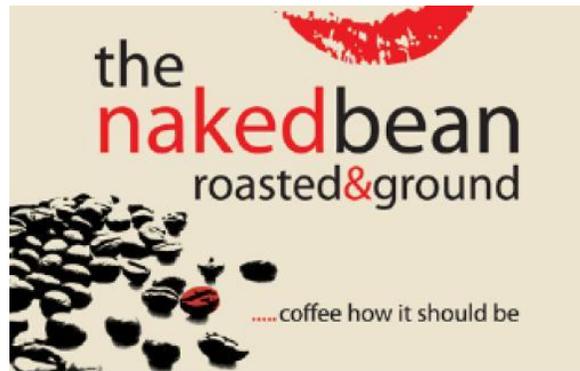


O-118-13

SUPPLEMENTARY DECISION

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION 2590810
BY THE NAKED RANGE T/A THE NAKED BEAN TO REGISTER THE
FOLLOWING TRADE MARK IN CLASSES 30 & 43:**



AND

OPPOSITION THERETO (NO 102850) BY RELISH (YORK) LIMITED

1) On 21 January 2013 I issued a decision in these proceedings, the outcome of which can be seen in the following extract:

“Summary of conclusions

38) Subject to the comments in paragraph 40 below, the opposition succeeds in relation to:

Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; sandwiches; prepared meals; pizzas, pies and pasta dishes.

Class 43: Services for providing food and drink; temporary accommodation; restaurant, bar and catering services; provision of holiday accommodation; booking and reservation services for restaurants.

39) The opposition fails (and the mark should be registered) in respect of:

Class 43: Retirement home services; creche services.

Revised specification

40) In the above conclusions, I have upheld the opposition against “temporary accommodation; provision of holiday accommodation” only on the basis that such terms include things such as hotel services. However, if the term were to be limited then it may be possible to register the mark for other forms of temporary accommodation/holiday accommodation. I gave an example of the provision of self-catering holiday accommodation earlier in this decision. In view of this, Range is permitted 14 days to put forward any revised terms that:

- i) Fall within the ambit of “temporary accommodation; provision of holiday accommodation” in class 43;
- ii) Do not have restaurants/other food and/or drink related services which form a key component.

41) Relish will be allowed 14 days to comment on any proposed terms and I will then issue a supplementary decision in which I will decide whether any proposed terms are free from objection. If Range puts forward no revised terms then I will simply issue a supplementary decision confirming the outcome as it stands in paragraph 38)- 39) above. In the supplementary decision I will also issue my decision on costs. The appeal

period for the substantive and supplementary decision will run from the date of the supplementary decision.”

2) The Naked Range t/a The Naked Bean were invited to file a revised specification in respect of the terms “temporary accommodation; provision of holiday accommodation”, but nothing was received from it. Consequently, the decision as outlined in paragraphs 38) to 39) of my earlier decision stands. The opposition has been successful in relation to:

Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice; sandwiches; prepared meals; pizzas, pies and pasta dishes.

Class 43: Services for providing food and drink; temporary accommodation; restaurant, bar and catering services; provision of holiday accommodation; booking and reservation services for restaurants.

But has failed in relation to:

Class 43: Retirement home services; creche services.

Costs

3) Relish (York) Limited has been the largely successful party and is entitled to a contribution towards its costs. The area in which it has not succeeded in its opposition is small and, from the way the parties have prosecuted the proceedings, a side issue. In the circumstances, I hereby order The Naked Range t/a The Naked Bean to pay Relish (York) Limited the sum of £500. This sum is calculated as follows:

Preparing a statement and considering the other side's statement - £300
Official fee - £200

4) The above sum should be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful

Dated this 13th day of March 2013

Oliver Morris
For the Registrar,
The Comptroller-General