

O-459-17

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3185355
BY VALOR INTERNATIONAL LTD.
TO REGISTER**

VALOR

**AS A TRADE MARK
IN CLASSES 16, 25, 26, 38 AND 41
AND
IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 60000611 BY DAVID ALLISON**

BACKGROUND

1. On 13 September 2016 Valor International Ltd. (“the applicant”) applied to register the trade mark shown on the cover page of this decision for a range of goods and services in classes 16, 25, 26, 38 and 41.

2. The application was published for opposition purposes on 9 December 2016 and a notice of opposition was subsequently filed by David Allison under the fast track procedure. The opposition is based upon Sections 5(1) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is limited to the following goods and services in the application:

Class 25: Clothing; footwear; headgear; swimwear; sportswear; leisurewear.

Class 26: Lace; embroidery; ribbons; braid.

Class 41: Organizing and presenting displays of entertainment [relating to style and fashion]; organization of [fashion] shows for entertainment purposes.

3. Mr Allison relies on the three marks shown in the table below:

Trade mark details	Goods relied upon
UK 3054305 Valor Clothing Filing date: 6 May 2014 Registration date: 17 October 2014 Grounds upon which the opposition is based: Section 5(2)(b)	Class 24: Textiles Class 25: Clothing, Footwear and Head gear

<p>UK 3146811</p> <p>Valour</p> <p>Filing date: 28 January 2016 Registration date: 17 June 2016</p> <p>Grounds upon which the opposition is based: Section 5(1) and 5(2)(b)</p>	<p>Class 24: Textiles; textile fabrics; materials for making into clothing; towels; bath towels; beach towels; hand towels.</p> <p>Class 25: Articles of clothing; headbands for clothing; shorts; leisure clothing; denims; playsuits; children's clothing; linen clothing; cashmere clothing; tops; ladies' clothing; silk clothing; knitted clothing; ties; belts; leather belts; gloves; knitwear; jerseys; jackets; polo sweaters; polo shirts; shirts; casual shirts; sweat shirts; T-shirts; jumpers; fleeces; trousers; leggings; jeans; shorts; swimwear; suits; socks; scarves; gloves; underwear; wristbands; furs; quilted jackets; headgear; caps; baseball caps and hats; fashion hats; footwear; shoes for casual wear; flat shoes; dress shoes; boots; ankle boots.</p>
<p>European Union Trade Mark (EUTM) 15054125</p> <p>Valour</p> <p>Filing date: 29 January 2016 Registration date: 08 June 2016</p> <p>Grounds upon which the opposition is based: Section 5(1) and 5(2)(b)</p>	<p>Class 25: Textiles; textile fabrics; materials for making into clothing; towels; bath towels; beach towels; hand towels</p> <p>Class 25: Articles of clothing; headbands for clothing; shorts; leisure clothing; denims; playsuits; children's clothing; linen clothing; cashmere clothing; tops; ladies' clothing; silk clothing; knitted clothing; ties; belts; leather belts; gloves; knitwear; jerseys; jackets; polo sweaters; polo shirts;</p>

	shirts; casual shirts; sweat shirts; T-shirts; jumpers; fleeces; trousers; leggings; jeans; shorts; swimwear; suits; socks; scarves; gloves; underwear; wristbands; furs; quilted jackets; headgear; caps; baseball caps and hats; fashion hats; footwear; shoes for casual wear; flat shoes; dress shoes; boots; ankle boots.
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4. The applicant filed a counterstatement in which it denies the ground of opposition.

5. Rules 20(1)-(3) of the Trade Marks Rules (TMR) (the provisions which provide for the filing of evidence) do not apply to fast track oppositions but Rule 20(4) does. It reads:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

6. The net effect of the above is to require parties to seek leave in order to file evidence (other than the proof of use evidence which is filed with the notice of opposition) in fast track oppositions.

7. No leave was sought in respect of these proceedings.

8. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if 1) the Office requests it or 2) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost. Otherwise written arguments will be taken.

9. Mr Allison has been represented throughout by BPE Solicitors LLP; the applicant has represented itself. A hearing was neither requested nor considered necessary. Only Mr Allison filed written submissions.

Mr Allison's best case

10. In these proceedings, Mr Allison is relying upon his registrations nos. UK3054305, UK3146811 and EUTM15054125. In my view, Mr Allison's strongest case lies in UK3054305: if he cannot succeed in respect of this earlier registration, he will be in no better position as regards as his other marks. I proceed on that basis. The mark UK3054305 is an earlier mark within the meaning of section 6(1) of the Act. As this earlier mark had not been registered for five years or more at the publication date of the opposed application, it is not subject to the proof of use provisions under Section 6A of the Act. Mr Allison can, as a consequence, rely upon all of the goods he has identified.

DECISION

Section 5(2)(b)

11. Section 5(2)(b) of the Act states:

“5.-(2) A trade mark shall not be registered if because-

(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”.

Section 5(2)(b) case law

12. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson*

Multimedia Sales Germany & Austria GmbH, Case C-120/04, Shaker di L. Laudato & C. Sas v OHIM, Case C-334/05P and Bimbo SA v OHIM, Case C-591/12P.

The principles

- (a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;
- (b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;
- (d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;
- (e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- (f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- (g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

- (h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- (i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- (j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;
- (k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

13. In the judgment of the Court of Justice of the European Union (CJEU) in *Canon*, Case C-39/97, the Court stated at paragraph 23:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

14. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- a) The respective users of the respective goods or services;
- b) The physical nature of the goods or acts of services;

- c) The respective trade channels through which the goods or services reach the market;
- d) In the case of self serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- e) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

15. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court (GC) stated:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut fur Lernsysteme v OHIM- Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

16. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criteria capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that “complementary” means:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”.

17. In *Sanco SA v OHIM*, Case T-249/11, the GC indicated that goods and services may be regarded as ‘complementary’ and therefore similar to a degree in circumstances where the nature and purpose of the respective goods and services

are very different, i.e. *chicken* against *transport services for chickens*. The purpose of examining whether there is a complementary relationship between goods/services is to assess whether the relevant public are liable to believe that responsibility for the goods/services lies with the same undertaking or with economically connected undertakings. As Mr Daniel Alexander Q.C. noted as the Appointed Person in *Sandra Amelia Mary Elliot v LRC Holdings Limited* BL-0-255-13:

“It may well be the case that wine glasses are almost always used with wine – and are, on any normal view, complementary in that sense - but it does not follow that wine and glassware are similar goods for trade mark purposes.”

Whilst on the other hand:

“.....it is neither necessary nor sufficient for a finding of similarity that the goods in question must be used together or that they are sold together.”

18. The competing goods are as follows:

The opponent’s goods	The applicant’s goods and services
<p>Class 24: Textiles</p> <p>Class 25: Clothing, Footwear and Head gear</p>	<p>Class 25: Clothing; footwear; headgear; swimwear; sportswear; leisurewear</p> <p>Class 26: Lace; embroidery; ribbons; braid</p> <p>Class 41: Organizing and presenting displays of entertainment [relating to style and fashion]; organization of [fashion] shows for entertainment purposes</p>

19. *Clothing, footwear and headgear* appear in both parties’ specifications and are identical. The contested *swimwear, sportswear* and *leisurewear* are encompassed by the term *clothing* in the earlier mark’s specification so, on the basis of the principle outlined in *Meric*, these goods are identical.

20. The contested *lace, embroidery, ribbons* and *braid* are decorative items which can be put to a variety of applications. They could be used, for example, to make and/or adorn garments and home furnishing, such as curtains. The goods are similar to textiles in the piece, such as fabric for home dressmaking, which is covered by the term *textiles* of the earlier mark. The goods share the same users and are similar in nature, purpose and trade channels, all being used to make clothing and other textile based items. There is also a degree of complementarity as *lace, embroidery, ribbons* and *braid* are used for making items with textiles and are important for the use of the other. These goods are similar to a medium degree.

21. Mr Allison submits that the contested *organizing and presenting displays of entertainment [relating to style and fashion]; organization of [fashion] shows for entertainment purposes* are similar to the goods in Class 25 covered by the earlier mark. Fashion houses might present and promote their creations at fashion shows, however, promoting one's own product is a form of marketing and advertising and fashion houses do not offer the services of organising fashion shows for others. The contested services are professional services directed at the organisation of fashion shows for third parties and would be provided by professional agencies engaged in providing fashion show management services. The services would include the handling of logistical tasks relating, for example, to the booking of a venue and the arranging of catering services, as well as the hiring of models. The users of these services would be those interested in organising fashion shows for entertainment purposes, i.e. designers, whilst Mr Allison's *clothing, footwear and headgear* in class 25 target the general public, so consumers are different. Whilst fashion shows cannot be rendered without clothing and footwear, this does not create a complementary relationship in the trade mark sense as the competing goods and services target different consumers¹. Further, the relevant public would not expect a manufacturer of clothing to provide the contested services to others. There is no similarity here.

22. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that:

¹ See Case T-316/07 paragraphs 46-49

“49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. If there is no similarity at all, there is no likelihood of confusion to be considered. If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.

23. Having concluded that there is no meaningful similarity between Mr Allison’s goods and:

Class 41: organizing and presenting displays of entertainment [relating to style and fashion]; organization of [fashion] shows for entertainment purposes

in the application, there can be no likelihood of confusion and the opposition to these services fails accordingly.

The average consumer and the nature of the purchasing act

24. As the case law above indicates, it is necessary for me to determine who the average consumer is for the goods at issue; I must then determine the manner in which these goods will be selected in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

25. In *New Look Limited v OHIM*, joined cases T-117/03 to T-119/03 and T-171/03, the GC stated that:

“43 It should be noted in this regard that the average consumer’s level of attention may vary according to the category of goods or services in question (see, by analogy, Case C-342/97 *Lloyd Schuhfabrik Meyer* [1999] ECR I-3819, paragraph 26). As OHIM rightly pointed out, an applicant cannot simply assert that in a particular sector the consumer is particularly attentive to trade marks without supporting that claim with facts or evidence. As regards the clothing sector, the Court finds that it comprises goods which vary widely in quality and price. Whilst it is possible that the consumer is more attentive to the choice of mark where he or she buys a particularly expensive item of clothing, such an approach on the part of the consumer cannot be presumed without evidence with regard to all goods in that sector. It follows that that argument must be rejected.

“50..... Generally in clothes shops customers can themselves either choose the clothes they wish to buy or be assisted by the sales staff. Whilst oral communication in respect of the product and the trade mark is not excluded, the choice of the item of clothing is generally made visually. Therefore, the visual perception of the marks in question will generally take place prior to purchase. Accordingly the visual aspect plays a greater role in the global assessment of the likelihood of confusion.”

26. The average consumer of the parties’ goods in class 25 is the general public. The purchase is likely to be primarily visual with the goods being selected from retail outlets, catalogues and websites. That said, as the selection of the goods, may, on occasion, involve the intervention of sales assistants, aural consideration cannot be ignored. As to the level of attention paid to the selection of the goods, factors such as material, size, colour, cost and compatibility with other items of clothing etc. may all come into play. This suggests that consumers will pay, at least, an average level of attention when making their selection.

27. Mr Allison's goods in class 24 include both finished products, such as household textiles, as well pieces of fabric for home dressmaking. The contested goods in class 26 are items which can be used in decorative sewing. The average consumer is the general public or a tailor. Both set of goods will be selected visually from a shop, a catalogue or a website. The level of attention of a consumer of *textiles* or *lace, embroidery, ribbons and braid* may vary depending on cost and use. However, even where the goods are low cost, the level of attention will be average as factors such as colour, dimension and pattern will be taken into consideration. Further, *lace, embroidery, ribbons and braid* although of relatively low cost are likely to have to function and to fit in with a decorative scheme.

Comparison of marks

28. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

29. It would be wrong, therefore, artificially to dissect the marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

30. The marks to be compared are:

Applied for mark	Earlier mark
VALOR	Valor Clothing

Overall impression

31. The applied for mark consists of the word VALOR presented in block capital letters; the overall impression it conveys and its distinctiveness lying in the totality. The earlier mark consists of the word Valor followed by the word Clothing with the first letter of each word in upper case and the remaining letters in lower case. The word Clothing performs a purely descriptive function and has little or no distinctive character.

Visual similarity

32. Visually, the marks are similar to the extent that they coincide in the word VALOR/Valor. Although the marks employ different casing, notional and fair use of the respective marks could include use in lower case, upper case or a combination of the two, so the difference in casing matters not. The earlier mark also contains the word Clothing, which has no equivalent in the applied for mark. However, bearing in mind my assessment of the overall impressions, I consider that there is a high degree of visual similarity between the marks.

Aural similarity

33. Aurally, again both marks are phonetically identical as far as the word VALOR/Valor is concerned. In my experience, it is not unusual for the descriptive element of a mark to be dropped in speech. As Clothing is the second and descriptive element in Mr Allison’s mark, it is likely that the average consumer will refer to his mark by the word Valor alone, in which case the competing marks would be aurally identical. Were the word Clothing to be articulated, however, I conclude

there would be at least a medium degree of aural similarity between the competing marks.

Conceptual similarity

34. As I have already found in relation to the goods relied upon by Mr Allison the word Clothing performs a purely descriptive function and has little or no distinctive character. That leaves the word Valor to consider. Collinsdictionary.com defines Valor as a noun meaning:

“VALOR

Regional note: in BRIT, use valour

Uncountable noun

Valor is great bravery, especially in battle.

VALOR in American

Noun

Marked courage or bravery

: Brit. sp. ; British 'valour”

35. Valor is a spelling variation, i.e. an American adaptation, of the English word VALOUR meaning bravery, courage. This is also admitted by the applicant. The marks are conceptually identical.

Distinctive character of the earlier mark

36. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated at paragraphs 22 and 23 that:

“In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the

goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

37. As no evidence of use has been filed by the opponent, I have only the inherent distinctive character to consider. The word VALOR in the earlier mark has no meaning in respect of the goods at issue, it is neither allusive nor descriptive. As a consequence the mark enjoys a normal degree of inherent distinctive character.

Likelihood of confusion

38. In determining whether there is a likelihood of confusion, a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. I must also keep in mind the average consumer for the goods and services, the nature of the purchasing process and the fact that the average consumer rarely has the opportunity to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has retained in his mind.

39. There are two types of relevant confusion to consider: direct confusion (where one mark is mistaken for the other) and indirect confusion (where the respective similarities lead the consumer to believe that the respective goods and/or services come from the same or a related trade source). This distinction was summed up by Mr Iain Purvis Q.C. sitting as the Appointed Person in *L.A. Sugar Limited v By Back Beat Inc*, Case BL-O/375/10:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI” etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

40. Earlier in this decision I have found that the competing marks are visually similar to a high degree and that they are aurally and conceptually identical. I have found at least a medium degree of similarity between the respective goods. I have also found the earlier mark to have a normal degree of inherent distinctive character. Finally, the word “Clothing” in the earlier mark will be regarded as purely descriptive. Weighing the various factors, I have little hesitation in concluding that **there is a likelihood of direct confusion**. Even on the assumption that the differences are registered, there will be indirect confusion, as the consumer will still assume that the goods are the responsibility of the same undertaking or undertakings with economic connections.

41. For the avoidance of doubt, I would have reached the same conclusion had I considered that the word VALOR would be seen as invented word by the average consumer. This would result in the opponent’s mark having a relatively high degree of inherent distinctive character and, although the competing marks would be conceptually neutral, there would still be a likelihood of confusion.

42. In his submissions, Mr Allison makes the following statement:

“[...] what I find to be very disturbing is the fact that the owner of Valor International, Mr Michael Gleissner, is registered with Companies House as having 1,103 company appointments to his name. I have been informed this practice is otherwise known as ‘Squatters’. Where people trawl the net/Companies House, to take names that are similar to companies that are either already trading or about to, in the hope that those companies will pay those ‘Squatters’ a fee to go away. There have been various discussions with regards to this mal practice and even Mr Gleissner is mentioned on the Internet as being prolific at this! I find it extraordinary that I have registered both spelling terms and classes and yet I still have to pay out Solicitors fees to defend my Trade Mark against such people who have only intent of extortion!

I would like my costs to date paid back in full and my trademarks remain intact please”.

43. Although the applicant has no responded to these comments, no evidence has been filed to support Mr Allison’s allegations. As such, I am unable to give this matter further consideration.

CONCLUSION

44. The partial opposition therefore succeeds in relation to:

Class 25: Clothing; footwear; headgear; swimwear; sportswear; leisurewear.

Class 26: Lace; embroidery; ribbons; braid

And fails in relation to:

Class 41: organizing and presenting displays of entertainment [relating to style and fashion]; organization of [fashion] shows for entertainment purposes

45. The remaining unopposed goods and services may proceed to registration:

Class 16: Paper; cardboard; printed publications; printed matter; computer printers (Inking ribbons for -); bookbinding materials; books; adhesives for stationery or household purposes; artists' paint brushes; music sheets; music scores; periodical magazines; photographs; stationery and educational supplies; typewriters; Instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printing blocks.

Class 26: buttons; hooks and eyes; pins; needles; artificial flowers.

Class 38: Telecommunication services; communication services for the electronic transmission of voices; transmission of data; electronic transmission of images, photographs, graphic images and illustrations over a

global computer network; transmission of data, audio, video and multimedia files; simulcasting broadcast television over global communication networks, the Internet and wireless networks; provision of telecommunication access to video and audio content provided via an online video-on-demand service; satellite communication services; telecommunications gateway services.

Class 41: Teaching; education; training; entertainment services; production of television programs; film distribution; production of shows; production of films; provision of non-downloadable films and television programs via a video-on-demand service; arranging, conducting and organisation of workshops; conducting of seminars and congresses; arranging of exhibitions for cultural purposes; organizing and arranging exhibitions for entertainment purposes.

COSTS

46. Awards of costs in Fast Track opposition proceedings are governed by Tribunal Practice Notice (TPN) 2/2015. Although Mr Allison has been successful in relation to classes 25 and 26, the applicant has succeeded in retaining the opposed services in class 41 for which it originally applied. As a consequence, Mr Allison is entitled to a contribution towards his costs, albeit reduced on a “rough-and-ready basis” to reflect the measure of the applicant’s success. Using TPN2/2015 as a guide, I award costs to Mr Allison on the following basis:

Official fees:	£100
Preparing a statement and considering the other side’s statement:	£180
Written submissions:	£180
Total:	£460

47. I order VALOR INTERNATIONAL LTD. to pay David Allison the sum of £460 as a contribution towards his costs. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case, if any appeal against this decision is unsuccessful.

Dated this 22nd day of September 2017

Teresa Perks

For the Registrar

The Comptroller – General