

**TRADE MARKS ACT 1994**

**IN THE MATTER OF INTERNATIONAL REGISTRATION No. 737715  
AND A REQUEST BY LODESTAR ANSTALT  
TO PROTECT THE TRADE MARK WILD GEESE  
IN CLASSES 25, 32 AND 33**

**AND IN THE MATTER OF OPPOSITION THERETO UNDER No. 71307  
BY AUSTIN NICHOLS & CO INCORPORATED DBA PERNOD RICARD USA**

**AND IN THE MATTER OF AN APPEAL TO THE APPOINTED PERSON  
BY THE OPPONENT**

---

**DECISION**

---

1. In a written decision issued on 17 October 2007 under reference number BL O/306/07, Mr. M. Reynolds, the Hearing Officer acting for the Registrar, refused an opposition brought by Austin Nichols & Co., Incorporated dba Pernod Ricard USA ("Austin Nichols") under number 71307 against a request by Lodestar Anstalt ("Lodestar") to extend protection in the UK to International Registration number 737715.
2. Austin Nichols gave notice to appeal to an Appointed Person under section 76 of the Trade Marks Act 1994. The statement of grounds of appeal challenged the Hearing Officer's determination of a fair specification of goods in the earlier mark for the purposes of section 6A(6) of the Act as well as certain of his findings in relation to the alleged grounds of opposition under section 5(2)(b), 5(3) and 5(4)(a).
3. Subject to any objection arising out of an interest notified by me to the parties through the Treasury Solicitors (none was received), the appeal was listed before me for hearing on Wednesday 23 April 2008 at 2.00 pm.
4. Following an uncontested request for an adjournment by fJ Cleveland, Austin Nichols' attorneys, dated 3 April 2008, the appeal hearing was rescheduled to take place on Friday 6 June 2008 at 2.00 pm.
5. On 23 May 2008, the Treasury Solicitors sent me a copy of a letter from fJ Cleveland to the Registrar dated 19 May 2008 stating: "The Opponent hereby withdraws the Appeal to the appointed person filed in relation to the above proceedings".
6. On 2 June 2008, I received through the Treasury Solicitors an application from Saunders & Dolleymore, Lodestar's attorneys, for an award of costs in respect of the abandoned appeal.
7. The Appointed Person's power to award costs in relation to appeals under rules 60 and 65(4) of the Trade Marks Rules 2000 is exercisable in relation to appeals that do not proceed to a determination (see *VFM Children's Entertainment Ltd's Application*, BL O/269/02, Mr. Geoffrey Hobbs QC).
8. At my request, Saunders & Dolleymore provided an itemised summary of the work covered by their claim for costs as follows:

"Trade Mark Attorney Fees – 10 December 2007 to date:

Receiving and noting appeal, advising client accordingly; correspondence with the UK Intellectual Property Office dated 7 January 2008 relating to who should hear the appeal; liaising with client and Counsel concerning possible conflict of interest in respect of the Appointed Person responsible for hearing the case; liaising with Counsel and client concerning change to the original Hearing date at the request of the appellant; receiving and noting correspondence from the Treasury Solicitor advising that the appeal had been withdrawn and the Hearing scheduled for 6 June 2008 cancelled; informing Counsel immediately; advising client thereof.

£540.00

Counsel's fees for preparing skeleton arguments to be used at the Hearing.

£200.00

£740.00"

9. In a letter to the Treasury Solicitors dated 19 June 2008, fJ Cleveland confirmed that their client wished to make no observations on Lodestar's costs claim.
10. The itemised summary did not include a note of time spent or relevant charge out rates. Nevertheless, in my view, neither the work carried out nor the fees seem out of order.
11. Bearing in mind the Registrar's Scale of costs applicable to these proceedings, I will order that Austin Nichols pay Lodestar the sum of £600 as a contribution towards their costs of the abandoned appeal within fourteen days of the date of this decision.

Professor Ruth Annand, 27 June 2008