



# Bona Vacantia isn't always what it's cracked up to be

By Robert Hawley

In June 2001, Arthur Crack Limited (“ACL”) filed a European Community trade mark (“CTM”) application for the word ‘CRAIC’ in respect of a range of alcoholic beverages in classes 32 and 33, which subsequently became registered. The company was dissolved in July 2006, as a result of which its unsold assets passed to the Crown (by way of a process known as bona vacantia).

Several months later, Reformed Spirits Company Holdings Limited (“RSCH”) approached the Treasury Solicitor (the Crown’s representative in such matters) and negotiated the purchase of the CTM registration formerly belonging to ACL. In April 2007, RSCH successfully recorded this assignment with the CTM Office (“OHIM”).

However, an individual by the name of David Chalk had actually taken assignment of the registration in January 2006 (i.e. prior to ACL being dissolved) but had not recorded the transfer. In May 2007 he belatedly filed a recordal application, which the OHIM accepted.

RSCH lodged an appeal in November 2007, the outcome of which saw the OHIM overturn its decision and reinstate the company as the proprietor of the contested registration, declaring that it was compelled to reject Mr Chalk’s recordal application on the grounds that it did not have the power to “change a decision that had been correctly adopted” (RSCH having satisfied the formal requirements for recording an assignment before the OHIM).

This is an unusual and interesting case in that it highlights the potential dangers faced by brand owners if they fail to promptly record assignments; the benefit of seeking expert advice from an intellectual property specialist; and also the latent vagaries of the bona vacantia process. Should you require assistance or further information in relation to any of these issues, please do not hesitate to contact the Trade Marks Department of Mathys & Squire LLP.