

O-515-14

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3015856 BY  
PAUL ASHFORD TO REGISTER:**



**IN CLASS 24**

**AND**

**IN THE MATTER OF OPPOSITION  
THERE TO UNDER NO. 400926 BY  
MEVLUT KAYGUSUZ**

**SUPPLEMENTARY DECISION**

## **BACKGROUND**

1. On 13 October 2014, I issued an interim decision in these proceedings. In that decision, I concluded that Mr Kaygusuz's opposition based upon section 5(2)(b) of the Act succeeded in relation to the specification of goods as originally filed, but failed under sections 5(2)(b), 5(3) and 5(4)(a) of the Act, in relation to a fall-back specification of "Hamam towels in class 24".

2. Having reached those conclusions, I stated:

### **"Next steps**

#### **What happens if Mr Ashford accepts the fall-back specification?**

64. Mr Ashford is allowed 14 days from the date of this decision to consider the fall-back specification I have identified above. If he is prepared to accept the limited specification, he should, within the period allowed, file Form TM21B (copied to Mr Kaygusuz) to amend his application. Mr Kaygusuz will be then be allowed a period of 14 days from the date that he receives a copy of the Form TM21B from Mr Ashford, to provide comments. At the conclusion of that period, I will review the proceedings and issue a supplementary decision, which will deal with costs and in which a period will be set for appeal.

#### **What happens if Mr Ashford does not accept the fall-back specification?**

65. Mr Ashford should, within the period allowed, write to the Tribunal (copied to Mr Kaygusuz), providing an indication to that effect. On receipt of such an indication I will issue a supplementary decision in which I will refuse the application under section 5(2)(b) of the Act and in which I will deal with costs and appeal."

3. On 15 October 2014, Mr Ashford filed a Form TM21B in which he restricted the specification of goods of his application to: "Hamam towels in class 24." In the letter which accompanied that Form, he confirmed that a copy of the Form had been sent to Mr Kaygusuz. Mr Kaygusuz elected not to file any submissions in response to the restriction of the application.

### **What happens now?**

4. In view of my findings in the interim decision, and as the scope of the application has now been restricted, Mr Ashford's application will, subject to any successful appeal, be allowed to proceed to registration for a specification reading: "Hamam towels in class 24."

### **Costs**

5. In reaching a conclusion on costs, I remind myself that Mr Ashford's specification originally read:

Textiles and textile goods, not included in other classes; Honeycomb materials [textiles]; Household textiles; Textiles for furnishings; Textiles for interior decorating; Textiles made of cotton; Textiles made of flannel; Textiles made of linen; Textiles made of satin; Textiles made of silk; Textiles made of synthetic materials; Textiles made of wool; textiles and textile goods.

6. Despite the direction contained in the Tribunal's letter issued at the conclusion of the evidence rounds, it was as a result of me construing a range of comments in his counterstatement and evidence as a de facto request for the Tribunal to consider a fall back specification, that Mr Ashford's application is being allowed to proceed. Regardless, as Mr Ashford has only retained a very small part of the broad specification he originally applied for, Mr Kaygusuz is entitled to a contribution towards the costs incurred by him, to reflect his overwhelming success in these proceedings. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 4 of 2007. Using that TPN as a guide, but bearing in mind that Mr Kaygusuz has not been represented, I award costs to him on the following basis:

Preparing a statement and considering Mr Ashford's statement:	£100
Preparing evidence and considering Mr Ashford's evidence:	£200
Opposition fee:	£200
<b>Total:</b>	<b>£500</b>

7. I order Paul Ashford to pay to Mevlut Kaygusuz the sum of **£500**. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful. The period for appeal against the interim decision runs concurrently with the appeal period for this supplementary decision.

**Dated this 5th day of December 2014**

**C J BOWEN**  
**For the Registrar**  
**The Comptroller-General**