

1 UK INTELLECTUAL PROPERTY OFFICE The Rolls Building,
2 7 Rolls Buildings,
3 Fetter Lane,
4 London, EC4A 1NL.
5
6 Friday, 30th May, 2014

7 Before:

8 MR. GEOFFREY HOBBS Q.C.
9 (sitting as the Appointed Person)

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11 In the Matter of the Trade Marks Act 1994

12 -and-

13 In the Matter of Trade Mark Application No. 2621558
14 in the name of HENCH NUTRITION LIMITED to register
15 the trade mark HENCH in Classes 5, 25, 28, 29, 30 and 32
16 -and-

17 In the matter of Joint Opposition thereto under No. 103923 by
18 ADEMOLA ADEYEBA and GET HENCH LTD

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20 (Appeal of the Opponents from the decision of
21 Mr. George Salthouse, acting on behalf of the Registrar,
22 dated 6th February 2014)

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24 (Transcript of the Shorthand Notes of Marten Walsh Cherer
25 Ltd., 1st Floor, Quality House, 6-9 Quality Court,
Chancery Lane, London, WC2A 1HP.
Tel No: 020-7067 2900. Fax No: 020-7831 6864.
email: info@martenwalshcherer.com. www.martenwalshcherer.com)

THE APPELLANT appeared in person.

THE RESPONDENT was not present and was not represented.

D E C I S I O N

(As approved by the Appointed Person)

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1 THE APPOINTED PERSON: Opposition no. 103923 (in the joint names
2 of Ademola Adeyeba and Get Hench Ltd) to trade mark no.
3 2621558 (in the name of Hench Nutrition Limited) was largely
4 successful under section 5(2) (b) of the Trade Marks Act 1994
5 for the reasons given in a written decision issued by
6 Mr. George Salthouse, on behalf of the Registrar of Trade
7 Marks, under reference BL O/064/14 on 6th February 2014.

8 For present purposes, it is sufficient to note that the
9 opposed application for registration covered the following
10 goods in Class 25: "Articles of clothing; footwear; headgear;
11 gloves, jackets, trousers, jumpers, vests, T-shirts" and that
12 the hearing officer held it to be objectionable under section
13 5(2) (b) in relation to "Articles of clothing; footwear;
14 headgear" for conflict with the rights conferred by the
15 opponents' earlier trade mark no. 2570053, registered on 6th
16 May 2011, with effect from 25th January 2011, for "clothing,
17 footwear, headgear" in Class 25.

18 The hearing officer's decision and reasoning with regard
19 to the objectionability of the opposed application for
20 "articles of clothing; footwear; headgear" in Class 25 could
21 not logically have been inapplicable to the further
22 itemisations in Class 25 of the opposed application for
23 "gloves, jackets, trousers, jumpers, vests, T-shirts".
24 However, the hearing officer allowed the opposed application
25 to proceed to registration for the latter items in Class 25 on

1 the basis that they were "specifically excluded by the
2 opponents in the statement of grounds", see paragraph 26 of
3 the decision.

4 The opponents appealed to an Appointed Person under
5 section 76 of the Trade Marks Act 1994 contending, in
6 substance, that the hearing officer had adopted an
7 over-literalistic approach to their objections as indicated in
8 their Form TM7 Notice and Grounds of Opposition filed on 9th
9 October 2012, and that consistently with his own decision and
10 reasoning with regard to the unacceptability of "articles of
11 clothing; footwear; headgear" he should have gone on to
12 exclude "gloves, jackets, trousers, jumpers, vests, T-shirts"
13 from the list of goods for which he permitted the opposed
14 application to proceed to registration.

15 In written submissions sent to the tribunal by email at
16 17 minutes past midnight today, it was contended on behalf of
17 the applicant for registration that the opponents' appeal
18 should be refused on the basis that "there is no provision for
19 the opponent/appellant to reverse its decision to the specific
20 exclusion".

21 The so-called specific exclusion is to be found at
22 point 4 of the opponents' Form TM7 under the heading "Details of
23 the mark you are opposing". At point 4, the template question
24 is: "Which goods or services in the application do you claim
25 are identical or similar to those covered by the earlier mark

1 and listed at question 3 (or at question 1 if the Statement of
2 Use does not apply)?"

3 The opponents' answer, as recorded in the form, was
4 "Some (please specify). Articles of clothing; footwear;
5 headgear". That repeated their answer to question 1 of the
6 form in which they had been asked: "What goods or services
7 covered by the earlier trade mark are relied upon for the
8 grounds stated above?" and they had responded "All. Articles
9 of clothing; footwear; headgear".

10 Given that question 4 had, in its own terms, referred
11 them back to question 1, it was not irrational for them to
12 have responded to question 4 in terms of the answer they had
13 already given to question 1. I agree with the opponents in
14 thinking that it was over-literal of the hearing officer to
15 treat their answer to question 4 as containing a specific
16 exclusion.

17 I consider it to have been tolerably clear that the
18 opponents were not objecting to "articles of clothing" at
19 large and simultaneously adopting the counter-intuitive
20 position of agreeing to registration of the applicant's mark
21 for the other goods itemised in Class 25 of the opposed
22 application. The other goods were all items of clothing. The
23 objection under section 5(2)(b) extended to all of them.

24 The appeal is for these reasons allowed and the opposed
25 application for registration is to be refused for all of the

1 goods listed in Class 25. That is my decision on this appeal.
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