O/0210/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NO. 3393437

IN THE NAME OF DARWIN EVOLUTION TECHNOLGIES LTD

AND

IN THE MATTER OF UK REGISTRATION NO. 918099715 IN THE NAME OF

DIEGO LIJTMAER

IN RESPECT OF THE IDENTICAL TRADE MARK

Bezos

IN CLASSES 9, 39 AND 42

AND

THE APPLICATIONS FOR INVALIDATION THERETO UNDER NOS. 507298 AND 507299

BY

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

Background and pleadings

1. These proceedings are against the following two UK trade mark registrations:

3393437

Bezos

Filing date: 18/04/2019

Registration date: 12/07/2019

Applicant: Darwin Evolution Technologies Ltd

Class 9: *Application software; Application software for cloud computing services; Application software for mobile devices; Application software for mobile phones; Application software for smart phones; Application software for wireless devices; Artificial intelligence software for analysis; Artificial intelligence software for vehicles; Augmented reality software; Augmented reality software for creating maps; Augmented reality software for use in mobile devices; Augmented reality software for use in mobile devices for integrating electronic data with real world environments; Authentication software; Bar code labels, encoded; Bar code readers; Bar code scanners; Business application software; Business intelligence software; Business management software; Business software; Business technology software*.

Class 39: *Agency services for arranging the transportation of goods; Arrangement for the delivery of parcels by sea and by air; Arrangement of transport; Arrangement of transportation; Arranging for the shipping of cargo; Arranging for the transport of goods by sea; Arranging the collection of packages; Arranging the collection of packets; Arranging the collection of parcels; Arranging the delivery of goods; Arranging the delivery of goods by post; Arranging the shipping of goods; Arranging the storage of goods; Arranging the transportation of goods; Arranging the transportation of parcels; Arranging the transportation of parcels by air.*

Class 42: *Computer software integration; Constructing an internet platform for electronic commerce; Design of engineering products; Design of equipment for the transportation of freight*.

918099715

Bezos

Filing date: 25/07/2019

Registration date: 20/12/2019

Receiving date in the UK: 25/01/2020

Applicant: Diego Lijtmaer

In respect of an identical list of goods in **Class 9** and services in **Class 39** and **Class 42** to those listed in 3393437

2. This second registration is a UK "comparable mark" created from an existing EU trade mark at the end of the Brexit transition period, pursuant to the Withdrawal Agreement. The registration retains its EU filing date but is an independent UK right that can be challenged separately to the EU trade mark.

3. CMS Cameron McKenna Nabarro Olswang LLP (hereafter "the applicant") filed applications for invalidation against the above registrations (together "the contested marks") based on Section 3(6) of the Trade Marks Act 1994 ("the Act"). It asserts that:

- The contested marks are both in respect of goods and services relating to the area of fame and expertise of Mr Jeffrey Bezos, founder of Amazon.com, Inc (hereafter "Amazon"), being the world's largest online retailer and market place;

- The intention of Darwin Evolution Technologies Ltd ("Darwin") and Diego Lijtmaer (together "the proprietors") in filing the contested marks is to gain some advantage deriving from the fame of Mr Bezos. The applicant claims that Mr Lijtmaer was co-founder and current director of Darwin Evolution Technologies

Ltd and that another director was formerly a director of Amazon Flex UK according to his Linkedin profile;

- The Bezos family name is so uncommon, and Mr Bezos is so well-known that the public will inevitably assume there is a connection between Mr Bezos, the contested marks and any use of the contested marks in relation to the goods and services listed when no such link exists;

- The proprietors have acknowledged that Mr Bezos "transformed the internet, e-commerce and logistics worlds". The proprietors are attempting to obtain trade mark registrations for the Bezos family name that is focussed on these industries. Additionally, Mr Lijtmaer's Linkedin profile also previously stated that "Bezos was named to honour the person who transformed the internet, e-commerce and logistics worlds";

- It concludes that the proprietors have acted below the standards of acceptable commercial behaviour judged by ordinary standards of honest people and both of the contested marks should be invalidated.

4. The proprietors filed counterstatements denying many of the claims made. In particular, they claim:

- That Darwin has been trading since 2019 and used its mark since then and that it is the company licensed by Mr Lijtmaer to use the contested marks;

- It is denied that the contested marks were filed with the intention of gaining some advantage from the fame of Mr Bezos, pointing out that Mr Bezos does not use his name as a trade mark or indicator of origin;

- Mr Bezos does not own any rights in the UK in his surname. Despite being famous, this does not prevent the proprietors from using his surname as a badge of origin;

- Mr Bezos' name, whilst well-known, is not associated with e-commerce but, rather, "Amazon" is;

- The contested marks were not registered as instruments of fraud to either extort money from Mr Bezos or to prevent Mr Bezos expanding a non-existent brand to the UK;

- The applicant's claim that the applicant's allegation that the filing of the contested marks was an attempt to benefit from the fame of Mr Bezos is an attempt to argue a case under section 5(3) or section 5(4)(a) of the Act by the backdoor and should be rejected.

5. The proprietors admit that their list of goods and services are those for which Amazon is known, that Mr Bezos is known as the founder of Amazon, that their signs consist of the family name of Mr Bezos and that "Bezos" is an unusual surname, at least in the UK. In light of these concessions, I do not intend to provide a detailed summary of the applicant's evidence that goes to these points.

6. The proprietors subsequently confirmed[1] that Mr Lijtmaer is a co-founder of, and shareholder of Darwin. Consequently, the two applications for invalidation were consolidated and Mr Lijtmaer and Darwin jointly provided in writing, an undertaking that they each confirm that they accept joint and several liability for costs in these proceedings.

7. Only the applicant filed evidence in these proceedings. This will be summarised to the extent that I considered it necessary. The applicant also provided written submissions which will not be summarised but will be referred to as and where appropriate during this decision. No hearing was requested and so this decision is taken following careful consideration of the papers.

8. 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.

[1] By email of 24 July 2024

Evidence

9. The applicant's evidence is in the form of the witness statement of David Parrish, partner at the applicant, together with Exhibits DP1 – DP41. He explains that the purpose of his evidence is to introduce various documents that the applicant will refer to during the proceedings.

Legislation

10. 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."

11. Section 3(6) is a relevant ground in invalidation proceedings because of section 47 of the Act, the relevant parts of which state:

> "47. (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration). […].
>
> […]
>
> (5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.
>
> […]
>
> (6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.
>
> Provided that this shall not affect transactions past and closed."

12. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [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 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)."

13. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, 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 Pro perty Office (EUIPO)* (C-104/18) EU:C:2019:724 ("Koton"), paras 46 and 47 […].”

14. According to *Alexander Trade Mark*, BL O/036/18, the key questions for determination in a claim of bad faith are:

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

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

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

15. The relevant dates in these proceedings are the dates upon which the contested marks were filed, namely 18 April 2019 and 25 July 2019 respectively.

16. At this point, I remind myself that the proprietors have conceded (sensibly so in my view) that:

- their list of goods and services are those for which Mr Bezos is associated;
- Mr Bezos is known, among other things, as the founder of Amazon, and;
- that their signs consist of the family name of Mr Bezos and that "Bezos" is an unusual surname, at least in the UK.[2]

17. The first two of these concessions appear to acknowledge that the proprietors have knowledge of the scale of the activities of Amazon, something that is demonstrated in the applicant's evidence.[3] These concessions also relate to Mr Bezos' role in founding the business and the level of recognition that he has as a result of this as well as other business and philanthropic activities. In fact, there appears to be much common ground between the parties regarding the repute of Amazon and Mr Bezos. Where the parties' views diverge is in respect of how the proprietors' actions of filing for their trade mark registrations should be perceived when considered through the prism of a claim of bad faith.

18. I intend to evaluate the proprietors' actions through the key questions identified in *Alexander Trade Mark*.

[2] See for example at Exhibit DP-17 is an extract from forebears.lo/surnames/bezos that shows only two occurrences of the surname in England and one in Wales, and at Exhibit DP-18 which consists of an extract from 192.com showing 7 individuals detected in the UK with the surname Bezos.

[3] See for example, Exhibits DP-2 that includes a press release that reflects the size of Amazon's operations in Europe (including the UK) in 2018. It refers to 5,500 researchers and engineers working across 25 centres in Europe and that since 2010 Amazon had invested €27 billion across Europe. Exhibits DP-3 – DP-4 consisting of Amazon's annual reports from 2020 and 2021. The latter shows net sales in the UK rising from over €17 million in 2019 to €nearly 32 million in 2021.

What, in concrete terms, was the objective that the proprietors have been accused of pursuing?

19. The applicant submits that the contested marks were applied for in bad faith because:

(i) the intention was to gain an advantage from the name Bezos deriving from the fame of Mr Jeff Bezos, the founder of Amazon, the world's largest online retailer and market place;

(ii) A director of Darwin was formerly a director of Amazon Flex UK according to his Linkedin profile;[4]

(iii) The Bezos family name is so uncommon, and Mr Bezos is so well-known, that the public will inevitably assume there is a connection between Mr Bezos, the contested marks and any use of the contested marks in relation to the goods and services listed when no such link exists;

(iv) The proprietors are attempting to obtain trade mark registrations for the Bezos family name in the field of internet, e-commerce and logistics worlds.

Was that an objective for the purposes of which the contested marks could not be properly filed?

20. In *Fianna Fail and Fine Gael v Patrick Melly* [2008] ETMR 41, Mr Geoffrey Hobbs QC (now KC) as the Appointed Person found that an intention to feed off the reputation associated with well known (non-trade mark) names amounted to bad faith on the facts of that case. Mr Hobbs stated that:

> "58. None of this was an accident. The applicant targeted the opponent organisations and took their names for the purpose of registering them in furtherance of his objectives. His strategy was leech like in its effort to fasten upon and feed off the distinctive character and repute of the names. I can see from what the applicant has written that he believed their names were open and available for registration in the United Kingdom on a first come, first served basis. I suspect that he also regarded registration of their names as a suitable way of pursuing a beneficial solution so far as his political wishes were

[4] Exhibit DP-23

concerned. Even so his subjective perceptions cannot, in my view, excuse or justify his conduct in connection with the disputed applications for registration. I am satisfied that his conduct in that connection should be regarded as improper for having been embarked upon in bad faith within the grasp of that objection as set out above. I therefore uphold the opponents' appeals and objections under Section 3(6) with the result that the disputed applications for registration will be refused in their entirety."

21. Therefore, it is possible that an intention to feed off the reputation associated with well known (non-trade mark) names can amount to bad faith. If I conclude that this was the intention of the proprietors then, consistent with the above guidance, I may find that the filing of the contested marks amounted to an act of bad faith.

Was it established that the contested marks were filed in pursuit of that objective?

22. It is necessary to ascertain, therefore, what the proprietors knew at the relevant date.[5] Evidence about subsequent events may be relevant, if it casts light backwards on the position at the relevant date.[6] The presumption is that the proprietors have acted in good faith and therefore an allegation of bad faith is a serious allegation which must be distinctly proved. The burden is on the applicant for invalidity to show that the facts surrounding the contested marks establish a prima facie case of bad faith. It is, however, also clear following the Supreme Court's judgment in *Skykick* that, if a prima facie case of bad faith is established, the burden shifts to the proprietor to provide a plausible explanation of the rationale underlying its application. 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.[7] Further as Lord Kitchin makes clear at [204(iv)]-[204(v)] of his judgment in *Skykick*, bad faith must be understood in the context of trade mark law and, in particular, the essential function of a trade mark.

[5] *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch).
[6] *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).
[7] Ibid *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited.*

23. On 22 September 2025, the applicant provided to the tribunal, a copy of an unchallenged decision of the EUIPO in respect of proceeding against the EU trade mark upon which the Mr Lijtmaer's comparable mark was based. The EU proceedings were also brought by the applicant in the current proceedings. Whilst I have not had sight of the precise wording of their grounds or the evidence filed in support of these EU proceedings, from a reading of the decision, the ground relied upon appears to have been based upon identical or near identical reasoning as in the case before me. I am not bound by the decision of the EUIPO. Nevertheless, I note that the EUIPO concluded that, at the time of filing, the name "Bezos" will be perceived by at least a significant part of the relevant public as a reference to Jeff Bezos, and that Bezos is "*a rather rare surname in the majority of countries of the European Union* …". These are points conceded by the proprietors in the current case.

24. Further, it made a number of factual findings regarding the scope of activities that Amazon and Mr Bezos are known for. I observe that these broadly reflect the scope of the proprietors' specifications and corresponds to the proprietors' concession in their counterstatements that their list of goods and services are those for which Amazon is known.

25. The EUIPO decision went on find that Mr Bezos was already famous as of the relevant date (being the same as the filing date of contested mark 918099715) and was "*virtually synonymous*" with Amazon, the company most closely associated with e-commerce, logistics and cloud services. In the current proceedings, the applicant provides evidence to support the contention that "Bezos" is a rare surname in the UK.[8] This evidence is consistent with the EUIPO's comment that it is "*a rather rare surname*".

26. It found that all the goods and services of the contested EUTM bear a link to Mr Bezos and the business activities he is famous for, that the fact that the EUTM was originally filed with the intention to take unfair advantage of the reputation of the name of a famous person may be an important indication that the EUTM was also filed in bad faith. It also pointed to the fact that the EUTM proprietor had not tried to

[8] See Exhibits DP-16 – DP-19

demonstrate a commercial logic behind the application. The proprietors' subjective perceptions in the current case cannot excuse or justify their conduct.

27. In the current case, the proprietors rely on the same reasoning that confronted the Appointed Person in *Fianna Fail*, namely, the word, the subject of the contested marks, was not a registered trade mark and was available to register. The proprietors rely upon the fact that Mr Bezos does not use his name as a trade mark or indicator of origin, that he does not own any rights in the UK in his surname, that despite being famous, this does not prevent the proprietors from using his surname as a badge of origin and that, whilst well-known, Mr Bezos' name is not associated with e-commerce but, rather, "Amazon" is. It is clear from these claims that the proprietors were well aware of Mr Bezos and the area of business where this reputation lies. The fact that they chose his surname as their trade mark and the fact that the goods and services for which the contested marks are registered matches this reputation points to the proprietors targeting the reputation attached to the name Bezos with a view of benefitting from such a reputation. Considered from this perspective, I find that the proprietors' claims do not provide a credible defence. The EUIPO decision considers the position that if the trade mark was chosen to honour Mr Bezos, such intention does not exclude a finding of bad faith. It went on to state:

> "…the use of Mr Bezos' name as a trade mark for precisely the goods and services for which he is known can only lead to the conclusion that the EUTM proprietor (at the time of filing the contested mark) intended to create a link in the minds of the relevant public between his own goods and services and the name of Mr Bezos, thereby exploiting his reputation for commercial gain"

28. In the absence of any credible defence, the EUIPO concluded that it was "*unable to identify any commercial logic or reasonable motive for the EUTM's proprietor's filing of the contested mark*" and that its "*only reasonable conclusion is that the proprietor is attempting to associate himself with and capitilize on the reputation of Mr Bezos' name as a renowned e-commerce, logistics and cloud computing entrepreneur*."

29. As I have already noted, I am not bound by the findings of the EUIPO, but I concur with its findings detailed above and for the same reasons.

30. The applicant's evidence includes:

- An extract from Darwin Evolution Technologies Ltd's Linkedin account where it is stated "Bezos was named to honour the person who transformed the internet, e-commerce and the logistics worlds";[9]

- An extract, dated 27 January 2020, from Mr Lijtmaer's Linkedin account where he states that he "[*r*]*ecently co-founded and launched Bezos.ai, a fulfilment as a service platform*" and also states that "*Bezos was named to honour the person who transformed the internet, e-commerce and the logistics industries*";[10]

- An extract, dated 27 January 2020, from Bezos.ai where it states that it is offering an alternative fulfilment centre to that provided by Amazon for fulfilling Amazon orders;[11]

- An extract dated 27 January 2020, from the Linkedin page of Vernon Tjon-Soei-Len, co-founder and co-CEO of Bezos. It records that he worked as a director at Amazon Flex UK between 2017 and 2018.[12] Amazon Flex is described as an initiative that enables non-professional delivery drivers to make deliveries on behalf of Amazon.[13]

31. The above evidence illustrates, as submitted by the applicant, that the proprietors adopted the name "Bezos" to refer to Mr Bezos and that Mr Tjon-Soei-Len previously worked for Amazon as a director of an initiative regarding delivering/fulfilling goods ordered through Amazon. Further, it shows that the proprietors' business was in the form of a fulfilment centre with the aim of competing directly with Amazon for its order fulfilment services.

32. As in the EUIPO proceedings, it appears that the proprietors in these current proceedings believed that they were entitled to apply and register the name "Bezos" in the UK despite being fully aware of Mr Bezos, his reputation, the nature of his business activities and the reputation he personally has as a result of these business

[9] Exhibit DP-20
[10] Exhibit DP-21
[11] Exhibit DP-22
[12] Exhibit DP-23
[13] Exhibit DP-24, an article about the launch of Amazon Flex dated 21 July 2016

activities. As the EUIPO found "[f]ree-riding behaviour on the reputation of a famous third party's name is an example of dishonest intention regarding the misappropriation of that third party's rights". I also note that the Appointed Person in *Fianna Fail* stated "*the applicant … believed their names were open and available for registration in the United Kingdom on a first come, first served basis. ... Even so his subjective perceptions cannot, in my view, excuse or justify his conduct in connection with the disputed applications for registration*." Clearly, such a subjective belief is not a defence to a claim of bad faith.

33. In respect of the proprietors' subjective intentions case law, I keep in mind the comments of Lord Kitchin in *SkyKick* at [235] and [252]:

> "235. I recognise that an inference that an application to register a trade mark was made in bad faith may be displaced by an explanation of an appropriate commercial rationale for making it. In my opinion, however, a failure to provide any satisfactory explanation may reinforce the inference and provide further support for a finding of bad faith.
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> …
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> 252. I recognise that such an applicant, when given an appropriate opportunity, may provide a reasonable explanation and justification for its actions and in that way answer and dispel any inference that it made the application in bad faith. If, however, it fails to do so, it is in my view open to the tribunal to find that the application was indeed made in bad faith in respect of those goods and services."

34. Mr Daniel Alexander stated that the decision in *Skykick* reinforced the importance of a satisfactory explanation. It is important therefore for the decision taker to consider whether an explanation was provided at all and whether there is sufficient basis to find that the explanation was unconvincing, taking the evidential picture as a whole.[14]

35. The proprietors' position is that they saw nothing wrong in their behaviour, but that changes nothing, since their behaviour must be judged against an objective standard.

[14] Mr Alexander in *Accessible Labs Ltd v Rui Qu (Shanghai) Enterprise Management Consulting Company Limited.*

I do not consider that they have provided a satisfactory explanation as to their motivation and in light of the other evidence presented before me I find the justification that the mark was available to register to be unconvincing with no appropriate commercial rationale for their actions taking account of the reputation of Mr Bezos in the areas of activity covered by the contested marks.

36. I note that in *Joseph Yu v Liaoning Light Industrial Products Import and Export Corporation*, BL O/013/05, Professor Ruth Annand as the Appointed Person held that:

> "22. [A] claim of bad faith is not avoided by making an application in the name of an entity that is owned or otherwise controlled by the person behind the application."

37. Consequently, and for the avoidance of doubt, the knowledge, intentions and motives of Mr Lijtmaer can properly be attributed to Darwin Evolution Technologies Ltd.[15]

38. Finally, I comment on the proprietors' allegation that the applicant's applications for invalidation are an attempt to run section 5(3) or section 5(4)(a) grounds. I reject this. The factual matrix must be viewed in the context of the law on bad faith. Even where the current circumstances have parallels to circumstances that may occur in section 5(3)/5(4)(a) cases, it would not preclude a finding of bad faith. My finding has been made in the context of bad faith law and jurisprudence.

Conclusion

39. I find that the proprietors applied for the contested marks with the intention of gaining some advantage deriving from Mr Bezos' reputation in respect of the contested goods and services. I find that as at the relevant dates, namely, 18 April 2019 and 25 July 2019, the contested marks were made in bad faith and both applications for invalidation succeed in totality.

[15] *John Williams and Barbara Williams v Canaries Seaschool SLU,* BL O/074/10

COSTS

40. The applicant has been successful and is entitled to a contribution towards its costs. In the circumstances, I make an award as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Filing Notice of invalidation x 2 and considering counterstatements	£400
Preparing and filing evidence	£1000
Filing written submissions	£450
Official Fee x 2	£400
Total	**£2,250**

41. I therefore order Darwin Evolution Technologies Ltd and Diego Lijtmaer, being jointly and severally liable, to pay CMS Cameron McKenna Nabarro Olswang LLP the sum of £2250. The above sum should be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 12th day of March 2026

Mr Mark Bryant

For the Registrar,

The Comptroller-General