

O-329-04

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO 2303346
BY UNILEVER PLC
TO REGISTER THE TRADE MARK:**

VEGETABALLS

IN CLASS 29

**AND THE OPPOSITION THERETO
UNDER NO 91263
BY PODRAVKA PREHRAMBENA INDUSTRIJA DD**

Trade Marks Act 1994

**In the matter of application no 2303346
by Unilever Plc
to register the trade mark:
VEGETABALLS
in class 29
and the opposition thereto under no 91263
by Podravka Prehrambena Industrija DD**

1) On 14 April 2004 Mr M Reynolds issued a provisional decision in relation to the above opposition, BL 0/102/04. The decision was provisional as the final outcome depended upon the registration of Community trade mark application no 2411882. This application has now been registered for all the goods referred to in Mr Reynolds' decision:

preserved, dried and cooked vegetables, in particular salted and pickled vegetables; soups and soup preparations, including vegetable soup preparations and meat broth concentrates; meat extracts; plant protein and plant extracts for food; mushrooms and garden herbs, as preserves, dried or frozen; not being semi-prepared or prepared meals;

sauces, salad dressings, spices, seasoning salt, condiments, additives for improving the taste of foodstuffs; salt; herb salt and vegetable salt for cooking purposes; coffee, artificial coffee, tea, cocoa, in the form of extracts; sugar, honey, natural sweeteners; yeast, baking powder, ice-cream powder and puddings in powdered form; salt, mustard, vinegar, mayonnaise.

2) In his decision, Mr Reynolds held, subject to the registration of Community trade mark application no 2411882, that the opposition would succeed in relation to part of the specification of the application – *vegetables*. In the absence of Mr Reynolds, it falls upon me to write a supplementary decision.

3) Application no 2303346 is to be refused, under section 5(2)(b) of the Trade Marks Act 1994, in respect of *vegetables*.

4) Unilever Plc should file, within one month of the expiry of the appeal period from this decision, a form TM21 to amend the specification to read as follows:

prepared meals containing vegetables.

If no form TM21 is filed within the period set the application will be refused in its entirety. (If an appeal is filed the period for filing the form TM21 will be one month from the final determination of the case, if the appeal is unsuccessful.)

5) Both sides have been partially successful and I consider it appropriate that they should bear their own costs. I, therefore, make no award of costs.

Dated this 2nd day of November 2004

**David Landau
For the Registrar
the Comptroller-General**