

**O/188/21**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
REGISTRATION NO. 2599069  
IN THE NAME OF LILIUM ENTERPRISES S.A.  
FOR THE TRADE MARKS:**

**Royal Dragon Vodka  
ROYAL DRAGON VODKA**

**IN CLASS 33**

**AND**

**AN APPLICATION FOR RECTIFICATION  
UNDER NO. 84827  
BY HORIZONS GROUP (LONDON) LTD**

## **BACKGROUND**

1. The trade marks shown on the cover page of this decision were applied for as a series of marks on 25 October 2011 by Dragon Spirits Limited (“Dragon Spirits”), under number 2599069. They were registered on 3 February 2012 in respect of ‘*vodka; vodka based products*’ in class 33.

2. On 25 June 2019, an application to record a change of ownership of the trade marks was filed on Form TM16 by Mr Joost Muylle of De Clercq & Partners, representing the old and new proprietors.<sup>1</sup> The same date was claimed by Mr Muylle as being the date which the new proprietor assumed ownership of the registration. The assignment was duly recorded in the register on 15 July 2019 and the registration now stands in the name of Liliun Enterprises S.A. (“the proprietor”).

3. On 31 January 2020, an application to rectify the register was made on Form TM26(R) by Horizons Group (London) Ltd (“the applicant”). In the statement of case accompanying the application to rectify the register, the applicant stated that it had been assigned all intellectual property rights in the trade marks by Dragon Spirits and that the assignment of the trade marks to the proprietor had been “carried out fraudulently”. Moreover, the applicant stated that Mr Michael Morren is the Director of the proprietor and that he had also been a Director of Dragon Spirits, until a summary judgement issued in February 2019 ordered him to relinquish all shares in the company. It is further stated that Mr Morren was never authorised to assign the trade marks as he did not have the approval of at least 70% of the shareholders, as required by the governing Joint Venture Agreement (“JVA”). In contrast, it is said that the assignment of the trade marks to the applicant 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 return to below.

4. 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 24

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<sup>1</sup> The Form TM16 was signed on behalf of both the old and new proprietors by Mr Michael Morren.

November 2020 to the address for service of its recorded representative, De Clercq & Partners. The accompanying letter outlined that the proprietor would be allowed two months to 25 January 2021 in which to file a Form TM8 and counterstatement. The proprietor failed to respond and, therefore, the application for rectification has not been contested. Nevertheless, I must still be satisfied that the register does stand in error before I can direct any rectification.

## **EVIDENCE**

5. By way of evidence to support the application for rectification, the applicant has provided the witness statement of Ms Joanne Bharwani dated 10 January 2020, together with Exhibits JB1 to JB8. Ms Bharwani confirms that she is a Director of the applicant. The relevant points from the witness statement and exhibits are as follows:

- Mr Morren was a Director of Dragon Spirits and entered into a JVA and Deed of Adherence on 25 July 2011;
- 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;
- 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 shareholder to sell all of their shares;
- As a result of adjudged breaches of his fiduciary duties, Mr Morren was ordered by the High Court of Hong Kong on 4 February 2019 to transfer all shares in the company to other named shareholders;
- A second court order was issued on 6 June 2019, ordering Mr Morren to transfer his shares within 14 days. The order also permitted other named shareholders to sign and file the documentation needed to affect the share transfer;

- On 4 February 2019, Mr Morren was removed as a shareholder of Dragon Spirits, with 71.4% of its shareholders approving the action;
- On 17 September 2019, all global intellectual property rights concerning the 'Royal Dragon Vodka' brand were assigned to the applicant by Deed of Assignment. The assignment was authorised by 71.4% of Dragon Spirits shareholders, in accordance with the terms of the JVA.

## **DECISION**

6. 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.”

7. As it appears to be the current rightful owner of the intellectual property rights relating to the ‘Royal Dragon Vodka’ brand, I consider that the applicant has sufficient interest to make the application for rectification. There do not appear to be any proceedings concerning the trade marks ongoing in the court.

8. An application to record a change of ownership is made by filing a Form TM16, as Mr Morren did through his representative. The information provided on the form is taken at face value and the registrar does not investigate or otherwise seek to establish the legality of the claim to change of ownership unless, as in this case, the recordal of the change of ownership is subsequently challenged.

9. The evidence 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 marks was not filed until 25 June 2019. Consequently, it is considered that Mr Morren was no longer a valid shareholder of Dragon Spirits when he made the application to record the change of ownership and, therefore, had no legal standing to do so on its 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, to my mind, the assignment of the trade marks was made without authority.

10. In light of the foregoing, I am prepared to 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**

11. The application for rectification has succeeded. I therefore direct that the register be rectified; that the name of Liliium Enterprises S.A. shall be removed as proprietor and that Dragon Spirits Limited shall be substituted in its place. The effect of my decision is that the recordal of the change of ownership to Liliium Enterprises S.A. shall be deemed never to have been made.

## **COSTS**

12. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 2/2016. This decision has been taken from the papers without an oral hearing. The applicant filed evidence in these proceedings. In the circumstances, I award the applicant the sum of **£700** as a contribution towards the cost of preparing a statement and evidence.

13. I therefore 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 23rd day of March 2021**

**James Hopkins**  
**For the Registrar**  
**The Comptroller-General**