

Barons Courts of Prestoungrange & Dolphinstoun

Trinity Session: Elizabeth II. 53. 2004. July – November

DECLARATOR

[E II. 53. 2004 P&D. 14] Declarator by the directors of Fowler’s Ales [Prestoungrange] Limited on the licensing agreement entered into with BrewBrand SA in respect of the name ‘Fowler’s’ when used in association with brewing activities; the payment of royalties arising directly to the Prestoungrange Arts Festival on behalf of BrewBrand SA; and the conduct of all their other brewing activities.

PETITION of the directors of Fowler’s Ales [Prestoungrange] Limited that developments of the legal circumstances surrounding their revival of real ale brewing under the name Fowler’s should be made known to all living on or visiting the ancient baronial lands including their initial decision making, the outcomes of the legal dialogue which the directors have necessarily held with BrewBrand SA of Munsbach, Luxembourg, and future strategies to be pursued without and benefit of the name Fowler’s.

1. THAT the Company was established to brew real ales in a microbrewery at The Prestoungrange Gothenburg being the Caput of the Barony with the purpose of honouring the memory of the most famous local brewery in Prestonpans closed after acquisition by Northern Breweries in 1962; and willingly agreed to pay the 1753 Impost of 2d Scotch per pint to the Prestoungrange Arts Festival charity [E II.53.2004 P&D.05].
2. THAT the directors made extensive enquiries in the area and of Tennent Caledonian as to any continuing interest in the name John Fowler’s without success; and it became apparent that the only brand bearing the name Fowler’s, the Wee Heavy, was made under licence from Tennent Caledonian, by Belhaven Brewery in Dunbar.
3. THAT having duly registered their corporate name they proceeded to establish the microbrewery in premises provided by the East of Scotland Public House Company Limited at The Prestoungrange Gothenburg.
4. THAT all their activities were widely publicised across the ancient baronial lands and on the internet and arrangements made for the brewery to open and for a Fowler’s School of Brewing to train Fowler’s Fellows and Companions.
5. THAT one week prior to the official launch solicitors acting for BrewBrand SA wrote to the directors suggesting that by virtue of three Registered Marks in the name of Fowler’s – Wee Heavy x 2 and 90/- Pale Ale – they had comprehensive rights to the name Fowler’s in Scotland.
6. THAT the directors indicated they could not readily agree to that position in common law, that passing off had been most carefully avoided, and that they believed there was no conflict between the two parties that could not be resolved by dialogue and mutual sharing of information. The directors proceeded to launch most successfully with full Declarators by the directors prominently displayed [May 8th 2004 et seq.]. For permitting some confusion to arise in Prestonpans the Head Brewer was placed in the stocks by these Courts on July 27th 2004 [E II.53.2004 P&D.10A]

7. THAT to obviate any disputation in common law whilst the dialogue was in progress, BrewBrand SA next unilaterally applied in Cardiff to register as a mark the single name 'Fowler's', to which the directors immediately lodged their objection. However, whilst that application was pending solicitors for BrewBrand SA indicated that they would take legal action against the Company if it did not accede forthwith to a Licence in respect of the single name 'Fowler's' as applied for, but not yet granted, for the range of ales made by the Company, all associated activities including the School of Brewing, and for the Company's own registered trading name itself.
8. THAT the directors were very greatly distressed by this turn of events but concluded that there was no realistic possibility of contesting the matter before the Court of Session, and that to do so would not necessarily advance the true purpose of reviving the name John Fowler's as a brewer on the ancient baronial lands. Accordingly they have of necessity agreed to enter into such a licence agreement with BrewBrand SA which they shall forthwith honour in every respect.
9. THAT despite the distressing final outcome in respect of the Company's name and generic branding as Fowler's Ales and Fowler's School of Brewing, several very satisfactory outcomes are expected to emerge from the dialogue for which the directors *are* appreciative viz. support from Tennent Caledonian for significant arts events in Prestonpans and vicinity and in particular that the royalty payable under the licence agreement shall be directly paid to the Prestoungrange Arts Festival.
10. THAT the directors are greatly appreciative of both these acts, although not being themselves beneficial to the Company, since the Company is a permanent supporter itself of the Prestoungrange Arts Festival.
11. THAT the necessity of agreeing to take a licence from BrewBrand SA for the very use of the name Fowler's has inevitably led the directors of the Company to reconsider its entire brand strategy in relation to the output of their microbrewery.
12. THAT the directors have determined that whilst continuing to trade as appropriate to honour John Fowler using the name Fowler's name under licence from BrewBrand SA, they shall also necessarily adopt a separate and distinctive trading name and corporate branding that is in no way subject to such license agreement since it shall make no use of Fowler's whatever, notwithstanding that all such brewing and sales shall continue to attract the 1753 Impost of 2d Scotch per pint.

LET IT BE KNOWN:

This sixteenth day of November 2004:

That the Petition of the directors of Fowler's Ales [Prestoungrange] Limited was proper and timeous and that the making of their public Declarator before these Courts must serve hereafter as the basis for the widest awareness of the matter across our ancient baronial lands:

1. We hereby require that the directors of Fowler's Ales [Prestoungrange] Limited shall at all future times respect each and every term of their **licence agreement with BrewBrand SA**, and make the details thereof available via public Notice in the Prestoungrange Gothenburg; and that all staff working for the Company shall all be made aware of the requirements in place.
2. That the Trade Mark 'Fowler's' as licensed from BrewBrand SA shall be acknowledged as required:

“Fowler’s is a registered trade mark of BrandBrew SA and is used under licence”
[Appendix to Agreement Part 3.]

- 3.** Further, that despite the great distress caused by the constraining clauses of the licence agreement necessarily entered into by the directors, they and their staffs must at all times give proper prominence and credit to the **assignment of the royalty payable by them to BrewBrand SA to the Prestoungrange Arts Festival.**
- 4.** That it is right and proper for the furtherance of its own business affairs that the directors of the Company should *also* pursue strategies in relation to their trading names and their corporate and generic branding of all their products and services wholly outwith the licence agreement provided that at all times the **1753 Impost of 2d Scotch per pint** sold after May 8th 2004 continues to be rendered to the Prestoungrange Arts Festival as HELD from July 13th 2004 [E II.53.2004 P&D.04]
- 5.** That notwithstanding the difficulties encountered it was and remains in the best interests of those living upon and visiting the ancient baronial lands that the name John Fowler be continuously honoured in all ways that can be accomplished; and that to this end the Prestoungrange Arts Festival should continue to publish the historical facts, display and encourage the use of old logos and images, and execute appropriate mural paintings in the town to that end.