

O/0321/26

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK00004011465

IN THE NAME OF GF ONLINE LIMITED

FOR THE FOLLOWING TRADE MARK:

ZUWIT

IN CLASS 12

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY

UNDER NO. CA000508011

BY

HK CROSSBORDERPAYMENT LIMITED

BACKGROUND AND PLEADINGS

1. On 6 February 2024, GF Online Limited (“the proprietor”) applied to register the trade mark shown on the cover page of this decision in the United Kingdom. The application was accepted and published in the Trade Marks Journal on 23 February 2024 and was subsequently registered on 3 May 2024 in respect of the following goods:

Class 12 - Baby, infant and child seats for vehicles; Baby strollers; Baby carriages; Canopies for baby strollers; Covers for baby strollers; Rubber baby buggy bumpers; Baby carriage canopies; Baby carriages [prams]; Prams [baby carriages]; Fitted footmuffs for baby carriages; Child restraints for vehicle seats; Child safety belt holders for automobile seats; Child safety harnesses for vehicle seats; Covers for baby carriages; Baby carriages (Covers for -); Hoods for baby carriages; Passenger seat belt pre-tensioners; Child restraint devices for use with vehicle seats; Safety seats for babies for use in vehicles; Passenger seat belt retractors; Vehicle safety belts for children; Car safety seats for children; Child booster cushions for vehicle seats; Child safety seats for use in vehicles; Vehicle safety restraints for use with pram bodies.

2. On 5 November 2024, HK CROSSBORDERPAYMENT LIMITED (“the applicant”) applied to invalidate the trade mark on the basis of sections 47 and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). This is on the basis of its alleged earlier rights in the sign **ZUWIT** which it claims to have used throughout the UK since January 2018 in relation to *Safety belts holders; child safety belt holders for automobile seats; Restraints for use with vehicle safety belts.*

3. The applicant submits that through its use of the sign 'ZUWIT' for its range of goods, it has managed to acquire considerable goodwill within the UK market. In addition, the company has experienced a significant increase in sales volume for products associated with the 'ZUWIT' mark. Consequently, any attempt by the proprietor to use the 'ZUWIT' mark in connection with their goods as specified would constitute a misrepresentation to the relevant public, suggesting that these goods are either produced by the applicant or are in some way associated with them. This misrepresentation is likely to result in damage to reputation, loss of profits, and

erosion of goodwill. Therefore, use of the proprietor's mark would be contrary to the law of passing off pursuant to section 5(4)(a) of the Act.

4. The proprietor filed a defence and counterstatement denying the claims made and stating that it is the rightful owner of the ZUWIT trademark as registered, and that since its registration, it has been actively using the mark in commerce and has established a clear market presence within the UK.

5. The applicant is represented by Pawel Wowra. The proprietor is self-represented. Both parties filed witness evidence. Neither party requested a hearing nor filed written submissions in lieu.

EVIDENCE AND SUBMISSIONS

6. The applicant filed evidence in chief in the form of:

- a. A witness statement of Cheng Shuqun, dated 19 February 2025, accompanied by exhibits CS1 – CS9. Mrs Shuqun is the legal representative of the applicant.
- b. A witness statement of Zhou Sibing, dated 19 February 2025, accompanied by exhibits ZS1 – ZS9. Mr Sibing is the legal representative of Shenzhen Kaifurui Trading Co., Ltd.

7. The proprietor filed evidence in chief in the form of a witness statement of George Crellin, dated 27 March 2025. Mr Crellin is the director of the proprietor.

8. The applicant did not file evidence in reply.

9. I have given due consideration to all of the documents filed by both parties but will only refer to the evidence/submissions as appropriate to the extent that is necessary in my decision.

LEGISLATION

10. 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.”

11. 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.”

12. The relevant parts of section 47 state:

“47. (1) [...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) [...]

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the 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.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(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.”

GENERAL PRINCIPLES

13. 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).”

14. Halsbury’s Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

“Establishing a likelihood of deception generally requires the presence of two factual elements:

- (1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and
- (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

- (a) the nature and extent of the reputation relied upon,
- (b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;
- (c) the similarity of the mark, name etc used by the defendant to that of the claimant;
- (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

EVIDENCE

The applicant's evidence in chief

14. I note the following from the witness evidence of Mrs Cheng Shuqun:

- a. Mrs Shuqun is the legal representative of the applicant, a limited liability company which is incorporated and registered in Hong Kong.
- b. The mark, ZUWIT, has been actively used in the UK since January 2018 in relation to car seat safety items. The goods have been sold in the UK exclusively through Amazon.co.uk and continue to be sold to date. The goods were also sold by the Chinese company, Shenzhen Kaifurui Trading Co., Ltd ("Kaifurui") on the basis of a license agreement, which Mrs Shuqun states concluded at the beginning of 2018¹.
- c. Printouts are provided for two Amazon storefronts; one is in the name of Kaifurui and the other is in the name of CBB Deals UK. Neither of these screenshots bear the mark².
- d. A further printout is provided, which has been taken from the Kaifurui Amazon account. This shows that three ZUWIT products have been available to purchase through this store (reference code B01LIWN6A4, B01N6Q89GD and B01MZ94J26). It appears that the products were first available in March 2018 and were available until April 2020. I note that none of the ZUWIT listings are active, which is at odds with the statement made in paragraph 14(b), specifically that the goods continue to be sold. Total sales are shown as £16,898.58³. I note that £1,293.35 has been spent on advertising and there were 1,258,023 impressions.
- e. I note that further evidence has been provided to show that one of the items is still accessible on the site (B01LIWN6A4)⁴, however, I note that whilst the item is still available to view, the listing states that it is "currently unavailable". This screenshot is dated 20 February 2025.
- f. A printout has been provided showing all Amazon orders which are identified by their Amazon ID. Purchases start on 26 January 2018 and

¹ Witness statement of Mrs Shuqun, para 4

² Exhibit CS1

³ Exhibit CS2 and 5 (exhibits are identical)

⁴ Exhibit CS3

end on 26 July 2020. Each order is for a ZUWIT product and there are 2,105 sales in total (although I note that 64 orders were cancelled). Sales amount to £39,470 in total⁵.

- g. A printout of an Amazon business report has been provided, dated between 18 February 2023 and 18 December 2023⁶. This shows that there were 2,482 items ordered in total. Mrs Shuqun states that this proved “that sales under the ZUWIT mark continued until the end of 2023”⁷.
- h. Mrs Shuqun goes on to state that since October 2020, her company has been selling ZUWIT branded products. By this I understand her to mean that her company took over from Kaifurui in selling the products, although I note that Kaifurui’s license agreement “concluded” at the beginning of 2018 according to the statement. Mrs Shuqun states that products under codes B08SM8XQJR, B01LIWN6A4, B07YY37GNW, B01N6Q89GD and B01MZ94J26 have been sold, however, only B08SM8XQJR, B01LIWN6A4 and B07YY37GNW can currently be accessed online⁸ (although as at 20 February 2025, I note that none were available for purchase). Mrs Shuqun states that sales of these products generated almost £45,000 in revenue between October 2020 and June 2024, and over £4,000 was spent on advertising⁹.
- i. Business reports are generated from the Amazon seller account¹⁰ which Mrs Shuqun states confirms that between February 2023 and December 2023 the company generated almost £45,000 of gross revenue. I note that this exhibit is identical to exhibit CS6, which Mrs Shuqun attributed to Kaifurui. A printout of sales between 2 March 2023 and 1 April 2023 is also provided, which amounts to £4,338.41 of sales in total during this period.
- j. A screenshot has been provided from Amazon which shows that five ZUWIT products have been available to purchase through this store.

⁵ Exhibit CS4

⁶ Exhibit CS6

⁷ Witness statement of Mrs Shuqun, para 7(d)

⁸ Exhibit CS7

⁹ Witness statement of Mrs Shuqun, para 8

¹⁰ Exhibit CS8

The products were available from October 2020 and were available until June 2024. I note that one of the ZUWIT listings is active. Total sales are shown as £45,955.96¹¹. I note that £7,053.76 has been spent on advertising. In relation to exhibit CS8, Mrs Shuqun confirms that between February 2023 and December 2023 the company generated almost £45,000 of gross revenue, however, according to this exhibit the total sales between October 2020 and June 2024 are shown as £45,955.96.

- k. Mrs Shuqun states that sales were discontinued due to the registration of the contested mark, and after February 2024 – when the proprietor filed their mark – sales dropped significantly¹².

Applicant's witness evidence of Mr Zhou Sibing

15. I note that Mr Sibing is the legal representative of Kaifurui, whom Mrs Shuqun has confirmed held a license agreement, which she states concluded at the beginning of 2018. All of the exhibits within Mr Sibing's witness statement, along with many of the points made and figures included, are identical to that of Mrs Shuqun's statement. As I have set these out in detail, above, I do not intend to regurgitate the same for the purpose of the decision. I note the following:

- a. The unregistered mark, ZUWIT, is understood to be a term invented by Mrs Shuqun, and the goods under the mark have been sold in the UK since 2018 by both Mrs Shuqun trading as the applicant and by Kaifurui on the basis of a license agreement which Mr Sibing confirms concluded at the beginning of 2018.

The proprietor's evidence in chief

16. I note the following from the witness evidence of Mr George Crellin:

- a. Mr Crellin is the director of the proprietor.

¹¹ Exhibit CS9

¹² Witness statement of Mrs Shuqun, para 8

- b. The proprietor has sold in excess of 3,120 units under the ZUWIT mark over the past 12 months through the Amazon UK platform. Mr Crellin states that “these sales represent continuous commercial activity and are supported by positive customer engagement”¹³.
- c. Mr Crellin states “significant investment has been made in Amazon PPC campaigns and other promotional activities to drive brand awareness and consumer recognition under the ZUWIT name”¹⁴. I have no details before me regarding the investment mentioned.
- d. Mr Crellin states:

“7. GF Online operates the current Amazon listing for ASIN B08SM8XQJR through its storefront 'Big Dog Store'. The listing referenced by the applicant in Exhibit ZS7¹⁵ is managed solely by us. The ASIN forms part of our product catalogue.

8. Any consumer association with the ZUWIT name in the present market arises from our trading activity, customer service, and advertising investment.

9. Since registration, GF Online Limited has assumed all commercial risk in sourcing, marketing, and distributing the product. The reputation currently attached to the mark derives from our own legitimate business operations.”

- e. Mr Crellin states that “the product concerned is a generic maternity belt lacking distinctive packaging or brand identifiers. No effort was made by the applicant to assert control over the listing or distinguish their offering through its design or trade dress”¹⁶.
- f. Exhibits ZS3 and ZS7¹⁷ comprise of screenshots of the listing for ASIN B08SM8XQJR, which Mr Crellin claims is a listing which is operated solely by the proprietor. Mr Crellin states:

¹³ Witness statement of George Crellin, para 5

¹⁴ Witness statement of George Crellin, para 6

¹⁵ Also CS7 in Mrs Shuqun’s evidence

¹⁶ Witness statement of George Crellin, para 10

¹⁷ Also CS3 and CS7 in Mrs Shuqun’s evidence

“The applicant's reliance on our commercial activity as supporting evidence is misplaced.”¹⁸

17. I note the content of Mr Crellin's witness evidence; however, I have no evidence before me in the way of exhibits to support the statements that have been made.

DECISION

Relevant date

18. Whether there has been passing off must be judged at a particular point (or points) in time. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*¹⁹, Mr Daniel Alexander QC (now KC) as the Appointed Person considered the relevant date for the purposes of s.5(4)(a) of the Act where the proprietor has used the mark(s) at issue prior to the date of the application to register the contested mark(s). He explained that:

“41. There are at least three ways in which such use may have an impact. The underlying principles were summarised by Geoffrey Hobbs QC sitting as the Appointed Person in *Croom's TM* [2005] RPC 2 at [46] (omitting case references):

- (a) The right to protection conferred upon senior users at common law;
- (b) The common law rule that the legitimacy of the junior user's mark in issue must normally be determined as of the date of its inception;
- (c) The potential for co-existence to be permitted in accordance with equitable principles.

42. As to (b), it is well-established in English law in cases going back 30 years that the date for assessing whether a claimant has sufficient goodwill to

¹⁸ Witness statement of George Crellin, para 14

¹⁹ BL O/410/11

maintain an action for passing off is the time of the first actual or threatened act of passing off: *J.C. Penney Inc. v. Penneys Ltd.* [1975] FSR 367; *Cadbury-Schweppes Pty Ltd v. The Pub Squash Co. Ltd* [1981] RPC 429 (PC); *Barnsley Brewery Company Ltd. v. RBNB* [1997] FSR 462; *Inter Lotto (UK) Ltd. v. Camelot Group plc* [2003] EWCA Civ 1132 [2004] 1 WLR 955: “date of commencement of the conduct complained of”. If there was no right to prevent passing off at that date, ordinarily there will be no right to do so at the later date of application.”

19. In his witness statement, Mr Crellin states:

“GF Online Limited has sold in excess of 3,120 units under the ZUWIT mark over the past 12 months through the Amazon UK platform.”

I note that the proprietor’s mark was applied for on 6 February 2024 and Mr Crellin’s witness statement is dated 27 March 2025. The proprietor has not claimed or filed any evidence that he has used the contested mark prior to making the application for registration. Therefore, I find the relevant date for assessing a passing off claim in this instance to be the date that the mark was applied for, i.e. 6 February 2024.

Goodwill

20. In *Inland Revenue Commissioners v Muller & Co’s Margarine Ltd* [1901] AC 217 (HOL):

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

21. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing of claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX)* (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark [1969] R.P.C. 472*). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur.”

22. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

23. In *Smart Planet Technologies, Inc. v Rajinda Sharma* (BL O/304/20), Mr Thomas Mitcheson QC (now KC), as the Appointed Person, reviewed the following authorities about the establishment of goodwill for the purposes of passing-off: *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2015] UKSC 31, paragraph 52, *Reckitt & Colman Product v Borden* [1990] RPC 341, HL and *Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd* [1980] R.P.C. 31. After reviewing these authorities Mr Mitcheson concluded that:

“... a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon.”

24. Goodwill arises as a result of trading activities. I note that the evidence provided by the applicant is somewhat contradictory. For example, the evidence shows that £45,955.96 in revenue was generated between October 2020 and June 2024, however, in relation to exhibit CS8, Mrs Shuqun confirms that between February 2023 and December 2023 the company generated almost £45,000 of gross revenue. It is clear that both cannot be correct. That being said, between exhibits CS5 and CS9, both of which are screenshots taken directly from Amazon, there is evidence of £62,854.54 of sales and an advertising spend of £8,347.11 between March 2018 and June 2024 in relation to the applicant's goods, maternity car seatbelt adjusters and bump belts. The proprietor has not challenged these figures, however, within his witness statement, Mr Crellin states in relation to exhibit CS7/ZS7 that the listing referenced B08SM8XQJR is managed solely by the proprietor through its storefront 'Big Dog Store' and forms part of their product catalogue. I have no evidence from Mr Crellin to support this assertion. The applicant has provided evidence supporting their claim that they sell this product, in the form of exhibit CS9/ZS9, which shows that an item bearing this reference has been sold via the applicant's storefront and that £31,626.91 has been made through sales of this product between October 2020 and June 2024.

25. It is clear from the unchallenged evidence that there were consistent sales made under the applicant's mark for the goods at issue, up to and including the filing date of the proprietor's registration, albeit that taken over the period of March 2018 to June

2024, the amount is relatively small. However, whilst the amount of goodwill is small, when taking the evidence as a whole, I find it to be more than trivial²⁰, and therefore I find that there was sufficient goodwill at the relevant date in a business associated with the sign, ZUWIT. I am satisfied that the applicant has met the burden placed on it to prove a protectable goodwill at the relevant date, albeit the goodwill is modest.

Misrepresentation

26. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents'[product]”

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

And later in the same judgment:

“.... for my part, I think that references, in this context, to “more than *de minimis*” and “above a trivial level” are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993). It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and

²⁰ *Hart v Relentless Records* [2002] EWHC 1984 (Ch)

concentrate on the quantitative to the exclusion of the qualitative aspect of confusion.”

27. I note that the test for misrepresentation requires a substantial number of members of the public to be deceived. In this instance, the parties’ marks are identical. The sign is an invented word which I find to be highly distinctive. The contested mark covers goods which are either identical, or highly similar, to those of the applicant and they are within the same or related fields of activity. As a result of the above, I have no doubt that at the relevant date, the applicant’s actual customers and its potential customers would be confused by the proprietor’s registration, believing the goods offered were from the same economic entity. I therefore find that there is misrepresentation.

Damage

28. In *Harrods Limited v Harrodian School Limited* [1996] RPC 697, Millett L.J. described the requirements for damage in passing off cases like this:

“In the classic case of passing off, where the defendant represents his goods or business as the goods or business of the plaintiff, there is an obvious risk of damage to the plaintiff’s business by substitution. Customers and potential customers will be lost to the plaintiff if they transfer their custom to the defendant in the belief that they are dealing with the plaintiff. But this is not the only kind of damage which may be caused to the plaintiff’s goodwill by the deception of the public. Where the parties are not in competition with each other, the plaintiff’s reputation and goodwill may be damaged without any corresponding gain to the defendant. In the *Lego* case, for example, a customer who was dissatisfied with the defendant’s plastic irrigation equipment might be dissuaded from buying one of the plaintiff’s plastic toy construction kits for his children if he believed that it was made by the defendant. The danger in such a case is that the plaintiff loses control over his own reputation.”

29. In *Ewing v Buttercup Margarine Company, Limited*, [1917] 2 Ch. 1 (COA), Warrington L.J. stated that:

“To induce the belief that my business is a branch of another man's business may do that other man damage in various ways. The quality of goods I sell, the kind of business I do, the credit or otherwise which I enjoy are all things which may injure the other man who is assumed wrongly to be associated with me.”

30. In this instance, I am of the view that the identity of the marks and the similarity/identity of the goods at issue would lead to a reasonably foreseeable diversion of sales from the applicant to the proprietor, resulting in the applicant suffering financial loss.

OUTCOME

31. The application for a declaration of invalidity on the grounds of passing off (section 5(4)(a)) succeeds in full. Under section 47(6) of the Act, the registration is cancelled and is deemed never to have been made.

COSTS

32. The applicant has been successful and is entitled to a contribution towards its costs. Awards of costs in proceedings are based upon the scale as set out in Tribunal Practice Note (“TPN”) 1/2023. In the circumstances I award the applicant the sum of £1,050 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

| | |
|--|---------------|
| Official fee | £200 |
| Preparing and filing the TM26(I) and considering the counterstatement: | £250 |
| Preparing evidence and considering the other side's evidence: | £600 |
| TOTAL | £1,050 |

33. I therefore order GF Online Limited to pay HK CROSSBORDERPAYMENT LIMITED the sum of £1,050. 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 15th day of April 2026

LA Bailey

For the Registrar,

The Comptroller-General