

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO 2128767
BY PAUL SHEPHERD
TO REGISTER A TRADE MARK IN CLASSES 16, 28 AND 41**

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER NO 47881
IN THE NAME OF PARTY LAND INC.**

TRADE MARKS ACT 1994

**IN THE MATTER OF Application No 2128767
by Paul Shepherd to register a trade mark
in Classes 16, 28 and 41**

And

**IN THE MATTER OF Opposition thereto under
No 47881 by Party Land Inc.**

SUPPLEMENTARY DECISION

On 13 March 2000, I issued my decision in respect of the above proceedings, finding the opposition to be successful under Section 5(1) in respect of Classes 16 and 28 of the application, and Section 5(2)(a) in respect of Class 41 by virtue of the opponents' earlier Community Trade Mark Application. My decision was subject to the opponents' application proceeding to registration.

Since the date of my decision the opponents' Community Trade Mark application has been withdrawn and the period during which it can be reinstated has passed. Consequently, it no longer constitutes an earlier trade mark and a barrier to the registration of this application. The outcome of my decision is therefore reversed and the opposition fails. Subject to any appeal the application is free to proceed to registration.

In my decision I noted that "paper plates, paper cups and plastic cups" had been accepted in Class 16 whereas they are proper to Class 21, stating that in the event of this application proceeding the applicants will be required to add Class 21 to cover these goods. They may, in the alternative request that paper plates, paper cups and plastic cups be deleted from the application.

Should the applicants elect to retain paper plates, paper cups and plastic cups as part of the application they are required to file Form TM3A accompanied by the prescribed fee (£50) requesting that Class 21 be added to the application. This to be done within one month of the end of the period allowed for appeal. The application will be readvertised for opposition purposes but only in respect of Class 21. If by the date specified the form and fee have not been filed, paper plates, paper cups and plastic cups will be deleted, and the application will be registered in respect of the remaining goods.

There remains the matter of costs. The opposition having failed, I order the opponents to pay the applicants the sum of £435 as a contribution towards their costs. This sum is to 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.

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Dated this 1 day of June 2000

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**Mike Foley
for the Registrar
The Comptroller General**

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