

TRADE MARKS ACT 1994

IN THE MATTER OF:

OPPOSITION NO. 71335

IN THE NAME OF PLAYBOY ENTERPRISES INTERNATIONAL INC.

**TO THE REQUEST FOR PROTECTION OF INTERNATIONAL TRADE MARK
NO. 866236**

IN THE NAME OF HOT SHEYT MANAGEMENT AND MUSIC EST

DECISION

1. For the reasons given in a written decision issued under reference BL O-013-08 on 18 January 2008, the Registrar's Hearing Officer (Judi Pike) held that Opposition No. 71335 succeeded in relation to all of the goods and services covered by the request for protection of International Trade Mark No. 866236 other than '*security services for the protection of individuals*' in Class 45. She ordered the Applicant for protection to pay £900 to the Opponent as a contribution towards its costs of the largely successful proceedings in the Registry.

2. On 15 February 2008 the Opponent gave Notice of Appeal to an Appointed Person under Section 76 of the Trade Marks Act 1994 contending that the Hearing Officer had wrongly allowed the request for protection of International Trade Mark No. 866236 to proceed in respect of the services referred to in paragraph 1 above.

3. It subsequently transpired that International Trade mark No. 866236 had ceased to have effect following the withdrawal of Swiss Trade Mark No. 531046 upon which it was based. The cessation was published on page 627 of Issue No. 11 of 2008 of the WIPO Gazette of International Marks published on 17 April 2008.

4. In the circumstances, I was minded to take the view that the Opponent's appeal from the Hearing Officer's decision of 18 January 2008 had been rendered pointless for lack of any continuing purpose or effect and that the right course would be for all further proceedings on appeal to be stayed with no order for costs. The Hearing Officer's decision would stand unreversed, but any impediment to the enforcement of her order as to costs would be removed.

5. However, before coming to a conclusion I wished to be informed of any objection that either party might have to the making of a determination to the effect indicated in paragraph 4 above and of any further or other position that either of them might want me to adopt.

6. In the exercise of the powers conferred upon me by Rules 57 and 65(4) of the Trade Marks Rules 2000 I therefore required each of the parties to the appeal to inform me in writing via the Treasury Solicitor's Department by no later than 4:00 pm on 9 June 2008 whether they agreed to the making of a determination to the effect indicated in paragraph 4 above and of any further or other position they might want me to adopt. Each party was directed to send a copy of its written response to: (1) the opposite party; and (2) the Registrar. They were informed that failure to respond without due cause or proper excuse would be taken to indicate that the party who failed to respond had no

objection to the making of a determination to the effect indicated in paragraph 4 above and wanted me to adopt no further or other position.

7. The determination indicated in paragraph 4 above was agreed by the agents of record for the Opponent. No response (and no reason for the absence of a response) was provided by or on behalf of the Applicant.

8. In the circumstances I determine:

- (1) that all further proceedings in the appeal from the Hearing Officer's decision dated 18 January 2008 be stayed;
- (2) that there be no order as to the costs of the appeal;
- (3) that the Opponent be at liberty to enforce the Hearing Officer's order for costs in respect of the proceedings in the Registry.

Geoffrey Hobbs QC

16 June 2008

The Applicant was represented by Messrs. Fleming & Reid.

The Opponent was represented by Messrs Frank B. Dehn & Co.