

O/0552/25

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. 913909288

IN THE NAME OF LILIUM ENTERPRISES S.A.

FOR THE TRADE MARK



IN CLASS 33

AND

AN APPLICATION FOR RECTIFICATION

UNDER NO. 84838

BY HORIZONS GROUP (LONDON) LTD

## Background

1. The trade mark shown on the cover page of this decision (“the contested trade mark”) is a comparable mark created from a EU Trade Mark registration numbered 013909288 (“EUTM”). Under Article 54 of the Withdrawal Agreement between the UK and EU, comparable UK trade marks were automatically created for all EUTMs registered as at the end of the Implementation Period of 31 December 2020 (“IP Completion Day”). Being a comparable mark, UKTM number 913909288 is recorded on the UK Trade Mark Register and has the same legal status as if it had been applied for and registered under UK law. Consequently, it has retained its original filing and registration dates of 2 April 2015 and 29 July 2015 respectively.

2. The EUTM was applied for by Dragon Spirits Limited (“Dragon Spirits”) in respect of *vodka; vodka based products* in class 33.

3. On 10 May 2019 the previous Director of Dragon Spirits, Mr Michael Morren, assigned the EUTM registration to Liliium Enterprises S.A. (“Liliium”), signing the Confirmatory Statement of Trademark Assignment document both as assignor and assignee. On 15 May 2019, an application to record the change of ownership of the EUTM was filed at the EUIPO by Joost Muylle of De Clercq & Partners, representing both the old proprietor (Dragon Spirits) and new proprietor (Liliium). The assignment was duly recorded in the EUTM register. Following IP Completion Day when the comparable mark was created it was registered on the UKIPO register in the name of Liliium Enterprises S.A.

4. On 16 September 2021, an application to rectify the register was made on Form TM26(R) by Horizons Group (London) Ltd (“Horizons”). In a witness statement accompanying the application to rectify the register,<sup>1</sup> Horizons stated that it had been assigned all intellectual property rights in the trade mark by Dragon Spirits on 27 June 2019. In so far as the assignment from Dragon Spirits to Liliium it is said that that assignment was “carried out fraudulently” by Mr Morren. Mr Morren was the Director of Dragon Spirits up until a summary judgement issued in February 2019 ordered him to relinquish all shares in the company. It is further stated that the assignment made by Mr Morren was unauthorised as he did not have the approval of at least 70% of the

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<sup>1</sup> Representing its statement of grounds.

shareholders, as required by the governing Joint Venture Agreement (“JVA”). In contrast, it is said that the assignment of the trade mark to Horizons was authorised by 71.4% of the shareholders, in accordance with the JVA. A number of documents were attached to the application for rectification which I will address further below. Horizons seeks rectification of the register.

5. On 7 February 2022, due to a related dispute between Capital Distribution & Consulting Inc (“CDC”) and Horizons, CDC were granted leave to intervene in these proceedings as they were deemed to have a direct interest in the outcome of the proceedings and because they had information pertinent to the current ownership of the contested registration.<sup>2</sup>

6. CDC’s interest arises from its subsequent purchase of all IP rights in the Dragon Spirits brand from the liquidators appointed to realise Dragon Spirits’ assets following a winding up order of the company being granted by the High Court of Hong Kong in September 2019. The dispute between Horizons and CDC centres around the current ownership of a number of trade marks originally in the name of Dragon Spirits, each laying claim to the proprietorship of those trade marks.

7. These proceedings and other related oppositions were suspended pending the outcome of related rectification proceedings between Horizons and CDC in relation to a different trade mark namely UKTM registration number 2599069. A decision in relation to that trade mark was issued on 26 May 2023 under number O/0485/23. These proceedings were subsequently resumed. It is sufficient to say in relation to the dispute between Horizons and CDC, that CDC supports Horizons’ application for rectification in so far as it concerns the wrongful assignment of the contested mark from Dragon Spirits to Liliium and the removal of Liliium’s name from the UK register as the proprietor of the contested mark.

8. In so far as this application for rectification and Liliium’s position is concerned, as the application for rectification was made by a person other than the registered proprietor, it was necessary to serve the application on the proprietor in accordance with Rule 44(2) of the Trade Marks Rules 2008 (“the Rules”). This was done on 20 October 2021 to the address for service of Liliium’s recorded representative, De Clercq

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<sup>2</sup> By virtue of Rule 45 of the Trade Mark Rules 2008.

& Partners. The accompanying letter outlined that Liliium would be allowed two months to 20 December 2021 to file a Form TM8 and counterstatement. Further given that CDC were an interested party as an intervenor, the application was also served on it. On 29 October 2021, De Clercq responded stating that they were no longer representing Liliium and so Liliium was served directly to the last known address recorded on the register. Neither Liliium, nor any representative, responded to that notice nor did it file a defence. Therefore, in so far as Liliium's position is concerned, the application for rectification has not been contested. Despite this, I must still be satisfied that the register does stand in error, before I can direct any rectification, particularly given CDC's interest.

## **Evidence**

### Horizons' evidence

9. Horizons' application for rectification, is supported by the witness statement of Mr Hiro Bharwani, dated 16 September 2021, together with Exhibits marked HB1-HB9.

10. Ms Bharwani confirms that he is the Director of Horizons. The relevant points taken from his witness statement and exhibits are summarised as follows:

- i. Mr Morren was a Director of Dragon Spirits and together with his associates as the founders and shareholders of the company, entered into a Joint Venture Agreement (JVA) and Deed of Adherence on 25 July 2011, to govern the management and operation of the company;
- ii. Under Clause 11 of the JVA, matters which required the approval of a minimum of 70% of shareholder agreement included the transfer and assignment of any intellectual property rights held by the company;
- iii. Under Clause 14 of the JVA, a consequence of shareholder non-compliance or default was that the other shareholders were entitled to require the defaulting shareholders to sell all of their shares;
- iv. As a result of adjudged breaches of his fiduciary duties, on 4 February 2019, Mr Morren was ordered by the High Court of Hong Kong, to transfer all shares in the company to other named shareholders and he was removed as a shareholder of Dragon Spirits, with 71.4% of its shareholders approving the action;

- v. Due to Mr Morren's non-compliance with the February court order, a second court order was issued on 6 June 2019, ordering Mr Morren to transfer his shares within 14 days. That order also permitted the solicitors for the Plaintiffs to sign and file the documentation needed to affect the share transfer if he failed to do so;
- vi. On 27 June 2019, it is said that all global intellectual property rights concerning the 'Royal Dragon Vodka' brand were assigned to Horizons by Deed of Assignment. The assignment was said to be authorised by 71.4% of Dragon Spirits shareholders, in accordance with the terms of the JVA.<sup>3</sup>

### CDC's evidence

11. CDC's evidence consists of the witness statement of Dennis Lee dated 24 January 2022, accompanied by seven exhibits. Mr Lee is a partner at BDB Pitmans LLP, CDC's former legal representatives.

12. Mr Lee outlines the background to the dispute and provides a summary of how the contested mark came to be in the name of Liliun and the position regarding Mr Morren which mirrors Mr Bharwani's evidence.

13. Mr Lee also sets out CDC's position regarding Horizons' claim as to the current ownership of the contested trade mark outlining details regarding the winding up proceedings. Mr Lee also produces documentary evidence in the form of a copy of an Asset Purchase Agreement dated 7 May 2021 regarding the claimed purchase of the contested mark by CDC from the insolvency practitioners effected in or about May 2023. I note that the schedule within the document listing the trade marks to which the transaction relates, whilst referencing other global trade marks within the brand, only makes reference to the EUTM from which the comparable mark derives but not the actual comparable UKTM itself.

14. Mr Lee confirms that CDC supports Horizons' application for rectification, in so far as it relates to correcting the register and reverting the ownership back into the name of Dragon Spirits. It does not support any subsequent transfer of ownership into the name of Horizons for reasons that have already been outlined in full in decision

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<sup>3</sup> By decision dated 26 May 2023 I found that the June 2019 assignment deed as relied upon was not the instrument of transfer as claimed, by which time Dragon Spirits had become insolvent.

O/0485/23 as aforesaid. Consequently, given CDC's position, it is unnecessary for me to outline the evidence relating to the dispute between Horizons and CDC in any detail.

### **Outcome of previous rectification proceedings**

15. In so far as the assignment to Horizons is concerned, under decision number O/0485/23 (which related to an application for rectification of trade mark number 2599069 between Horizons and CDC), I found that in those proceedings the June 2019 deed of assignment relied upon by Horizons, was not the instrument upon which the trade mark was assigned and was no more than an agreement to assign at a future date, but was not the actual assignment instrument. The consequence of this meant that the ownership of trade mark number 2599069 could not have validly passed to Horizons by way of assignment in June 2019, but was likely to have occurred at some later date, by which point an insolvency petition had already been issued against Dragon Spirits in the High Court of Hong Kong. CDC's rectification application was, therefore, successful against Horizons and the register was corrected to return the trade mark into the name of Dragon Spirits, and subsequently to CDC.

### **Decision**

16. Despite the dispute between Horizons and CDC as to the current ownership of the contested mark, Horizons and CDC are both in agreement that any assignment from Dragon Spirits to Liliium was as a result of unauthorised actions by Mr Morren. Given that the scope of the dispute in relation to these proceedings relates to whether the assignment from Dragon Spirits to Liliium was made in error, I shall proceed to determine the matter.

17. The rectification of the register is governed by section 64 of the Trade Marks Act 1994 ("the Act"), which states:

"64. - (1) Any person having a sufficient interest may apply for the rectification of an error or omission in the register: Provided that an application for rectification may not be made in respect of a matter affecting the validity of the registration of a trade mark.

(2) An application for rectification may be made either to the registrar or to the court, except that—

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(3) Except where the registrar or the court directs otherwise, the effect of rectification of the register is that the error or omission in question shall be deemed never to have been made.

(4) The registrar may, on request made in the prescribed manner by the proprietor of a registered trade mark, or a licensee, enter any change in his name or address as recorded in the register.

(5) The registrar may remove from the register matter appearing to him to have ceased to have effect.”

18. Despite the dispute between CDC and Horizons as to the current ownership of the contested mark, Horizons appears to have sufficient interest to make the application for rectification. There do not appear to be any proceedings concerning this contested trade mark ongoing in the court.

19. An application to record a change of ownership was made by filing a transfer form at the EUIPO via Mr Morren’s representative. The information provided on the form is taken at face value and as at IP Completion Day when the EUTM was cloned into a comparable UKTM, the Registrar does not investigate or otherwise seek to establish the legality of a previous claim regarding a change of ownership unless, as in this case, the recordal of the change of ownership is subsequently challenged.

20. The evidence, accepted by CDC, demonstrates that Mr Morren was removed as a shareholder of Dragon Spirits on 4 February 2019. I note that the application to record a change of ownership of the trade mark was not filed until 15 May 2019. The evidence shows and which I accepted in the previous proceedings, that Mr Morren was no longer a valid shareholder of Dragon Spirits when he purported to assign the contested trade mark from Dragon Spirits to Liliun, nor when he made the application to record the change of ownership and, therefore, had no legal standing to do so on Dragon

Spirits' behalf. Moreover, even if Mr Morren had the requisite legal standing, there is no evidence that the assignment had been approved by at least 70% of Dragon Spirits shareholders, as stipulated by the JVA to which he was a signatory. Accordingly, I accept as I did in the other proceedings that the assignment of the trade mark signed by Mr Morren was made without authority.

21. Consequently, I accept that the register does stand in error. That error was that the assignment could not have legally been made. In my view, it is right that the error be corrected.

### **Conclusion**

22. The application for rectification succeeds. I direct that the register be rectified and that the name of Liliun Enterprises S.A. shall be removed as the proprietor of UK trade mark number 913909288 and that the proprietorship of the contested mark reverts back into the name of Dragon Spirits Limited. The effect of my decision is that the change of ownership from Dragon Spirits Ltd to Liliun Enterprises S.A. shall be deemed never to have been made.

### **Final remarks**

23. Whilst CDC now claim to be the rightful owners of the trade mark it is not permissible for me to merely follow the outcome of the previous decision and substitute CDC's name as the proprietor of the trade mark, to do so would be to bypass the assignment procedure. Whilst CDC supports Horizons' claim as against Liliun it is not the applicant in rectification. Therefore, in order to substitute its name as the current owner of trade mark no. 913909288 on the UK Register, CDC would need to make an application in the normal way, usually by filing form TM16, accompanied by such documentation sufficient to establish the transaction as to the change of proprietorship.

### **Costs**

24. In so far as this application for rectification, Horizons has been successful in bringing the rectification action and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. This decision was taken from the papers without an oral hearing and Horizons filed evidence to support its

case. In the circumstances, I award Horizons the sum of £700 as a contribution towards the cost of preparing a statement and evidence.

25. I order Liliium Enterprises S.A. to pay Horizons Group (London) Ltd the sum of £700. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an unsuccessful appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 19<sup>th</sup> day of June 2025**

**L Davies**

**For the Registrar**