

**TRADE MARKS ACT 1994**

**IN THE MATTER OF:**

**OPPOSITION No. 409494**

**IN THE NAME OF CONSORZIO DI TUTELA DENOMINAZIONE DI ORIGINE  
CONTROLLATA PROSECCO**

**TO TRADE MARK APPLICATION No. 3215159**

**IN THE NAME OF WOOF AND BREW LTD**

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**DECISION**

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1. On 26 February 2017, Woof and Brew Ltd (“the Applicant”) applied under number 3215959 to register **PAWSECCO** as a trade mark for use in relation to “*edible pet treats*” in Class 31. The application for registration was opposed by the Consorzio di Tutela della Denominazione di Origine Controllata Prosecco (“the Opponent”) on the basis of a Notice and Grounds of Opposition filed under number 409494 on 9 June 2017.
2. The Opponent is an association established and appointed under Italian law to protect and promote the PDO (Protected Designation of Origin) **PROSECCO** registered at the EU level in respect of wine under number PDO-IT-A0516 on 1 August 2009 and protected under what is now Regulation (EU) No. 1308/2013 of 17 December 2013. Six objections to registration were raised in the Grounds of Opposition. Only one objection remains to be considered on this appeal. That is the

objection raised under s.3(4) of the Trade Marks Act 1994 (“*A trade mark shall not be registered if or to the extent that its use is prohibited in the United Kingdom by any enactment or rule of law or by any provision of [EU] law*”) upon the basis that:

10. The Opposed Mark should be refused in light of Article 102 and Article 103(2) of the Regulation (EU) no. 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No. 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No. 1234/2007, since its use will harm the PDO PROSECCO insofar as it would constitute a

*“direct or indirect commercial use of that protected name: [...] in so far as such use exploits the reputation of designation of origin or a geographical indication.”*

*[Article 103(2)(a)(ii)]*

11. Use of the Opposed Mark is commercial use which exploits the reputation of PROSECCO. Use of the Opposed Mark would also misuse, imitate or evoke the name PROSECCO and, therefore, contrary to Articles 102 and 103 of the Regulation.

3. Articles 102 and 103 of the Regulation provide as follows:

#### Article 102

##### **Relationship with trade marks**

1. The registration of a trade mark that contains or consists of a protected designation of origin or a geographical indication which does not comply with the product specification concerned or the use of which falls under Article 103(2), and that relates to a product falling under one of the categories listed in Part II of Annex VII shall be:

(a) refused if the application for registration of the trade mark is submitted after the date of submission of the application for protection of the designation of origin or geographical indication to the Commission and the designation of origin or geographical indication is subsequently protected; or

(b) invalidated.

2. Without prejudice to Article 101(2), a trade mark referred to in paragraph 1 of this Article which has been applied for, registered or established by use in good faith, if that possibility is provided for by the law concerned, in the territory of the Union either before the date of protection of the designation of origin or geographical indication in the country of origin, or before 1 January 1996, may continue to be used and renewed notwithstanding the protection of a designation of origin or geographical indication, provided that no grounds for the trade mark's invalidity or revocation exist under Directive 2008/95/EC of the European Parliament and of the Council or under Council Regulation (EC) No 207/2009.

In such cases, the use of the designation of origin or geographical indication shall be permitted alongside the relevant trade marks.

### Article 103

#### **Protection**

1. A protected designation of origin and a protected geographical indication may be used by an operator marketing a wine which has been produced in conformity with the corresponding product specification.

2. A protected designation of origin and a protected geographical indication, as well as the wine using that protected name in conformity with the product specifications, shall be protected against:

(a) any direct or indirect commercial use of that protected name:

(i) by comparable products not complying with the product specification of the protected name; or

(ii) in so far as such use exploits the reputation of a designation of origin or a geographical indication;

(b) any misuse, imitation or evocation even if the true origin of the product or service is indicated or if the protected name is translated, transcribed or transliterated or accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “limitation”, “flavour”, “like” or similar;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the wine product concerned, as well as the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the consumer as to the true origin of the product.

4. The Opponent’s objection was upheld under s.3(4) of the Act by reference to Article 103(2)(b) of the Regulation for the reasons given by Mr. Oliver Morris on behalf of the Registrar of Trade Marks in a Decision issued under reference BL O/311/18 on 21 May 2018. (The objection raised by reference to the provisions of Articles 102 and 103(2)(a) was rejected and has not been pursued on appeal). The Applicant was ordered to pay £2,200. to the Opponent in respect of its costs of the proceedings in the Registry.
5. Mr. Stefano Zanette (President of the Opponent, Chairman of its Board of Directors and a Member of its Executive Committee) provided a witness statement with 15 exhibits dated 16 October 2017 in support of the Opposition. In paragraphs 28 to 31 he stated:

## PAWSECCO

28. The Applicant filed the Application on 27 February 2016, shortly before the launch of a “*wine for pets*” product under the Pawsecco name, which took place on 24 March 2017. The product offered for sale under the Pawsecco mark is a drink suitable for pets which, according to the Applicant, can be either pour over food or drunk on its own.
29. From its inception, there has been a clear intention to connect the product sold under the Pawsecco name with PROSECCO. The Applicant has taken deliberated steps to create a connection between Pawsecco and PROSECCO. Enclosed at **Exhibit SZ14** is a copy of the press released by the Applicant on 24 March 2017 which states:

*WOOF&BREW add another award-winning innovative product to their drinks for pet's portfolio - and it's going down a treat!*

*Good friends bring happiness, but best friends bring Prosecco and now mans' best friends can join in too. WOOF&BREW's 'Pawsecco', a still 'wine' for cats & dogs, provides the purrfect treat for those on four feet and allows owners to now share the experience in 'raising a glass' with their pets.*

30. The connection established by the Application in its press release has been reproduced by the relevant public who regularly refers to the product sold under the Pawsecco mark as “prosecco for pets”. For example, numerous press outlets have dedicated articles to Pawsecco, invariably referring to it in the manner described above. Enclosed at **Exhibit SZ15** are copies of online articles in different publications making the connection between PROSECCO and Pawsecco.
31. Further, the end consumers are also clearly connecting both names and, to a great extent, it is clear that the purchase of the goods labelled under the Pawsecco mark is influenced by the fact that the relevant public identify the word Pawsecco as a clear reference to PROSECCO.

The relevant public identify the product as “*prosecco for pets*”. Enclosed at **Exhibit SZ16** are a number of posts in different

social media sites (Twitter, Instagram and Facebook) in which consumers refer to Pawsecco as “prosecco for dogs/cats/pets”. They state, inter alia:

*“... I have bought princey some treats and a bottle of rose doggy prosecco, or PAWsecco if you will”*

*“Amazing. Cat prosecco AKA pawsecco ...”*

*“Apparently there is now prosecco for dogs called Pawsecco ...”*

*“This is actually a thing. I shit you not. #passtheproseccoplease (/t/passtheproseccoplease) #pawsecco (/t/pawsecco) #prosecco (/t/prosecco)”*

6. The Applicant’s press release at Exhibit SZ14 presents and promotes the **PAWSECCO** product to which it relates as *“non-alcoholic, non-carbonated and contains no grapes”* and as being *“an elaborate, stylish treat, but one that also has real substance. Designed to pour over food, making the perfect ‘au jus’, or serve as a drink, our feline friends and dearest doggies have already given Pawsecco the palatability paws up”*.
7. Exhibits SZ15 and SZ16 include various photographs showing bottles of the Applicant’s **PAWSECCO** product bearing labels marked with the wording **“SERVE OVER FOOD for the perfect au jus”**. They also contain an abundance of published statements and comments linking **PAWSECCO** to **PROSECCO** in relation to the Applicant’s bottled product labelled **“PAWSECCO. STILL ‘WINE’ FOR CATS & DOGS”**.

8. Mr. Stephen Bennett (founder director of the Applicant) provided a witness statement with 7 Annexes dated 18 December 2017 in defence of the contested application for registration. In paragraphs 3 to 8 he stated:

3. As can be seen from Annex 1, my company produces and sells pet drinks. Drinks for pets are a developing commercial area. Annex 2 to this statement provides background historical material about the development of so-called “pet wines”.
4. There are two United States companies in the field [of] called Apollo Peak and Catwinery. Annexes 3 and 4 to this statement are taken from the websites of the respective companies. Annex 5 to this statement shows that trademark registrations obtained in the United Kingdom by Apollo Peak. I am not aware that they have yet launched in the United Kingdom.
5. As can be seen from the Annexes three and four, a number of the products have been named in a manner which might be taken as allusive to certain wines or types of wine. My company decided to adopt a similar approach and my business partner Lisa Morton thought of the word PAWSECCO. I filed the application to register this directly at the UK trade marks office.
6. The PAWSECCO product as manufactured and distributed by my company as developed with the help of our veterinary advisor and is safe for cats to drink, and does not include any alcohol. It is not a wine in the conventional sense of that word i.e. it has not been manufactured from grapes or other fruit using a fermentation process as part of the manufacturing method. It is marketed as a healthy treat for cats and dogs to be poured over their food.
7. The word “prosecco” is used by a wide variety of manufacturers to identify an aspect of the product they make. Annex 6 attached to this statement shows the first page of listings only of those products which can be purchased via the Amazon UK website. The website search engine enables a category of products to be selected and Annex 6 includes the first display page in respect of

four such categories. It also indicates the number of “hits” in each case.

8. Annex 7 to this statement reproduces newspaper articles published in the UK and referring to prosecco and to the use of “prosecco” in connection with products other than prosecco wine.
9. In the ‘about us’ text from its website at Annex 1, the Applicant refers to itself as “*the pet drink specialists ...*” and notes that its products range “*From teas to tonics to treats ...*”. At Annex 7 is a newspaper article from 15 June 2017 in which the writer commented: “*There’s even Pawsecco which, ok, is the kind of groan-worthy pun we like but is still ‘wine’ for cats and dogs available in both rose and white varieties, that you can serve your four-legged friends poured over food or just as a drink. If that’s not a sure sign we’ve finally reached peak prosecco, then I don’t know what is*”.
10. The evidence and materials on file established that:
  - (i) drinks for pets are a developing commercial area, which has come to include within it so-called “*pet wines*” (as confirmed in paragraphs 3 and 4 of Mr. Bennett’s Witness Statement and his Annexes 1 to 4);
  - (ii) the Applicant had in furtherance of its business as “*pet drinks specialists*” (Annex 1 to Mr. Bennett’s Witness Statement) marketed its bottled **PAWSECCO** product “*as a healthy treat for cats and dogs to be poured over their food*” (as confirmed in paragraph 6 of Mr. Bennett’s Witness Statement);

- (iii) the Applicant decided to employ an approach “*similar*” to that of naming products “*in a manner which might be taken as allusive to certain wines or types of wine*” (as confirmed in paragraph 5 of Mr. Bennett’s Witness Statement) by adopting the name **PAWSECCO** for use in relation to the bottled product it marketed “*as a healthy treat for cats and dogs to be poured over their food*”;
  - (iv) moving forward on that basis, the Applicant applied to register **PAWSECCO** as its trade mark for “*edible pet treats*” in Class 31 (as confirmed in paragraph 5 of Mr. Bennett’s Witness Statement);
  - (v) the capacity of the name **PAWSECCO** to be “*taken as allusive to*” **PROSECCO** has been fully demonstrated by the Applicant in connection with the marketing of its bottled **PAWSECCO** product (as confirmed by the substantially uncontroverted evidence of the Opponent to that effect).
11. There was (as recorded by the Hearing Officer in paragraph [5] of his Decision) no dispute between the parties as to the reputation and goodwill enjoyed by the PDO **PROSECCO** in relation to sparkling wine. In paragraphs [17] and [18] of his Decision he rejected the Applicant’s contention to the effect that the marketing of its bottled **PAWSECCO** product was immaterial to the Opponent’s objection to the registration of **PAWSECCO** as a trade mark for “*edible*” pet treats. In paragraphs [21] and [22] of his Decision he rejected the Applicant’s contention to the effect that use of **PAWSECCO** as a trade mark for “*edible pet treats*” in Class 31 would not involve or give rise to “*any misuse, imitation or evocation*” of the PDO

**PROSECCO** of the kind proscribed by Article 103(2)(b) of the Regulation. In paragraphs [23] to [25] of his Decision he rejected the Applicant's contention to the effect that the use of **PAWSECCO** for "edible pet treats" would amount to nothing more than a harmless pun which ought to be regarded as unobjectionable under Article 103 of the Regulation.

12. The Hearing Officer's reasoning and conclusions in relation to these contentions can be seen from the following paragraphs of his decision:

(As to the first contention).

[18] In deciding this matter, I am struck by the fact that the applicant's witness makes no mention of any other form of treat sold under the mark and, also, his explanation that the product is to be poured over food. Therefore, whilst the product could potentially be drunk (the marketing material states that it could) the key manner of consumption, according to the witness, is to add it to other foods to create an edible dish. The faux wine product does, in my view, fall within the specification and such a form of use can be considered in deciding whether the use of the mark would constitute a "misuse, imitation or evocation" of the PDO.

(As to the second contention)

[22] ...The applicant's witness stated that the mark was coined in order to allude to a type of wine. Indeed, the nature of the whole marketing strategy appears predicated upon an assumption that the potential consumer will see the evocation. The mark, and the pun of which it consists, does not work if Prosecco is not evoked. Thus, for the type of product shown in the evidence, there is a clear evocation of the PDO. For completeness, I should also add that I agree with Ms Clark's further submission that even if the goods did not cover the type of product shown in the evidence, and it instead only covered more traditional treats for pets, evocation is still likely. It would be counterintuitive to believe that the applicant, who has coined the mark for the purpose of evoking

the PDO, would not use it in a manner which achieves that evocation.

(As to the third contention).

[25] It seems to me an inevitable conclusion that the applicant must have seen some form of commercial benefit in choosing (and using) the name it did. It is essentially a pun, creating something of a marketing gimmick. The marketing gimmick is the combination of a faux wine product for pets coupled with the use of a name which evokes a popular (the evidence shows it is very popular and is currently very much in vogue) type of wine. The applicant is therefore taking advantage of the strong reputation possessed by the PDO, riding on its coat-tails. To tolerate such use would not promote fair competition. I conclude that the type of evocation that the applicant applied for mark creates is enforceable under article 103(2)(b). The ground of opposition succeeds. For completeness, I should add that the evidence of other traders using the name Prosecco on other products does not undermine this decision. As Ms. Clark submitted, the opponent may not be aware of them all and, in any event, some of the goods may well contain Prosecco or otherwise promote Prosecco. This evidence does not persuade me that the evocation that the applicant's mark creates should be regarded as fair competition.

13. The Applicant maintains on appeal that the Hearing Officer should have upheld all three contentions and rejected the opposition to registration. The question for determination by this Tribunal is, in essence, whether it was open to the Hearing Officer, on the evidence and materials before him, to conclude as he did for the reasons he gave that the contested application for registration was caught by the objection raised under s.3(4) of the Act by reference to Article 103(2)(b) of the Regulation.

14. The first contention. It is correct to say that an application for registration of a trade mark must be examined for acceptability in relation to all goods of the kind listed by the applicant and not just those of the kind for which the applicant has used the mark within the scope of the application. But if the mark in question is not acceptable for registration in relation to those for which the applicant has used it, that will be sufficient to justify refusal of the application as a whole unless steps are taken to confine the coverage of the application to goods for which the mark is fully registrable: see NMSI Trading Ltd.’s Trade Mark Application (FLYING SCOTSMAN) [2012] RPC 7 (BL O/313/11; 31 August 2011) at paragraphs [12] and [13]; and for a recent example of this, see Case T-229/18 Biolatte Oy v. EUIPO (BIOLATTE) EU: T: 2019 375 at paragraphs [32] to [34], [101] and [102]. In the present case, the Applicant has declined to restrict or limit the scope of the contested application to anything more specific than “*edible pet treats*”. It follows that the application to register **PAWSECCO** for “*edible pet treats*” in Class 31 could legitimately be examined for acceptability as a whole by examining it for acceptability in relation to the Applicant’s bottled **PAWSECCO** product, if (as the Hearing Officer found and the Applicant disputes) that product was an “*edible*” pet treat.
15. The general indications in the class heading for Class 31 include “*Foodstuffs for animals*” and the TMclass classification tool used by the UKIPO and the EUIPO identifies “*edible pet treats*” and “*pet beverages*” as acceptable itemisations of goods for inclusion in applications for registration in that Class. A finished product can, in my view, be one or other or both of these things according to its function and

purpose. The Applicant's bottled **PAWSECCO** product was designed and presented for ingestion by cats and dogs by eating it when served over food or drinking it when served on its own. Its versatility in that regard made it both an "*edible pet treat*" and "*pet beverage*". It was, in its role as an "*edible pet treat*", an exemplar in relation to which it was permissible for the Hearing Officer to examine the acceptability of the contested application for registration as he did. And even if that were not the case, it was open to him to consider whether the evidence relating to the marketing of the Applicant's bottled product shed light on the question whether use of **PAWSECCO** as a trade mark in relation to "*edible pet treats*" would be liable to involve or give rise to evocation of the PDO **PROSECCO**.

16. The second contention. Recital (97) in the preamble to the Regulation confirms that:

Registered designations of origin and geographical indications should be protected against uses which take unfair advantage of the reputation enjoyed by complying products. So as to promote fair competition and not to mislead consumers, that protection should also extend to products and services not covered by this Regulation, including those not found in Annex I to the Treaties.

That leaves the presence or absence of evocation to be determined according to the net effect upon the mind of the average consumer (who is taken to be reasonably well-informed and reasonably observant and circumspect) of the differences and similarities between **PAWSECCO** and **PROSECCO** and "*edible pet treats*" and sparkling wine. And as I have noted in paragraph [15] above, it would be wrong to

assume when making the required assessment that “*edible pet treats*” cannot be liquid products.

17. The CJEU has recently considered the concept of evocation in Case C-614/17 Fundacion Consejo Regulador de la Denominacion de Origen Protegida Queso Manchego EU: C: 2019: 344, where it re-affirmed at paragraph [20] that “*the decisive criterion is whether, when the consumer is confronted with a disputed designation, the image triggered directly in his mind is that of the product whose geographical indication is protected*”. The case law of the Court clearly establishes that it is possible for a protected designation to be evoked where there is no likelihood of confusion between the products concerned and even where no EU law protection extends to the parts of that designation which are echoed in the term or terms at issue: Case C-87/97 Consorzio per la tutela del formaggio Gorgonzola EU: C: 1999: 115 at paragraph [26]; Case C-56/18P EUIPO v. Instituto dos Vinhos do Douro e do Porto, IP EU: C: 2017: 693 at paragraph [123].
18. When this appeal first came on for hearing before me, I was concerned that the Judgment of the CJEU in Case C-44/17 Scotch Whisky Association v. Michael Klotz EU: C: 2018: 415 (delivered after the date of the decision under appeal) might be thought to have ruled out the “surrounding circumstances” approach to the assessment of evocation which had heavily influenced the Hearing Officer’s determination in the present case. The Court had referred in paragraph [57] of its Judgment to the role played by “*the context in which the disputed designation is embedded*” in the national court’s assessment of whether there is an evocation. It

had gone on to rule in paragraph [60] that “*for the purpose of establishing that there is an ‘evocation’ of a registered geographical indication, account is not to be taken either of the context surrounding the disputed element, or, in particular, of the fact that that element is accompanied by an indication of the true origin of the product concerned.*” It had similarly ruled in paragraph [71] that “*for the purpose of establishing that there is a ‘false or misleading indication’, as prohibited by [Article 16(c) of Regulation No. 110/2008], account is not to be taken of the context in which the disputed element is used*”.

19. I was initially minded to make an order for reference under Article 267 TFEU seeking clarification from the CJEU as to the scope of the limitation imposed by the stated requirement for evocation to be assessed without taking account of “*the context surrounding the disputed element.*” On reflection, having had the benefit of submissions from the parties at a further hearing convened to consider that matter, I came to the conclusion that I could and should determine the appeal before me without recourse to an order for reference. My reason, shortly stated, is that whatever the Judgment in the Scotch Whisky Association case might ultimately be held to require by way of “acontextual” assessment of evocation, it does not purport to overrule and cannot reasonably be taken to exclude the established principle, re-affirmed in Case C-75/15 Viiniverla Oy v. Sociaali- ja terveystieteiden tutkimuskeskus EU:C:2016:35 at paragraphs [39] and [40], that “*It is also for the referring court to take into account, in accordance with the Court’s case-law, possible information capable of indicating that the visual and phonetic relationship between the two names is not fortuitous (see, to that effect, judgment in Consorzio*

*per la tutela del formaggio Gorgonzola, C-87/97 EU:C:1999:115, paragraph 28)*”.

I consider that “surrounding circumstances” can, on that basis, be regarded as inculpatory when it comes to the assessment of evocation. That is sufficient, in my view, to allow for evocation to be assessed with regard to “surrounding circumstances” in the way it was by the Hearing Officer in the present case.

20. I am satisfied that it was open to the Hearing Officer on the evidence and materials before him to come to the conclusion he did on the issue of evocation for the reasons he gave in paragraph [22] of his decision.
21. The third contention. Article 11 of the EU Charter of Fundamental Rights and Freedoms protects the right to freedom of expression (including commercial expression). Article 16 recognises the freedom to conduct a business in accordance with Union law and national laws and practices. Article 17 protects the right to property. Article 17(2) states in imperative terms that “*intellectual property shall be protected*”. Protected geographical indications are liable to be regarded as “*intellectual property*” in accordance with the provisions of Article 1(2) and Section 3 of Part II of the TRIPs Agreement. Article 54(1) of the Charter provides that “*Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others*”.

22. More specifically with regard to parody, Article 5(3)(k) of the InfoSoc Directive (Directive 2001/29/EC) provides that “*use for the purpose of caricature, parody or pastiche*” may be permitted by way of exception or limitation in relation to rights of the kind protected under Articles 2 and 3 of that Directive. In Case C-201/13 Deckmyn EU:C:2014:2132 the Grand Chamber of the CJEU decided that ‘parody’ is for the purposes of that Article to be regarded as an autonomous concept of EU law (paragraph [17]) which should, consistently with its usual meaning in everyday language, be understood as referring to something the essential characteristics of which are “*first, to evoke an existing work, while being noticeably different from it, and secondly, to constitute an expression of humour or mockery*” (paragraphs [19], [20] and [33]) and the acceptability or unacceptability of which should be judged in all the circumstances of the particular case by striking “*a fair balance between, on the one hand, the interests and rights of persons referred to in Articles 2 and 3 ..., and, on the other, the freedom of expression of the user of a protected work who is relying on the exception for parody, within the meaning of Article 5(3)(k)*” (paragraphs [25] to [31] and [34]).
23. In similar vein, it is stated both in Recital (21) of the preamble to the EU Trade Mark Regulation (Regulation (EU) 2017/1001) and Recital (27) of the preamble to the Recast Trade Marks Directive (Directive (EU) 2015/2424) that “*Use of a trade mark by third parties for the purpose of artistic expression should be considered fair as long as it is at the same time in accordance with honest practices in industrial and commercial matters. Furthermore, this [Regulation/Directive] should be*

*applied in a way that ensures full respect for fundamental rights and freedoms, and in particular the freedom of expression.”*

24. There is, so far as I am aware, no case law touching on the possibility of applying such principles to particular situations in a way which might enable parody to be set up as a justification for evocation of a PDO. I do not rule out the possibility, but I would expect the availability of any such justification to be quite closely circumscribed by the need to ensure that PDOs receive protection in relation to use in commerce which is commensurate with that which the legislature has plainly intended them to receive. Beyond that, I find it difficult to see how an ability to defend the use of a sign from attack in particular circumstances involving or amounting to parody can be elevated to the status of a reason for regarding the sign as eligible for registration as a trade mark.
25. I do not find it necessary to go any further into these matters in the present case because I agree with the reasoning and conclusion set out in paragraph [25] of the Hearing Officer’s decision (see paragraph [12] above) and I consider that the contested application for registration must accordingly be on the wrong side of any possible dividing line there could conceivably be for differentiating between permissible parody on the one hand and impermissible evocation of a PDO on the other.
26. The Applicant’s Appeal is dismissed for the reasons I have given. I approach the question of costs in the manner indicated in paragraphs [12] to [14] of my decision in AMARO GAYO Trade Mark BL O/257/18 (25 April 2018). Having regard to

what I consider to be the amount of effort and expenditure that is likely to have been reasonably and productively incurred in defence of the Hearing Officer's decision at the hearings which took place before me, I think it would be reasonable to order the Applicant to pay £4,500. to the Opponent in respect of its costs of the Appeal. That sum is to be paid within 21 days of the date of this decision. It is payable in addition to the sum of £2,200. awarded to the Opponent in respect of its costs of the proceedings in the Registry.

Geoffrey Hobbs QC

27 June 2019

Mr Richard Gallafent of Gallafents Ltd appeared on behalf of the Applicant

Ms Fiona Clark instructed by Bird & Bird LLP appeared on behalf of the Opponent

The Registrar took no part in the Appeal