient clarity and precision to enable the Registrar and third parties to identify what is and is not covered by the specification (see IP Translator, C-307/10). It is considered that the way in which the proposed limitations in each of classes 33 and 35 is worded, is insufficiently clear or precise.

The proposal – ‘none of the aforementioned goods being in relation to cider or cider-based beverages’ is ambiguous in scope. It is unclear how goods or services can be or not be ‘in relation to cider or cider-based beverages’ and is therefore difficult for third parties to understand how the exclusion applies.

Therefore, the proposed limitation is unacceptable based on Tribunal Practice Notice (TPN) 1/2024

Ordinarily the Tribunal do not suggest wording as a matter of course, but in this circumstance ‘None of the aforementioned goods being cider or cider-based beverages’ would be deemed acceptable.

Class 35

It is noted that Class 35 is a services class, however, the proposed restrictions reads ‘none of the aforementioned goods’ instead of ‘services’, please review. For further guidance, please refer to Tribunal Practice Notice (TPN) 1/2024. In addition, if you wish us to consider an alternative limitation, please file a new Form TM21B.”

8. Additionally, the Registry’s letter stated the following (original emphasis):

“Please be aware that filing a Form TM21B cannot be accepted as a substitute for filing a Form TM8. The deadline for submitting a TM8 is statutory and cannot be extended. Therefore, a TM8 must be filed to

protect your position, even where the parties have reached a settlement and submitted a TM21B to reflect that agreement. Until the Tribunal has formally approved and implemented the TM21B and confirmed any withdrawal, the opposition proceedings remain active and must continue to be treated accordingly. Your attention is drawn to Tribunal Practice Notice (TPN) 1/2024 paragraphs 21 - 23 which highlights this.

Our letter dated 03 November 2025 invited you to file a Form TM8 and counter-statement on or before 05 January 2026.

As no Form TM8 and counter-statement has been filed within the time period set, Rule 18(2) of the Trade Mark Rules 2008 (as amended) applies. Rule 18(2) states:

“Where the applicant fails to file a Form TM8 or counter-statement within the relevant period, the application for registration, insofar as it relates to the goods and services in respect of which the opposition is directed, shall, unless the registrar otherwise directs, be treated as abandoned.”

It is our preliminary view that the application should be treated as abandoned because no defence was filed by the deadline referred to above.

If you disagree with the preliminary view, you **must** file the Form TM8 and counter-statement **and** a witness statement setting out the reasons for the failure to meet the deadline on, or before, **30 January 2026**.

If no response is received by this date, the application will be treated as abandoned (i.e. it will be withdrawn).”

9. On 26 January 2026 Mr Rae sent an email to the Registry categorically stating that the Applicant does not want to abandon the application and that the form TM8 and an acceptable TM21B will be submitted by the deadline of 30 January 2026. Subsequently, on 28 January 2026 the Registry wrote to the parties

again reiterating that a form TM21B cannot be accepted as a substitute for a form TM8.

10. On 28 January 2026, Mr Rae submitted a form TM8, followed by a witness statement and form TM21B filed on 30 January 2026. Mr Rae's witness statement cited a "lengthy period of illness" on his part, and "miscommunication with his client" for the missing of the deadline for filing the TM8.
11. On 4 February 2026 the Registry wrote to Mr Rae stating that, after considering the witness statement, it was the Tribunal's preliminary view that the TM8 form should not be admitted into proceedings as it was received outside of the prescribed non-extendable period. The letter stated that the reasons given for missing the deadline were not "compelling", nor were there any "extenuating circumstances" that would permit the Tribunal to exercise its limited discretion. The Applicant was given a deadline of 18 February 2026 by which to request a hearing if it disagreed with the preliminary view. The Registry made the Applicant aware that if no response was received by that date, the preliminary view would automatically become final, and the application would be confirmed as being deemed abandoned.
12. On 18 February 2026, the Applicant formally responded to the preliminary view with further written reasons for missing the deadline, as well as requesting to be heard on the point.
13. On 5 March 2026 Mr Rae sent skeleton arguments prior to the hearing scheduled for 09 March 2026.

## **THE HEARING**

14. A hearing took place before me, by telephone conference, on 9 March 2026. Only the Applicant attended; with Mr Alan Rae, appearing on its behalf. The Opponent did not attend, nor did it make any submissions in lieu of the hearing.

15. At the hearing Mr Rae reiterated his submissions from his witness statements, stating that due to a period of illness, there had been a misunderstanding of the circumstances surrounding the filing of a TM8 form and the TM21B form. Mr Rae confirmed that he was ill for a period of two weeks with the flu and was unable to tend to any work tasks. He submitted that following the initial opposition the Applicant had been delighted to receive correspondence from the Opponent asking it to limit its specification to prevent the opposition from going any further.
  
16. Mr Rae stated that he was not a trained solicitor in this field, and that this was the first time he had dealt with an opposition and was therefore not familiar with the process. Consequently, Mr Rae confirmed that the Applicant followed the direction of Stephens Scown when they initially filed the TM21B with the proposed limitation wording. Mr Rae added that due to his period of illness, the Applicant itself filed the initial TM21B <sup>1</sup>, before the deadline for filing the TM8 form <sup>2</sup>, which contained an error in the class number quoted. Upon his return to work, Mr Rae stated that he promptly filed a corrected version of the TM21B <sup>3</sup> and assumed that this would be actioned, with the opposition being withdrawn afterwards.
  
17. Mr Rae then stated that he was surprised to receive a letter from the Tribunal stating that the limitation was not deemed acceptable but was pleased that the caseworker had proposed an acceptable wording that could be adopted. He also stated that this letter, dated 16 January 2026, was the first time that it was pointed out that a form TM21B cannot be used as a substitute for a form TM8. He added that this was 16 days after the Applicant had filed, within the deadline of 5 January 2026, the initial form TM21B, and that had this been pointed out before deadline then the Applicant would have complied with the advice and filed a TM8 form before the deadline.

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<sup>1</sup> Dated 31 December 2025.

<sup>2</sup> 05 January 2026.

<sup>3</sup> Dated 09 January 2026.

18. Further, Mr Rae submitted that given that the caseworker had provided acceptable wording for the limitation, as well as giving a further deadline to file the TM8 form and a witness statement <sup>4</sup>, he assumed that if this direction was followed and the wording adopted then the TM8 form would be accepted and that the limitation would be applied, with the opposition being withdrawn as per the Opponent's request. Mr Rae added that the TM8 form was filed on 29 January 2026, with the witness statement following on 30 January 2026, both within the deadline given by the caseworker.
19. I thanked Mr Rae for his submissions and confirmed that I would take them away for consideration and issue my decision in due course. Having given consideration to all of the submissions made I now give my decision below.

## **Decision**

20. The filing of a Form TM8 and counterstatement in opposition proceedings is governed by rule 18 of the Trade Mark Rules 2008 ("**the Rules**"). The relevant parts read as follows:

"18. (1) The applicant shall, within the relevant period, file a Form TM8, which shall include a counter-statement.

(2) Where the applicant fails to file a TM8 or counter-statement within the relevant period, the application for registration, insofar as it relates to the goods and services in respect of which the opposition is directed, shall, **unless the registrar otherwise directs**, be treated as abandoned.

(3) Unless either paragraph (4), (5) or (6) applies, the relevant period is the period of two months beginning immediately after the notification date."

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<sup>4</sup> 30 January 2026.

21. The combined effect of rules 77(1), 77(5) and Schedule 1 of the Rules mean that the time limit in rule 18, which sets the period in which the defence must be filed, is non-extensible other than in the circumstances identified in rule 77(5) which states:

“A time limit listed in Schedule 1 (whether it has already expired or not) may be extended under paragraph (1) if, and only if—

(a) the irregularity or prospective irregularity is attributable, wholly or in part, to a default, omission or other error by the registrar, the Office or the International Bureau; and

(b) it appears to the registrar that the irregularity should be rectified.”

22. In reaching my decision, I recognise that if the late TM8 is not accepted, the application will be treated as abandoned and the Applicant will lose the filing date for its mark. Further, I recognise that it may be that the Applicant will simply re-file its application and that this may, once again, be opposed by the Opponent resulting in further opposition proceedings arising at some point in the future. However, the loss of priority and possibility of further proceedings on much the same basis are often the consequences of a failure to comply with the non-extendable deadline to file Form TM8s. In my view, to regard the mere prospect of another application as a strong consideration would significantly undermine the prescriptive nature of the timeframes under the rules for filing a Form TM8. Further, whilst repeated proceedings, which I accept could be likely in this case, are, in my view, regrettable on the account of wasted cost and efforts of the parties, not to mention the further strain on the Registry’s resources, I must consider the specific circumstances at hand.
23. In his submission, Mr Rae explained that the Applicant submitted a TM21B on 31 December 2025, five days before the deadline for filing the TM8. However, it was not until 16 January 2026 that the Applicant was informed that the TM21B was unacceptable and, in any event, could not serve as a substitute for a TM8.

Mr Rae stated that, had the Applicant been made aware of this earlier, the TM8 would have been filed before the 5 January 2026 deadline. Accordingly, while Mr Rae's illness contributed to the missed deadline, the delay was also partly due to the Registry's failure to provide the Applicant with the necessary information in a timely manner.

24. I agree with Mr Rae that the delay in providing the Applicant with this information, particularly given that it is not professionally represented by a trade mark specialist, was a contributing factor to the failure to meet the TM8 filing deadline. It is evident that once the Applicant received the full information, it submitted the required forms and documents within the prescribed time period, and I have no doubt that it would similarly have complied with the TM8 deadline had that information been provided earlier.
25. Taking all of the above into account, I consider that the reason for failing to file the TM8 was due to an error made by the Registry, which it appears should be rectified. Therefore, based on rule 77(5) the late filed TM8 will be admitted into proceedings. Consequently, as the TM8 is admitted under rule 77(5) there is no need to discuss the discretion to admit late TM8's under rule 18(2).

## **Conclusion**

26. The TM8 form has been admitted into the proceedings, and the opposition will therefore be permitted to continue. Ordinarily, this would result in the casework examiner setting deadlines for the filing of evidence and subsequently inviting the parties to request a hearing or to file submissions in lieu. However, as indicated by both parties, the Opponent has confirmed its intention to withdraw the opposition once an acceptable TM21B has been actioned to restrict the Applicant's specification. I can confirm that the TM21B dated 30 January 2025 is acceptable. Accordingly, the casework examiner will now action the restriction and issue confirmation to both parties. The opposition will then be withdrawn in line with the Opponent's most recent request dated 9 January 2026.

## **Costs**

27. As I have admitted the Applicant's defence into the proceedings, and the opposition is allowed to continue, costs are usually to be considered at the final determination of the case. However, due to the acceptance of an acceptable TM21B the opposition will soon be withdrawn. Consequently, I make no award of costs in these proceedings.

**Dated this 21<sup>st</sup> day of April 2026**

**Oliver Rose'Meyer  
For the Registrar**