



Simpson
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10 July 2009

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For: Ceri Wells

New Zealand Trade Mark Registration No. 700726 RADLER in the name of DB Breweries Limited - Application for Declaration of Invalidity by Society of Beer Advocates (SOBA) Incorporated

Enclosed for your information is a copy of the owner's Counterstatement in the above matter filed today with the Intellectual Property Office of New Zealand.

Yours faithfully
SIMPSON GRIERSON

Sarah Chapman
Senior Associate

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BARRISTERS AND SOLICITORS

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Trade Marks Act 2002
Section 73, Regulations 108 and 109

IN THE MATTER of registration no. 700726 RADLER
in class 32 in the name of DB
Breweries Limited

AND IN THE MATTER An application for declaration of
OF invalidity filed on 6 May 2009 by
Society of Beer Advocates (SOBA)
Incorporated (the **Applicant**).

COUNTERSTATEMENT

NOTICE is hereby given by DB Breweries Limited, of Corner of Great South Road and Bairds Road, Otahuhu, Auckland, the owner of registration no. 700726 (the **Owner**), that the following are the grounds relied on in support of the registration:

1. The Owner is the proprietor of trade mark registration no. 700726 for RADLER in class 32 (**Trade Mark**).
2. The Owner is the owner of the RADLER trade mark in New Zealand which has been used by it or a related company in connection with beer since 2001.
3. The Trade Mark was at the date of application, and remains today, eligible for registration in New Zealand under the Trade Marks Act 2002.

Response to Application for Declaration of Invalidity

4. The Owner admits that the Applicant is an incorporated society but otherwise has no knowledge of and therefore denies the statements in paragraph 1.1.
5. The Owner admits that the document purporting to be the Applicant's charter filed with the Registrar of Incorporated Societies includes the goals set out in

paragraph 1.2, but otherwise has no knowledge of and therefore denies paragraph 1.2.

6. The Owner denies paragraph 1.3.
7. The Owner denies paragraph 1.4.
8. The Owner denies paragraph 1.5.
9. Except as admitted above, the Owner denies paragraph 1.

In response to the grounds for the application, with reference to the Application for Declaration of Invalidity, the Owner states that:

10. It denies paragraph 2.
11. It denies paragraph 3.
12. It denies paragraph 4.
13. Alternatively or additionally to the denials in paragraphs 11-13 (inclusive) above, the Trade Mark has acquired distinctive character such that section 73(2) of the Trade Marks Act 2002 applies.
14. It is not required to plead to the relief sought but denies that it should be granted.

Relief

15. The Owner seeks:
 - (a) dismissal of the Application for Invalidity; and
 - (b) costs of and incidental to this Application for Invalidity; and

(c) any other relief the Commissioner deems appropriate.

The Owner's address for service in New Zealand in these proceedings is c/o Simpson Grierson, 88 Shortland Street, Auckland, New Zealand (For: S Chapman Ref: 1907226).

DATED this 10th day of July 2009

SIGNED on behalf of DB Breweries Limited by
its agent SIMPSON GRIERSON per:


A handwritten signature, appearing to be 'S. Chapman', is written over a horizontal line.

TO: The Commissioner of Trade Marks
Wellington