

O-322-17

SUPPLEMENTARY DECISION

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION NO. 3137729 IN RESPECT OF THE
FOLLOWING TRADE MARK IN CLASS 25:**

ELECTRIC BALLROOM

IN THE NAME OF MR ARA ASHDJIAN

AND

**AN APPLICATION FOR INVALIDATION (NO. 501168) BY
CASTLE ROCK PROPERTIES LIMITED**

Supplementary decision

1. On 19 May 2017, I issued a decision in these proceedings in which I partially upheld the applicant's claim for a declaration of invalidity. I indicated, however, that there may be some goods for which the claim should not succeed. I summed this up by saying that:

“45. Without amendment to the specification, the application for invalidity will succeed in relation to all of the goods for which the mark is registered. However, the proprietor is invited to request a limitation to its specification, if it so wishes, to something along the lines of : “Articles of clothing, footwear and headgear for ballroom dancing” and/or any other goods which are sufficiently far removed from the type of clothing which would be traditionally merchandised or could function as an image carrier of some form. The applicant will then be given an opportunity to comment on the revised specification in terms of its capacity to avoid the objection. I will then issue a supplementary decision, which will also deal with the matter of costs.”

2. The proprietor of the mark responded by agreeing that the specification could be limited to:

“Articles of clothing, footwear and headgear for ballroom dancing”

3. As the amendment was within the ambit of the goods for which I had already found that the claim for invalidation would fail, it was not, in my view, necessary for the applicant to comment. However, I allowed 14 days for the applicant to make any observations about this. No response was received.

4. When putting forward the limited specification, the proprietor also filed Form TM23 to make good the limitation on the register. Such a form constitutes a voluntary (partial) surrender of the registration. A surrender does not take effect from a date any earlier from which it was requested. In view of this, it is still necessary to make a formal finding that the registration of the proprietor's mark is declared invalid, and deemed never to have been made, in respect of all of its goods, save for:

Class 25: Articles of clothing, footwear and headgear for ballroom dancing

for which the mark may remain registered.

Costs and appeal

5. The date of this supplementary decision shall be the start of the period for the purposes of appeal. In terms of costs, both sides have achieved something. I do not propose to favour either party with an award.

Dated this 12 day of July 2017

Oliver Morris

For the Registrar,

The Comptroller-General