

**TRADE MARKS ACT 1994  
IN THE MATTER OF APPLICATION NO 2156999  
BY THE ROBERT ALLEN GROUP, INC  
TO REGISTER A TRADE MARK IN CLASS 24**

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5

DECISION AND GROUNDS OF DECISION

10 On 2 February 1998, the Robert Allen Group, Inc, of 55 Cabot Boulevard, Mansfield, Massachusetts 02048, United States of American applied under the Trade Marks Act 1994 for registration of the mark NOBODY KNOWS COLOR BETTER in respect of:

15 Class 24 Upholstery fabric, drapery fabric, decorative trim; bed coverings, pillows and drapery.

20 Objection was taken to the application under Section 3(1)(b) and (c) of the Act because the mark consists exclusively of the words NOBODY KNOWS COLOR BETTER, the whole being a sign which is devoid of distinctive character and a phrase that other traders should be legitimately free to use in advertisement to reflect the quality, or a desirable characteristic, of the goods e.g. fabrics of superior colour quality.

25 At a Hearing at which the applicants were represented by Mrs E Jefferson of Baron & Warren, the objections were maintained. Following refusal of the application under Section 37(4) of the Act I am now asked under Section 76 of the Act and Rule 62(2) of the Trade Marks Rules 2000 to state in writing the grounds of my decision and the materials used in arriving at it.

30 No evidence of use has been put before me. I have, therefore, only the prima facie case to consider. The agent did however submit evidence under Rule 51 of the Trade Marks Rules 1994 which demonstrated how the mark is used in relation to the goods applied for.

Section 3(1)(b) and (c) of the Act reads as follows:

“The following shall not be registered-

- 35 (b) trade marks which are devoid of any distinctive character,
- (c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services.
- 40

45 Apart from the well-known American spelling of the word “colour” (ie. “color”), the mark consists of ordinary words in the English dictionaries which are so well-known that it is not necessary for me to set out any references for each of the individual words that constitute the mark applied for. I am, in any case, bound to accept or reject the mark in its totality. I must therefore consider the meaning of the mark as a whole.

In my view the phrase NOBODY KNOWS COLOR BETTER is not invented but is merely a laudatory statement that seeks to bring to the customer's attention the trade mark owner's knowledge and expertise in respect of the colour of the goods offered for sale. Coupled with that, it seems to me that the statement also claims that the trade mark owner has knowledge and expertise in respect of fabrics incorporating different colours within their patterns. Overall, the words NOBODY KNOWS COLOR BETTER is a non-distinctive claim regarding the trade mark owner's expertise in the field of textile fabrics. I consider this to be a phrase that other traders should be free to use to claim their respective expertise in the field of textile fabrics when advertising their products.

On 6 October 1999, the agent provided examples of the mark in use and submitted that the information was sufficient for the objections to be waived. I have taken full account of this information but remain of the view that the objections must be maintained. The examples of the mark in use are all contained within the pages of the company brochure where the brand name of "ROBERT ALLEN" is present on each page. I give an example at Annex A of the page promoting "lively lilacs". I note that the word "knows" in the phrase appears over a pot of lilac coloured powder. Other examples provided include "barley browns", "berry reds", "basic blacks" and "neutral naturals".

In my view this literature does little to support the view that the words NOBODY KNOWS COLOR BETTER would, through use, be seen as identifying the origin of the goods applied for.

In this decision I have taken account of the comments in the unreported decision on the DAY BY DAY case (Application No. 2068646 dated 12 April 1994). In that appeal Mr Simon Thorley QC in his role as the Appointed Person said:

"In my judgement, Mr James correctly submitted that I should have regard not only to natural use on packaging but also to natural use in the context of advertising ....."

I also bear in mind the comments of Mr Geoffrey Hobbs QC in the AD2000 decision (1997 RPC 168) at page 176, lines 9 to23:

"Although Section 11 of the Act contains various provisions designed to protect the legitimate interests of honest traders, the first line of protection is to refuse registration of signs which are excluded from registration by the provisions of Section 3. In this regard, I consider that the approach to be adopted with regard to registrability under the 1994 Act is the same as the approach adopted under the old Act. This was summarised by Mr Robin Jacob QC in his decision on behalf of the Secretary of State in the *Colorcoat trade mark* [1990] RPC 511 at 517 in the following terms:

"That possible defences (and in particular that the use is merely a bona fide description) should not be taken into account when considering registration is very well settled, see e.g. *Yorkshire Copper Works Limited's trade mark application* (1954) lines 20 to 25 per Viscount Simonds LC. Essentially the reason is that the privilege of a monopoly should not be conferred where it might require "honest men to look for a defence"."

I therefore conclude that the mark NOBODY KNOWS COLOR BETTER is devoid of any distinctive character and consists exclusively of a sign that other traders may use in the course of business to designate the quality of the goods, and is thus excluded from registration under Sections 3(1)(b) and (c) of the Act.

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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 Sections 3(1)(b) and (c) of the Act.

10

**Dated this        19                    day of April 2000**

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**JANET FOLWELL (MS)  
For the Registrar  
The Comptroller General**

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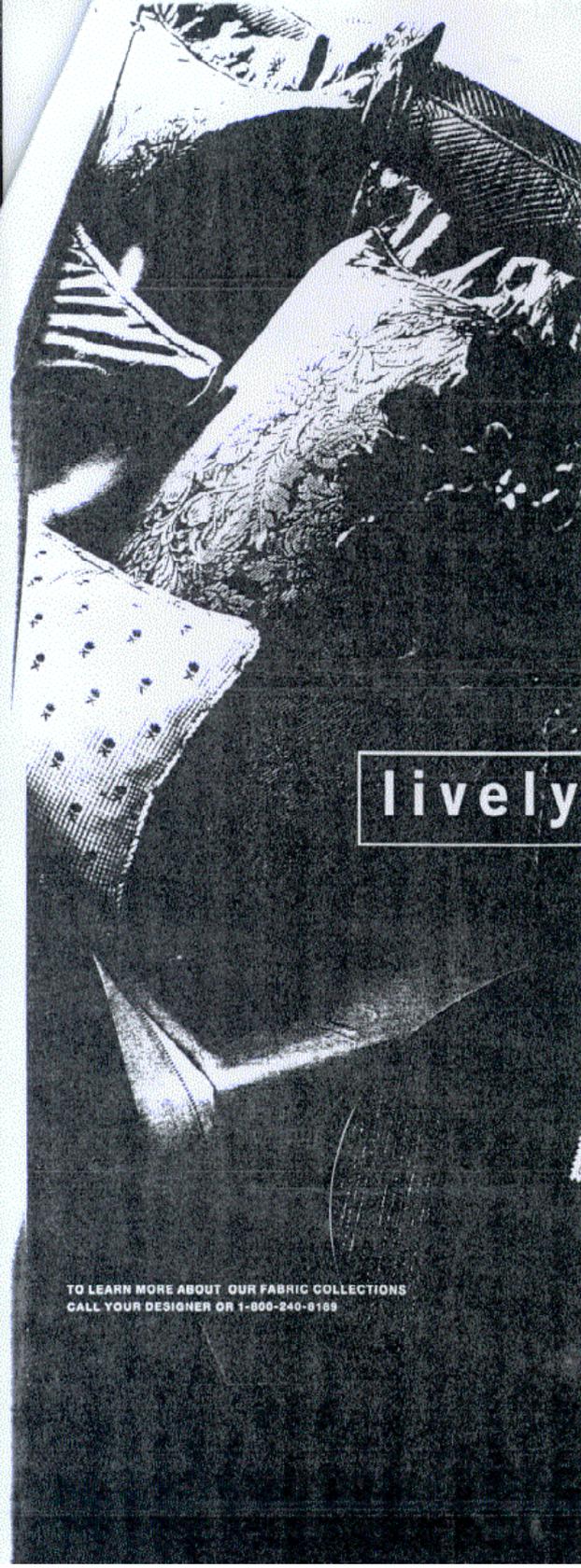
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ANNEX A



LIAC  
ROBERT ALLEN

PLUM

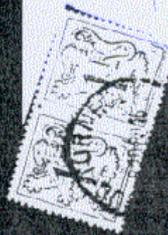
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