

1987 April 22

[SAVVIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

BLUE BELL INC , OF DELAWARE U S A ,

Applicant,

v

THE REGISTRAR OF TRADE MARKS.

Respondent

(Case No 696/84)

Trade Marks — Registrability — Letter of alphabet — Principles applicable — The Trade Marks Law, Cap 268 as amended by Law 69/71, sections 11(1)(e), 11(2), 11(3) and the interpretation of the words «Trade Mark» and «Mark» by the Interpretation section 2(1) — Confusion or deception — Section 13 of Cap 268 — Test applicable — In the circumstances reasonably open to the respondent to reject registration in Class 25 Part A of the Register of the capital letter «W» formed by dots in respect of articles of clothing on the grounds of lack of distinctiveness contrary to section 11(1) and likelihood of confusion or deception contrary to section 13 of the said Law

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Trade Marks — Registrability — Judicial control — Principles applicable

The respondent Registrar turned down applicants' application for registration in Class 25, Part A of the Register of Trade Marks of the capital letter «W» formed by dots, as a trade mark in respect of articles of clothing, including boots, shoes and slippers, on the following grounds, namely (a) Lack of distinctiveness, contrary to section 11(1) of the Trade Marks Law, Cap 268, and (b) Likelihood to cause confusion contrary to section 13 of the same law

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As a result the applicants filed the present recourse One of applicants' contentions was that once trade marks B13769 and B21504, which, also, consisted of the single letter «W» in another shape were accepted as distinctive, the respondent could not treat applicants' proposed trade mark as devoid of distinctiveness and his action to refuse registration amounted to discrimination against the applicants

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In reply, counsel for the respondent argued that such other marks did

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not consist of a single letter, but were devices or combinations with other registrable matters whereas that of the applicant was a mere representation of capital letter «W» with no other distinctive features

5 Held, *dismissing the recourse* (1) This Court, as an administrative Court, does not interfere with an administrative decision regarding the registrability of a trade mark, if such decision was reasonably open to the Registrar of Trade Marks, and it does not substitute its own evaluation in the place of that of the Registrar

10 (2) The relevant for this case provisions are sub-section 11(1)(e) of Cap 268, sub-section (2) of section 11 of the same law interpreting the word «distinctive» in sub-section (1) of section 11, sub-section (3) of section 11 of the same law, the interpretation of the words «trade mark» and «mark» in the interpretation section 2(1) of Cap 268 as amended by Law 69/71 and section 13 of the aforesaid law*

15 (3) A mere comparison of the proposed trade mark with trade marks B13769 and B21504 clearly supports the relevant view of the respondent. It follows that there is no substance in the complaint relating to the alleged discrimination

20 (4) The question of registrability of a plain letter of the alphabet as a trade mark and whether such mark may be considered as possessing the characteristics of «distinctiveness» was considered in England by the House of Lords in the leading case of the *Registrar of Trade Marks v W and G Du Cros Ltd* [1913] A C 624

25 (5) As regards the test to be applied whether deception or confusion is likely to occur reference may be made to the judgment of Romer J in *Jellinek's Trade Mark* [1946] 63 R P C 59

30 (6) In the light of the authorities and the material before it, this Court came to the conclusion that it was reasonably open to the Registrar of Trade Marks to decide as he did. The burden of proving that confusion could not emanate was upon the applicant, who failed to discharge it

*Recourse dismissed No order
as to costs*

Cases referred to

35 *White Horse Distillers Ltd v El Greco Distillers Ltd and Others*
(1987) 3 C L R 531,

Registrar of Trade Marks v W & G Du Cros Ltd [1913] A C 624,

Re Smith Kline and French Laboratories Ltd's Applications [1974] 1
All E R 529 and on appeal [1974] 2 All E R 826,

* These provisions are quoted at pp 548 549 post

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Jellinek's Trade Mark [1946] 63 R.P.C. 59.

Alfred Dunhill Ltd's Application [1982] R.P.C. 145

Recourse.

Recourse against the refusal of the respondent to register in Part A of the Register of Trade Marks the capital letter «W» formed by dots as a trade mark in respect of clothing, including boots, shoes and slippers

Chr. Theodoulou, for the applicant.

St. Ioannides (Mrs.), for the respondent.

Cur. adv. vult. 10

SAVVIDES J. read the following judgment. The applicant, a company incorporated in the state of Delaware, U.S.A. applied on the 8th November, 1983 for the registration in Class 25, Part A of the Register of Trade Marks of the capital letter «W» formed by dots, as a Trade Mark in respect of articles of clothing, including boots, shoes and slippers. The respondent by letter dated 7th December, 1983, objected to the registration on the ground that the proposed trade mark lacked distinctiveness, contrary to section 11(1) of the Trade Marks Law, Cap. 268, in that it consisted of a mere letter of the alphabet. It was also found to be contrary to the provisions of section 13 of the Trade Marks Law. Furthermore, he raised an objection under section 14(1) of the law in view of its resemblance to other trade marks already appearing in the Register of Trade Marks and in particular trade marks under Registration B 13769 and B 21504 in respect of similar products. 15
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On the 12th March, 1984, counsel for the applicant sent to the Registrar of Trade Marks a considered reply on the matter by which he contested the objections setting out his grounds in respect thereof and requesting that in case the respondent would not be satisfied with such reply, to fix the case for hearing so that more arguments in favour of the registration of the mark could be advanced. In response to such letter the respondent fixed the case for hearing on the 27th September, 1984. 30
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At the hearing counsel for applicant relied on the matters

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raised by him in his written reply of 12th March, 1984 and on an affidavit sworn by a clerk of his office to the effect that the applicants were using the said trade mark for their products which they were selling in Cyprus and that during the years
5 1978, 1979, 1982 the value of goods imported in Cyprus was US Dollars 74,000 He also submitted that there was distinctiveness in the use He further produced the consent of the proprietors of trade mark B13769 and suggested to send notice of the publication of the application to the proprietors of
10 trade mark B21504

The respondent delivered his judgment on the 16th October, 1984, which was communicated to counsel for applicant by letter of the same date the contents of which read as follows

«I refer to your hearing of 27 9 1984 in connection with
15 the above mark, and inform you that the Registrar having re-examined your application in the light of what you have mentioned at the aforesaid hearing and having also taken into consideration your letter dated 12 3 84 decided as follows -

20 (a) The objections of the Registrar on the basis of section 14(1) of the Trade Marks Law Cap 268 which are mentioned in our letter dated 7 12 83 could

(i) The objection in connection with mark No B13769
25 be withdrawn once the consent of the proprietors of such mark has been submitted

(ii) The objection in connection with mark No B21504,
be modified by sending a notice of the publication of your application to the owners of the mark

30 (b) His objections however, in respect of section 11(1) and 13 of the Law cannot be withdrawn and they are hereby affirmed »

As a result, the applicant filed the present recourse challenging the said decision and praying for a declaration that the sub judice is null and void and of no effect whatsoever
35 Counsel raised the following grounds of law in support of his application:

1 The decision is not duly reasoned

2. The respondent misdirected himself and/or proceeded on wrong principles in arriving at his decision.

3. The respondent acted under a misconception of Law and/or fact.

4. The respondent failed to consider whether the mark proposed for registration was inherently adapted to or capable of distinguishing the applicant's goods. 5

5. The respondent acted in violation of Article 28 of the Constitution which provides for the principle of equality, and discriminated against the applicant. 10

6. The respondent did not take into consideration the provisions of the Law concerning cases where use of a mark is shown and proved.

7. The respondent exercised his discretion wrongly.

By his written address counsel for applicant contended that the Registrar wrongly interpreted and applied the law. He further submitted that once trade marks B13769 and B21504 which also consisted of the single letter «W» in another shape, were accepted as distinctive, the respondent could not treat the applicant's trade mark as devoid of distinctiveness. Counsel also added that the fact that the applicant has been trading in Cyprus for a number of years under such distinct mark made it mandatory on the respondent to accept it as distinctive mark and have it registered accordingly. Lastly, counsel contended that the Registrar, having already accepted the two trade marks, reference to which has already been made, for registration, though consisting of a single letter, was bound to accept the applicant's trade mark also for registration and his action to refuse it amounted to discrimination vis-a-vis the owners of those marks and the applicant. 15
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Counsel for the respondent, on the other hand, submitted that the proposed mark consisted of an alphabetical letter and as such it was lacking of distinctiveness. She further added that single letters even with evidence of long use are inherently unregistrable unless such letters are written or designed in a particular manner so as to be registrable as a device and not as a letter. She further contended that the Registrar correctly applied the law, particularly in the circumstances of the present case where registration of such trade mark was likely to cause confusion or there was reasonable 35

probability of deception. Counsel argued that the applicant on whom the burden of proof rested failed to show that registration of its mark will not contravene the provisions of section 13 of the Trade Marks Law. In dealing with the contention of counsel for applicant as to the alleged discrimination in respect of the owners of the other two trade marks she submitted that such other marks did not consist of a single letter but were devices or combinations with other registrable matter, whereas that of the applicant was a mere representation of capital letter «W» with no other distinctive features. In support of her argument in this respect counsel produced facsimiles of the three trade marks for comparison purposes. Counsel finally submitted that bearing in mind all the facts of the case and the relevant provisions of the law, the decision complained of was not arbitrary but was lawfully taken and reasonably open to the respondent.

In the course of the hearing of this recourse counsel for applicant filed an affidavit sworn by an attorney in charge of the trade marks of the applicant the material part of which is as follows:

- «1.»
 2. I have a long experience in trademark matters all over the world. Based on this experience, I say that since the Registrar has accepted trademark Nos B13769 and B21504 as distinctive, he should have accepted also the applicants' mark which is similar, according to him, as distinctive.
 3. I confirm and repeat the contents of the affidavit of Miss Yiannoulla Theophanous of 14/3/1984 that there is use of the applicant's mark in Cyprus and that for the years 1978, 1979 and 1982, the sales of the applicants' products in Cyprus were approximately U.S. Dollars 74,000.»
- The contents of paragraph 2 of such affidavit is a mere expression of opinion. As to the contents of the third paragraph the material contained therein was before the Registrar embodied in the affidavit of Yiannoulla Theophanous sworn on 14.3.1984.

The principles governing the exercise of jurisdiction by the Supreme Court as an administrative court are well established and approach of this court, in this respect, is that it does not interfere with an administrative decision regarding the registrability of a trade mark if such decision was reasonably open to the Registrar of Trade Marks and it does not substitute its own evaluation in the place of that of the Registrar. This approach of the Supreme Court

has been reiterated in the recent decision of the Full Bench in Revisional Appeal 505 (*White Horse Distillers Ltd. v. El Greco Distillers Ltd. and others*.in which judgment was delivered on the 20th February, 1987, not yet reported)* and in which our case law on the matter has been reviewed.

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The objections raised by the respondent against the registration of the subject matter trade mark, were originally based on section 11(1), 13 and 14(1) of Trade Marks Law, Cap. 268. At the hearing before him and after the production by counsel for the applicant of the written consent of the proprietor of trade mark B13769 and his undertaking to send a notice of the applicant's publication to the proprietors of trade mark B21504, the objection of the respondent under section 14(1) was withdrawn.

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The material part of section 11(1) reads as follows:

«11(1) In order for a trade mark to be registrable in Part A of the register, it must contain or consist of at least one of the following essential particulars:-

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(a) The name of a company, individual, or firm, represented in a special or particular manner;

(b)

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(c)

(d)

(e) any other distinctive mark but a name, signature, or word or words, other than such as fall within the descriptions in the foregoing paragraphs (a), (b), (c) and (d), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness».

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The interpretation of the word «distinctive» appearing in sub-section (1) of section 11 is given under sub-section (2) of the same section as follows:

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«For the purposes of this section 'distinctive' means adapted, in relation to goods in respect of which a trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of

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* Reported in (1987) 3 C.L.R. 531.

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which no such connection subsists»

It is further provided under sub-section 3 of section 11 as follows:

5 «In determining whether a trade mark is adapted to distinguish as aforesaid the Registrar may have regard to the extent to which -

(a) the trade mark is inherently adapted to distinguish as aforesaid; and

10 (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact adapted to distinguish as aforesaid.»

The interpretation section, 2(1), as amended by Law 69/71 provides:

15 «'trade mark' means except with reference to a certification trade mark, a mark used or proposed to be used in relation to goods for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark whether with or without any indication of the identity of that person;».

20 The section also provides:-

«'mark' includes a device, brand, heading, label, ticket name, signature, word, letter, numeral, or any combination thereof».

Section 13 provides as follows:

25 «It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.»

30 Bearing in mind the above provisions and in the light of all the material before him the respondent refused to register the trade mark applied for which consisted of a plain letter «W» as, in his opinion, irrespective of the fact that such letter was formed by dotted lines, nevertheless, it was clearly a letter of the alphabet
35 without any distinctiveness and likely to cause confusion.

The Registrar had in mind the other two trade marks which as alleged by counsel for the applicant, consisted also of a letter of the alphabet but found that those marks were devices or special

designs and not mere reproductions of plain letters of the alphabet.

A mere comparison of the facsimiles of the three trade marks, the one proposed by applicant and those under registrations B13769 and B21504 clearly supports the view of the respondent that the proposed trade mark of the applicant is a reproduction of the letter «W» in capital, though formed by dotted lines, whereas the other two marks form devices or special designs which visually do not give the impression of a plain letter of the alphabet.

In view of the above I find no substance in the complaint of counsel for applicant for discrimination against the applicant's trade mark in this respect.

Sections 11 and 13 of Cap. 268 correspond to sections 9 and 11 respectively of the English Trade Marks Act 1938 of which they are in fact reproductions. Also the definition of «trade mark» and «mark» under interpretation section 2(1) of Cap. 268 are the same as in the English Act.

In Kerly's Law of Trade Marks and Trade Names, 12th Edition, 1986 at p. 84 under paragraphs 8-24, it reads:-

«Before the 1905 Act, letters not being essential particulars, the Comptroller objected to register names of letters. However, the definitions of 'mark' in section 3 of the 1905 Act and section 68 of the 1938 Act include 'letter', but letters are not generally distinctive. A word representing phonetically the names of letters, not themselves registrable, is not an invented word.»

The question of registrability of a plain letter of the alphabet as a trade mark and whether such mark may be considered as possessing the characteristics of «distinctiveness» was considered in England by the House of Lords in the leading case of the *Registrar of Trade Marks v. W. & G. Du Cros, Ltd.* [1913] A.C. 624 in which it was held that a trade mark which consisted of the letters «W» and «G» (joined by the copulative symbol «&») written in a running hand with a distorted tail to the «G» ending up under the «W» and another mark which consisted of «W & G» in ordinary block letters notwithstanding that they had become in fact distinctive in the London area, were not distinctive within the meaning of the word in section 9 of the Trade Marks Act 1905 and were therefore not registrable.

The judgment of Lord Parker in the above case is very elucidating on the matter. It reads at pp. 634, 635, 636, as follows:-

5 «In my opinion, in order to determine whether a mark is
distinctive it must be considered quite apart from the effects of
registration. The question, therefore, is whether the mark
itself, if used as a trade mark, is likely to become actually
distinctive of the goods of the person so using it. The applicant
10 for registration in effect says, 'I intend to use this mark as a
trade mark, i.e., for the purpose of distinguishing my goods
from the goods of other persons', and the Registrar or the
Court has to determine before the mark be admitted to
registration whether it is of such a kind that the applicant, quite
apart from the effects of registration, is likely or unlikely to
attain the object he has in view. The applicant's chance of
15 success in this respect must, I think, largely depend upon
whether other traders are likely, in the ordinary course of their
business and without any improper motive, to desire to use
the same mark, or some mark nearly resembling it, upon or in
connection with their own goods. It is apparent from the
20 history of trade marks in this country that both the Legislature
and the Courts have always shewn a natural disinclination to
allow any person to obtain by registration under the Trade
Marks Acts a monopoly in what others may legitimately desire
to use. For example, names (unless represented in some
25 special manner) and descriptive words have never been
recognized as appropriate for use as trade marks. It is true that
they became registrable for the first time under the Act of
1905, but only if distinctive, and they cannot be deemed
distinctive without an order of the Board of Trade of the
30 Court. This restriction does not apply to marks consisting of a
letter or combination of letters, but before such a mark be
accepted the Registrar or the Court has to be satisfied that it is
adapted to distinguish the goods of the applicants from those
of others. It need not necessarily be so adapted, and whether
35 it is or is not so adapted appears to depend largely on whether
other traders are or are not likely to desire in the ordinary
course of their business to make use in connection with their
goods of the particular letter or letters constituting the mark.

40 There seems no doubt that any individual or firm may
legitimately desire in the ordinary course of trade to use a

mark consisting of his or their own initials upon, or in connection with, his or their goods. The applicant company's cars are marked W & G because those are the initial letters of the christian names of the partners in the firm to whose business the applicant company has succeeded. The use of the initials of an individual or firm on the goods, packing cases, letter paper, and invoices of such individual or firm is common. Individuals whose names were William Green or Wallace Graham, or firms whose names were Weston and Gibbs or Wilcox and Gathorne, might desire to make use in this way of the letters W G or W and G, and it would be a strong thing to deprive them of the right to do so. It is to be observed that initials are even less adapted for trade mark purposes than names, and the latter (unless represented in a special manner) cannot be deemed distinctive without an order of the Board of Trade or the Court. Under these circumstances, I cannot think that the mark «W & G», whether in script or in block type, is in itself distinctive within the meaning of the Act.»

Dealing with the question of distinctiveness acquired through use of the trade mark, Lord Parker had this to say at p. 637:-

«There is, however, a proviso in s.9 to the effect that in determining whether a mark is distinctive in this sense the tribunal may consider the extent to which actual user has rendered the mark in fact distinctive. But the tribunal is not bound to allow registration even if the mark be in fact distinctive. A common law mark is still not necessarily registrable. If the tribunal finds that a mark is anywhere, or among any class of people, in fact, distinctive of the goods of the applicant, it may be influenced by this fact in determining whether it is adapted to distinguish these goods from those of other persons, but distinctiveness in fact is not conclusive, and the extent to which the tribunal will be influenced by it must, in my opinion, depend on all the circumstances, including the area within which and the period during which such distinctiveness in fact can be predicated of the mark in question.

In the present case it appears that the mark «W & G» in script is at the present moment, and in a particular area, in fact distinctive of the cars of the applicants for registration, but the area within which the time during which such distinctiveness

has existed are, in my opinion, insufficient to displace the opinion I have formed on more general grounds.»

5 Useful assistance may also be derived from the concurring judgment of Lord Shaw in the above case both in respect of the undesirability of the registration of trade marks consisting simply of letters of the alphabet and the functions of the Registrar when dealing with such cases. Thus at p. 629, it is stated:-

10 «There is, however, one point in the discussion to which I desire particularly to refer. I allude to the view taken by the Court of Appeal with regard to the position and duty of the Registrar of Trade Marks. My Lords, in my opinion, that official, when an application for registration is made, has not only an administrative but also a quasi-judicial function. I think that he has to exercise a discretion, exercising it, of course, in 15 a judicial spirit. To use the words of Lord Herschell in Enon's Case, 'while he is in certain cases prohibited from registering, a discretion whether to register or not seems in all cases plainly conferred. Of course this discretion must be reasonably and not capriciously exercised'.

20 But in the next place, I think that those provisions of the statute, to which I am about to refer, shew that his action is not merely of a preliminary character (passing on the case to the stage when opponents of the registration may appear), but is of the character of a judicial pronouncement on the merits of 25 the application itself.»

And at pp. 631, 632:-

30 «....., speaking for myself, I should describe the duty of the Registrar as this: that examining the particular facts, he has also to survey the possible confusions or difficulties which might arise in consequence of the grant of the trade mark, or the possible impairment of the rights of innocent traders to do that which, apart from the grant, would be their natural mode of conducting their business. What, my 35 Lords, could be a more natural mode of conducting business than that a trader whose initials are 'W. and G.' should put these initials upon the goods which he vends or uses? And yet for some reason, as I say, not disclosed, it is proposed to reserve these initials, which may be the initials of hundreds of other traders, as the exclusive property of one person under 40 the guise of a trade mark.»

On the question of use of plain letters of the alphabet we read the following at p. 630:-

«Accordingly, if a trade mark were granted for 'W & G' simpliciter, it would disable all those traders who contemplated entering the motor business from attaching to their own goods their own initials except under the peril of infringement. I cannot think that the statute meant to grant any such privilege under the guise of a trade mark.» 5

And at pages 632, 633:-

«..... I do not think that any right which is substantially by way of monopoly should be granted to one particular trader, to use under the guise of a trade mark and for himself alone initials which may be of general use in trade. 10

..... If the block letters are to be condemned they are to be condemned in this language of the Master of the Rolls which I am about to read: 'In my opinion this is an illegitimate attempt to take exclusive possession of a part of the alphabet to the detriment of future traders who may honestly desire to put their own initials on their own goods'». 15 20

An effort to distinguish the above case was made in *Re Smith Kline & French Laboratories Ltd.'s Applications* [1974] 1 All E.R. 529 which however was reversed on appeal [1974] 2 All E.R. 826). 25

Reference may also be made to the judgment of Romer J. in *Jellinek's Trade Mark* [1946] 63 R.P.C. 59 as to the test to be applied whether deception or confusion is likely to occur. The following is stated at page 78:-

«Upon the evidence which I have before me, what is the test which I have to apply in considering whether deception or confusion within the meaning of s. 11 is likely to occur? 30

Mr. Burrell, on behalf of the Opponents, submitted to me the following propositions with regard to this section: (1) In all applications for registration of a trade mark the onus is on the applicant to satisfy the Registrar (or the Court) that there is no reasonable probability of confusion. (2) It is not necessary, in order to find that a mark offends against the section, to prove 35

5 that there is an actual probability of deception leading to a passing-off. It is sufficient if the result of the user of the mark will be that a number of persons will be caused to wonder whether it might not be the case that the two products come from the same source. It is enough if the ordinary person entertains a reasonable doubt. (3) In considering the probability of deception, all the surrounding circumstances have to be taken into consideration. (4) In applications for registration, the rights of the parties are to be determined as at 10 the date of the application. (5) The onus must be discharged by the applicant in respect of all goods coming within the specification applied for, and not only in respect of those goods on which he is proposing to use it immediately, nor is the onus discharged by proof only that any particular method of user will not give rise to confusion; the test is: What 15 can the applicant do?

I think that these propositions are, in substance, well founded, and I would merely add, with regard to the second 20 of them, the following extract from the judgment of the late Farwell, J., in Bailey's case, reported in 52 R.P.C., 136, at page 153: 'I think that the Court has to be satisfied not merely that there is a possibility of confusion; I think the Court must be satisfied that there is a real tangible danger of confusion if the mark which it is sought to register is put on the Register.'

25 In the case of *Alfred Dunhill Ltd.'s Application* [1982] R.P.C. 145 a mark consisting of a letter «d» with exaggerated ascender in a broken circle was refused for registration both in Part A and Part B (in spite of some evidence of distinctiveness) as being «for all practical purpose a 'd' mark» so that the goods «would be likely to 30 be referred to as 'd' goods».

It was held in that case in refusing registration in Part A that:

«(1) Since the mark consisted essentially of a letter 'd', the circular border being merely a vehicle for its display, a person giving oral or written orders for goods bearing the mark would 35 be most likely to specify them as 'd' goods, the 'd' appealing to both ear and eye; this being so, the mark could not be distinctive.

(2) The mark did not come within the rules of practice adopted by the Registrar concerning the registrability of letter 40 marks;

(3) The employment of a very long ascender on the letter 'd' is a common device which does not render a mark as a whole a device mark; nor does it demonstrate any inherent adaptedness to distinguish.»

It was further held in refusing registration in Part B that: 5

«(1) It is not possible to infer from the mere appearance of the mark, for which there was no evidence of factual capacity to distinguish, that it has a sufficient degree of inherent capacity to distinguish the applicant's goods from the similar goods of other traders identified by the letter 'd'. 10

(2) Where a letter mark will almost inevitably be known and referred to as that letter, disclaimer of the exclusive use of 'the' letter is in effect a disclaimer of the exclusive use of the whole mark. This would be a negation of the exclusive nature of the right conferred upon a trade mark proprietor.» 15

In the present case on the material before me I have come to the conclusion that it was reasonably open to the Registrar to decide as he did. The burden of proving that confusion could not emanate, was upon the applicant who failed to discharge such burden. 20

On the basis of the well established principle that the Supreme Court in the exercise of its jurisdiction as an administrative court does not interfere with the decision of an administrative organ, if such decision was reasonably open to it and cannot substitute its own discretion to that of the appropriate organ, I find no reason to disturb the decision of the respondent in the present case, once I have reached the conclusion that such decision was reasonably open to him. 25

In the result the recourse fails and is hereby dismissed but in the circumstances I make no order for costs. 30

*Recourse dismissed.
No order as to costs.*