

TRADE MARKS ACT 1994

In the Matter of Application Nos 2117243A
and 2117243B by David Charles Page to
register the mark David Page in Class 25

and

In the Matter of Consolidated Oppositions
thereto under Nos 47998 and 48071 by
Palmon (Overseas) Ltd

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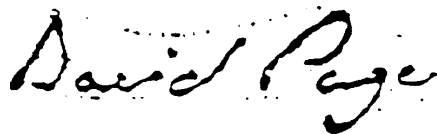
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In the Matter of Consolidated Oppositions
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Palmon (Overseas) Ltd

BACKGROUND

On 2 December 1996 , David Charles Page applied to register, as a series, two trade marks.
The application was later divided into two separate applications, details of which are set out
below:-

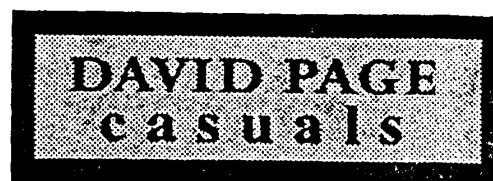
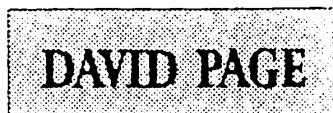
Application No	Mark	Class	Goods
2117243A	David Page	25	Clothing, footwear, headgear
2117243B		25	Clothing, footwear, headgear



On 2 January 1998, Palmon (Overseas) Limited filed notice of opposition to application No
2117243A and on 21 January 1998 filed notice of opposition to application No 2117243B.
The oppositions were later consolidated.

The grounds of opposition are, in summary:-

- the opponents are the proprietors of registration No 2118919 in respect of the trade
mark set out below. The mark applied for is so similar to the opponent's trade mark
and it is proposed to be used and registered for goods identical and/or similar to the
opponents' registration which would lead to a likelihood of confusion. Although this
is not stated, I take this to be an objection under Section 5(2)(b).



The specification of goods of this registration is “Articles of clothing”.

- registration or use of the mark applied for would obstruct or prejudice the legitimate conduct of the opponent’s business, and consequently the application should be refused in the exercise of the Registrar’s discretion.

As the Registrar has no discretion to refuse an application that in other respects complies with the requirements of the Act, I do not propose to say anything further on this last ground of opposition.

The applicant filed counterstatements denying the above grounds, alleging also that the opponent’s registration no 2118919 was granted in error. I will return to this point later in this decision.

Both sides ask for an award of costs in their favour. Only the opponents filed evidence but neither party has sought to be heard and therefore, acting on behalf of the Registrar and after a careful study of the papers, I give this decision.

Opponents’ evidence

The opponents filed a statutory declaration dated 15 July 1998 by Michael Watson, Secretary of Palmon (Overseas) Ltd. The facts set out in that declaration are directed towards the allegation that the application by Mr David Charles Page was made in bad faith and therefore the application should be refused (presumably on the basis of Section 3(6) of the Act). However, that was not a ground pleaded when the Notice of Opposition was filed and there has been no subsequent request by the opponents or their representatives to amend the statement of grounds of opposition. I take no account therefore of this evidence insofar as the opposition is concerned.

DECISION

The only objection of substance notified by the opponent in the Notice of Opposition is based on Section 5(2)(b). This Section reads:

“5 -(1).....

(2) A trade mark shall not be registered if because

(a).....

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

The term “earlier trade mark” is itself defined in Section 6 as follows:

“6 -(1) In this Act an “earlier trade mark” means -

- (a) **a registered trade mark**, international trade mark (UK) or Community trade mark **which has a date of application for registration earlier than that of the trade mark in question**, taking account (where appropriate) of the priorities claimed in respect of the trade marks (my emphasis)
- (b) a Community trade mark which has a valid claim to seniority from an earlier registered trade mark or international trade mark (UK) , or
- (c) a trade mark which, at the date of application for registration of the trade mark in question or (where appropriate) of the priority claimed in respect of the application, was entitled to protection under the Paris Convention as a well known trade mark.”

The applications in suit were filed on 2 December 1996. The mark the opponents seek to rely on, though it has proceeded to registration, was the subject of an application dated 17 December 1996. The opponents’ mark has a date of application for registration later than that of the trade mark in question, is not therefore an earlier trade mark within the meaning of Section 6 of the Act, and thus is outwith the ambit of Section 5(2)(b). Consequently, the opposition under Section 5 must fail.

For completeness, and as mentioned earlier in this decision, the applicants allege in their counterstatement that the opponent’s registration was granted in error, however, I have no evidence before me to support this allegation and make no comment on that matter.

The opposition having failed, the applicant is entitled to an award of costs. I therefore order the opponent to pay the applicant the sum of £370.

Dated this 4 Day of June 1999

Ann Corbett
For the Registrar
the Comptroller General