

O/0235/26

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK REGISTRATION NO 3946875
IN THE NAME OF SERVELAND LTD
FOR THE FOLLOWING MARK IN CLASS 16:**

Festive Wonderland

**AND AN APPLICATION TO INVALIDATE THAT REGISTRATION
(UNDER NO. 506787)**

**BY
TALLON INTERNATIONAL LIMITED**

BACKGROUND

1) On 17 August 2023, Serveland Ltd ('the registered proprietor') applied to register the trade mark shown on the cover page of this decision, in the UK. It was accepted and published in the Trade Marks Journal on 01 September 2023 in respect of the following goods:

Class 16: Wrapping paper; Sheets for wrapping made of paper; Paper for wrapping books; Plastic sheets for wrapping; Gift wrapping paper; Paper gift wrapping ribbons ;Decorative wrapping paper; Brown paper for wrapping; Gunpowder wrapping paper; Metallic gift wrapping paper; Giftwrapping paper; Plastic sheets for wrapping and packaging; Paper sheets [stationery]; Gift wrap paper; Paper gift wrap; Decorative paper bows for wrapping; Viscose sheets for wrapping; Sheets of recycled cellulose for wrapping; Gift-wrapping paper; Paper gift wrap bows; Paper bows for gift wrap; Wrapping materials made of paper; Sheets for wrapping made of plastic material; Tissue paper for making stencil paper; Sheets of reclaimed cellulose for wrapping; Baking paper; Packing paper; Stuffing of paper or cardboard; Ribbons of paper; Paper ribbons; Ribbons (Paper -);Lining papers for wrapping; Paper gift boxes; Paper;Gift paper; Paper and cardboard; Towels of paper; Paper towels; Bags and articles for packaging, wrapping and storage of paper, cardboard or plastics; Kraft paper; Paper boxes; Boxes of paper; Paper garlands; Paper gift bags; Boxes of paper or cardboard; Boxes of cardboard or paper; Paper envelopes for packaging; Greaseproof paper; Absorbent sheets of paper or plastic for foodstuff packaging; Paper washcloths; Paper handtowels; Paper ribbon; Paper doilies; Napkins of paper; Paper napkins; Paper gift tags; Bottle wrappers of cardboard or paper; Bottle wrappers of paper or cardboard; Laminated paper; Plastic foil for wrapping; Paper stock [printing paper]; Packaging boxes of paper; Tissue paper for use as material of stencil paper (ganpishi);Bags of paper; Paper bags; Bottle envelopes of cardboard or paper; Bottle envelopes of paper or cardboard; Paper tablecloths; Tablecloths of paper; Bunting of paper; Paper bunting; Bunting [paper];Glassine paper; Gift wrapping foil; Labels of paper or cardboard; Serviettes of paper; Paper serviettes; Paper bags for packaging; Packaging bags of paper; Tablemats of

paper; Paper bows; Bows (Paper -);Vellum paper; Paper impregnated with oil for wrapping purposes; Christmas gift wrap; Paper cake decorations; Paper banners; Banners of paper; Wrapping foils for books; Corrugated paper; Plastic bags for wrapping; Cloth paper; Parchment paper; Paper stationery; Napkin paper; Paper hand-towels; Table decorations of paper; Paper sheets for note taking; Foils of plastic for wrapping; Plastic sheets for packaging; Crepe paper; Shopping bags of paper or plastic; Envelope paper; Bags made of paper for packaging; Oiled paper for paper umbrellas (kasa-gami); Tissue paper; Newsprint paper; Stencil paper [mimeograph paper];Handkerchiefs of paper; Paper handkerchiefs; Clips for paper [stationery];Treated paper for wrapping flowers and floral displays; Plastic bubble packs for wrapping; Printing paper; Strips of fancy paper (tanzaku); Wrapping materials made of cardboard; Packing [cushioning, stuffing] materials of paper or cardboard; Paper cutting crafts; Paper boxes for storing greeting cards; Drying towels of paper; Party ornaments of paper; Manila paper; Hat boxes of paper; Binder paper.

2) As no opposition was filed to the application within the time allowed, the mark was entered into the register on 10 November 2023.

3) Tallon International Ltd ('the applicant') seeks invalidation of the registration under sections 47(1) and 47(2)(b) of the Trade Marks Act 1994 ('the Act'), relying upon grounds under sections 3(6) and 5(4)(a) of the Act, respectively.

4) The objection under section 3(6) of the Act is pleaded as follows:

"The mark in question is identical to that of the Cancellation Applicant's and covers identical goods. The Registered Owner is aware of the Cancellation Applicant's longstanding use of the FESTIVE WONDERLAND mark and their registration of this mark is being used as a tactic to block the Cancellation Applicant's use of it. The behaviour of the Registered Owner falls short of the standards of acceptable commercial behaviour and has been calculated to deceive consumers for personal gain, to the detriment of the Cancellation Applicant."¹

¹ Form TM26(l), page 7

The applicant further states that:

“16. The Registered Trade Mark Owner (and now the owner of the Amazon Brand Registry Listing for the FESTIVE WONDERLAND mark) is well aware of the Cancellation Applicant and their connection to the FESTIVE WONDERLAND mark. Indeed, on the Registered Trade Mark Owner’s product listings on Amazon, they have listed the manufacturer of goods sold by them as “Tallon” (i.e. the Cancellation Applicant) (evidence of this to be provided later in the proceedings).

17...

18...., the registration of this mark by the Registered Trade Mark Owner is no coincidence and has been calculated in order to:

- i. Block the Cancellation Applicant from registering their trade mark.
- ii. Register the mark with Amazon Brand Registry thus blocking the Cancellation Applicant from obtaining this Amazon Brand Registry listing and legitimately selling their own goods on this platform.

...

..., the Registered Trade Mark Owner’s motives in applying for this mark have been calculated to generate association with, free-ride on and profit from the fame and reputation enjoyed by the Cancellation Applicant without its consent. This is designed to deceive consumers into thinking that goods provided under the mark are sold by the Cancellation Applicant where this is not the case, for monetary gain, to the detriment of the Cancellation Applicant, who has received ‘violation’ complaints from Amazon Brand Registry when attempting to sell their own goods on this platform.

19. Therefore, we submit that the registered trade mark should be cancelled in its entirety, under section 3(6) of the Act.”²

5) Under section 5(4)(a) of the Act, the applicant claims to have used the sign FESTIVE WONDERLAND since 2017 throughout the UK in relation to the following goods:

Gift cards, gift wrap cards, gift wrap, decorative wrapping paper; sheets of wrapping made from paper and plastic; wrapping materials made of paper, cardboard and plastic; decorative paper bows, ribbons, stickers and decorations for wrapping; packaging containers made of paper, cardboard and plastic; packaging boxes made of paper, cardboard and plastic; paper and cardboard bags, envelopes and pouches for packaging; children’s colouring and activity books, sticker books, dot-to-dot books, colouring sets, coloured pencils, crayons, pens; adhesives or stationery for household purposes, arts and craft paint kit comprising all material necessary to paint including a pre-painted picture which indicates the colours to use; decorative pencil top ornaments; scraper foils engrave patterns; stationery; office requisites; paper and goods made of paper; cardboard and goods made of cardboard; card and goods made of card; calendar planners; pads of paper; books; notebooks; pencil sharpeners; adhesive tape dispensers for household and commercial use; rubber bands; ink cartridges for pens; paper napkins; stickers (stationery); gift boxes; paper boxes; paper towels, cups and bowls; containers; household utensils; games and playthings; Christmas decorations; decorations for Christmas trees; toy balloons; party poppers; crackers (party novelties), novelties for parties, dances (party favours); paper hats (party novelties); paper party favours; party games; party novelties; party poppers; streamers (party novelties); gift bags; envelopes; party ornaments of paper; paper napkins.

It is claimed that the applicant has established significant goodwill under the sign FESTIVE WONDERLAND and that the adoption and use of the contested mark by the registered proprietor will, undoubtedly, result in a misrepresentation which misleads the public and damages the applicant’s goodwill.

² See the ‘Statement of Grounds’ attached to Form TM26(I)

6) A brief counterstatement was filed by Rukhsana Parveen on behalf of the registered proprietor. It states:

“We are the manufacturers of the product sold under the trade name FESTIVE WONDERLAND. We sell throughout the United Kingdom in good faith and with due course. Evidence of its use will be shown later in the proceedings. In no way does our use of a trade mark violate the law. The trade mark is for a festive wonderland that is clearly distinguishable. The cancellation applicant’s allegations are false, and the cancellation party is attempting to harm our business by providing false and misleading information.” (my emphasis)

7) The applicant filed evidence in the form of a witness statement from Mr Barry Heath³ with exhibits BH1 - BH17 thereto. The registered proprietor has filed nothing beyond its counterstatement. Neither party requested to be heard. The applicant filed written submissions in lieu.⁴ I now make this decision based on the papers before me.

MR HEATH’S EVIDENCE

8) I have read all of Mr Heath’s evidence. I will now summarise the most pertinent parts of it here.

The Applicant’s use of ‘FESTIVE WONDERLAND’

9) Mr Heath states that the applicant is one of the UK’s leading suppliers of stationery, arts and crafts supplies, seasonal products, dairies and calendars.

10) It is said that the mark FESTIVE WONDERLAND has been used by the applicant since 2017 in relation to a range of stationery and paper-based goods, for example, gift wrap, greetings cards and gift labels. Those goods have also been sold under the following ‘logo version’ of the FESTIVE WONDERLAND mark:

³ Dated 26 July 2024

⁴ Dated 29 November 2024



10) A selection of catalogues is provided, dated 2019, 2021 and 2022. All of these bear the 'logo version' of the mark shown above or the same logo in a colour other than red and white. That mark is present on the cover page of the catalogues (along with the mark 'Tallon'). It is also present on the goods themselves within the catalogues. The goods include Christmas cards, gift bags, gift cards, money wallets made of card and envelopes, card holders.⁵

11) Undated extracts are provided from the applicant's website, <https://tallon.co.uk>, showing the variety of goods offered by the applicant. All the goods shown bear the 'logo version' of the mark (either in red or a different colour) and include gift wrap, money wallets (made of card), card holders (made of card), children's craft sets, paper bows, gift tags and tissue paper.

12) Mr Heath provides the following information, which he states, lists the applicant's sales figures for the full range of FESTIVE WONDERLAND products (of the kind shown on the applicant's website and in the catalogues):⁶

Date	Sales Figures (GBP)
1 April 2022 – 31 March 2023	£1,883,401.450
1 April 2021 – 31 March 2022	£1,894,521.199
1 April 2020 – 31 March 2021	£1,716,600.082
1 April 2019 – 31 March 2020	£1,667,988.102
1 April 2018 – 31 March 2019	£1,271,790. 748
1 April 2017 – 31 March 2018	£1,112,936. 680

⁵ Exhibit BH7

⁶ Witness statement of Mr Heath, [17]

13) A selection of invoices⁷ is also provided. Each item listed on the invoices has a description and a product code. Behind each invoice is a handful of examples showing images of the products which correspond to the product codes. There are several invoices spanning 2021 – 2023 (including some dated prior to 17 August 2023, being the filing date of the contested mark). Each invoice is headed with the prominent mark, 'Tallon'. All the images of products behind the invoices bear the 'logo version' of the applicant's FESTIVE WONDERLAND mark and/or are referred to by the plain words, FESTIVE WONDERLAND. The goods shown include children's Christmas painting, colouring and sticker books, gift labels, Christmas cards, money wallets (made of card), ribbon cops, Christmas bunting, Christmas cracker kits (make and fill your own), bows and paper chains.

14) It is said that the applicant showcases its goods at various UK trade shows, and that the following shows have been attended in the past:

- Autumn Fair at the NEC in Birmingham (every year from 2017 to 2023).
- Spring Fair at the NEC in Birmingham (every year from 2017 to 2023, except 2019).
- London Stationery show (every year from 2017 to 2023).
- Harrogate Christmas Fair (every year from 2017 to 2023).

Photographs of the applicant's exhibition stands from the Harrogate and NEC Spring Fair are provided. These show use of the 'logo version' of FESTIVE WONDERLAND on stands containing various paper-based Christmas items including Christmas cards, gift bags, gift wrap, bows, ribbon and tissue paper.⁸

⁷ Exhibit BH11

⁸ Exhibit BH5

Relevant activities of the registered proprietor

15) Mr Heath states that the registered proprietor has been re-selling the applicant's products on Amazon and is attempting to stop the applicant and legitimate sellers of its products from doing the same.

16) Mr Heath explains that the applicant first became aware of the use and registration of the FESTIVE WONDERLAND mark by the registered proprietor when the applicant's customers notified it of such use. This came about because the applicant's authorised sellers had attempted to sell the applicant's genuine FESTIVE WONDERLAND products on Amazon but had received 'violation' notices which prevented them from doing so. These violation notices were issued because, Mr Heath says, the registered proprietor had secured the registered trade mark for FESTIVE WONDERLAND and had subsequently registered the brand via its own user account with the Amazon Brand Registry. One such violation notice is provided.⁹ Mr Heath points out that the violation notice provides the name and contact details of the person bringing the complaint. The name of the person is Rukhsana Parveen and the contact email address is write.servelandinfo@gmail.com. A copy of the details for the company Serveland Ltd is provided from the Companies House website, showing that Ms Parveen is a director of that company.¹⁰

17) A copy of an Amazon product listing¹¹ is provided, which Mr Heath states, was originally associated with the registered proprietor since in the 'brand' part of the listing, it states, 'FESTIVE WONDERLAND'. Mr Heath explains that, as this brand was associated with the Brand Registry account registration which had been listed by the registered proprietor, it would not have been possible to list the brand as 'FESTIVE WONDERLAND' unless it was registered with the Amazon Brand Registry.

18) Mr Heath states that the listing referred to above shows goods originating from the applicant. He points out that the product artwork is identical to that used on the applicant's goods as shown in the examples of use by the applicant. Further, Mr Heath

⁹ Exhibit BH13

¹⁰ Exhibit BH14

¹¹ Exhibit BH15

highlights that in the ‘Technical details’ of the registered proprietor’s Amazon listing, the manufacturer is said to be ‘Tallon’.¹² Mr Heath states that this indication of the origin/manufacture as ‘Tallon’ shows that the registered proprietor knows that the products being sold are manufactured by, and originate from, the applicant.

Section 3(6)

19) Section 47(1) of the Act states that:

“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).”

And Section 3(6) of the Act states that:

“A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

20) 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 Ankenævnet 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).

¹² Exhibit BH16

(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 Mağazacılık 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).”

21) 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 registered proprietor has been accused of pursuing?

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

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

22) It is necessary to ascertain what the registered proprietor 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).

What, in concrete terms, is the objective that the registered proprietor has been accused of pursuing and was that an objective for the purposes of which the contested registration could not properly be filed?

23) The applicant's case is set out at paragraph 4. If that case is made out on the evidence before me, that is clearly an objective for the purposes of which the contested registration could not properly have been filed.

Has it been established that the contested registration was filed in pursuit of that objective?

24) It is clear from the evidence before me that the applicant has been running a successful business in the UK since 2017 providing various paper-based Christmas-themed items, including Christmas cards, gift wrap, gift tags, bows, ribbon and tissue paper. The marks which have been used in relation to those goods are the words FESTIVE WONDERLAND and/or the 'logo version' referred to earlier. The question then, is whether the registered proprietor was aware of that business when it filed the contested mark on 17 August 2023 ('the relevant date') and what its intention was when it made that filing.

25) I note that, in its counterstatement, the registered proprietor denies all the applicant's allegations and states that it is the manufacturer of the goods which it sells. However, Mr Heath's evidence clearly indicates the contrary. The Amazon listing in Mr Heath's evidence, which he states belongs to the registered proprietor, shows goods of the kind which have been produced and sold by the applicant in the UK since 2017. The mark used in the Amazon listing is also identical to that which has been used by the applicant. Moreover, the relevant section of the Amazon listing, as highlighted by Mr Heath, states that the manufacturer is 'Tallon' (the applicant). In my view, this piece of evidence alone completely undermines the registered proprietor's defence. Not only does that evidence show that the goods sold by the registered proprietor are not, in fact, manufactured by it, as asserted in the counterstatement, it also shows that the registered proprietor must have been well-aware that the true manufacturer is 'Tallon' (the applicant). All of this clearly indicates that the registered

proprietor was well-aware of the applicant's established business when it filed the contested mark.

26) Mr Heath has also given evidence to show that the registered proprietor, or at least the controlling mind thereof, has registered the mark FESTIVE WONDERLAND with the Amazon Brand Registry. The effect of this has been to prevent the applicant and its authorised sellers from selling genuine Tallon-manufactured FESTIVE WONDERLAND goods on Amazon. Bearing this in mind, together with my finding that the registered proprietor would have been well-aware of the applicant's established business at the relevant date and that it was, indeed, selling goods listed as being manufactured by the applicant on Amazon, I have no hesitation in finding that the application for the contested mark was, prima facie, an act of bad faith. On the face of things, the only plausible explanation is that the registered proprietor has obtained the registered mark with the aim of preventing the applicant (being the true manufacturer), and its genuine authorised sellers, from legitimately selling the applicant's goods on Amazon (or, indeed, elsewhere in the UK). It seems likely that this is intended to deceive consumers and unfairly benefit from that deception to the detriment of the applicant.

27) The onus now switches to the registered proprietor to provide a plausible explanation of the objectives and commercial logic pursued by the application for registration to rebut the prima facie case of bad faith. However, the registered proprietor has filed no evidence or submissions at all in response to Mr Heath's evidence or to support its contention that it is, as asserted in the counterstatement, the manufacturer of the goods it sells. I find that the mark was applied for in bad faith.

28) As to the extent of success of the bad faith claim, the goods covered by the registered proprietor's mark are all paper/plastic-based goods which are identical or similar to those which have already been sold by the applicant or are those which may be natural extensions of the applicant's business going forward. I find that the application for invalidation based upon section 3(6) of the Act succeeds against all the goods in class 16.

Section 5(4)(a)

29) Given, what I consider to be, a clear case of bad faith, I do not consider it necessary to also consider the grounds under section 5(4)(a) of the Act.

OVERALL OUTCOME

30) The application for invalidation succeeds; the registration is declared invalid in its entirety.

COSTS

31) The applicant has been successful and is entitled to an award of costs. Using the guidance in Tribunal Practice Notice 1/2023, I award the applicant costs on the following basis:

Official fee (Form TM26(I))	£200
Preparing a statement and considering the other side's statement	£300
Preparing and filing evidence	£800
Written submissions	£350
Total:	£1650

32) I order Serveland Ltd to pay Tallon International Limited the sum of **£1650**. This sum is to 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 19th day of March 2026

**Beverley Hedley
For the Registrar**