

# Declaration under the Trade Marks Act 1995 and Regulation 21.6 of the Trade Marks Regulations 1995

**Title:** Written Response to Adverse Examination Report Dated 26 July 2023

**IP Right No(s)** in relation to which the declaration is made:

2363246

**I, *Bradley Daniel Edwin Hodges, of 5 Nathaniel Way, ORELIA WA 6167, Australia, do declare as follows:-***

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1. I am making this declaration in my capacity as Chief Executive Officer of Advena Proprietary Limited, 81-83 Campbell Street, SURRY HILLS NSW 2010, Australia.
2. I am writing on behalf of Advena Proprietary Limited (“**Advena**”, or “**We**”, or “**Our**”) in response to the *Adverse Examination Further Report* dated 4 August 2023 concerning our application for the registration of a figurative trade mark (2363246).
3. We appreciate the comprehensive examination of our application, and would like to respectfully address the concerns raised.

## **Classification of Goods and Services**

4. In relation to the decision concerning the acceptability of *a. body worn video cameras for use by security, law enforcement, and military professionals* in Class 9, we accept your decision to admit the goods and services to Class 9.
5. In relation to the decision concerning the acceptability of *b. sensors and other scientific and technical instruments for the purpose of detecting motion, sound, applied force, and other measurements* in Class 9, we wish to offer the below amendment (the claim to read as provided in (5)(a)) to our submission for this item in order to provide a form acceptable for admission to Class 9:
  - a. sensors and other scientific and technical instruments for the purpose of detecting motion, sound, applied force, and other measurements (all being security equipment)
6. In relation to the decision concerning the acceptability of *c. surveillance equipment and services for wide area monitoring and threat detection in public places* in Class 9, we accept your decision to admit the goods and services to Class 9.
7. In relation to the decision concerning the acceptability of *d. electronic monitoring services for the purpose of protecting persons, and buildings against threats* in Class 9, we accept your decision to admit the goods and services to Class 9.
8. In relation to the decision concerning the acceptability of *e. technical equipment for use by law enforcement for the purpose of securing, and monitoring the general state and security of various facilities, including structures, buildings, vehicles and other conveyances, armouries and firearms storage facilities, prisoner transit areas, prisoner holding areas, and other places requiring surveillance, patrol, and/or video monitoring* in Class 9, we accept your decision to admit the goods and services to Class 9.
9. In relation to the decision concerning the acceptability of *f. forensic science services* in Class 42, we accept your decision to admit the goods and services to Class 42.

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10. In relation to the decision concerning the acceptability of *g. biometric identification and verification systems, including facial recognition, fingerprint scanning, and iris scanning technologies* in Class 9, we wish to offer the below amendment (the claim to read as provided in 10(a)) to our submission for this item in order to provide the claim in a form acceptable for admission to Class 9:
  - a. instruments and embedded software for biometric identification and verification systems, including facial recognition, fingerprint scanning, and iris scanning technologies
11. In relation to the decision concerning the acceptability of *h. contraband detection services, including drug, weapon, controlled substance, and explosive detection* in Class 45, we withdraw the claim to the extent that it concerns Class 45.
12. In relation to the decision concerning the acceptability of *i. access control systems, including keycard systems, electronic locks, and gate control systems* in Class 9, we accept your decision to admit the goods and services to Class 9.
13. In relation to the decision concerning the acceptability of *j. security services for special events, including crowd control, access management, and emergency response coordination* in Class 45, we withdraw the claim to the extent that it concerns Class 45.
14. In relation to the decision concerning the acceptability of *k. cybersecurity services, including threat detection and mitigation, vulnerability assessment, and secure network infrastructure design* in Class 42, we accept your decision to admit the goods and services to Class 42.
15. In relation to the decision concerning the acceptability of *l. security software for data encryption, secure communication, GPS tracking, remote access to security appliances, and intrusion detection* in multiple classes, we wish to offer the below declarations:
  - a. We accept your decision to admit the goods and services to Class 9, and;
  - b. We wish to offer the below amendment (the claim to read as provided in 15(b)(i)) to our submission for this item in order to provide a claim in a form acceptable for admission to Class 42:
    - i. software as a service being security software for data encryption, secure communication, GPS tracking, remote access to security appliances, and intrusion detection
16. In relation to the decision concerning the acceptability of *m. security consulting services, including risk assessment, security protocol design, and security system integration* in Class 45, we withdraw the claim to the extent that it concerns Class 45.
17. In relation to the decision concerning the acceptability of *n. training services for security, law enforcement, and military professionals, including use of security equipment, threat assessment, and emergency response protocols*, we withdraw the claim in its entirety.
18. In relation to the decision concerning the acceptability of *o. personal protective equipment for security and law enforcement personnel, including body armour, helmets, and shields and projectile deflection devices* in Class 9, we accept your decision to admit the goods and services to Class 9.

**Section 44 - Identical or Deceptively Similar Trade Marks**

19. In support of our clear statement indicating honesty of adoption under Section 42(a), we offer the following declarations:
  - a. The mark was designed in October 2015 by Bradley Hodges.

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- b. A triangular shape of the mark, resembling the letter 'A', was selected early in the design process as the 'A' mark is intended to serve as a "real-estate-conscious" (short form) to the full wordmark art.
  - c. I submit Annexure 1 ("**Ann. 1**"), a PNG image depicting Advena's wordmark art (referred to herein as "**the Wordmark**"), discussed in 19(b), which contains the applied 'A' mark.
  - d. The Wordmark, which the applied 'A' mark belongs within, is arranged and presented in such a way as to depict the word "Advena" – the name of the company.
  - e. The applied 'A' mark serves as the first and last letters of the company name in the Wordmark.
  - f. The mark was originally designed with a flat, solid bottom border, presenting the entire mark as a continuous hollow triangle.
  - g. The decision to separate the bottom section of the triangle was made early in the design process.
  - h. The decision to separate the bottom section of the triangle in such a way presented in the trade mark application (the 'A' mark) was made as the uninterrupted triangle shape was not consistent with our brand design at the time.
  - i. The logo was originally designed with a slope angle of 53 degrees, a deliberate number, representing the number of characters in the binary representation of the word "Advena", the company which is applying for the mark.
  - j. The decision to depart from a 53-degree angle for all edges was made early in the design process as the overall shape of the logo was not favoured internally.
  - k. The 53-degree angle was retained as part of the design (and is at the time of writing) for the bottom interior angle (the internal left-to-right truncated triangle of the mark) as a subtle reference to the binary representation of our company name, representing our primary industry – computing.
  - l. The applied 'A' mark forms an integral part of our main company logo, which reads our company name clearly, and was designed meticulously and deliberately to avoid confusion with other brand marks.
  - m. The applied 'A' mark has not been significantly modified since its creation in 2015.
  - n. The mark has been in continuous, consistent use in a commercial capacity since September 2016.
  - o. The applied 'A' mark is an original work of Bradley Hodges, the intellectual rights of which were transferred to Advena Proprietary Limited on 19 August 2020.
20. In support of our commercial use of our mark in relation to the claimed goods and services, I submit Annexure 3 ("**Ann. 3**"), a PDF document that contains [REDACTED] [REDACTED] relevant to the mark which demonstrate commercial use and profitability while using the mark.
21. Annexure 3 contains [REDACTED]  
[REDACTED]  
[REDACTED]
22. Annexure 3 is marked PROTECTED as compromise of information confidentiality would be expected to cause high impact to our business.
23. Annexure 3 is confidential and is not fit for public disclosure.

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24. We request that Annexure 3, in accordance with declarations 21 and 22, be excluded from Freedom of Information Act (FOI) requests for this file.
25. In support of our previously submitted evidence where examples of the applied 'A' mark are provided within the Wordmark, we would like to underpin the value of our previously supplied evidence in light of our trade mark application Right Number 2363245, an accepted Trade Mark for the word "ADVENA".
26. In relation to demonstrable use in proximity to offered goods and services, we advise that Advena Proprietary Limited ("**Advena**") does not offer products directly and does not advertise under the Advena brand. In addition, we advise the following in relation to our administrative structure, commercial capacity, and use of intellectual property in relation to goods and services offered:
- a. Advena operates in a commercial capacity as an administrative parent organisation to a number of wholly-owned subsidiaries and commercial brands (our "**Brands**") which directly provide products and services to customers.
  - b. Advertising for certain goods and services is carried out under the relevant child Brand offering, or otherwise chiefly responsible for, the goods and services.
  - c. Advena provides certain software services to customers directly, including single sign-on (SSO) and other Software as a Service facilities for customers to access other Advena products and Brand services.
  - d. Advena engages a concerted effort to educate customers that the Brands which Advena trades under for goods and services are part of the main Advena brand. This includes presentation of the Advena Brand, the applied 'A' mark, and the Wordmark.
  - e. Billing and invoicing are carried out under the main Advena brand with invoices marked with the applied 'A' mark. While Advena advertises products under its various Brand names, Advena does administer the applied 'A' mark and accompanying Advena brand in all billing, support, customer service, product education, and consulting engagements, making our use of the applied 'A' mark demonstrable in a commercial capacity despite the absence of direct advertising spending and related marketing campaigns.

**Conclusion**

27. We hope that this clarification addresses your request for further information. In the event that it does not, I welcome you to contact me directly, either by written correspondence, or by telephone on (02) 5657 0202.
28. We kindly request your reconsideration of the issues raised in the report, considering the arguments presented above. We believe our trade mark application aligns with the provisions of the Trade Marks Act 1995, and that our mark can coexist with Adobe Inc.'s without causing confusion or infringing on their rights.
29. We deeply value your understanding and thoughtful consideration in this matter and look forward to your response.
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**I make this declaration conscientiously believing the statements contained in this declaration to be true and correct.**



**Signed** 14 September 2023

**by** Mr Bradley Daniel Edwin HODGES

**in** Perth, Western Australia

Ann. 1 - Advena's Full-Size Wordmark (Containing the Applied 'A' Mark - Icon)

**ADVENA**<sup>TM</sup>

**Ann. 2 - The Applied 'A' Mark (Icon)**





**PROTECTED**

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[SEC=PROTECTED]

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