

O-695-18

UK INTELLECTUAL PROPERTY OFFICE

1st Floor
4 Abbey Orchard St
London, SW1P 2HT

Friday, 2nd November 2018

Before:
THE APPOINTED PERSON
(Miss Emma Himsworth QC)

In the matter of THE TRADE MARKS ACT 1994

-and-

In the matter of UK Trade Mark Application No 3194423 by
Leanora Harper to register BOTEGA NATURALS NATURE'S CHILD

-and-

Opposition thereto under no. 408715 by Lorenz Snack-World
Holding GmbH

-and-

An appeal by Lorenz Snack-World Holding GmbH from decision
O-244-18 by Ms. J. Ralph, for the Registrar, on 18th April
2018.

Computer-aided transcript of the Stenographic notes of
Marten Walsh Cherer Ltd.
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The Appellant did not appear and was not represented.

The Respondent did not appear and was not represented.

APPROVED DECISION

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THE APPOINTED PERSON: This is the hearing of an appeal against decision of Ms June Ralph, on behalf of the Registrar of Trade Marks, dated 18th April 2018, with the BL number O-244-18.

The proceedings were an opposition brought by Lorenz Snack-World Holding GmbH, who I shall refer to as the Opponent. It was an opposition to trade mark application number 3194423 by Leanora Harper, who I shall refer to as the Applicant.

The opposition was brought on the basis of section 5(2) (b) of the Trade Marks Act 1994.

In her decision, which was made on the papers before her, the Hearing Officer dismissed the opposition.

The Hearing Officer went on to make no order as to costs, on the basis that although the unrepresented Applicant was invited to indicate whether she wished to make a request for an award of costs, she did not do so.

On 14th May 2018, an appeal against the Hearing Officer's decision was filed on behalf of the Opponent, pursuant to section 76 of the Trade Marks Act 1994. Notification of the hearing of the appeal today was sent to the parties by letter dated 3rd October 2018. Subsequently, in the light of a request from the Opponent that the appeal be determined on the papers, I indicated that pursuant to rule 73(1) of the Trade Mark Rules 2008, in the absence of any indication from the Applicant as to whether she was content

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for the appeal to be determined on the papers, that the hearing would go ahead.

I gave directions to the parties to notify me in writing whether they wished for the appeal to be determined on the papers. It was also made clear that in the event that the hearing was not vacated, the appeal would be determined on the basis of the papers before me at the time of the hearing and any oral submissions that were made at the hearing.

No response was received from the Applicant and therefore the hearing was not vacated. Further, in this connection I note that the Applicant has not at any stage taken any steps with respect to the appeal, or indeed the proceedings, since the filing of the counterstatement and Form TM8.

In accordance with my directions for the conduct of the appeal, the Opponent reconfirmed that it would not be attending the hearing of the appeal and filed written submissions, together with a copy of the judgment in case *C-120/04 Medion AG v Thomson Multimedia Sales Germany and Austria GmbH*.

The Applicant has not appeared at the hearing of the appeal today. I have therefore reached my decision on the basis of the papers before me, without the assistance of any oral submissions from either side.

For reasons that will be provided in writing in due

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course, it does not seem to me that there is any error of principle or material error in the Hearing Officer's decision. It was, in my view, open to the Hearing Officer to make the decision that she did. In the result the appeal fails and is accordingly dismissed.

The appeal having been dismissed, the Applicant is entitled to her costs. However, as the Applicant has taken no steps whatsoever in connect with the present appeal, my preliminary view is that it is appropriate to make no order as to costs on the appeal. In the absence of any submissions from the Applicant as to why that is not the correct order as to the costs of the appeal, such submissions to be made on or before 4pm on 16th November 2018, that is the order that I shall make.

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