

O-195-03

TRADE MARKS ACT 1994

IN THE MATTER OF :

OPPOSITION No. 50491

IN THE NAME OF HOKOCHEMIE GMBH

TO APPLICATION No. 2204593

TO REGISTER A TRADE MARK IN CLASS 1

IN THE NAME OF LINSEAL INTERNATIONAL LTD.

DECISION

1. In September 2002 Linseal International Ltd gave notice of appeal under Section 76 of the Trade Marks Act 1994 against the refusal of its application number 2004593 for registration of the designation **OKO** as a trade mark for use in relation to *“chemical preparations for use in the manufacture, treatment and repair of tyres; sealants; preparations for repair of tyres and for preventing punctures in tyres; all included in Class 1”*.

2. The application for registration was refused under Section 5 (2) (b) of the Act in the context of opposition proceedings brought by Hokochemie GmbH under number 50491 in December 1999. The grounds for refusal were contained in provisional and final determinations issued by Mr John MacGillivray on behalf of the Registrar of Trade Marks on 28 June 2001 and 29 August 2002.

3. In an interim decision given on 1 April 2003 (SRIS 0/116/03) I determined that Linseal’s appeal in the present proceedings should be stayed pending the outcome

of an application for a declaration of invalidity it had filed in respect of Hokochemie's International Trade Mark No. 701295, that being the earlier trade mark on the basis of which the opposition to application number 2204593 had succeeded before Mr MacGillivray.

4. Under cover of a letter dated 15 May 2003, the Treasury Solicitor's Department was provided with a copy of a settlement agreement in which Linseal and Hokochemie had agreed, inter alia, that Hokochemie's opposition number 50491 to Linseal's trade mark application number 2204593 should be withdrawn with no order as to costs.

5. By letter dated 11 June 2003 the Registrar has confirmed that she would have no objection to:

- (1) the determinations issued by Mr MacGillivray on 28 June 2001 and 29 August 2002 in opposition number 50491 being discharged by consent; and
- (2) the opposition filed under number 50491 being withdrawn by consent with no order as to costs in accordance with the agreement between the parties referred to in paragraph 4 above.

6. I therefore direct and determine with the consent of the parties as envisaged by their settlement agreement that:

- (1) the determinations issued by Mr MacGillivray on 28 June 2001 and 29 August 2002 in opposition number 50491 be discharged;
- (2) Linseal's appeal from those determinations now stand withdrawn with no order as to costs;

(3) Hokochemie's opposition number 50491 to Linseal's trade mark application number 2204593 now stands withdrawn with no order as to costs.

Geoffrey Hobbs QC

23 June 2003