

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No. 2165953
BY AWEAR TO REGISTER A MARK
IN CLASSES 16, 36, 41 AND 42**

**AND IN THE MATTER OF OPPOSITION THERETO
UNDER No. 49118 BY A-WEAR LIMITED**

**AND IN THE MATTER OF AN APPEAL
TO THE APPOINTED PERSON
BY THE OPPONENT
AGAINST THE DECISION OF MR M. REYNOLDS
DATED 30 JULY 2001**

DECISION

1. By an application dated 7 May 1998, aware of Hucknall, Nottinghamshire (“the applicant”) applied to register the following mark:

awear

2. The specified goods and services were:

Class 16	printed publications
Class 36	charitable fundraising, charitable collections
Class 41	provision and development of training courses; all relating to fashion and clothing; arranging and conducting conferences; advisory services relating to all the aforesaid
Class 42	inspection of buildings; accreditation services; all relating to the clothing and fashion industry
3. Notice of opposition was filed by A-Wear Limited of Dublin, Ireland (“the opponent”) to the application on 28 October 1998. During the course of the opposition proceedings Brown Thomas Group Limited was substituted as the opponent.

4. Opposition was grounded under section 5(2)(b) of the Trade Marks Act 1994 (“TMA”) on the following earlier UK trade marks:

No.	Mark	Class	Goods
1326354	A-WEAR	25	Articles of clothing, footwear and headgear
1326355	A-WEAR & Device	25	Articles of clothing, footwear and headgear
1509195	A-WEAR EQUIPT	25	Articles of clothing, footwear and headgear

5. It is undisputed that the opponent’s best case resided in Registration No. 1326354 for A-WEAR and that opposition was directed at part only of the applicant’s specification namely:

Class 41 provision and development of training courses; all relating to fashion and clothing

Class 42 accreditation services; all relating to the clothing and fashion industry

6. No objection was taken to the applicant’s goods and services in Classes 16 and 36 or to the remainder of the applicant’s services in Classes 41 and 42.
7. Neither party requested a hearing and a decision on the papers was taken by Mr M. Reynolds acting on behalf of the registrar of Trade Marks on 30 July 2001. Mr Reynolds rejected the opposition under section 5(2)(b) of the TMA and ordered the opponent to pay the applicant the sum of £500 towards the applicant’s costs of the opposition.
8. On 23 August 2001 the opponent gave notice of appeal to an Appointed Person under section 76 of the TMA. The sole ground of appeal was that the hearing officer had paid insufficient attention in his determination of the opposition under section 5(2)(b) to evidence exhibited at PK 1 of a statutory declaration of Paul Kelly dated 28 November 2000 filed pursuant to Rule 13(11) of the Trade Marks Rules 2000.
9. The appeal came before me on 14 December 2001. The opponent was represented by Mr Douglas Campbell of Counsel and Mr Hulse of Hulse & Co., the opponent’s trade mark agents. Mr P. Barker and Mr A. Townsend of the applicant appeared in person.
10. After hearing the parties’ arguments and submissions it became clear to me that a misunderstanding had occurred as to the exact nature of the applicant’s intended use of its mark for the disputed services.

11. I therefore granted a short adjournment of the appeal hearing in order to allow the parties to discuss any differences.
12. On resumption of the appeal hearing, the parties informed me of their joint wishes that the application should proceed to registration with the following revised specification in Classes 41 and 42. For the avoidance of doubt I set out the lists of services in those Classes in their entirety with the proposed revisions shown in italics:

Class 41 provision and development of *disability equality training courses, etiquette training courses, clothing alteration training courses*; all relating to fashion and clothing; arranging and conducting conferences; advisory services relating to all the aforesaid

Class 42 inspection of buildings, *building and customer service accreditation services*; all relating to the clothing and fashion industry
13. This, of course, is all subject to the applicant filing the necessary Form TM21 at the registry and gaining the registrar's approval for the proposed amendments to the services in the application pursuant to section 39(1) of the TMA. Since the application has already been published there is also a need for the registrar to publish any such amendments.
14. In the circumstances, I believe that I need have no further role to play in these proceedings.
15. Accordingly, I propose to make no order on the appeal but to give either party or the registrar leave to reapply to me should they run into any difficulties.

Professor Ruth Annand, 19 December 2001