

**In The Matter Of Application No. 8886/95
By Bayer Aktiengesellschaft
To Register A Trade Mark In Class 5**

And

**In The Matter Of Opposition Thereto
By Beecham Group P.L.C**

*Before Principal Assistant Registrar Anne Loo
17 October 2001*

Trade Mark - application for registration - opposition - applicant's mark similar to and/or so resembles opponent's mark - deception and confusion - Trade Marks Act (1992 Revised edition) ss 10, 12(2), 15 and 23.

The Applicants applied for registration of the mark "AMOXIBAY" in respect of class 5 goods. The Opponents being the proprietors of the registered trade mark "AMOXIL" in class 5, opposed the trade mark application on the ground that the Applicants' mark was similar to and/or so resembled their mark such that it was likely to deceive or cause confusion and/or lead to the Applicants' products being passed off or mistaken for the goods of the Opponents' manufacture.

Held, allowing the opposition:

- On the question of s.23, the marks "AMOXIL" and "AMOXIBAY" are neither identical nor confusingly similar and there will be no real tangible risk of confusion and deception in the present case if the registration of the Applicants' mark "AMOXIBAY" proceeds.
- Although it cannot be disputed that the Opponents' mark has attained this reputation, reputation is but one requirement under section 15. There is also the question whether there will be a likelihood of confusion or deception should the Applicants' mark be allowed registered. As the marks are not confusingly similar, there is no likelihood of confusion or deception arising.

Provisions of legislation discussed:

- Trade Marks Act (Cap. 332, 1992 Revised Edition), Sections 10, 12(2), 15 & 23.

Cases referred to:

- Jellinek's Application [1946] 63 RPC 59
- Aristoc Ltd v Rysta Ltd [1943] 60 RPC
- Univer Trade Mark [1993] RPC 239
- Erectiko mark [1953] 52 RPC
- Pianotist Co's Application [1906] RPC 774
- Otsuka Pharmaceutical co. Ltd v Farmatalia Carlo Erba SpA [1995] AIPR 86
- Harker Stagg Ltd's Trade Mark [1953] 70 RPC
- Terbuline Trade Mark [1990] RPC 21
- Floradix Trade Mark [1974] RPC 583
- Chugai Seiyaku KK v Elf Sanofi UK Ltd [1995] AIPR 371
- Smith Hayden & Co's Application (1945) 63 RPC 97
- Bali Trade Mark [1969] RPC 472
- Lancer Trade Mark [1987] RPC 303
- Tiffany & Co v Fabriques de Tabac Reunies SA [1999] 3 SLR 147