

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO. 4025082

IN THE NAME OF EVENTUP LIMITED

AND

AN OPPOSITION THERETO UNDER NO. 446912

BY ANISOARA KENDALL

Background and pleadings

1. On 12 March 2024 (“the relevant date”), Eventup Limited (“the applicant”) filed trade mark application number 4025082 for a range of services in class 41. The trade mark is the figurative mark shown below:



2. The application is opposed by Anisoara Kendall under s. 3(6) of the Trade Marks Act 1994 (“the Act”) and is directed at the following services only:¹

Class 41: Production of talent shows; production of entertainment shows featuring dancers and singers; presentation of live entertainment shows.

3. Ms Kendall’s claim is as follows:

“One of the former Director of my company Dar Din Dar Ltd had access to all my data, ideas and concepts. With this former director I have discussed how to continue doing talent contests for Romanians living in diaspora. This former director, Olivia Marin, works with Madelina Apopei, the director of Eventup Ltd. Eventup Ltd now has applied for registering “Romani talentati in diaspora” as a trade mark, pretending in public and at the Intellectual Property Office, they had the idea of doing a talent contest for Romanians living in diaspora despite I have done such show and contest already in 2018 and she knew very well about this as I have discussed with her and she has seen the photos and videos.” (all sic)

¹ A claim under s. 5(4)(a) was struck out during proceedings: see the official letter dated 15 August 2024.

4. Ms Kendall also asserts that the opposed services will “be held in Romanian language, for Romanian audience and with Romanian performers living in diaspora” (sic).

5. The applicant filed a counterstatement denying the grounds and putting Ms Kendall to proof of her claims.

Hearing and representation

6. Neither party has had professional representation in these proceedings. A hearing was held before me by videoconference on 17 June 2026. The applicant was represented by Adrian Schwab. Although Ms Kendall had originally requested a hearing, she did not confirm her attendance or provide contact details as required in the official letter dated 17 March 2026. Ms Kendall did not attend the hearing, nor did she file written submissions in lieu.

Evidence

7. Ms Kendall filed a witness statement accompanied by eleven exhibits. Her evidence shows the use she has made of the sign “Diaspora are Talent” and contains some information about the intended use of the contested trade mark.

8. The applicant filed two witness statements with its counterstatement, which are admissible as evidence. The first is a statement from Olivia Marin, in which Ms Marin describes her relationship with Ms Kendall and her company and denies any knowledge of the event said to have been held by Ms Kendall. The second is from Madalina-Elena Apopei, a director of the applicant. Ms Apopei details the inception of the applicant’s talent show idea and attests that at the time she did not know of anyone in the UK having organised or planned a talent show for Romanians abroad.

9. None of the witnesses was cross-examined. I have read all of the evidence and will refer to it, as I consider necessary, later in this decision.

Bad faith: section 3(6)

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

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

11. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin JSC said at [155] that the circumstances which may justify a finding of bad faith have tended to fall into one of two categories, namely:

“(i) where the application was made, not with the intention of engaging fairly in competition but with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or

(ii) where the application was made 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, in particular the essential function of indicating origin - and so enabling the consumer to distinguish the goods and services of one undertaking from others which have a different origin.”

12. He then said that category (i) cases are:

“158. [...] generally concerned with conduct by an applicant which was intended to undermine the interests of one or more third parties, although the circumstances which may justify a finding that the application was made in bad faith may vary a great deal from case to case. The applicant may, for example, have appropriated the mark of another trader; or made the application in breach of an agreement or fiduciary duty; or even sought to secure by registration a right to prevent one or more third parties from using a mark in relation to particular goods or services despite those third parties having an earlier right to use the mark in that way. Nor do these circumstances necessarily involve any suggestion that the applicant has not used or does not intend to use the mark itself. Indeed, the impugned conduct may very well involve the use of the mark by the applicant.”

13. This is a category (i) case. Lord Kitchin summarised the general principles applicable to bad faith at [240] of *Skykick*. The principles relevant to the present decision are 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 Ankenaevenet for Patenter og Varemaerker* (C-320/12) EU:C:2013:435 (“*Malaysia Dairy*”), para 29; [*Sky plc v SkyKick UK Ltd* (C-371/18) EU:C:2020:45 (“*Sky CJEU*”), para 73).

(iv) While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, the concept must also be understood in the context of trade mark law, which involves the use of marks in the course of trade. Further, it must have regard to the objectives of the [...] law of trade marks, namely the establishment and functioning of [...] a system of undistorted competition in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin (*Lindt*, para 45; [*Koton 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).²

14. The mere fact that the applicant knew that another party used the trade mark in the UK does not establish bad faith: *Lindt, Koton* (at [55]). However, an application to register a mark is likely to have been filed in bad faith where the applicant knew that a third party used the mark in the UK, or had reason to believe that it may wish to do so in future, and intended to use the trade mark registration to extract payment/consideration from the third party, e.g. to lever a UK licence from an overseas trader: *Daawat Trade Mark*, [2003] RPC 11, or to gain an unfair advantage by exploiting the reputation of a well-known name: *Trump International Limited v DDTM Operations LLC*, [2019] EWHC 769 (Ch).

15. Ms Kendall’s case is that Ms Marin knew about the event Ms Kendall had held in 2018 and that the applicant is “pretending in public and at the Intellectual Property Office, they had the idea of doing a talent contest for Romanians living in diaspora”. The evidence which Ms Kendall has filed, however, is limited. There is a poster, a

² 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.

Facebook page, a booking receipt and photographs, all relating to an event in Wembley on 27 October 2018.³ The event was called “Diaspora are Talent”. There is also evidence of the original specification for the contested mark, which included text with details of an event named “Romani Talentați in Diaspora”, a “talent show dedicated to the Romanian community in the UK, with the participation of artists and talents from the diaspora”.⁴

16. I accept that “Diaspora are Talent” and the words “TALENTE in Diaspora” in the contested mark are quite similar. I also accept that “Romani Talentați in Diaspora” is quite similar to the words “Diaspora are Talent”. Nonetheless, for a talent/entertainment show, these combinations allude strongly to the purpose of the event, namely to showcase the talent in a diaspora community. The contested services are or include such shows and when used in relation to these services, even for English speakers without a knowledge of Romanian, “TALENTE” in the contested mark is likely to be taken as related to “talent” because of the similarity between the two words. As the words “TALENTE in Diaspora” are not particularly distinctive, it is as likely as not that the applicant coined the contested mark independently. In view of this, the similarity between the words “Diaspora are Talent” and “TALENTE in Diaspora” is not sufficient on its own to conclude that there was any copying of the name.

17. Ms Kendall says that she discussed the idea of doing talent contests with Ms Marin. Ms Marin admits to being a director of Dar Din Dar CIC from 31 October 2023 to 19 February 2024 but flatly denies discussing “doing talent contests” with Ms Kendall. However, even if the idea of talent contests was discussed with Ms Marin, that would not be enough for a finding of bad faith. That is, first, because there is no protection in law for an idea and, secondly, because this is a trade mark dispute. The burden is on Ms Kendall, who needs to establish that the bad faith involved the trade mark, as distinct from copying an idea about holding a talent show. Ms Kendall’s evidence shows that she did put on a show in 2018 under the name “Diaspora are Talent”. However, the only evidence that this event, or any other talent show, was discussed with Ms Marin is Ms Kendall’s bare assertion to that effect. Had there been

³ Exhibits E1B-E8B.

⁴ E10B.

serious discussion about such events, and in particular any discussion about a trade mark under which such events would be marketed, one would expect some sort of written evidence, such as emails or other types of instant messages, or at least a more detailed account from Ms Kendall about the nature and purpose of the discussions (such as whether the 2018 event was discussed because a further event was being planned and, if so, details of that event). There is nothing of that nature in evidence. Nor is there any evidence that Ms Kendall had held any other event in the interim, that she had been planning another event at or around the relevant date or that there were any plans to use “Diaspora are Talent” or any similar name in future. The evidence establishes that a talent show took place in 2018 but evidence of advertising is very limited: there is nothing to suggest widespread promotion such that it must have come to Ms Marin’s notice and Ms Marin denies any knowledge of it. I am not prepared to conclude on the basis of Ms Kendall’s unsupported assertion and a single event which took place five years before Ms Marin was appointed to Dar Din Dar Impact CIC that Ms Marin had any knowledge of that event or of any marks associated with that event.

18. Even if Ms Marin had been aware of the 2018 event, I would still not have concluded based on that fact alone that the application was made in bad faith. As I have said, Ms Kendall’s show was a single event over five years before the relevant date. There is nothing which establishes that there was any similar event in the intervening years, still less under any particular name with which the contested mark may be associated and thus exploit. In the absence of any evidence that there was more than a single event in 2018 or that future events were being planned, there is no sound basis to conclude that the contested mark was applied for with the intention of exploiting Ms Kendall’s business, whether by appropriating a mark which she was using, preventing her from registering a mark to which she had a right through use, or for any other reason. I therefore reject the claim that the application was made in bad faith.

Conclusion

19. The opposition fails and the application will, subject to appeal, proceed to registration in full.

Costs

20. The applicant has been successful and would ordinarily be entitled to an award of costs. However, Mr Schwab indicated at the hearing that the applicant's main concern was that it not be liable for Ms Kendall's costs. I allowed time for the applicant to file a costs pro forma if it wished but none was filed. Accordingly, I direct that the parties bear their own costs.

Dated this 17th day of July 2026

Heather Harrison

For the Registrar