

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION Nos 2005457
TO REGISTER AS A TRADE MARK
ABERCROMBIE & FITCH
IN CLASS 25;**

**APPLICATION No 2005458 TO REGISTER AS A
TRADE MARK ABERCROMBIE IN CLASS 25**

**APPLICATION No 2026185 TO REGISTER AS A
TRADE MARK ABERCROMBIE & FITCH IN CLASS 42**

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER
Nos 43467, 44372 AND 44371 BY J & J CROMBIE**

TRADE MARKS ACT 1994

5 **IN THE MATTER OF Application Nos 2005457
to register as a trade mark Abercrombie & Fitch
in Class 25**

10 **Application No 2005458 to register as a trade mark
Abercrombie in Class 25**

**Application No 2026185 to register as a trade mark
Abercrombie & Fitch in Class 42**

15 **and**

**IN THE MATTER OF Opposition thereto under
Nos 43467, 44372 and 44371 by J & J Crombie**

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BACKGROUND

25 On 23 December 1994, A & F Trade Mark Inc, of 1105 North Market Street, Wilmington,
Delaware, United States of America, applied under the Trade Marks Act 1994 to register the
trade marks ABERCROMBIE & FITCH and ABERCROMBIE under Nos 2005457 and
2005458. After examination the applications were published for specifications of goods which
reads as follows:-

| 30 | No | Mark | Class | Journal/ Page | Specification |
|----|---------|------------------------|-------|------------------|--|
| 35 | 2005457 | ABERCROMBIE & FITCH | 25 | 6088 | Articles of clothing for men and women; pants, sweatshirts, T- shirts, suits, trousers, shorts, shirts, skirts; blazers, coats, overcoats, raincoats; dresses, culottes, sweaters, blouses, jackets; stormcoats, trenchcoats; 40 slickers, scarves, ties; hats, headbands and caps; hosiery; boots, shoes, slippers, sandals; belts; fishing vests, mufflers, 45 gloves, helmets, ponchos, socks and braces. |

| | | | | |
|---------|-------------|----|----------------|--|
| 2005458 | ABERCROMBIE | 25 | 6107/ 11631 | Articles of clothing for men and women; pants, sweatshirts, T-shirts, suits, trousers, shorts, shirts, skirts; blazers, coats, overcoats, raincoats; dresses, culottes, sweaters, blouses, jackets; stormcoats, trenchcoats; slickers, scarves, ties, hats, headbands and caps; hosiery; boots, shoes, slippers, sandals; belts; fishing vests, mufflers, gloves, helmets, ponchos, socks and braces; but not including any such goods bearing a tartan pattern. |
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On 6 July 1995, the applicants applied to register the trade mark ABERCROMBIE & FITCH in Class 42 under No 2026185. This was accepted and published for a specification of services which reads as follows:-

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Design, information, advisory and consultancy services, all relating to clothing, footwear, headgear, jewellery and fashion accessories.

On 14 November 1995, J & J Crombie Ltd, Grandholm Mills, Woodside, Aberdeen, Scotland filed notice of opposition to application No 2005457, on 3 April 1996 they filed notice of opposition to application No 2005458 and on 10 April 1996 they filed notice of opposition to application No 2026185. The grounds of opposition were the same in each case and can be summarised as follows:-

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1. Under Section 5(2)(b) of the Act - because the applicants trade marks are sufficiently similar to the opponents earlier registered trade marks (see Appendix A), that there exists a likelihood of confusion on the part of the public which would include the likelihood of association with the opponents trade marks.

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2. Under the provisions of Section 5(4)(a) - because of the use by the opponents of their trade marks use by the applicants of their trade marks is likely to be prevented by virtue of the law of passing off.

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3. As the opponents trade marks are well known trade marks as defined in Article 6 (bis) of the Paris Convention, under the provisions of Section 56 and Section 6(1)(c) of the Act, the applications should be refused under the provisions of Section 5(2)(b).

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4. Under the provisions of Section 3(1)(a) and Section 3(1)(b), as the applicants' trade marks contain or consists of the term ABERCROMBIE which is a common surname in Scotland and is therefore a sign which is not capable of distinguishing the applicants' goods from those of other undertakings and which is also devoid of any distinctive character.

5. Under Section 3(6) of the Act - because the applications were made in bad faith.

6. Under Section 3(3)(b) of the Act - in that the trade marks are of a nature to be deceptive.

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The applicants deny these grounds of opposition.

Both parties seek their costs in these proceedings and the matter came to be heard on 28 September 1999 when the applicants were represented by Mr Richard Arnold of Counsel, instructed by A A Thornton & Co, their Trade Mark Attorneys. The opponents were represented by Mr George Hamer of Counsel, instructed by William A Shepherd & Son, their Trade Mark Attorneys.

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The opponents evidence

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This consists of a Statutory Declaration by Mr Allan Moreland Murray dated 9 October 1996, a Director of the opponents who makes the declaration based upon his personal knowledge or information obtained from the files and records of the opponents.

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Mr Murray, first of all provides background information about the opponents and their CROMBIE trade mark and its international reputation. Mr Murray exhibits a list of all of the company's registrations and goes on to provide turnover figures in respect of sales of clothing and cloth under the brand name CROMBIE and other 'Own Label' sales which relate to the provision of cloth under the CROMBIE trade mark but where the customers eg DUNHILL & AQUASCUTEN use their own labels on the subsequent goods.

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| Year | Crombie Label | Own Label | Total |
|-------------|----------------------|------------------|--------------|
| 1991/92 | £1928 K | £950 K | £2878 K |
| 1992/93 | £1778 K | £877 K | £2655 K |
| 1993/94 | £1872 K | £923 K | £2795 K |
| 1994/95 | £2185 K | £1077 K | £3262 K |
| 1995/96 | £1956 K | £974 K | £2930 K |

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Mr Murray goes on to say that £100,000 per annum is spent on advertising and promotion material and I am referred to Exhibits filed with a Statutory Declaration by Mr Murray in connection with related opposition proceedings under the Trade Marks Act 1938 (opposition Nos 41804, 41803 and 42935). In addition, I am referred to that Statutory Declaration in connection with a list of retail outlets (concessions and independent outlets) selling CROMBIE products, which shows sales throughout the United Kingdom and the Royal Warrant which the company holds.

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It is Mr Murray's view that the CROMBIE trade mark is and has been synonymous with fine quality cloth and clothing sold by the opponents for nearly 200 years. The opponents have taken steps to protect both their reputation and their registrations throughout the world hence the opposition to these applications for registration, because all of the applicants trade marks contain the entire trade mark of the opponents - the only obvious difference being the prefix

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<ABER' which, in his view, does not distinguish the trade marks. If anything, he believes that it goes to create a Scottish theme (Abercrombie being a renowned Scottish surname he says) and thus giving rise to the possibility that it could be regarded as an extension of the opponents product range.

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Mr Murray goes on to state the word ABERCROMBIE is a well known Scottish surname and he provides information on the number of times the surname Abercrombie (and its phonetic equivalent Abercromby) appears in various Scottish telephone directories, these are as follows:-

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| Town/City | Abercrombie | Abercromby |
|------------------|-------------|------------|
| Aberdeen | 4 | 1 |
| Edinburgh | 20 | 4 |
| 15 Glasgow | 58 | 9 |
| Clyde Valley | 47 | 5 |
| Clyde Coast | 26 | 2 |
| Lomond & Argyle | 10 | 3 |
| Central Scotland | | |
| 20 & Trossacks | 51 | 9 |
| Fife & Kinross | 15 | 1 |
| | <hr/> | <hr/> |
| | 231 | 34 |

25 In that connection I am referred to an Exhibit to a Statutory Declaration filed by Mr Murray in the related opposition proceedings (mentioned earlier in this decision) which provides copies from the relevant telephone Directories.

30 Mr Murray goes on to state that he believes that the Registrar should take notice of the fact that the word Abercrombie is a well known Scottish surname. On the basis of that information the trade marks in suit should be refused registration as they are not capable of distinguishing the applicants goods and services from other undertakings and that they are devoid of any distinctive character.

35 **The applicants evidence**

40 This consists of a Statutory Declaration dated 6 March 1997 by Claire Poh Sim Birro, a trade mark assistant with A A Thornton & Co, the applicants Trade Mark Attorney, provides further information on the entries for Crombie, Abercrombie and Abercromby in Scottish telephone directories. Further, Claire Poh Sim Birro states that it is her belief that a Royal Warrant is not granted as a result of the reputation of goodwill in a particular business but is based upon the supply of goods to the Royal household over a period of time.

45 The applicants also filed a Statutory Declaration by Mr Seth Johnson dated 15 March 1997. He is the Vice President and Chief Financial Officer of Abercrombie & Fitch Inc and the information contained in the declaration comes from his personal knowledge or from the applicants records or from the records of Abercrombie & Fitch Inc. He first of all states that

Abercrombie & Fitch is a subsidiary of The Limited Inc, as is Abercrombie & Fitch Trade Mark Inc. The function of Abercrombie & Fitch Inc is to operate retail outlets selling goods under the trade marks ABERCROMBIE & FITCH and ABERCROMBIE under licence from A & F Trade Marks Inc. Mr Johnson then goes on to provide some background as to the use of the trade mark ABERCROMBIE & FITCH in the United States since 1892. The total number of US retail stores trading as Abercrombie & Fitch has risen from 25 in 1988 to 102 at the end of 1996, and sales through these outlets has risen from \$35 Billion in 1988 to \$231 Billion in 1996. The advertising expenditure in relation to goods sold under the applicants' trade marks has risen from \$103,000 in 1988 to \$4.2 Million at the end of 1996. Mr Johnson provides a list of magazines in which goods under the trade marks have been advertised. He also provides details of the countries worldwide in which the trade marks ABERCROMBIE and ABERCROMBIE & FITCH are registered.

Mr Johnson notes from Mr Murray's Statutory Declaration of 9 October 1996 that the opponents sell goods marked under the CROMBIE trade mark in the United States of America. To his knowledge there have been no instances of confusion between the opponents trade marks and those of the applicants. He further notes that the opponents have registrations of their trade mark CROMBIE in the United States of America dating from 1959. The applicants trade mark has been in use in that country in relation to clothing since 1904 and no instances of confusion between the respective trade marks, despite their co-existence for over 90 years, have been cited.

Opponents evidence in reply

There is a further Statutory Declaration by Mr Allan Moreland Murray dated 17 September 1997. This comments on the Statutory Declaration by Mr Johnson and, in essence, states that all of the information the latter provides relates to sales etc. in the United States of America and has no bearing on matters within this jurisdiction. Insofar as the statement made by Mr Johnson that the respective trade marks have co-existed in the United States for a considerable period of time, he states that, in his view, there will nevertheless be confusion in the United Kingdom. Mr Murray accepts that the names CROMBIE and ABERCROMBIE are distinct Scottish surnames. However, he considers that when two similar Scottish surnames such as these are used alongside each other, trade and consumer confusion will occur, not least because ABERCROMBIE could be viewed as an extension or alternative product of the CROMBIE range. Insofar as the statements made by Ms Birro in connection with the Royal Warrant are concerned, Mr Murray accepts that the grant of a Royal Warrant is not synonymous with having a reputation or goodwill in a particular business but he believes that a Royal Warrant represents a validated hallmark underpinning the quality and reputation of the goods supplied. Mr Murray also states that the opponents have successfully opposed the application for registration of the word ABERCROMBIE by the applicants in Spain.

The opponents also filed a Statutory Declaration by Mary Adrienne Zartarian, dated 11 December 1997, a Trade Mark Agent with the opponents' Attorneys, William A Shepherd & Son. She provides as an exhibit a report by Carratu International which conducted a survey on behalf of the opponents in order to determine whether or not confusion was likely to occur between the use of the trade marks CROMBIE and ABERCROMBIE. The survey covered a telephone survey of staff in retail outlets as well as a street survey carried out in the West End

of London, covering the general public. Mary Adrienne Zartarian goes on to make a number of points as a result of the survey. The principle ones being that 65% of the staff in retail outlets questioned would find it confusing if the names CROMBIE and ABERCROMBIE were seen on goods in the same clothing department and that 68% of the general public would also be confused as between the trade marks CROMBIE and ABERCROMBIE.

Applicants additional evidence

This consists, first of all, of an Affidavit by Courtney Wilson dated 3 April 1998, a partner in Colucci and Umans, Attorneys acting for A & F Trade Mark Inc. He states that the Statutory Declaration of Mr Allan Moreland Murray dated 17 September 1997, states that the opponents had successfully opposed registration of the trade mark ABERCROMBIE, belonging to A & F Trade Mark Inc in Spain. However, he says that the opposition against application No 1778551 for the trade mark ABERCROMBIE & FITCH was not successful. Also filed is a Statutory Declaration by Philip Malivoire, a Director of NOP Consumer, the consumer research division of the NOP Research Group. This is dated 19 March 1998. After providing some background as to his own credentials and those of his company, Mr Malivoire states that he was unaware of Carratu International prior to receiving a copy of their report. They do not appear in the Market Research Society's organisation handbook and therefore he doubts whether the survey they conducted was in accordance with the Market Research Society's code of conduct. He goes on to offer a number of comments on the survey.

First of all, Mr Malivoire considers that the number of persons interviewed was too small to enable any statistical weight to be placed on the results. Secondly, the questionnaires are "typed up versions" rather than the originals. Thirdly, the preferred approach in surveys for legal purposes is to ensure that answers given by the respondent are recorded verbatim, particularly where the answers are not ones that can be pre-coded and hence recorded by ticking a box (that shows "Yes" or "No"). In this survey, in the majority of cases, the answer recorded is a single word and therefore it is impossible to be sure whether the single word recorded was in fact the full answer and whether the interview probed for an answer and if so, what the probing might have been. Fourthly, some of the questions appear to be leading and invite the respondent to speculate. He considers it pure conjecture to ask respondents whether they would consider that goods bearing the name ABERCROMBIE "could" have been made by the maker of CROMBIE. This is especially so for the 21 of the 50 respondents who were not aware of the CROMBIE brand in the first place. Finally, he comments that one of the trade marks in issue in these proceedings is ABERCROMBIE & FITCH, yet none of the questions relate to this mark as opposed to the trade mark ABERCROMBIE.

That completes my review of the evidence filed in these proceedings insofar as I consider it relevant.

DECISION

First of all I dismiss the opposition based upon Sections 3(3)(b) and Section 3(6). No evidence, in my view has been put forward to support those grounds.

I go on to consider the matter under Sections 3(1)(a) and 3(1)(b) which state:-

3.-(1) The following shall not be registered -

(a) signs which do not satisfy the requirements of Section 1(1),

5 (b) trade marks which are devoid of any distinctive character.

Section 1(1) states:

10 1.-(1) In this Act a "trade mark" means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings.

A trade mark may, in particular, consists of words (including personal names), designs, letters, numerals or the shape of goods or their packaging.

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The opponents consider that the applicants trade marks insofar as they consist of or contain the word ABERCROMBIE consist of or contain a well known surname. The Trade Mark Registry's practice in relation to surnames is set out in Chapter 6 part 3 of its Work Manual. The relevant parts of which state:-

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3.12 Surnames, forenames & full names

3.12.1 Surnames alone

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In considering an appeal against the Registrar's refusal to register the trade mark MISTER LONG (unreported at the time of writing), Geoffrey Hobbs Q.C., acting as The Appointed Person, stated:

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"Section 1(1) of the Act (implementing Article 2 of the Directive) confirms that personal names are eligible to be regarded as signs capable of registration. Different persons having the same name nevertheless share the right to use it in accordance with honest practices in industrial or commercial matters under Section 11(2)(a) of the Act (which gives effect to Article 6(1)(a) of the Directive). And Section 3(1)(b) of the Act (which implements Article 3(1)(b) of the Directive) prohibits the registration of trade marks which are devoid of any distinctive character. These provisions indicate to my mind that surnames are neither automatically eligible nor automatically ineligible for registration under the Act. In each case the question to be determined is whether the surname put forward for registration possesses the qualities identified in Section 1(1) of the Act and none of the defects identified in Section 3. For the reasons I gave at greater length in AD2000 TM (1997) RPC 167 I think that in order to be registrable a surname or any other sign must possess the capacity to communicate the fact that the goods or services with reference to which it is used recurrently by the applicant are those of one and the same undertaking. When assessing that capacity at the relevant date (the date of application) it is, of course, necessary to bear in mind that surnames, as such, are naturally adapted to identify all individuals so named."

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The surname LONG appearing 800 times in the London telephone directory was found not to possess a distinctive character. However, Geoffrey Hobbs Q.C. decided that the words MISTER LONG were unlikely to be understood as having surnominal signification in respect of the applicant's goods - which were unusually elongated frozen confections. Accordingly, the trade mark was deemed registrable for a restricted specification which reflected this characteristic of the goods.

In the light of this case, the Registrar will not accept words which are surnames for registration *prima facie*, unless having regard to:

- (a) the commonness of the surname;
- (b) the size of the market (in terms of the number of traders in it) in the goods or services specified in the application;
- (c) the nature of the goods or services

- it is likely that the trade mark will be taken as a sign identifying goods or services originating from a single source.

A surname will be regarded as common if there are more than **100 entries** in the London Telephone Directory.

Where the market in the goods or services is small, more common surnames may be capable of distinguishing goods or services. Where the market is very small, eg airline services, even very common surnames may be capable of distinguishing, even though it is also a common surname. However, a common surname should not be accepted simply because it has another meaning, eg WALKER or READ.

Every case should be decided on its own merits taking account of the above guidance.

3.12.7 Two or more forenames

Combinations of two or more forenames may be accepted *prima facie* for any goods or services.

In this case the name Abercrombie (and its equivalent), on the basis of the evidence before me, appears less than 100 times in London, less than 100 times in Glasgow, less than 100 times in Edinburgh. Even when the figures for the latter two cities are added together the number of occurrences of the surname Abercrombie (and its phonetic equivalent Abercromby) is less than 100. As the Manual indicates, the limits it quotes are a guide and there may be circumstances in which they have to be set aside. However, I see no reason for doing so here. It seems to me that the name Abercrombie is a surname but on the evidence before me it is not a common one. Even when one begins to aggregate the figures in telephone Directories for two major cities in the United Kingdom the figures do not come near to breaching the limits. In the circumstances the opponents arguments and submissions on this point have no merit. The trade mark ABERCROMBIE may be a surname but it is not one which is prevented

acceptance prima facie for registration. It falls well within the limits and guidelines set out in the Work Manual and it can therefore in my view distinguish the applicants goods sold under trade mark ABERCROMBIE from the goods of other traders; it has a distinctive character.

5 Insofar as the opposition is directed to the applicants ABERCROMBIE and FITCH trade mark the guidance makes clear that the combination of two surnames (for that is what I consider the trade mark to be) is acceptable for registration prima facie.

10 The opposition based upon Section 3(1)(a) and 3(1)(b) to the applicants trade marks is dismissed.

I turn to consider the grounds of opposition based upon Section 5(2)(b). In doing so I propose to consider the matter on the basis of the approach adopted by the European Court of Justice in SABEL v PUMA 1998 RPC 1999. The Court considered the meaning of Article 15 4(1)(b) of the Directive (EC Directive 104/89) which corresponds to Section 5(2) of the Act and stated that:

20 "..... it is clear from the tenth recital in the preamble to the Directive that the appreciation of the likelihood of confusion depends on numerous elements and, in particular, on the recognition of the trade mark on the mark, of the association which can be made with the used or registered sign, of the degree of similarity between the trade mark and the sign and between the goods or services identified'. The likelihood of confusion must therefore be appreciated globally, taking into account all factors relevant to the circumstances of the case.

25 That global appreciation of the visual, aural or conceptual similarity of the marks in question, must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components. The wording of Article 30 4(1)(b) of the Directive - '<.... there exists a likelihood of confusion on the part of the public

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' - shows that the perception of marks in the mind of the average consumer of the type of goods or services in question plays a decisive role in the global appreciation of the likelihood of confusion. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details."

35 I also have regard to the approach adopted by the European Court of Justice in Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc. (Case-39/97) which also dealt with the interpretation of Article 4(1)(b) of the Directive. The Court in considering the relationship between the nature of the trade mark and the similarity of the goods stated:

40 "A global assessment of the likelihood of confusion implies some interdependence between the relevant factors, and in particular a similarity between the trade marks and between these goods or services. Accordingly, a lesser degree of similarity between these goods or services may be offset by a greater degree of similarity between the marks, and vice versa. The interdependence of these factors is expressly mentioned in 45 the tenth recital of the preamble to the Directive, which states that it is indispensable to give an interpretation of the concept of similarity in relation to the likelihood of confusion, the appreciation of which depends, in particular, on the recognition of the

trade mark on the market and the degree of similarity between the mark and the sign and between the goods or services identified."

Finally, the court gave the following judgement on the interpretation of Article 4(1)(b):

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"On a proper construction of Article 4(1)(b) of First Council Directive 89/104/EEC of 21 December 1998 to approximate the laws of the Member States relating to trade marks, the distinctive character of the earlier trade mark, and in particular its reputation, must be taken into account when determining whether the similarity between the goods or services covered by the two trade marks is sufficient to give rise to the likelihood of confusion."

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First of all I accept, on the basis of the evidence filed, that the opponents have a reputation for the manufacture of high quality cloth and for high quality clothing, particularly overcoats made up from that cloth, all sold under the CROMBIE trade marks shown in Annex A. The applicants, in my view, have no reputation in either of their trade marks insofar as the United Kingdom is concerned. All of the evidence goes to show use and reputation in the United States of America. And despite the assertions of Mr Arnold that I should do so I am unable to hold that there has been any spill over of that reputation into this country. I therefore compare established trade marks with a reputation against unused trade marks.

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Secondly, I consider the goods covered by the opponents' registrations with the goods and services of the applicant. The goods are the same in respect of clothing. They are not similar in comparing the opponents textile piece goods (Class 24) with the applicants clothing (Class 25). It is not usual, as far as I am aware for the manufacturer of cloth to go on to make up clothing. Therefore in the normal course of trade I do not consider that one would be associated with the other. However, I think there is a direct relationship between the applicants made up clothing (Class 25) and the opponents Design services. The current fashion for 'designer' clothing is testament to that. But that relationship does not extend to the raw material for made up clothing including textile piece goods. So, the goods and services covered by the specifications of the applications and which fall into Classes 25 & 42 respectively are the same or similar as those covered by the opponents' registrations which fall into Class 25, but they are not the same or similar to the opponents goods which fall into Class 24.

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I go on to consider the respective trade marks themselves - the opponents CROMBIE trade marks and the applicants' ABERCROMBIE and ABERCROMBIE & FITCH trade marks. As I have held in related opposition proceedings under the Trade Marks Act 1938 (as amended), I do not consider, prima facie, that the respective trade marks are confusingly similar one with the other - visually or orally. The fact that the opponents' CROMBIE trade mark are wholly contained within both of the applicants' trade marks is not apparent without careful dissection of the opponents trade marks, One is lost in the other.

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Bringing all of these considerations together as I am required to do, I hold that though some of the applicants goods and services are the same or similar to some of the opponents goods, the trade marks themselves are so dissimilar as to rule out any possibility that there is any likelihood of confusion on the part of the public. In reaching this view I take account of the

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opponents' reputation but I am not persuaded at all that this in any way adds to the likelihood that anyone will associate the applicants' trade marks with those of the opponents. In that context I have taken no account of the survey evidence produced by the opponents. It is flawed and does not meet the criteria for such evidence set out by Mr Justice Whitford in Imperial Group PLC v Phillip Morris Ltd [1984] RPC 293. The opposition under Section 5(2)(b) is dismissed.

I go on to consider the ground of opposition based upon Section 5(4) and take account of the observations of Geoffrey Hobbs QC acting as the Appointed Person in WILD CHILD (1998) RPC 455 in relation to the considerations to be applied in order to determine whether the common law tort of passing off applies. In essence there must be goodwill in a business which is known by a sign and that is being misrepresented by another party through use of a sign which is the same or similar such that actual or likely damage has occurred or will occur. The opponents clearly meet the first requirement. They have goodwill in a business manufacturing textile piece goods and made up clothing and they have a reputation in the CROMBIE trade marks. However, given my findings above I do not consider that any use by the applicants of their ABERCROMBIE and ABERCROMBIE & FITCH trade marks is likely to result in misrepresentation thus there will be no damage caused to the opponents by use of the trade marks in suit on the goods in the subject of these applications. The ground of opposition under Section 5(4) is therefore dismissed.

As the considerations to be applied in relation to the ground of opposition based upon Section 56 (well known trade mark) are no different to those applied in determining matters under Section 5(2) I dismiss this ground of opposition on the basis set out above.

The opponents having failed on all of their grounds of opposition the applicants are entitled to a contribution towards their costs. I take account of the fact that these three cases have been determined together to order the opponent to pay to the applicant the sum of £1000.

Dated this 14 day of February 2000

**M KNIGHT
for the Registrar
the Comptroller General**

ANNEX A

| <u>Trade Marks</u> | <u>Number</u> | <u>Class</u> | <u>Goods</u> |
|----------------------|---------------|--------------|---|
| COATS OF ARMS DEVICE | 682279 | 24 | Piece goods wholly or substantially wholly of wool, worsted or hair. |
| CROMBIE | 682280 | 24 | Piece goods wholly or substantially wholly of wool, worsted or hair. |
| COAT OF ARMS DEVICE | 682281 | 25 | Men's and boy's coats, suits, jackets, waistcoats and trousers, and women's and children's coats, suits, frocks and skirts, all made from piece goods wholly or substantially wholly of wool, worsted or hair. |
| CROMBIE | 682282 | 25 | Men's and boy's coats, suits, jackets, waistcoats and trousers, and women's and children's coats, suits, frocks and skirts, all made from piece goods wholly or substantially wholly of wool, worsted or hair. |
| CROMBIE | 895848 | 25 | Jackets, waistcoats, cardigans and pullovers, all for men and boys: coats, suits, frocks, skirts, cardigans and jumpers, all for women and children; all being knitted articles of clothing or articles of clothing made from knitted piece good, all wholly or substantially wholly or wool or hair. |
| COAT OR ARMS DEVICE | 1294039 | 25 | Articles of clothing included in Class 25; but not including footwear. |
| COAT OF ARMS DEVICE | 1296653 | 24 | Textile piece goods included in Class 24. |