**O/0067/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. UK00004048543**
**BY STOMPCLO LTD**
**TO REGISTER:**

# STOMP

**AS A TRADE MARK IN CLASS 25**

**AND**

**IN THE MATTER OF THE OPPOSITION THERETO**
**UNDER NO. 448424**
**BY ALEXANDER GEORGE**

## BACKGROUND AND PLEADINGS

1. On 07 May 2024, STOMPCLO LTD ("the applicant") applied to register the trade mark shown on the cover page of this decision, in the UK. The application was accepted and published in the Trade Marks Journal on 24 May 2024 in respect of the following goods:

> **Class 25:** *Clothing; Knitwear [clothing]; Jackets [clothing]; Ready-to-wear clothing; Woolen clothing; Furs [clothing]; Garments for protecting clothing; Linen clothing; Headbands for clothing; Headbands [clothing]; Clothes; Gloves [clothing]; Gloves as clothing; Jerseys [clothing]; Shorts [clothing]; Denims [clothing]; Cashmere clothing; Capes (clothing); Oilskins [clothing]; Gabardines [clothing]; Silk clothing; Leather clothing; Clothing of leather; Leather (Clothing of -); Parts of clothing, footwear and headgear; Collars [clothing]; Veils [clothing]; Knitted clothing; Corsets [clothing, foundation garments]; Embroidered clothing; Hoods [clothing]; Windproof clothing; Wristbands [clothing]; Belts [clothing]; Belts for clothing; Casual clothing; Rainproof clothing; Waterproof clothing; Jackets being sports clothing; Jackets (Stuff -) [clothing]; Clothing for leisure wear; Ready-made clothing; Bottoms [clothing]; Woven clothing; Drawers [clothing]; Drawers as clothing; Clothing for sports; Sports clothing; Leisure clothing; Athletic clothing; Ties [clothing]; Tops [clothing]; Weatherproof clothing; Water-resistant clothing; Men's clothing.*

2. On 03 July 2024, the application was opposed in full by ALEXANDER GEORGE ("the opponent") based upon Sections 5(4)(a) and 3(6) of the Trade Marks Act 1994 ("the Act").

3. Under Section 5(4)(a), the opponent relies upon the sign 'STOMP' which it claims to have used throughout the UK since 24 June 2022 in relation to *"clothing, telecommunication (social media and TV) and podcasting".* In particular, the opponent's pleadings state as follows:

> *"Please note that the above date is when the podcast, STOMPcast, was launched as this gives a firm date of when the brand STOMP existed and can*

*be well evidenced on podcast platforms and social media. However, the community and brand around STOMP precedes this.*

*Dr Alex George has been using the word STOMP for many years across his personal brand and social media pages (@dralexgeorge, @thestompcast). He has created a large following and community around the concept of stomping, and off the back of the STOMP brand has a popular podcast called the STOMPCAST which has had over 2.5 million downloads. STOMPCAST has been trademarked (UK00003813535) for 2 years and the brand continued to grow so STOMPwear was launched in November 2023, consisting of a hoodie and a cap with the word STOMP embroidered in the centre of both. We have since been working on expanding this merch offering and have therefore applied to trademark STOMP ourselves.*

*Having reviewed the application for STOMP (UK00004048543), it appears that the individual has incorporated a company in January 2024 and filed for this mark shortly afterwards. Given they have only filed for class 25 we were suspicious and looked into the details. We are upset to see that the individual follows Alex and appears to be a floor/carpets tradesman with nothing visibly related to the company he has started 'STOMP CLO Ltd' or the mark STOMP. We unfortunately believe he may have seen our merch at the end of last year, noticed we hadn't yet trademarked it and thought he could jump in and trademark it himself. We are submitting this opposition based on both Section 5(4)(a) and Section 3(6), because we believe the individual is illegitimately trying to publish this mark either to try and profit from us needing to regain the mark, as will be outlined in the next section, or with the aim of copying the brand and clothing we have produced to pass it off as being linked to us and profit in this way. He does not currently appear to be legitimately using the mark in anyway and clearly doesn't have any sort of existing or longstanding brand like we do. If the intention is to release items in class 25 with the STOMP branding we believe this will be confusing and ultimately misrepresent the brand created. This is particularly frustrating when the ethos of the STOMP brand is getting people outside and walking for their overall wellbeing and health."*

4. Under Section 3(6), the opponent repeats the same claims alleging that the applicant attempted to register the opponent's brand with the sole intention of profiting from selling its rights to the opponent.

5. The applicant filed a defence and counterstatement, denying some of the opponent's claims. In particular, the applicant denies the bad faith claim in full.

6. Notably, whilst the applicant states that (a) he *"absolutely reject the claim that his application was made in 'bad faith"* and that (b) he was not aware of the opponent's use of the sign 'STOMP', both assertions denying the Section 3(6) claim in full, it hardly addressed the passing off claim as he only stated that he *"disagree that [his] brand will misrepresent what [the opponent] has built".* For the avoidance of doubt, I reproduce the totality of the applicant's pleadings below:

> *"I absolutely reject the claim that my application was made in 'bad faith', assuming I'm trying to make money by reselling rights to a name which was free at the time. I am a floor layer by trade, but I don't see why my past or present work should impede me. My purpose has changed (something which I assume would resonate with Dr Alex George, formerly an A&E doctor, now an influencer, author, other). I don't intend to be a floor layer forever, and I have been tirelessly developing my own personal Instagram @joejerrom since 7th April 2023, alongside my day job. I have endeavoured to start a brand born from my passion of fitness and wellbeing. STOMP is a luxury streetwear fashion brand built around the idea of moving with purpose and has nothing to do with your claim. This has been long in the making. The previous correspondence claims I have nothing visibly relating myself to the STOMP venture and this is incorrect. Please see my instagram handle for proof, starting 10th October 2023. Evidence of additional materials such as branding, designs & invoices can also be shared. If Dr Alex George has been using the word STOMP for many years across his personal brand and social media pages, why has it taken this long to trademark the brand name. I feel personally attacked by the previous correspondence, I'm trying to build something that I believe in, from what I love, using my own resources and ideas. I have followed the appropriate steps to devise, plan and soon execute on my brand. I saw the*

*acquisition of the trademark STOMP as an early step in this process of building my brand, and followed guidelines to create it. I was not aware of Dr George's brand 'STOMP', and I disagree that our brand will misrepresent what Dr George has built. To be penalised for this would be deeply concerning and incredible deceptive."*

7. The applicant did not file anything further.

8. Both parties are litigants in person. Only the opponent filed evidence during the evidence rounds. Neither party requested a hearing, nor did they file submissions in lieu of a hearing. I make this decision having taken full account of all the papers, referring to them as necessary.

**The evidence**

9. The opponent's evidence consists of a witness statement from Alexander George dated 30 September 2024 and accompanied by 15 exhibits being those labelled AG1-AG15. Mr George is the opponent himself, and his evidence goes to his use of the earlier sign and to the applicant's knowledge of such use.

10. I do not intend to summarise the opponent' evidence in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

**Relevance of EU Law**

11. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, Section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

## DECISION

### Section 5(4)(a)

12. Section 5(4)(a) states:

> "(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-
>
> > (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,
> >
> > (aa) […]
> > (b) […]
>
> A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark."

13. Subsection (4A) of Section 5 states:

> "(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application."

14. In *Discount Outlet v Feel Good UK,* [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

> "55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of

deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether *"a substantial number"* of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

15. As it will be recalled, in its pleadings, the opponent stated that he has used the sign 'STOMP' in relation to items of clothing, that he launched 'STOMPwear' in November 2023 (which is seven months prior to the relevant date), and that he has since been working on expanding his merchandise offering. Admittedly, the opponent's pleadings do not claim that, at the relevant date, the opponent owned sufficient goodwill under the sign 'STOMP' in relation to clothing (as opposed to podcasting, for example) to sustain an action for passing off.

16. The fact that both parties are litigants in person might have contributed to the pleadings being poorly set out. However, as Mr Geoffrey Hobbs KC, sitting as the Appointed Person in *BOSCO* (BL-O- O/399/15) stated, the CPR does not make specific or separate provision for litigants in person and the same approach should be adopted in relation to the need for compliance with rules, orders and directions in Registry proceedings under the 1994 Act and the 2008 Rules.

17. In the present case, whilst both parties' pleadings in relation to passing off fail to deal with the issue of goodwill, the consequences flowing from this are fatal for the applicant, but not for the opponent. I will explain why shortly. But before I do that, it is convenient to note that, having observed that the applicant's counterstatement failed to deal with the passing off claim, on 18 July 2024 the Tribunal wrote to the applicant asking him to state whether he agreed or disagreed with the opponent's claim under 5(4)(a). In this connection, the official letter clearly pointed out to the applicant that the opponent had claimed that *"use of the applicant's trade mark would be contrary to law, in particular, the law of passing off"* and that the opponent had stated that it had *"developed goodwill and a reputation, and [the contested] mark would misrepresent*

*it."* In addition, the applicant was informed that he was not able to request proof of use as the opposition was not based on grounds under Sections 5(1), 5(2) or 5(3) and was invited to amend the part of the Form TM8 where it required the opponent to provide proof of use. The applicant filed an amended Form TM8 on 21 July 2024, however, whilst correcting the proof of use request, it left the counterstatement substantially unaltered.

18. Turning to the point about the different consequences of failing to plead something in the statement of grounds as opposed to the counterstatement, they are linked to the question of what is necessary to make good an objection and a defence. In *SKYCLUB* (BL-O/044/21), Professor Phillip Johnson, sitting as the Appointed Person, stated that the principle that where a defendant fails to deal with an allegation it is taken to be admitted (CPR 16.5(5)) is applicable in trade mark opposition proceedings. However, he also clarified that it is possible to make an objection under Section 5(2) solely by completing the boxes on TM7 without the need to plead every aspect of the case by filing a separate statement of grounds. He stated:

> "19. Accordingly, the issue becomes whether the TM8, as filed, was sufficient to put the issue of the similarity of goods and services in issue. If the TM8 was sufficient then the Hearing Officer was entitled to make the findings he did (subject to the second ground of appeal) but if the TM8 was not sufficient then he would have to treat the goods as similar (this would raise an issue about how similar he must treat them as being).
>
> 20. Before considering the adequacy of the TM8, I will first address Mr Engelman's argument regarding the TM7. He alleges that the TM7 filed in this case was insufficient as it included no separately pleaded Statement of Grounds.
>
> 21. In WILD CHILD TM [1998] RPC 455, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, spelt out what was required for an objection under section 5(4)(a):
>
> **The Scope of the Opposition**

> In the interests of justice and fairness it is plainly necessary for an objection to registration under section 5(4) to be framed in terms which: (i) specify whether the objection is raised under subsection (4)(a) or subsection (4)(b); (ii) identify the matters which are said to justify the conclusion that use of the relevant trade mark in the United Kingdom is liable to be prevented by virtue of an "earlier right" entitled to recognition and protection under the relevant subsection; and (iii) state whether the objection is raised in relation to all or only some (and, if so, which) of the goods or services specified in the registration or application for registration of the relevant trade mark…

22. In relation to each of these things, as adapted for objections under section 5(2)(b), it is possible to make the objection entirely by completing the boxes on TM7. There is no need to file a separate Statement of Grounds. Of course, where certain things are alleged a Statement of Grounds will be needed, for instance where enhanced distinctiveness is claimed. Nevertheless, an Opponent has a fully pleaded claim based on the completion of the boxes on Form TM7 alone.

23. The same cannot be said for Form TM8. Mr Engelman submits that filing Form TM8 should be treated as a general denial; that is, denying everything alleged by the Opponent that is not specifically addressed in the pleadings. In other words, if a blank Counter-Statement were filed then the similarity of marks, the similarity of goods and services, the likelihood of confusion, and anything else alleged by the Applicant would be in issue.

24. The position in the Civil Procedure Rules (CPR) is clear; namely, a defendant must state which allegations are denied, which allegations a defendant is unable to admit or deny, and which allegations the defendant admits (CPR, 16.5(1)). Where a defendant fails to deal with an allegation it is taken to be admitted (CPR 16.5(5)). This is subject to the rule that where an allegation is not dealt with, but the defence sets out the nature of his case in relation to the issue to which that allegation is relevant, then the allegation must

be proved by the Claimant (CPR 16.5(3)). Thus, the filing of a “blank” defence would lead to the whole of the Claimant’s case being admitted.

25. The procedure before neither the registrar nor the Appointed Person is governed by the CPR, but there is a Tribunal Practice Notice (TPN 4/2000) which deals with pleadings and provides a similar rule to the CPR:

> 19. A defence should comment on the facts set out in the statement of case and should state which of the grounds are admitted or denied and those which the applicant is unable to admit or deny but which he requires the opponent to prove
>
> 20. The counter-statement should set out the reasons for denying a particular allegation and if necessary the facts on which they will rely in their defence. For example, if the party filing the counter-statement wishes to refer to prior registrations in support of their application then, as above, full details of those registrations should be provided.

26. In the context of the CPR, the Court of Appeal has emphasised that there is a positive duty on a defendant to admit or deny matters unless the party is unable to do so: *SPI North Ltd v Swiss Post International* (UK) Ltd [2019] EWCA Civ 7 at [48]. As Lord Hoffmann opined in *Barclays Bank Plc v Boulter* [1999] 1 WLR 1919 at 1923:

> The purpose of the pleadings is to define the issues and give the other party fair notice of the case which he has to meet.

27. In that case, their Lordships excused otherwise inadequate pleadings (under the old Rules of the Supreme Court) because the case the defendant would have to meet was made abundantly clear (from concealed and referential allegations) and the pleading point was said to be “technical in the highest degree” (Barclays at 1923). In that case, the defendant’s Counsel had made it clear that he would be able to deal with the point without the trial being adjourned. On the other hand, the plaintiff would merely have to make a formal

request to amend. On balance it was concluded that no amendment was necessary.

28. In this case, it is clear from the Hearing Officer's decision that the amendment would have been allowed if an application had been made and (as in fact occurred) the parties were ready to proceed on the basis that the similarity of goods and services, the global appreciation test and the likelihood of confusion was in issue. However, in contrast to *Barclays*, in this case there was no concealed or referential allegation. The defence appeared only to address the (now abandoned) section 5(3) ground and nothing (other than experience) would have put the Appellant on notice that the similarity of goods and services or confusion were in issue in relation to s 5(2)(b)."

19. Although *SKYCLUB* was based on a Section 5(2) objection, Professor Phillip Johnson drew his conclusion from *WILD CHILD,* a case which sets out what is required for an objection based on the law of passing off. Applying the guidance from *WILD CHILD TM*, in this case the opponent's form TM7:

i. identifies that the objection is raised under Section 5(4)(a);

ii. identifies the matters which are said to justify the conclusion that use of the relevant trade mark in the UK is liable to be prevented by virtue of an "earlier right"; these matters were set out in answer to the question *"Why would use of the applicant's trade mark be contrary to law, particularly the law of passing of";* and

iii. state that the objection is raised in relation to all of the goods specified in the application for registration of the relevant trade mark.

20. Accordingly, applying the above guidance, I conclude that although the opponent does not refer expressly to having acquired goodwill under the sign in his statement of grounds, he has presented a sufficiently clear passing off claim insofar as it alleges that the applicant has been *"copying the brand and the clothing [the opponent] has produced to pass it off as being linked to [the opponent] and profit in this way".* The

opponent has made it clear which sign is relied upon in relation to which goods/services. In any event, (a) it is a prerequisite of a passing off claim that the opponent must have goodwill, so the fact that the opponent states that the applicant is passing off makes it implicit that the opponent is claiming to have goodwill and (b) the fact that the opponent has listed clothing as one of the goods that he has goodwill in does, in itself, indicate that he thinks he has sufficient goodwill for clothing to bring a claim for passing off, even if he has not expressly said so in his statement of grounds. Further, the opponent's claim contains no concealed or referential allegations.

21. Conversely, applying the same guidance, I conclude that the applicant has failed to deal with the opponent's passing off claim or, at least, with its claim to goodwill – the consequence of this is that goodwill is not at issue. As regards misrepresentation and damage, the opponent's sign 'STOMP' is identical to the contested sign 'STOMP'. The goods are also identical, all being items of clothing. It follows that misrepresentation and damage are not just likely, but unavoidable.

22. The opposition under Section 5(4)(a) is successful.

**Section 3(6)**

23. Section 3(6) of the Act states:

> "(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith."

24. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1) ("SkyKick")* [2024] UKSC 36, Lord Kitchin summarised the general principles applicable to bad faith at [240] as follows:

> "(i) […]
>
> (ii) The date for assessing whether an application to register [a] trade mark was made in bad faith is the date the application for registration was made (*Lindt*, para 35).

(iii) Bad faith in this context is an autonomous concept of EU law which must be given a uniform interpretation […], and must be interpreted in the context of Directive 89/104 in the same manner as in the context of Regulation 40/94 ([*Malaysia Dairy Industries Pte Ltd v Ankenaevnet for Patenter og Varemaerker* (C-320/12) EU:C:2013:435 ("*Malaysia Dairy*")], para 29; [*Sky plc v SkyKick UK Ltd* (C-371/18) EU:C:2020:45 ("*Sky CJEU*")], para 73).

(iv) While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, the concept must also be understood in the context of trade mark law, which involves the use of marks in the course of trade. Further, it must have regard to the objectives of the […] law of trade marks, namely the establishment and functioning of […] a system of undistorted competition in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin (*Lindt*, para 45; [*Koton Mağazacilik Tekstil Sanayi ve Ticaret AS v European Union Intellectual Property Office (EUIPO)* (C-104/18) EU:C:2019:724 ("*Koton*")], para 45).

(v) Consequently, the objection will be made out where the proprietor made the application for registration, not with the aim of engaging fairly in competition but either (a) with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or (b) with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, and in particular the essential function of indicating origin (*Koton*, para 46; *Sky CJEU*, para 75).
(vi) The intention of the applicant is a subjective matter, but it must be capable of being established objectively by the competent administrative or judicial authorities having regard to the objective circumstances of the case (*[Hasbro Inc* v *EUIPO, Kreativni Dogaaji d.o.o. (intervening)* (Case T-663/19) EU:T:2021:211 ("*Hasbro*")], paras 39 and 40; *Koton*, para 47).

(vii) The burden of proving that an application for a registered mark was made in bad faith lies on the party making the allegation. But where the circumstances of the case may lead to a rebuttal of the presumption of good faith, it is for the proprietor of the mark to explain and provide a plausible explanation of the objectives and commercial logic pursued by the application for registration (*Hasbro*, paras 42 and 43).

(viii) Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all of the factors relevant to the particular case (*Lindt*, para 37).

(ix) The applicant for a trade mark is not required to indicate or to know precisely when the application is filed or examined, the use that will be made of it (*Sky CJEU*, para 76; [*AS v Deutsches Patent-und Markenamt* (C-541/18) EU:C:2019:725], para 22).

(x) Nevertheless, the registration by an applicant of a mark without any intention to use it in relation to the goods and services covered by the registration may constitute bad faith where there is no rationale for the application in the light of the aims referred to in Regulation 40/94 and Directive 89/104 (*Sky CJEU*, para 77).

(xi) Such bad faith may, however, be established only where there are objective, relevant and consistent indicia tending to show that, when the application was filed, the applicant for registration had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark (*Sky CJEU*, para 77).

(xii) It follows that the bad faith of the applicant cannot be presumed on the basis of a mere finding that, at the time of filing the application, the applicant had no economic activity corresponding to the goods and services referred to in the application (*Sky CJEU*, para 78).

(xiii) When the absence of an intention to use the mark in accordance with the essential functions of a trade mark concerns only certain goods or services referred to in the application for registration, that constitutes making the application in bad faith only in so far as it relates to those goods or services (*Sky CJEU*, para 81).

(xiv) If, at the end of the day, the court concludes that, despite formal observance of the relevant rules and conditions for obtaining registration, the purpose of the rules has not been achieved, and that there was an intention to take advantage of the rules by creating artificially the conditions laid down for obtaining the registration, this may amount to an abuse sufficient to find that the application was made in bad faith (see, for example, *Hasbro*, para 72).

(xv) Directive 89/104 does not preclude a provision of national law under which an applicant for registration must state that the mark is being used in relation to the goods or services in relation to which it is sought to register the mark, or that the applicant has a *bona fide* intention that it should be used, provided that infringement of such an obligation cannot constitute a ground for invalidity. It may, however, constitute evidence for the purposes of establishing possible bad faith on the part of the applicant when the application was filed (*Sky CJEU*, paras 86 and 87)."

25. The essence of bad faith objection is that the applicant's intended conduct is a departure from accepted principles of ethical behaviour or honest commercial practices. Earlier in *SkyKick*, Lord Kitchin considered the question of what amounts to bad faith. He underlined that the categories of bad faith and the circumstances which may constitute bad faith are not closed, and continued:

"152. In seeking to identify the relevant principles, it is necessary to have in mind two fundamental aspects of trade mark law to which I have already referred: first, it is concerned with the use of marks in trade to denote the origin of goods and services. Secondly, the aim of the trade mark regime is to contribute to a system of undistorted competition in which businesses are able to attract and retain customers by the quality of their goods and services, and

for that purpose are able to have registered signs which enable consumers to distinguish the goods and services of one undertaking from those of another. Such a system must also provide an incentive and protection for the investment by a brand owner in the quality and other beneficial aspects of its goods and services, and so allow it to develop a goodwill in its business relating to their sale and supply.

153. Against this background, the essence of the objection that an application to register a mark was made in bad faith may be understood: it is that the motive or intention of the applicant was to engage in conduct that departed from accepted principles of ethical behaviour or honest commercial practices having regard to the purposes of the trade mark system which I have described. Whether the conduct was undertaken with that motive or intention and did indeed depart from such ethical behaviour or honest commercial practices must be assessed having regard to all the objective circumstances of the case: see, for example, *Koton Mağazacilik Tekstil Sanayi ve Ticaret AS v European Union Intellectual Property Office (EUIPO)* (C-104/18) EU:C:2019:724 ("*Koton*"), paras 46 and 47 […]."

26. The correct approach to assessing bad faith was set out in *Alexander Trade Mark*, BL O/036/18, where Mr Geoffrey Hobbs sitting as the Appointed Person stated that the key questions for determination in a claim of bad faith are:

(a) What, in concrete terms, was the objective that the applicant has been accused of pursuing?

(b) Was that an objective for the purposes of which the contested application could not be properly filed? and

(c) Was it established that the contested application was filed in pursuit of that objective?

27. It is necessary to ascertain what the applicant knew at the relevant date: *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929

(Ch). Evidence about subsequent events may be relevant, if it casts light backwards on the position at the relevant date: *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited* and others, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).

28. An allegation of bad faith is a serious allegation which must be distinctly proved, but in deciding whether it has been proved, the usual civil evidence standard applies (i.e. balance of probability). This means that it is not enough to establish facts which are as consistent with good faith as bad faith: *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch).

29. The caselaw shows that the initial evidential burden falls upon the opponent: the opponent must present evidence from which a rebuttable presumption of lack of good faith can be drawn. If it does that, then the burden shifts to the applicant to rebut the allegation.

30. With this in mind, I now turn to the opponent's evidence.

31. The first part of the opponent's evidence is about his social media presence. This evidence reveals that the opponent started using the word 'STOMP' in posts shared via his personal Instagram and Tick Tock accounts since December 2020.[1] Admittedly, the screenshots do not display the dates when the posts were shared; however, the opponent has written the dates down next to each post, and I have no reason to disbelieve him (especially given that the evidence is unchallenged). These documents establish that: (i) the opponent has used the word 'STOMP' on social media posts for more than three years prior to the relevant date; (ii) the words 'STOMP' and 'STOMPING' are used by the opponent to describe the act of being in the nature and enjoying the outdoors as a way of supporting physical and mental health; and (iii) the opponent's posts appear to have large follower counts with some posts reaching over 50,000 followers.

[1] AG1

32. In addition, the opponent says that he is the author of various books in which he used the word 'STOMP', listing the following as examples: 'A Better Day' (published September 2022), 'The Mind Manual' (published May 2023), and 'A Better Day Journal' (published January 2024). Whilst the evidence is supported by relevant extracts from the books, it is not clear how many copies were sold in the UK prior to the relevant date.

33. The opponent also states that he coined the term 'STOMP' to mean "*moving with purpose",* a definition he has used and shared, as shown by various posts dated in 2022 and 2023 which refer to 'stomping' as *"walking with a purpose"*. In this connection, the opponent alleges that in his TM8, the applicant *"blatantly copied*" the opponent's brand claiming that the applicant's 'STOMP' brand is *"built around the idea of moving with purpose";* this, the opponent states *"is a direct and unmistakable replication of both [the opponent's] definition and the essence of [the opponent's] brand".*

34. The opponent states that he has worked hard to build a substantial following, with over 3 million followers across Instagram and TikTok and alleges that the applicant has been following his page via his business profile since May 2020. In support of this statement the opponent provides a copy of a screenshot showing that jj_carpets_and_flooring started following him in May 2020.[2] The opponent gives evidence that jj_carpets_and_flooring is the business account for the applicant. I bear in mind that this evidence is unchallenged by the applicant.

35. The opponent further states that in May 2022, he launched 'STOMPCAST', a podcast centred around getting people outside stomping for their mind and their body. This, the opponent explains, was a natural extension of his passion and love of stomping and his desire to further expand the 'STOMP' brand. Copies of social media posts announcing the launch of 'STOMPCAST' are produced in evidence along with evidence that 'STOMPCAST' episodes were posted on Apple Podcasts and Spotify since 25 July 2022.[3] Since then, the opponent states, weekly episodes have been

[2] AG5
[3] AG6

released, totalling 114 to the date of the witness statement, and 'STOMPCAST' has reached over 3 million downloads. The opponent has also stated that he obtained registration for the trade mark 'STOMPCAST' under UK00003813535, with copy of the relevant certificate being provided in evidence.[4] In support of the claim that 'STOMPCAST' has achieved significant success, the opponent provides copies of online articles,[5] including an article from the Guardian dated 20 April 2023 which states:

> *"Stompcast*
> *Infinite props to Dr Alex George for turning a moderately cringeworthy stint on the 2018 series of Love Island into a successful, diverse and very dignified career as a mental health advocate and influencer (a job which sees him work for the Department for Education and give out self-care tips on OnlyFans). In this quiet, thoughtful and thoroughly wholesome podcast, he extols the psychological benefits of walking by going for a stroll with a guest, during which meandering chats are propelled by gentle questioning…"*

36. Copies of other online articles about the opponent's 'STOMPCAST' podcast from metro.co.uk (dated 20 June 2023), walesonline.co.uk (dated 9 August 2022), and stlylist.co.uk (dated October 2022) are produced in evidence . The articles confirm that 'Stompcast' has been created and is run by the opponent, Dr Alex George, who is a former Love Island contestant. The articles also reveal that the opponent is the host of the podcast, and that the series sees him speak with different guests on different topics whilst out walking.

37. Listenership figures for the opponent's podcast are given as of 12 September 2024 (which is approximately 4 months after the relevant date) and are over 30K (for the last 7 days), over 140K (for the last 30 days) and over 1.5million (all-time).[6]

38. As regards use of the mark in relation to clothing, the opponent says that *"given the established brand and substantial social media following, [they] launched STOMP*

[4] AG7
[5] AG8
[6] AG8

*apparel in November 2023"*; this consisted of a green cap and a green hoodie, both with the brand name 'STOMP' embroidered in white at the centre. Examples of Instagram posts promoting these goods in November 2023 are exhibited,[7] along with copies of web pages from the opponent's website which offer those good for sale.

39. Finally, the opponent provides copies of the orders relating to 'STOMP' branded clothing received on 19 November 2023, which are said to amount to £3,415 supported by an invoice for the purchase of the stock.[8] The opponent states that these sales were made in only 48 hours.

40. The opponent's case is, essentially, that the applicant, who was one of the opponent's followers, copied the opponent's brand 'STOMP' and that by seeking registration of the same mark in relation to clothing, the applicant acted in bad faith with the intention of either profiting from the opponent needing to regain the mark, or passing off as being linked to the opponent and profiting in this way.

41. I think there is enough in this case to conclude that the applicant was aware of the opponent's brand when he applied for the contested mark. This is because: (i) the opponent's social media activity and podcast, both of which were promoted under the brand 'STOMP', appear to be relatively successful in the UK as demonstrated by the follower count, listenership figures and UK press coverage; (ii) as the opponent entirely correctly pointed out, in his counterstatement the applicant acknowledged facts about the opponent's background (that he was formerly an A&E doctor, and now an influencer and author) that were not disclosed in the statement of grounds and that the applicant could not have been aware of unless he had an interest in the opponent as a TV and social media personality; (iii) the word 'STOMP' is a dictionary word meaning "*to walk with intentionally heavy steps, especially as a way of showing that you are annoyed*"; however, the way the opponent uses the word 'STOMP' in his social media posts and in his podcast is completely original and, in the counterstatement the applicant adopts the same original meaning, i.e. *"walking with purpose*" to promote the health benefits of outdoor life. This is unlikely to be coincidental; and (iv) the opponent

[7] AG10
[8] AG12-13

gave evidence that the applicant follows his social media accounts, and such evidence is unchallenged by the applicant.

42. It is well established that the mere fact that the applicant knew that another party used the trade mark in the UK does not establish bad faith: *Lindt, Koton* (paragraph 55). The applicant may have reasonably believed that it was entitled to apply to register the mark, e.g. where there had been honest concurrent use of the marks: *Hotel Cipriani*.

43. However, an application to register a mark is likely to have been filed in bad faith where the applicant knew that a third party used the mark in the UK, or had reason to believe that it may wish to do so in future, and intended to use the trade mark registration to extract payment/consideration from the third party, e.g. to lever a UK licence from an overseas trader: *Daawat* Trade Mark, [2003] RPC 11, or to gain an unfair advantage by exploiting the reputation of a well-known name: *Trump International Limited v DDTM Operations LLC*, [2019] EWHC 769 (Ch).

44. In *Sivaratnam v Maya Appliances PVT. Ltd*, BL O/0052/25, Iain Purvis KC, as the Appointed Person, cautioned that although the burden of showing bad faith is on an applicant for invalidation, in the majority of cases all an applicant for invalidation can do is make inferences from the objective facts and invite the other party to respond. In that case, the applicant for invalidation had provided evidence of its own reputation in India, the personal and business links of the proprietor to India which would have made him aware of the applicant's activities, and pointed out that the proprietor had no obvious business interest in the goods at issue. It argued that the adoption of an identical mark, which was an invented word, for identical goods was unlikely to be coincidental and the only obvious reason why the proprietor would have applied for the mark for the particular goods was to frustrate the applicant's business activities in the UK. Mr Purvis held that these facts established a *prima facie* case of bad faith and that, in the absence of a credible explanation from the proprietor for his conduct, bad faith was established.[9]

[9] See also: *Rui Qu (Shanghai) Enterprise Management Consulting Company Limited v Accessible Labs Ltd*, BL O/0534/25.

45. That case concerned an application for invalidation, but the same principles apply to an opposition. I think a similar conclusion can be drawn in the present case. As I have already said, the applicant's statements indicate that he was aware of the opponent's activities. In addition, the applicant applied to register a mark identical to that used by the opponent. Whilst I bear in mind that the mark in question is not an invented word, as it was in the case referred to above, significantly, there is evidence that the applicant attributed to that sign the same original meaning and concept that the opponent has coined, developed and promoted through his social media and podcast activity. It is also of note that the application (which relates to clothing) was made after the opponent launched an apparel range, a matter that the applicant is likely to have been aware of due to his following of the opponent on social media. Whilst the applicant states that he does not intend to be a floor layer forever and has endeavoured to start a brand born from his passion of fitness and wellbeing, he provided no explanation as to how he came up with the brand 'STOMP' and with the idea of "moving with purpose" which reproduces the opponent's brand and its ethos. In those circumstances, having considered the evidence filed and the argument made by the opponent, I consider that they establish a *prima facie* case of bad faith that the applicant has not rebutted.

46. The opposition under Section 3(6) is also successful.

**OUTCOME**

47. The opposition has been successful, and the application is refused.

**COSTS**

48. The opponent has been successful and would ordinarily be entitled to an award of costs. However, as the opponent is an unrepresented party, the tribunal wrote to the opponent and asked him to complete and return a costs pro-forma if he intended to seek an award of costs. He was advised that, if the pro-forma was not returned, no award of costs would be made. The pro-forma has not been received by the tribunal and I therefore direct that the parties bear their own costs.

**Dated this 29th day of January 2026**

**TERESA PINTO**

**For the Registrar**