

A Hijab: Not Quite “The Look”

Claire L. McCarty, University of Wisconsin – River Falls

Ali Fatih Dalkilic, University of Wisconsin – River Falls

Olca Surgevil, University of Wisconsin – River Falls

This critical incident was prepared by the authors and is intended to be used as a basis for class discussion. The views presented here are those of the authors based on their professional judgment and do not necessarily reflect the views of the Society for Case Research. Copyright © 2015 by the Society for Case Research and the authors. No part of this work may be reproduced or used in any form or by any means without the written permission of the Society for Case Research.

Introduction

After informing Samantha that she did not get the job, Heather Cooke, an assistant manager at Abercrombie & Fitch, wondered if she should have asked if Samantha was Muslim. Did she need religious accommodation? But Samantha hadn't requested such accommodation and Ms. Cooke could not ask her about her religion, could she? As most prudent employers do, Abercrombie trained its store managers not to assume facts about applicants and not to ask about their religion. Consistent with EEOC guidance, asking such questions could raise an inference of discrimination based on religion.

The Interview

It was June 2008 and time for 17-year-old Samantha Elauf to get a job policy (EEOC v. Abercrombie & Fitch, 2013). She applied for a position as a “model” (what Abercrombie & Fitch called their sales associates) at one of their Kids stores in Tulsa, Oklahoma. Samantha often shopped at Abercrombie and wore an Abercrombie-like T-shirt and jeans, and chose a hijab that she thought looked chic. Samantha regularly wore a headscarf, as was appropriate according to her Muslim religion. She had been told by a friend that wearing a hijab would not be a problem in getting a job at Abercrombie (Miller & DiNapoli, 2015).

Ms. Cooke had seen Samantha in the store before and knew she wore a hijab. It never came up during their conversation. Ms. Cooke was impressed with Samantha and she racked up points during the interview. At one point, Ms. Cooke told Samantha that she would have to wear clothing similar to that sold by Abercrombie but never told her about their specific “look” policy (EEOC v. Abercrombie & Fitch, 2013). This policy prohibited employees from wearing “caps.” Samantha was very agreeable and already had many clothes that were appropriate. At the end of the interview, Ms. Cooke asked Samantha if she had any questions. She stated that she did not.

The “Look” Policy

Abercrombie & Fitch, an upscale American fashion retailer focused on casual wear and accessories, targeted a consumer of around 18 to 22 years old. Founded in 1892 as an elite outfitter of sporting goods, the stores were patronized by luminaries such as Teddy Roosevelt, Amelia Earhart, John Steinbeck, Ernest Hemingway, and John F. Kennedy (see http://www.thefullwiki.org/Abercrombie_and_Fitch).

Abercrombie was all about image. The company strictly enforced its “look” policy, which detailed acceptable hair styles, make up, jewelry, and clothes. There was even a 40-page manual for the actors and models who worked on the company’s Gulfstream jet (Creswell, 2012). Men had to be clean shaven and wear Abercrombie polo shirts, boxer briefs, and flip flops. The manual was only disclosed as part of an age discrimination lawsuit by a former pilot.

The Selection Process

After someone was interviewed for a position, Abercrombie required the interviewer to assess the candidate according to a point scale, taking into consideration the candidate’s appearance as one of the factors. As Ms. Cooke considered Samantha’s application (she had scored a 6 which was good enough to be hired), she wondered if the headscarf was a “cap” (EEOC v. Abercrombie & Fitch, 2013). The meaning of “cap” was not explicitly defined in the policy. She assumed that Samantha was Muslim and wore a *hijab* for religious reasons, but did not know for sure. Samantha had not requested any accommodation for a religious custom and Ms. Cooke could not ask her about her religion, could she?

She consulted with her district manager. When he stated that a headscarf would be inconsistent with the look policy, Ms. Cooke decided not to make an offer of employment to Samantha. In fact, the district manager instructed her to lower Samantha’s job interview scores in the “appearance and sense of style category” (Avins, 2014). Ms. Cooke put Samantha’s application into the “do not hire” pile.

Meanwhile, Samantha waited to hear from the company. Ms. Cooke told her that the next time she would hear from Abercrombie it would be about when to report for orientation. Finally, she asked her friend who worked at the store to find out why she had not been hired. The friend told her it was because of her hijab (Couric, 2015).

References

- Abercrombie and Fitch. (nd). Retrieved from:
http://www.thefullwiki.org/Abercrombie_and_Fitch).
- Avins, J. (2014, Oct. 3). Abercrombie & Fitch's absurd dress code is going all the way to the Supreme Court. *Quartz*. Retrieved from: <http://qz.com/275737/abercrombies-absurd-dress-code-is-going-all-the-way-to-the-supreme-court/>
- Couric, K. (2015, June 2). Muslim woman talks to Katie Couric about Supreme Court victory. [Video file]. Retrieved from <http://katiecouric.com/video/#PeLbcqyZ8WU>
- Creswell, J. (2012, Oct. 19). Suit exposes strict manual for Abercrombie flight crew. *The New York Times*. Retrieved from: <http://www.nytimes.com/2012/10/20/business/suit-exposes-strict-manual-for-abercrombie-flight-crew.html>
- EEOC v. Abercrombie & Fitch (2013). Retrieved from:
<http://www.ca10.uscourts.gov/opinions/11/11-5110.pdf>
- Miller, S.A. & DiNapoli, K.M. (2015, April 9). U.S. Supreme Court considers religious accommodations. *The Legal Intelligencer*. Retrieved from:
<http://www.thelegalintelligencer.com/id=1202722977717/US-Supreme-Court-Considers-Religious-Accommodations#ixzz3XJHo1WSu>