

Alicante, 25/05/2018

BOULT WADE TENNANT
Verulam Gardens
70 Gray's Inn Road
London WC1X 8BT
REINO UNIDO

Notification of a decision to the EUTM proprietor/IR holder

Revocation number:
Contested trade mark:

000018125 C
001495100
LAMBRETTA

Please find attached the decision terminating the proceedings referred to above. The decision was delivered on **25/05/2018**.

Please note that the decisions of the Cancellation Division are not signed by the officials responsible but only indicate their full name and bear a printed seal of the Office in accordance with Article 94(2) EUTMR.



Claudia SCHLIE

Enclosures (excluding the cover letter): 03 pages

CANCELLATION No 18125 C (REVOCATION)

Brandconcern BV, Goudstraat 99, 2718 RD Zoetermeer, Netherlands (applicant), represented by **Wood IP Limited**, 2 Ivy Court, NN11 4EP Daventry, United Kingdom (professional representative)

a g a i n s t

Scooters India Limited, Post Bag No 23 Sarojini Nagar, 226 008 Lucknow, India (EUTM proprietor), represented by **Boulton Wade Tennant**, Verulam Gardens 70 Gray's Inn Road, WC1X 8BT London, United Kingdom (professional representative).

On 25/05/2018, the Cancellation Division takes the following

DECISION

1. The application for revocation is upheld.
2. The EUTM proprietor's rights in respect of European Union trade mark No 1 495 100 are revoked in their entirety as from 04/12/2017.
3. The EUTM proprietor bears the costs, fixed at EUR 1 080.

REASONS

The applicant filed a request for revocation of European Union trade mark No 1 495 100 'LAMBRETTA' (word mark) (the EUTM). The request is directed against all the goods covered by the EUTM, namely:

Class 3: *Soaps; perfumery, essential oils, cosmetics, hair lotions.*

Class 12: *Vehicles; apparatus for locomotion by land, air or water.*

Class 18: *Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.*

Class 25: *Clothing, headgear.*

The applicant invoked Article 58(1)(a) EUTMR.

GROUNDINGS FOR THE DECISION

According to Article 58(1) (a) EUTMR, the rights of the proprietor of the European Union trade mark will be revoked on application to the Office, if, within a continuous period of five years, the trade mark has not been put to genuine use in the Union for the goods or services for which it is registered, and there are no proper reasons for non-use.

In revocation proceedings based on the grounds of non-use, the burden of proof lies with the EUTM proprietor as the applicant cannot be expected to prove a negative fact, namely that the mark has not been used during a continuous period of five years. Therefore, it is the EUTM proprietor who must prove genuine use within the European Union or submit proper reasons for non-use.

In the present case the EUTM was registered on 06/08/2002. The revocation request was submitted on 04/12/2017. Therefore, the EUTM had been registered for more than five years at the date of the filing of the request.

On 20/12/2017, the Cancellation Division duly notified the EUTM proprietor of the application for revocation and gave it a time limit of two months to submit evidence of use of the EUTM for all the goods for which it is registered. A request of extension of the time limit to submit proof of use from the EUTM proprietor was received by the Office on 23/02/2018. The time limit to submit proof of use, originally due to expire on 25/02/2018 was extended until 25/04/2018.

The EUTM proprietor did not submit any observations or evidence of use in reply to the application for revocation within the time limit.

On 02/01/2018 and 22/01/2018 the EUTM proprietor requested a suspension of the present proceedings in view of a number of parallel revocation requests against the same EUTM. In view of the circumstances of the case and of the arguments of the applicant against the suspension of the proceedings, the Cancellation Division chose to wait and not to decide on the request until the deadline for filing evidence of use had expired. In view of the fact that no evidence of use was filed within said deadline, the Cancellation Division hereby refuses the suspension request, since, for reasons of administrative efficiency, it considers it expedient to give a decision on this application for revocation without further delay.

According to Article 19(1) EUTMDR, if the proprietor of the European Union trade mark does not submit proof of genuine use of the contested mark within the time limit set by the Office, the European Union trade mark will be revoked.

In the absence of any reply from the EUTM proprietor, there is neither any evidence that the EUTM has been genuinely used in the European Union for any of the goods for which it is registered nor any indications of proper reasons for non-use.

Pursuant to Article 62(1) EUTMR, the EUTM must be deemed not to have had, as from the date of the application for revocation, the effects specified in the EUTMR, to the extent that the proprietor's rights have been revoked.

Consequently, the EUTM proprietor's rights must be revoked in their entirety and deemed not to have had any effects as from 04/12/2017.

COSTS

According to Article 109(1) EUTMR, the losing party in cancellation proceedings must bear the fees and costs incurred by the other party.

Since the EUTM proprietor is the losing party, it must bear the cancellation fee as well as the costs incurred by the applicant in the course of these proceedings.

According to Article 109(1) and (7) EUTMR and Article 18(1)(c)(ii) EUTMIR, the costs to be paid to the applicant are the cancellation fee and the costs of representation, which are to be fixed on the basis of the maximum rate set therein.



The Cancellation Division

Cindy BAREL

Claudia SCHLIE

José Antonio GARRIDO
OTAOLA

According to Article 67 EUTMR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 68 EUTMR, notice of appeal must be submitted in writing at the Office within two months of the date of notification of this decision. It must be submitted in the language of the proceedings in which the decision subject to appeal was taken. Furthermore, a written statement of the grounds of appeal must be submitted within four months of the same date. The notice of appeal will be deemed to be filed only when the appeal fee of EUR 720 has been paid.

The amount determined in the fixation of the costs may only be reviewed by a decision of the Cancellation Division on request. According to Article 109(8) EUTMR, such a request must be submitted within one month of the date of notification of this fixation of costs and will be deemed to be submitted only when the review fee of EUR 100 has been paid (Annex 1 A(33) EUTMR).