

30 November 2011

Partner Reference
E C Gray - Auckland

Independent Liquor (NZ) Limited /
Boundary Road Brewery Limited
35 Hunua Road
Papakura
AUCKLAND 2110

Writer's Details
Direct Dial: +64-9-977 5002
Fax: +64-9-977 5169
Email: earl.gray@simpsongrierson.com

BY EMAIL

For: Julian Davidson - CEO

"Lawn Ranger" Beer – Unauthorised use of RADLER

1. We act for DB Breweries Limited (DB).
2. We refer to the letter sent to you by DB on 4 November 2011 regarding the billboard advertisement and promotional Facebook posts for Boundary Road Brewery Limited's (BRB) new "Lawn Ranger" product. We are informed that no response was received to that letter.
3. Despite a clear and specific request that future material surrounding the "Lawn Ranger" product not make use of DB's RADLER trade mark in an infringing manner, DB has now become aware of further BRB promotional material that infringes its rights.
4. Specifically, we refer to the press release which has been published on the M2 Magazine website (<http://www.m2magazine.co.nz/read.php/article/boundary-road-brewery>), and quoted in recent articles written by Geoff Griggs (**M2 Press Release**). The material, which quotes BRB Marketing Manager, Ben Shaw, includes two infringing uses of the RADLER mark.
5. Accordingly, DB requires that Independent Liquor and BRB immediately procure the removal of the infringing wording from the M2 website and similar entries on the BRB Facebook Page, and ensure that the text of the M2 Press Release (and any other promotional material) is amended to remove the infringing uses prior to being provided to any other party. A letter confirming that these steps have been taken must be received by DB before **7 December 2011**.
6. As indicated in DB's letter of 4 November, any use of "RADLER" in New Zealand will be interpreted as a reference to DB's RADLER trade mark. For example, notwithstanding the meaning of "Radler" in other countries, use of the words "radler style" in New Zealand infringes DB's rights in almost all contexts. Any contrary indications – including the broad statement made by James & Wells lawyer, Ben Cain, in his article discussing the failed challenge to DB's registration by his firm's client, Society of Beer Advocates, Inc. – are either incorrect or limited to a narrow and different context.
7. Independent Liquor's/BRB's actions to date indicate that your intention is to illegitimately try to extract publicity for the new BRB product by attempting to revive the limited public attention surrounding the RADLER trade mark, and by that method create positive associations between the Monteith's RADLER beer and the new BRB product. DB has no intention of assisting BRB with a manufactured controversy, but will continue to take such steps as are necessary to protect its valuable and recently-confirmed trade mark rights.

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AUCKLAND: Lumley Centre, 88 Shortland Street, Private Bag 92518, Auckland 1141, New Zealand. T +64 9 358 2222

WELLINGTON: HSBC Tower, 195 Lambton Quay, PO Box 2402, Wellington 6140, New Zealand. T +64 4 499 4599

CHRISTCHURCH: 28 Hereford Street, PO Box 874, Christchurch 8140, New Zealand. T +64 3 365 9914

www.simpsongrierson.com

8. BRB's continued deliberate attempts to take advantage of DB's reputation are rapidly escalating the issue. In the context of BRB's varied use of the RADLER mark in promoting its "Lawn Ranger" product, even relatively minor infringements (such as the M2 Press Release, which we understand has not been widely distributed at this stage) may taint other uses that may not otherwise have been likely to be considered use as a trade mark by consumers.
9. DB has therefore instructed us to put Independent Liquor and BRB on final notice that further infringing uses of DB's RADLER trade mark will not be tolerated. DB has invested substantially in developing and protecting its RADLER brand, and will not allow that investment to be diminished by a publicity stunt.
10. While DB believes Independent Liquor/BRB would be safer to promote the new BRB product on its own merits rather than try to compare it to DB's well known RADLER beer, if you choose to use the "Radler" name again, that must be within the very narrow confines of the exceptions to infringement in the Trade Marks Act 2002. Specifically, any such use must be in accordance with honest business practices, and not take unfair advantage, or diminish the distinctive capacity, of the mark. Very few (if any) uses by Independent Liquor/BRB will meet these requirements.
11. We look forward to receiving the confirmation referred to in paragraph 5 well in advance of 7 December, and hope that the confirmation will mark the end of this matter.

Yours faithfully
SIMPSON GRIERSON


Earl Gray/James Kevany
Partner/Solicitor