

**O/692/19**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3351965  
BY ALLDAY PHARMA PVT LTD.  
TO REGISTER THE TRADE MARK**

**SWISSLIFE FOREVER**

**IN CLASS 5**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 415509 BY  
SWISS FEDERAL INSTITUTE OF INTELLECTUAL PROPERTY**

## **Background and pleadings**

1) Allday Pharma PVT LTD. (“the applicant”) applied to register the trade mark no. 3351965 SWISSLIFE FOREVER in the UK on 8 November 2018. It was accepted and published in the Trade Marks Journal on 23 November 2018 in respect of the following goods:

**Class 5:** *Vitamins; Dietary food supplements; Food supplements; Mineral food supplements.*

2) Swiss Federal Institute of Intellectual Property (“the opponent”) oppose the trade mark on the basis of sections 3(1)(b) and (c) and section 3(3)(b) of the Trade Marks Act 1994 (the Act). It asserts that:

### Section 3(1)(b)

- the dominant element of the applicant’s mark is the word SWISS;
- the applicant’s mark immediately informs the relevant public that the goods are all Swiss, or have a link with Switzerland “and if the relevant public consumes the goods applied for, their life expectancy will be prolonged”;
- in view of this meaning, the mark cannot perform the function of identifying the applicant’s goods from those of other undertakings;
- the applicant’s mark is, therefore, devoid of distinctive character and contravenes section 3(1)(b) of the Act.

### Section 3(1)(c)

- the mark consists exclusively of a sign which may serve, in trade, to designate the kind and/or quality and/or geographic origin of the goods and would be seen purely as a descriptor of the characteristic of the goods.

Section 3(3)(b)

- the applicant's mark is of such a nature as to deceive the public as to the nature and/or quality and/or geographic origin of the goods;
- the inclusion of the word SWISS creates real potential for deception, because it means originating from Switzerland, which has a reputation for the goods applied for;
- the inclusion of the word SWISS is a desirable quality of the goods, being something that the consumer will pay a premium for;
- As a result of the inclusion in the applicant's mark of a reference to a geographical location, it is reasonable to believe that the consumer would genuinely expect the goods to originate from Switzerland. Further, the quality associated with the word SWISS may well influence the consumer's decision to select the goods. The mark would, therefore, deceive the public.

3) The applicant filed a counterstatement denying the claims made. It asserts that SWISS is not the dominant element in the applicant's mark and that it is only part of the mark.

4) Only the opponent filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary. The opponent also filed written submissions that I keep in mind and will refer to as appropriate.

5) No hearing was requested and so this decision is taken following careful consideration of the papers.

6) The opponent has been represented in these proceedings by Groom Wilkes & Wright LLP. The applicant has not been represented.

## DECISION

### Evidence

7) The opponent's evidence takes the form of a witness statement by David Stärkle, a lawyer working for the opponent. He states that the facts and matters in his statement are taken from his personal knowledge, from the records of the opponent, to which he has full access, or are true expressions of his opinion based upon his experience and knowledge. I will refer to this evidence as required.

### Section 3(1)(b) and section 3(1)(c)

8) The relevant parts of section 3(1) read:

“3(1) The following shall not be registered –

(a) ...

(b) trade marks which are devoid of any distinctive character,

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

(d) ...

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

9) In *SAT.1 SatellitenFernsehen GmbH v OHIM*, Case C-329/02 P, the Court of Justice of the European Union (“the CJEU”) stated that:

“25. Thirdly, it is important to observe that each of the grounds for refusal to register listed in Article 7(1) of the regulation is independent of the others and requires separate examination. Moreover, it is appropriate to interpret those grounds for refusal in the light of the general interest which underlies each of them. The general interest to be taken into consideration when examining each of those grounds for refusal may or even must reflect different considerations according to the ground for refusal in question (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-0000, paragraphs 45 and 46).”

10) Whilst I recognise that section 3(1)(b) and section 3(1)(c) are independent of each other and require separate examination, the opponent’s arguments in relation to both grounds are predicated upon a submission of a claimed descriptive nature of the contested mark. There is no separate argument why the section 3(1)(b) ground should succeed where the section 3(1)(c) fails. Consequently, if the opponent is unsuccessful in respect of its grounds based upon sections 3(1)(c) then its grounds based upon section 3(1)(b) will also fail. Therefore, I will not consider the ground based upon section 3(1)(b) separately from my considerations regarding section 3(1)(c): (see the comments of Anna Carboni, sitting as the Appointed Person in O-363-09 *COMBI STEAM Trade Mark*).

11) The case law under section 3(1)(c) (corresponding to article 7(1)(c) of the EUTM Regulation, formerly article 7(1)(c) of the CTM Regulation) was set out by Arnold J. in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) as follows:

“91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:

“33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the

purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ( OJ 1989 L 40 , p. 1), see, by analogy, [2004] ECR I-1699 , paragraph 19; as regards Article 7 of Regulation No 40/94 , see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18, paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461, paragraph 24).

36. ... due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94. Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia, *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44, paragraph 45, and *Lego Juris v OHIM* (C-48/09 P), paragraph 43).

37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley*, paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94 , it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie*, paragraph 38; and the order of 5

February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in Article 3 of Directive 89/104, *Koninklijke KPN Nederland*, paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a 'characteristic' of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94 , the terms 'the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service', the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56)."

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the

goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97].”

12) The opponent submits that because the dominant element of the applicant’s mark is the word SWISS, the relevant public is immediately informed that the applicant’s goods are all Swiss or have a link with Switzerland and, consequently, these goods will be perceived as extending life expectancy. It argues that, because of this, it cannot perform the function of identifying the applicant’s goods from those of other undertakings.

13) In support of these submissions. Mr Stärkle provides evidence allegedly to the high reputation enjoyed internationally by Swiss products and that Switzerland has developed a “strong reputation” in respect of vitamins and dietary food supplements. I summarise this evidence below, to the extent that I consider it necessary:

- Mr Stärkle makes statements that Switzerland enjoys broad international recognition as one of the leading countries and economies in the world<sup>1</sup>;
- There is evidence that products that are renowned for being Swiss have added value and he refers to the example of a Swiss made watch being more valuable than a watch made in Italy or Germany<sup>2</sup>;
- On 1 January 2017, Switzerland passed a “Swissness” legislation in order to curb the misuse of the “Swiss” designation and to preserve the value of the Swiss brand<sup>3</sup>;
- In respect of vitamins, Mr Stärkle states that Switzerland has developed a strong international reputation for high quality vitamin enriched products. He states that this is because of the existence of the Swiss Vitamin Institute. Its certification service combined with the use of the “SVI seal” is a quality control programme offered to companies to certify either the vitamin content or stability of specific products<sup>4</sup>;

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<sup>1</sup> Mr Stärkle’s witness statement, paras 4 - 6

<sup>2</sup> Ditto, para 7 and Exhibit DS3

<sup>3</sup> Ditto, para 9

<sup>4</sup> Ditto, para 10 and Exhibit DS5

- Mr Stärkle provides evidence demonstrating a number of Swiss companies that manufacture or sell vitamins, food and nutritional products. These companies are authorised to use “Swiss”, “Switzerland” and/or the Swiss Cross<sup>5</sup>;
- Mr Stärkle cites the “great success of Swiss vitamin, dietary and food nutritional companies” to explain that there has been a “flood of non-Swiss products which seek to ride on [their] coat-tails”<sup>6</sup>;
- Mr Stärkle states that it is his opinion that when consumers see SWISS, they expect the product to come from Switzerland and expect the product to be of a high quality because the consumer has been educated to expect this<sup>7</sup>.

14) Mr Stärkle refers to the Swiss Vitamin Institute and the use of its “SVI seal” as part of its quality control programme. I dismiss the relevance of this evidence for several reasons. Firstly, I must consider the issue from the perspective of the UK average consumer, who is not likely to know about such an authorisation scheme for Swiss companies. Secondly, the authorisation scheme described as the “SVI seal” is stated to recognise vitamin content or stability and, therefore, appears to have nothing to do with the mark itself, that is the subject of my considerations. Elsewhere, Mr Stärkle refers to successful Swiss vitamin companies being authorised to use the word “Swiss”, however, such authorisation is also outside the normal scope of knowledge of the UK average consumer and, consequently, it is not relevant to my considerations under section 3(1)(b) or section 3(1)(c).

15) I note Mr Stärkle’s opinion that consumers will understand the presence of SWISS in the mark to indicate that the products come from Switzerland and are of high quality. In respect to the first of these assertions, it is my view that whether the presence of the word SWISS in a mark indicates that the products are from Switzerland will depend upon the context and how the word appears in the mark. Each case must be assessed on its own merits and it cannot be the case that in all marks containing the word SWISS it is perceived as indicating that the products are from Switzerland. I will discuss this point in the context of the contested mark later. In

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<sup>5</sup> Ditto, para 11 and Exhibit DS6

<sup>6</sup> Ditto, para 12

<sup>7</sup> Ditto, para 13

respect of the second assertion, I accept that the UK average consumer may expect some goods originating from Switzerland to be of superior quality, such as watches (as referred to in the evidence) and chocolate, but it is not obvious from the evidence that the perception of the UK average consumer extends to all products originating from Switzerland.

16) In respect of the goods of the contested application Mr Stärkle's has stated that Switzerland enjoys a "strong international reputation". The evidence in support of this statement would appear to be the evidence relating to the existence of the Swiss Vitamin Institute, its certification service and the fact that there are Swiss vitamin companies that have achieved great success. I find that none of these, taken separately or together, to be persuasive. It would be considered quite normal for any developed economy to have the same or equivalent certification service and also to have successful companies without that territory being able to claim such a reputation. Further, as I noted in paragraph 14, above, there is nothing before me that the claimed "strong international reputation" extends to the UK or is known by the UK average consumer.

17) In respect of Mr Stärkle's evidence regarding Switzerland's "Swissness" legislation, I find that this is not relevant because it is also not an issue that the UK average consumer is likely to be aware. Further, the context of the use of SWISS in a trade mark is a relevant factor that I must take into account and it is not clear from the evidence how such legislation is applied and whether it is applicable in all cases where SWISS appears as part of a mark, even where, for example, its use is in such a way as to not indicate geographical origin and/or quality.

18) The opponent submits that Mr Stärkle's evidence demonstrates that Switzerland "is a well-known country associated with quality and prestige and it is also reputed for producing high quality vitamins, dietary food supplements, food supplements, mineral food supplements"<sup>8</sup>. As I have already mentioned, the UK average consumer may be familiar with some quality Swiss products, such as watches or chocolate, but there is no evidence that the UK average consumer associates Switzerland with high

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<sup>8</sup> Written submissions, para 19

quality vitamins and food supplements. The opponent refers to the finding of the General Court (“the GC”) in *Mövenpick v OHIM*, T-377/09 and it provides a quote from that decision, namely, that the EUIPO’s “Board of Appeal rightly found [...] that the goods and services of Swiss origin are generally perceived as being of good quality and that the element “swiss” of the trade mark applied for is not only an indication of geographical origin of the goods and services concerned but also conveys information relating to quality”. The judgment is not available in English and, consequently, it is reasonable to assume that such comments were made without the court having the UK consumer in mind. I also note that the GC was considering the mark “Passionately Swiss” that has different conceptual considerations to the mark at issue in these proceedings. For these reasons, I find that this GC judgment does not support the opponent’s submissions.

19) I find that the evidence fails to support the claim that Switzerland has a reputation in respect of vitamins and food supplements or that, even if I am wrong, that the UK average consumer is aware of this.

20) In respect of the claim that the SWISS element of the applicant’s mark describes the geographical origin, the opponent relied upon a number of decisions of the GC and the EUIPO Board of Appeal. It conceded that I was not bound by the latter but I should, nonetheless, consider them. The marks in issue in these cases were, variously, BRASIL<sup>9</sup>, MONACO<sup>10</sup>, PARIS<sup>11</sup> and GR<sup>12</sup> (being “an obvious abbreviation for Greece”). I have taken all of these into account but dismiss their relevance because they differ from the current case in that they consist of a single element indicating a geographical location, whereas, in the current case, the geographical element is combined with other elements. I must consider the mark as a whole and any impact of the additional elements may have that could lead to a different finding to the findings of the GC or EUIPO Boards of Appeal.

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<sup>9</sup> EUIPO Board of Appeal Case R 434/2013-1

<sup>10</sup> GC judgment T-197/13

<sup>11</sup> EUIPO Board of Appeal Case R 3265/2014-4

<sup>12</sup> Ditto, Case R 1337/2016-5

21) The opponent refers to the CJEU judgment in *Produktions-und Vertriebs GmbH (WSC) v. Boots-und Segelzubehör Walter Huber (C-108/97)*, *Franz Attenberger (C-109/97)*, paragraph 31, where it stated:

“Thus, under Article 3(1)(c) of the Directive, the competent authority must assess whether a geographical name in respect of which application for registration as a trade mark is made designates a place which is currently associated in the mind of the relevant class of persons with the category of goods concerned, or whether it is reasonable to assume that such an association may be established in the future.”

22) It submits that it must be emphasised that to fulfil the requirement of section 3(1)(c) it is not necessary for the sign in question to be already associated in the mind of the average consumer to a geographical location. Rather, it is reasonable to assume that a sign will, in the future, be associated to a geographical location. I keep this guidance in mind, but once again, I remind myself that I must consider the mark as a whole and note that an element, on its own, may indicate a geographical location, but may impart a different impression when combined with other elements.

23) The opponent also submits that the elements LIFE and FOREVER describe the effect that the owner wants the products to have on the consumer. Such a dissection of the mark appears somewhat artificial. The words SWISS and LIFE are conjoined leading the average consumer to perceive these two elements as functioning together to indicate the lifestyle in Switzerland. The FOREVER element is likely to be perceived as having its common dictionary meaning of “for all future time”<sup>13</sup>. Consequently, the mark when considered as a whole, informs the UK average consumer that the products sold under the mark will impart the benefits of a permanent Swiss lifestyle or that they will impart, upon the user, a level of health perceived as being equal to that enjoyed by Swiss people. This may suggest a beneficial aspect of using these products if it were recognised that the lifestyle of the Swiss is considered to be a particularly healthy one (but I have no evidence either way on this). It does not impart a message that the goods sold under the mark

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<sup>13</sup> <https://www.lexico.com/en/definition/forever>

originate in Switzerland. This is a distinction that sets the contested mark apart from the marks referred to in the various case law cited by the opponent.

24) In light of these findings, the applicant's mark does not consist exclusively of a sign that designates a characteristic of the applicant's goods because:

- (i) Its meaning is only allusive;
- (ii) It appears to allude to a healthy lifestyle and not to the products having Swiss origin as pleaded by the opponent, and;
- (iii) Insofar as the opponent's case relies on a pleading that it indicates an enhanced quality, this is not supported by the evidence.

25) For all these reasons, the grounds based upon section 3(1)(c) fails in its entirety. Further, I find that, for the same reasons, the contested mark is not devoid of any distinctive character for any of the reasons asserted by the opponent. As I stated in paragraph 10, above, for the reasons I have found that the opposition, based upon section 3(1)(c) fails, it also fails in respect of the ground based upon section 3(1)(b).

### **Section 3(3)(b)**

26) This section of the Act reads:

“(3) A trade mark shall not be registered if it is-

- (a) [...]
- (b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service).”

27) Section 3(3)(b) of the Act derives directly from article 3(1)(g) of the Directive. In the judgment of the CJEU in *Elizabeth Florence Emanuel v Continental Shelf 128 Ltd* Case C-259/04, paragraphs 46 – 50, it held that the following two conditions must be satisfied before this ground for refusal can apply:

- (i) there must be actual deceit or a sufficiently serious risk that the relevant consumer will be deceived, and;

(ii) the deception must be attributable to the nature of the mark itself (as opposed to the way in which it is used).

28) An objection under section 3(3)(b) should therefore only be raised if there is a real, as opposed to a purely theoretical potential for deception of the public. In *Consorzio per la tutela del formaggio Gorgonzola*, the CJEU stated:

“41. As to that, the circumstances contemplated in Article 3(1)(c) of the First Directive 89/104 do not apply to the present case. The circumstances envisaged in the other two relevant provisions of that directive - refusal of registration, invalidity of the trade mark, or revocation of the proprietor's rights, which preclude its use being continued under Article 14(2) of Regulation No 2081/92 presuppose the existence of actual deceit or a sufficiently serious risk that the consumer will be deceived (see, on that subject, *Clinique*, cited above, Case C- 470/93 *Mars* [1995] ECR I-1923, and Case C-313/94 *Graffione* [1996] ECR I-6039, paragraph 24).”

29) There is no evidence of actual deceit and I must, therefore, consider if there is a sufficiently serious risk that the relevant consumer will be deceived.

30) The opponent asserts that the applicant's mark is of such a nature as to deceive the public as to the nature and/or quality and/or geographic origin of the goods because of the inclusion of the word SWISS in the mark. It claims this will result in real potential for deception if the goods sold under the mark do not originate from Switzerland and have the desirable quality associated with Swiss goods. It refers to a decision<sup>14</sup> of the EUIPO Board of Appeal in respect of a stylised mark with the word elements MONTE-CARLO where it was found to be misleading if the proprietor has no connection with Monte Carlo. For the same reasons as I detailed in paragraph 20, above, this decision is not persuasive because the word elements of this mark consist solely of the place name Monte Carlo and, consequently, the considerations are different to those in respect of the contested mark.

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<sup>14</sup> R 1431/2010-2

31) At paragraphs 23 and 24, above, I have already found that the contested mark, when considered as a whole, informs the UK average consumer, in an allusive way, that the products sold under the mark will impart the benefits akin to a permanent Swiss lifestyle or a level of health perceived as being equal to that enjoyed by Swiss people. It does not impart a message that the goods sold under the mark originate in Switzerland or are of a certain quality associated with Switzerland (as I have already concluded, this latter point was not established in the evidence). It follows from such findings that the contested mark will not deceive the UK average consumer in circumstances where it is used in respect of vitamins or food supplements not originating from Switzerland.

32) As a consequence of these conclusions, I find that the opponent has failed to show that there is a sufficiently serious risk that the UK average consumer will be deceived if the mark is used in respect of goods not originating from Switzerland or not having some recognisable enhanced quality associated with Switzerland.

33) In summary, I find that the ground based upon section 3(3)(b) also fails.

## **Summary**

34) The opposition fails in respect of all grounds and the application may proceed to registration.

## **COSTS**

35) The applicant has been successful and is entitled to a contribution towards its costs. However, because it appears to be an unrepresented party, by letter of 17 September 2019, it was directed to complete a costs proforma by 15 October 2019.

It did not comply with this direction and no completed costs proforma was filed.  
Therefore, I make no award of costs.

**Dated this 13<sup>th</sup> day of November 2019**

**Mark Bryant**  
**For the Registrar,**  
**The Comptroller-General**