

**TRADE MARKS ACT 1938 (AS AMENDED)  
AND TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO 1555665  
IN THE NAME OF AMANDA LADKIN T/A  
SAFETY FIRST MANUFACTURING**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NUMBER 46244 IN THE NAME OF  
UK SAFETY GROUP LIMITED**

**TRADE MARKS ACT 1938 (AS AMENDED)  
AND TRADE MARKS ACT 1994**

**IN THE MATTER OF Application No 1555665  
in the name of Amanda Ladkin t/a Safety First Manufacturing**

**AND**

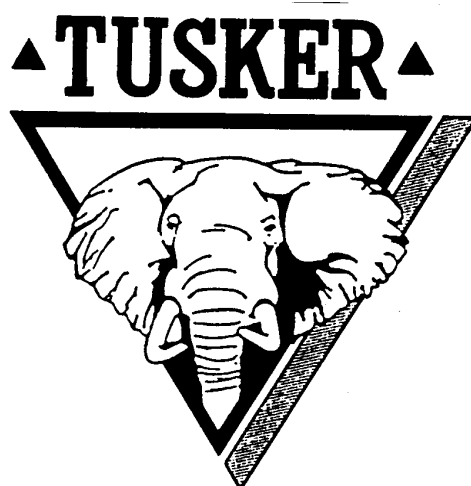
**IN THE MATTER OF Opposition thereto  
under number 46244 in the name of  
UK Safety Group Limited**

**Background**

On 3 December 1993, Amanda Ladkin t/a Safety First Manufacturing, of Old Station Yard, South Brent, TQ10 9AL, applied to register a trade mark in Class 9 in respect of the following goods:

Protective aprons, capes, caps, gaiters, jackets, sleeves, trousers, bibs and braces, chaps, spats, glove protectors, hoods and knee pads; fire blankets; all included in Class 9.

The application is numbered 1544510 and the mark applied for is as follows:



On 21 January 1997, UK Safety Group Limited filed notice of opposition to this application in which, inter alia, they say that the specification published in the Trade Marks Journal covers a wider range of goods than originally applied for. The grounds of opposition are in summary:-

- 1. Under Section 11** Because the opposed mark would be likely to deceive or cause confusion or is otherwise disentitled to protection in a Court of Justice.

2. **Under Section 12** Because the mark applied for should not be permitted registration under Section 12(1) or Section 12(2).
3. **Under Section 17(1)** Because the applicant is not the proprietor of the mark and in particular is not the proprietor in respect of the goods added to the application after filing.

The opponents ask that the Registrar exercise his discretion and refuse to register the mark and that an award of costs be made in their favour.

Details of the opponents' registered mark cited in the grounds of opposition is as follows:

No.	Mark	Class	Journal/Page	Specification
759189	Tuskers	25	4109/37	Boots, shoes, slippers and sandals, none being made of textile material

The applicants filed a counterstatement in which they deny the grounds of opposition. They ask that the opposition be rejected and that they be awarded costs.

Both sides filed evidence in these proceedings. The matter fell to be heard on 24 January 2000 when the applicants were represented by Mr Michael Needleman of Withers & Rogers, their trade mark attorneys, the opponents were represented by Mr Brian Dunlop of Wynne Jones Laine & James, their trade mark attorneys.

By the time this matter came to be determined, the Trade Marks Act 1938 had been repealed in accordance with Section 106(2) and Schedule 5 of the Trade Marks Act 1994. These proceedings having begun under the provisions of the 1938 Trade Marks Act must continue to be dealt with under that Act, in accordance with the transitional provisions set out in Paragraph 17 of Schedule 3 of the 1994 Act. Accordingly, all references in this decision are references to the 1938 Trade Marks Act.

### **Opponents' evidence**

This consists of a Statutory Declaration dated 26 September 1997, executed by Donna Kathleen Walker, who is currently the Personal Assistant to the Group Sales and Marketing Director of UK Safety plc, which is the holding company of UK Safety Group Limited, the opponents in these proceedings. Ms Walker says that she joined TUSKERS (a division of the opponents' company) in 1988 and has held a number of positions within the opponents' company prior to taking up her present duties.

Ms Walker says that since at least 1956, UK Safety Group Limited or their predecessors in title have had a division which has sold footwear under the name TUSKERS, which in the majority of cases has been associated with an elephant logo. She refers to two trade mark registrations owned by the opponents; number 759189 which is referred to in the grounds of opposition, and to number 759188. Details of both of these registrations are shown as exhibit DKW1.

Ms Walker next says that her company has made extensive use of the TUSKERS name and refers to exhibit DKW2, which consists of posters, brochures, etc, promoting a range of footwear which Ms Walker says date back to at least the 1980's . In all but one case these materials are undated or dated well after the relevant date and can be given little if any weight. One item, a copy of a brochure is dated as having been issued in April 1992, and shows, inter alia, a range of footwear being promoted under the name TUSKERS in conjunction with a fairly ordinary representation of an elephant's head. Ms Walker notes that some of the boots have long legs, saying that the alternative to having the boot extending up the leg is to wear a shoe or short boots in combination with spats, gaiters and chaps.

Ms Walker says that her company's business is mainly carried out through a network of over 1000 distributors that they currently have on their mailing lists, and who are provided with leaflets and wall charts to promote the footwear. She says that from this it can be seen that her company is well known throughout the United Kingdom in respect of work clothing.

Ms Walker continues saying that around December 1988 her company began to show samples of work wear to distributors, and refers to exhibit DKW3 which she says is a photograph of her taken at that time wearing a sample boiler suit, and which was used as an illustration for a magazine. She continues saying that in March 1989 her company launched a selection of work wear under the TUSKERS brand name which was shown at the ROSPA Exhibition of that year, and refers to exhibits DKW4 and DKW5 which consists of a brochure, price list and printout from a computer. The brochure shows a range of outer clothing, the name TUSKERS and device of an elephant's head are clearly shown, although is undated. The price list is dated September 1990 and is headed with the TUSKERS name and device of an elephant's head, and the printout is dated April 1991 and refers to TUSKER footwear recording figures for sales from 1983. Individual items are listed by reference number although on the price list these appear under general headings such as foundry boots, wellington, non-safety footwear, and TUSKER work wear. Some items are clearly footwear, and if the price list is considered in conjunction with the brochure, it can be seen to include the items of outer clothing. Ms Walker also notes that the list includes first aid kits.

Ms Walker goes on to say that in 1990 her company become associated with a work wear supplier called Beechtree, and she refers to exhibit DKW6. This consists of a catalogue dated 1990 headed with the name Beech Tree and advertises business work wear. The TUSKERS name with the elephant head contained within a rectangular border appears on the first page, although not in association with any goods and there is no indication of their connection. It is shown next to an entry for "Badge Services" and a selection of sample badges and may be taken to be one more example of the type of badge available. Ms Walker notes that TUSKERS telephone number is also featured and that telephone orders would have been answered TUSKERS or TUSKERS FOOTWEAR and would have been invoiced for goods on invoices bearing the TUSKERS name and logo. Ms Walker says that sales from the catalogue continued for at least a year, and possibly longer.

Ms Walker next says that in 1993 her company began showing a range of work wear in association with Dr. Martens. She says that they received a positive response, and although her company launched the work wear at the ROSPA show in April 1994 they did not proceed with the product line. Exhibit DKW7 consists of a price list and brochure for Dr. Martens work wear

to be sold under the TUSKERS logo although as it clearly originates from after the relevant date can be given no weight.

5 Ms Walker continues saying that her company's name is further advertised by a uniform worn by members of the TUSKERS supply staff, details of which are given as exhibit DKW8. This consists of a leaflet showing a vehicle bearing the TUSKERS name and the elephant logo and which bears the text showing copyright belonging to the Automobile Association 1996 so clearly dates from well after the relevant date. The exhibit also includes a photocopy of a tie bearing and decorated with, inter alia, the elephant head logo, and the word TUSKERS.

10 Ms Walker says that her company has another division, TUF, which sells work wear direct through catalogues and the like. She goes on to say that her company handles orders for TUF work wear from those with accounts with her company, and who would be invoiced on invoices bearing the TUSKERS trade mark and refers to exhibit DKW9 which consists of such an invoice.  
15 Ms Walker next refers to exhibit DKW10 which consists of a price list dated 1 March 1989 listing TUSKER work wear and a computer printout showing despatch totals for TUSKER footwear from 1990 to 1994. Both list items by code number and although no description is given the numbers are those shown in exhibits DKW4 and DKW5 and it is reasonable to infer that they relate to the same goods. Ms Walker concludes her Declaration saying that exhibits DKW5 and  
20 DKW10 show the high volume of articles of clothing and footwear are despatched every year.

### **Applicants' evidence**

25 This consists of a Statutory Declaration by Amanda Ladkin, the proprietor of Safety First Manufacturing, a position she has held since 1990.

30 Ms Ladkin begins by saying that her business is the manufacture of protective clothing and protective and safety equipment which is sold through distributors and at a retail counter at her business premises, and in connection with that business she uses the trade mark TUSKER and the elephant's head device set out application number 1555665 (the opposed application).

35 Ms Ladkin refers to exhibit AL1 which consists of two newspaper articles; one endorsed "Guardian Friday January 24 1986", the other "Western Morning News Monday November 11 1985". Both refer to the setting up of the applicants' company around 1981/2, and to the adoption of the trade mark RED TUSKER at some unspecified time and which was used in connection with a leather jacket for welders.

40 Ms Ladkin next refers to the filing of the trade mark application which took place on 3 December 1993, and she sets out the series of two composite marks originally applied for. She refers to the circumstances leading to a revision of the specification of goods applied for to that published in the trade marks journal, to the removal of the first of the marks from the series and the application proceeding under Section 12(2) on the basis of Honest Concurrent Use. She refers to the evidence as having shown that the trade mark had first been used in November 1996 in relation to protective aprons, capes, caps, gaiters, jackets, sleeves and trousers made from red leather and  
45 sold under the brand name RED TUSKER. Ms Ladkin says that in March 1987 the use of the trade mark was extended, and included fire blankets, bibs and braces, spats, glove protectors, hoods and knee pads, and to the full range being provided in various colours and materials. She

says that shoe protectors were added in 1992, and in March 1993 the first mark in the series was adopted in place of the original.

Ms Ladkin refers to exhibit AL2, which consists of copies of two advertisements that appeared in late 1986 in the trade journal “Welding and Metal Fabrication”, both showing the name RED TUSKER and TUSKER and elephant’s head logo although no indication of the date of publication. The remainder of the exhibit consists of price lists dating from 1991 and giving details of, inter alia, various articles of heat resistant and protective clothing under the same name RED TUSKER and both the original and revised versions of the composite mark. Ms Ladkin goes on to refer to exhibit AL3 which consists of a copy of the new version of the composite mark being used on what appears to be a leather, a copy of a document dated 10 December 1988 relating to the delivery of 5,000 stickers for the same composite mark but with the words “FROM SAFETY FIRST MFG” below, and two undated copies of a brochure illustrating the range of clothing.

Ms Ladkin goes on to set out the annual turnover figures based on ex-factory prices for the sale of protective clothing and fire blankets from 1989, which are as follows:

1993	£129,000
1992	£111,000
1991	£127,000
1990	£146,000
1989	£138,000

Ms Ladkin confirms that sales have been throughout the United Kingdom and she goes on to detail some of the towns and cities where goods have been sold. She next refers to the promotion of the trade mark which she says is by means of brochures and advertisements as in exhibits AL2/AL3, saying that similar advertisement were placed in the Direct Order Catalogue and Devon County Guide, details of which are shown at exhibit AL4. This consists of an undated advertisement of the type shown at exhibit AL2, and an advertisement endorsed “Devon County Guide May 1989” promoting leather clothing for welders under the Tusker composite mark. Ms Ladkin gives the annual advertising expenditure promoting the trade mark in relation to protective clothing and fire blankets as follows:

1993	£2,400
1992	£900
1991	£500
1990	£500
1989	£4,600

Ms Ladkin refers to the examination of the trade mark application by the Trade Marks registry, and to the outcome, details of which are given earlier. She goes on to say that she is well aware of the activities of the opponents and that shoes bearing the opponents’ trade mark and their own goods are sold side by side at the retail counter in her business premises, but that she has no knowledge of there being any confusion. She says the opponents may have a reputation in the United Kingdom for footwear but do not, and did not at the date of application have any

reputation or use of the trade mark TUSKER either alone or with a device in respect of the goods covered by the application. She sets out details relating to a later filed application made by the opponents, and which is numbered 2002260.

5 Ms Ladkin refers to exhibit AL5 which she says is statement made by the Chairman of the  
opponents' company made at the Annual General Meeting in May 1997, and in particular, to the  
comment "there is an excellent opportunity for TUSKERS to sell a wider range of PPE (Personal  
10 Protection Equipment) products to its customers and during 1997 we will be introducing a  
branded range of work wear which although well established in Europe will be new to the United  
Kingdom". Ms Ladkin takes the view that this statement appears to contradict the Statutory  
Declaration made by Dawn Kathleen Walker in support of the opponent's case. She goes on to  
refer to her enquiries which she says suggest that the opponent is not using the name TUSKER  
15 in relation to work wear in the United Kingdom or the rest of Europe, and refers to exhibit AL6  
which consists of the opponents' 1997/98 brochure for work wear noting that there is no mention  
of TUSKER in relation to work wear.

### **Opponents' evidence in reply**

20 This consists of a Statutory Declaration dated 18 September 1998 and comes from Alan F Smith,  
Company Secretary of UK Safety Group Limited.

25 Mr Smith confirms that he has read the Declaration made by Amanda Ladkin on behalf of the  
applicants. He comments on the date of the Guardian newspaper in paragraph 2 which he says  
is clearly wrong, and on paragraph 6 of the Declaration saying that this appears to relate to a  
different trade mark RED TUSKER. Mr Smith notes the lack of an explicit statement of when  
the applicants first used the mark applied for, and that the figures given in paragraph 9 are  
estimates with no indication of the proportion relating to protective clothing.

30 Mr Smith refers to exhibit AFS1 which consists of a copy of the form TM3, the form of  
application relating to the opposed application. He notes that the goods fire blankets were not  
part of the original specification, and therefore the specification of goods published included  
goods not within the original specification. Mr Smith contends that as fire blankets are not  
relevant any sales of these goods should be discounted. He refers to exhibit AFS2 which consists  
35 of a leaflet for TUSKER welding blankets which Mr Smith says is from the applicants.

40 Mr Smith also notes that an entry made on the Form TM3 (exhibit AFS1) on 4 November 1994  
excluded protective footwear from the specification. He comments that notwithstanding the  
exclusion, the items "chaps" and "spats" which Mr Smith contends are footwear, or are similar  
to footwear were added to the specification. Mr Smith says that the sales figures would also  
include these goods, and notes that the sales figures do not say whether they include Value Added  
Tax, and he comments on the implications

That concludes my review of the evidence insofar as it is relevant to these proceedings.

## Decision

I will turn first to the grounds founded under Section 11 and Section 12 of the Act. Those sections read as follows:-

5  
11 It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

10  
12.-(1) Subject to the provisions of subsection (2) of this section, no trade mark shall be registered in respect of any goods or description of goods that is identical with or nearly resembles a mark belonging to a different proprietor and already on the register in respect of:

15 (a) the same goods

(b) the same description of goods, or

20 (c) services or a description of services which are associated with those goods or goods of that description.

25 The reference in Section 12(1) to a near resemblance is clarified by Section 68(2)(b) of the Act which states that references in the Act to a near resemblance of marks are references to a resemblance so near as to be likely to deceive or cause confusion.

30 The established tests for objections under these provisions are set down in Smith Hayden and Company Ltd's application (Volume 1946 63 RPC 101) later adapted, in the case of Section 11, by Lord Upjohn in the BALI trade mark case 1969 RPC 496. Adapted to the matter in hand, these tests may be expressed as follows:-

35 **Under Section 11** Having regard to the opponents' user of the mark TUSKERS and TUSKERS with a device, is the tribunal satisfied that the mark applied for, TUSKER and device, if used in a normal and fair manner in connection with any goods covered by the registration proposed will not be reasonably likely to cause deception and confusion amongst a substantial number of persons?

40 **Under Section 12** Assuming user by the opponents of their mark in a normal and fair manner for any of the goods covered by the registrations of that mark, is the tribunal satisfied that there will be no reasonable likelihood of deception amongst a substantial number of persons if the applicants use their mark TUSKER and device, normally and fairly in respect of any goods covered by their proposed registration?

45 I will deal with the matter firstly under Section 12. The opponents rely on one registration for the mark TUSKERS which is registered in Class 25 for a range of footwear. There is a limitation excluding goods of textile material but this in my view will not have a bearing on the outcome. The applicants in turn are seeking to register their trade mark TUSKER with a device



incorporating an elephant's head for a specification of "Protective aprons, capes, caps, gaiters, jackets, sleeves, trousers, bibs and braces, chaps, spats, glove protectors, hoods and knee pads; fire blankets; all included in Class 9". I will look first at the respective marks and I adopt the well known test propounded by Parker J in Pianotist Co's application (1906) 23 RPC 774. The relevant passage reads:

"You must take the two words. You must judge of them both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of these trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks. If, considering all those circumstances, you come to the conclusion that there will be a confusion - that is to say - not necessarily that one will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public, which will lead to confusion in the goods - then you may refuse the registration, or rather you must refuse the registration in that case."

The applicants' mark consists of the word TUSKER placed above the device of an elephant's head. The device in turn is positioned over a background composed of a triangle and line although this element has little significance in the assessment of similarity. The elephant logo has a prominent pair of tusks and could be taken as an oblique reference to the word TUSKER, or as seems more likely, the word taken as emphasising the connection with the elephant logo. That the word TUSKER is placed above the device and that in composite marks "words talk" in my view makes the word the most prominent and memorable feature and I find that the opponents' registration for the word TUSKERS is all but identical to a dominant and distinctive element of the applicants' mark.

The applicants are seeking to register their mark in respect of specific items of protective clothing in Class 9, whereas the opponents earlier registration is in Class 25 and essentially covers footwear. The application does not include footwear per se so the question is whether any of the items mentioned would be considered to be of the same description as footwear. The opponents objection is specifically directed at the "spats, gaiters and chaps" in the application which they say are items of footwear or are similar to footwear. As I am satisfied that the remaining items covered by the application are neither the same nor similar to footwear I propose to restrict my considerations to these items only.

The term gaiter is defined in Collins English Dictionary as "a cloth or leather covering for the leg or ankle buttoned to one side and usually strapped under the foot, also called a spat", with spat is in turn being given the definition of "another name for gaiter". These definitions indicate that these items are worn over the lower leg and covering the foot, essentially as an extension to footwear and the applicants' own evidence shows this to be the case. I have no evidence before me to show whether spats, gaiters and chaps share the same channels of trade as footwear, but given the similarity in their nature and purpose I do not see why this should not be the case, and I have no difficulty in finding these goods to be of the same description.

Adapting the wording of the Pianotist test and having determined that the similar goods are involved I must go on to consider the nature and kind of customer and the surrounding

circumstances. Ordinary items of industrial footwear are most likely to be selected on the basis of strength, durability and cost. While the purchase of protective clothing may involve careful selection to ensure that it affords protection from the hazards to be encountered, in the case of spats, gaiters and chaps which are small, inexpensive items I do not consider that the purchaser will exercise the same degree of care, as say, in the purchase of a more important item such as a jacket. Taking this into account with my findings on the similarities of the marks, I find that there is a real tangible risk of deception amongst a substantial number of persons should the applicants use their mark in connection with spats, gaiters and chaps, and the opposition, therefore, succeeds under Section 12 in respect of these goods.

I will next consider the grounds under Section 11 of the Act. The test set out earlier requires me to consider the user established by the respective parties at the relevant date, that is, the date of the application for registration of the trade mark under opposition.

The opponents say that they first used the trade mark TUSKERS, on its own and with an elephant's head logo in 1956. Few exhibits are dated but there is sufficient to substantiate that the opponents have been using the trade mark in the manner claimed in relation to footwear from at least 1983. I take the view that should the applicants use their mark in relation to similar goods to footwear, in other words, spats, gaiters and chaps, there would be a strong likelihood of deception and confusion. The opponents also claim to have used the same trade marks on work wear from 1988/9. While the evidence shows this to have been the case, the work wear shown is far removed from the protective clothing found in the application and I do not consider that there is a likelihood of confusion or deception arising out of the opponents' user in respect of work wear. With the above in mind I find the opposition to also be successful under Section 11 in respect of spats, gaiters and chaps.

My finding under Section 11 and Section 12(1) of the Act is not the end of the matter since the applicants claim that they are entitled to have their application accepted by virtue of the provisions of subsection 2 of Section 12 of the Act, which states:-

**12 -(2)** In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Registrar make it proper so to do, the court or the Registrar may permit the registration by more than one proprietor in respect of:-

- (a). the same goods
- (b.) the same description of goods or
- (c) goods and services or descriptions of goods and services which are associated with each other.

of marks that are identical or nearly resemble each other, subject to such conditions and limitations, if any, as the Court or Registrar, as the case may be, may think it right to impose.

The main matters for consideration under Section 12(2) were laid down by Lord Tomlin in Pirie's Trade Mark (1933) 50 RPC 147 at 159. They are:

- (i) the extent of use in time and quantity and the area of trade;
- (ii) the degree of confusion likely to ensue from the resemblance of the marks, which is, to a large extent, indicative of the measure of public inconvenience;
- (iii) the honesty of the concurrent use;
- (iv) whether any instances of confusion have been proved;
- (v) the relative inconvenience which would be caused if the mark in suit was registered, subject if necessary to any conditions and limitations.

Setting aside the question of work wear which I have already said is quite removed from the goods set out in the application, I am only required to determine whether the use made by the applicants in respect of goods similar to footwear, namely, spats, gaiters and chaps is sufficient to allow the application to proceed under the provisions of Section 12(2).

The evidence indicates that the applicants started using the trade mark RED TUSKER in 1986 although there is nothing to show whether it was used as a word only or in the composite form applied for. The earliest evidence showing the mark applied for being used in trade is dated 1991 in relation to, inter alia, gaiters, chaps and spats. There is evidence to show that the TUSKER logo was available for use on stickers in December 1988 and it is reasonable to assume that they were used around that time although this is of little assistance as it is not known on what goods.

The applicants say that they have traded throughout the United Kingdom and have provided details of turnover which can be described as modest although not insignificant. The respective marks bear close resemblance, particularly so when the applicant's trade mark is compared with the composite mark used by the opponents, and I can see a very real risk of confusion. I have no evidence which casts any doubt on the honesty of the applicants' use, and no instances of confusion have been brought to my attention. It is possible to draw the conclusion from the opponents' evidence that they are really only concerned with the goods that they consider to be similar to footwear, namely, spats, gaiters and chaps. Given my finding on their similarity to footwear and the close resemblance of the marks, it is not difficult to envisage how use by the applicants in relation to such goods could lead to inconvenience. Taking the above into account I am not convinced that the evidence before me establishes a claim to honest concurrent use and the claim is dismissed.

This leaves the ground founded under Section 17(1) of the Act. There is no evidence before me to substantiate this ground and no substantive submissions were made at the hearing and I dismiss this ground.

In my considerations in respect of Section 12(1) and Section 11, I found the goods "protective aprons, capes, caps, jackets, sleeves, trousers, bibs and braces, glove protectors, hoods and knee pads and fire blankets" not to be a goods of the same or similar description as the goods covered by the opponents' registrations or for which they have prior use. There is, therefore, a case for restricting the applicants' specification to these particular goods. There is, however, another matter relating to the specification of goods which the opponents say is wider than applied for.

The application had originally been filed for a specification of:

Protective clothing for industrial purposes; flame-retardant and heat resistant clothing and headgear; all included in Class 9.

5

During the course of examination, fire blankets were transferred to the application from a co-pending application. To overcome an objection under Section 12(1) an exclusion of “protective footwear” was agreed although was subsequently removed when the application was allowed to proceed on the basis of Honest Concurrent Use and the specification amended to read:

10

Protective aprons, capes, caps, gaiters, jackets, sleeves, trousers, bibs and braces, chaps, spats, glove protectors, hoods and knee pads; fire blankets; all included in Class 9.

15

The specification as filed covered protective clothing at large, although qualified as being either for industrial purposes, flame retardant or heat resistant. The published specification covered specific items of clothing which would have been within the scope of the term clothing, but as they were not limited to being either for industrial purposes, flame retardant or heat resistant included goods which had not been in the specification originally applied for. At the hearing Mr Needleman proposed that the specification be limited by the addition of the term “for industrial purposes” which in my view brings the specification within the scope of the original. In conclusion, therefore, if the applicants file a Form TM21 within one month from the end of the appeal period to reduce their specification to:

20

Protective aprons, capes, caps, jackets, sleeves, trousers, bibs and braces, glove protectors, hoods and knee pads, all for industrial purposes; fire blankets; all included in Class 9.

25

I will, in the event of no appeal, allow this application to proceed to registration. If the applicants fail to file a TM21 within one month from the end of the appeal period the application will be refused.

30

The opponents have been successful in these proceedings to the extent that if the applicants’ application proceeds they will have to restrict their specification of goods as suggested above. In the event that the application is amended and proceeds I order the applicants to pay to the opponents the sum of £420. If the applicants do not amend their application it will be refused and the award of costs increased to £835. This costs are to be paid within one month of the expiry of the appeal period or within one month of the final determination of this case if any appeal against this decision is unsuccessful.

40

**Dated this 3 day of March 2000**

45

**Mike Foley  
for the Registrar  
The Comptroller General**