

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
APPLICATION NO. 2200078**

**BY CO-OPERATIVE WHOLESALE LIMITED TO REGISTER A  
TRADE MARK IN CLASSES 39 AND 42**

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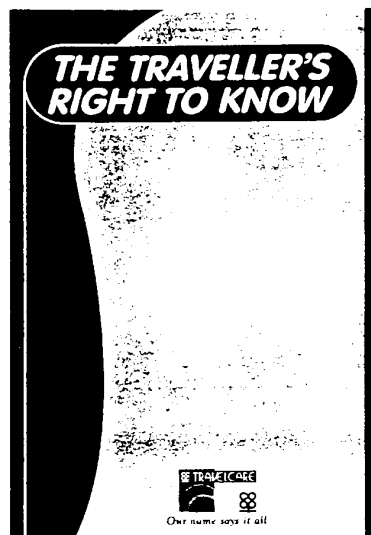
**IN THE MATTER OF APPLICATION  
NO 2200078 BY CO-OPERATIVE WHOLESALE SOCIETY LIMITED  
5 TO REGISTER A TRADE MARK  
IN CLASSES 39 AND 42**

**DECISION**

10 **Background**

On 11 June 1999, Co-operative Wholesale Society Limited of Manchester, England, applied to register the following mark:

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The mark is being used or there is a bona fide intention that it will be used, in respect of the following services:

35 Class 39:

Travel services; travel agency and tourist services; arranging and booking of holidays, travel cruises, tours and excursions; tour conducting, escorting of travellers, arranging and booking of seats, travel reservations and tickets; information and advisory services relating to all the aforesaid.

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Class 42:

Arranging and booking of accommodation for travellers.

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Objection was taken to the application under paragraph (b) of Section 3(1) of the Act on the grounds that the mark consists essentially of the words “The Traveller’s Right to Know” on a fairly commonplace magenta and yellow background that is devoid of distinctive character, the mark therefore being devoid of distinctive character, for example for travel services featuring the concept that the traveller has the right to know all factors that might affect their travel or choice of travel. The examiner added in parenthesis that the marks COOP and TRAVELCARE were “lost” within the overall mark.

### Hearing and decision

At a hearing at which the applicant was represented by Miss Caroline Bonella of Trade Mark Owners Association Limited, the objection was maintained and following refusal of the application under Section 37(4) of the Act, I am now asked under Section 76 of the Act and Rule 56(2) of the Trade Marks Rules 1994 (as amended) to provide a statement of the reasons for my decision.

Miss Bonella did not seek to claim that the words THE TRAVELLER’S RIGHT TO KNOW” are distinctive per se. At the hearing and in correspondence, various arguments were made in support of acceptance of the mark and it was contended that the mark was registrable for the following reasons:

S the mark as a whole comprises a number of elements including the applicant’s registered trade marks, COOP and COOP TRAVELCARE;

S these registered trade marks although representing a smaller portion of the mark are clearly visible and identifiable and would indicate an association with the applicant;

S the colour combination is not a fairly commonplace set of colours and no other trader would, by chance, wish to adopt an identical set of colours represented in this particular form. If necessary, the application could be limited to the specific colours contained in the mark;

S the mark, as a whole, is distinctive of the applicant.

These arguments did not persuade me that the mark was not devoid of any distinctive character.

The relevant parts of the Act under which the objection was taken is as follows:

Section 3(1):

“The following shall not be registered-

(b) trade marks which are devoid of any distinctive character,

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

No evidence of use has been put before, therefore the proviso to this section of the act does not apply and I have only the prima facie case to consider.

The mark consists of various elements, namely:

- 5 S the words “The Traveller’s Right to Know” highlighted on a blue background;
- S a combination of colours;
- 10 S a small area towards the bottom of the mark containing the words “coop” , “travelcare” and “our name says it all” together with a combination of the colours magenta, green and blue.

15 At the hearing, Miss Bonella showed me an example of the mark in use (see Annex to this decision). The mark is applied to the cover of a series of leaflets, published by the applicant, with the aim of providing information about travel and holidays.

20 The mark includes several ordinary dictionary words which, individually, are so well known that that I do not need to set out any dictionary definitions here. I am, in any case, bound to accept or reject the mark in its totality. I do not consider that the individual elements of the mark add up to a distinctive whole. Although the get-up created by the colour combination appeals to the eye and the mark includes the applicant’s registered trade marks, the totality is dominated by the words “The Traveller’s Right to Know” to the extent that the other elements do not create sufficient surplus to turn the whole sign into a distinctive mark.

25 The test for distinctiveness was clearly set out by Mr Justice Jacob in the British Sugar PLC and James Robertson and Sons Ltd decision (1996) RPC 281, page 306, line 1 (referred to as the TREAT decision):

30 *“Next, is “Treat” within Section 3(1)(b). What does devoid of any distinctive character mean? I think the phrase requires consideration of the mark on its own, assuming no use. Is it the sort of word (or other sign) which cannot do the job of distinguishing without first educating the public that it is a trade mark? A meaningless word or a word inappropriate for the goods concerned (“North Pole” for bananas) can clearly do. But a common laudatory word such as “Treat” is, absent use and recognition as a trade*  
35 *mark, in itself (I hesitate to borrow the word inherently from the old Act but the idea is much the same) devoid of any distinctive character.”*

40 Although Justice Jacob’s comments were made in relation to the word “Treat”, they equally apply to marks which are combinations of words and/or devices and/or colours. When all the component parts of this complex mark are viewed as a totality, the overall message which is likely to be conveyed to potential customers is that the mark identifies information about a traveller’s “right to know”. On careful and detailed examination of the mark the public might eventually notice that it also includes registered trade marks but on first impression these features are so insignificant to the extent that they are likely to be overlooked. At the hearing, Miss Bonella  
45 offered to submit an enlarged representation of the mark in order to make the registered trade marks more visible. I rejected this offer since whatever size the mark is represented in, its relative

proportions would remain the same and the overwhelming impact of the mark would still reside in the words “The Traveller’s Right to Know”. Regarding the combination of colours used in the depiction of the mark, I do not think that the proposed limitation to these specific colours affects the question of registrability in this case. Whilst I acknowledge that a striking image is created by the contrasting magenta and yellow, from my own knowledge it is not uncommon for businesses and advertisers to use bold colours in this manner, especially in order that promotional materials or leaflets are eye-catching to the consumer. Further, I do not accept the argument that a mark is distinctive in a trade mark context merely because it includes a set of colours presented in a particular form which it is contended that other traders would not wish to use.

10 In the Proctor & Gamble Ltd’s Trade Mark Applications (1999) RPC 673, page 680, line 42, Lord Justice Robert Walker said:

15 *“Despite the fairly strong language of section 3(1)(b), “devoid of any distinctive character” - and Mr Morcom emphasised the word “any” - that provision must in my judgment be directed to a visible sign or combination of signs which can by itself readily distinguish one trader’s product - from that of another competing trader. Product A and Product B may be different in their outward appearance and packaging, but if the differences become apparent only on close examination and comparison, neither can be said to be distinctive....”*

20 In the present case, I take the view that the public would require educating that the mark tendered for registration is a badge of origin for the services in question and whilst not unregistrable, it is the sort of mark which needs to acquire a distinctive character before it may be considered eligible for registration.

25 **Conclusion**

30 In conclusion, in the absence of evidence that the mark has acquired a distinctive character by reason of the use made of it, it is debarred from registration under Section 3(1)(b) of the Act.

In this decision I have considered all the documents filed by the applicant and all the arguments submitted to me in relation to this application, and, for the reasons given, it is refused under the terms of Section 37(4) of the Act because it fails to qualify under Section 3(1)(b) of the Act.

35 Dated this 22nd day of March 2000

40  
45 Charles Hamilton  
For the Registrar  
the Comptroller General

ANNEX

# ***THE TRAVELLER'S RIGHT TO KNOW***

## **FACTS TO HELP YOUR HOLIDAY ENJOYMENT**

 **TRAVELCARE**



*Our name says it all*

How many times have you come back from your holiday, wishing you'd had more information before you went? Perhaps you'd like to have known more about the resort you were staying in... possibly you felt you missed out because you didn't know enough about local culture... maybe you hadn't quite appreciated the implications of the small print in the holiday brochure.

Getting information before you go away can do two important things... it can help lessen the chances of a nasty surprise when you get to your destination and it can help you get more out of your holiday by giving you better knowledge of the place you're visiting.

As a Co-operative travel agency, Co-op Travelcare believes in an open, honest and responsible approach to doing business with its customers. We want to make sure you've got access to the kind of information that will help make your holiday not just a good one but a great one.

We've been talking to people to find out what kind of information they want from travel agents... and we've used the findings of our research to formulate a new, ground breaking customer service policy to help you find the facts on important issues before you go on holiday. We call it The Traveller's Right To Know.

## **Getting the best from your break**

Our research has highlighted some fascinating facts about what people want from travel agents. They've told us quite clearly that they want more information, first and foremost on topics that can have a direct impact on their holiday including the weather, personal security and health matters.

There are also wider topics relating to holiday destinations which they'd like travel agents to give them access to. These include things like local customs, cultural aspects of the country they're visiting and the natural environment of the resort. These aren't things which people tend to consult holiday brochures on when they're looking for answers.

A disturbing proportion of the people we've spoken to said that some aspects of a package holiday they had taken had failed to live up to their expectations and many said that holiday brochures were to blame. It's also clear that brochures aren't always read as closely as they should be.

## **An unbiased view**

Tour operators have made great strides recently in improving the accuracy and content of their brochures but we feel that, as an independent travel agency group, we should be able to give you an unbiased view of the resort and accommodation you're thinking about. That's why Co-op Travelcare is ensuring that the Agents' Gazetteer- an excellent reference source on hotels and destinations normally kept behind the counter by other travel agents- is consulted before you book.

We've based The Traveller's Right To Know on what people have told us they want from a travel agent. It's not cast in tablets of stone... Co-op Travelcare will ensure it develops, based on the feedback we get from our customers and changing circumstances in the travel industry.

Leisure Range

**THE TRAVELLER'S  
RIGHT TO KNOW**

**FACTS TO HELP  
YOUR HOLIDAY  
ENJOYMENT**

**TRAVELCARE**  
Our name says it all

**THE TRAVELLER'S  
RIGHT TO KNOW**

**SMALL  
PRINT, BIG  
DIFFERENCE**

Key points  
to help you when  
booking your  
holiday

**TRAVELCARE**  
Our name says it all

**THE TRAVELLER'S  
RIGHT TO KNOW**

**LOOK AFTER  
YOURSELF**

Advice on  
personal security  
when travelling  
overseas

**TRAVELCARE**  
Our name says it all

**THE TRAVELLER'S  
RIGHT TO KNOW**

**SETTING  
THE SCENE**

Maintaining the  
attraction of  
tourism for  
generations to  
come

**TRAVELCARE**  
Our name says it all