

BLO/0751/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO 3875464

BY

Johann Radauer GmbH

TO REGISTER THE TRADE MARK

POWER MANDELA

IN CLASS 32

AND

THE OPPOSITION THERETO UNDER NO 440897

BY

THE TRUSTEES FOR THE TIME BEING OF THE
NELSON MANDELA FOUNDATION TRUST

BACKGROUND AND PLEADINGS

1. On 7 February 2023, Johann Radauer GmbH ("the applicant") applied to register the above trade mark in class 32, for the following goods:¹

Energy drinks; vitality drinks; energy drinks with fruit taste; vitality drinks with fruit taste.

2. The application has a priority date of 17 January 2023 from the European Union and was published on 17 February 2023, following which The Trustees for the time being of the Nelson Mandela Foundation Trust ("the opponent") filed a notice of opposition against all of the goods in the application.

Preliminary issues

3. Before outlining the opponent's pleadings, it is necessary for me to deal with ambiguity in the opponent's skeleton argument filed before the hearing.

4. In the first instance, the opponent relied on sections 5(2)(b), 5(3) and 3(6) and on its trade marks NELSON MANDELA and MANDELA, both of which were claimed to be well-known marks. At paragraph 2 of its skeleton argument the opponent submits:

"2. The following arguments support the opposition against UK Trade Mark Application No UK00003875464 for POWER MANDELA in class 32 ('the Application') by Johann Radauer GmbH ('the Applicant') filed by the Opponent on the grounds of

a. Section 3(6); and

¹ International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement (15 June 1957, as revised and amended).

b. Section 5(3) of the UK Trade Marks Act ('the Act'), 5(3) being pursued on the basis of the Opponent's

i. UK Trade Mark Registration No UK00917924463 MANDELA;

ii. NELSON MANDELA being a well-known trade mark under Section 6(1)(c) and;

iii. MANDELA being a well-known trade mark under Section 6(1)(c).

3. The Opponent no longer wishes to pursue its opposition on the grounds of Section 5(2)(b) based on its registered trade mark rights, and Section 5(2)(b) based on MANDELA and NELSON MANDELA being well known marks under Section 6(1)(c)."

5. Paragraph 3 clearly removes reliance on section 5(2)(b) for both trade marks. Point i of that statement identifies one mark, MANDELA and seems to have omitted the NELSON MANDELA mark, given points ii and iii that follow. However, nothing turns on this for reasons that are explained in the next paragraphs.

6. Later in its skeleton argument the opponent submitted:

20. The Opponent has not provided evidence of use of the NELSON MANDELA trade mark in relation to the class 14 goods and class 35 services covered by UK Trade Mark Registration No UK00002391453. Therefore, this basis of opposition under Section 5(3) is dropped.

7. The NELSON MANDELA trade mark is registered only in classes 14 and 35, so I take this to mean the NELSON MANDELA mark is no longer relied on, though I note, it continues to be referred to throughout the skeleton argument.

The pleadings

8. In light of the concessions made in the skeleton argument the opponent bases its case on sections 3(6) and 5(3) of the Trade Marks Act 1994 (“the Act”).

9. Under section 5(3) it relies on the following trade mark, being a well-known mark under section (6)(1)(c):

Mark details:	Goods relied on:
UKTM: 917924463 MANDELA Filed: 28 June 2018 Registered: 3 June 2019	Class 9 Apparatus and equipment for recording, transmitting, storing, processing or reproducing sound, data or images; magnetic data carriers, recording discs, audio and video discs, tapes and cassettes, compact discs, gramophone records and audio cassettes; computer software; digital media; downloadable recordings and publications; lifesaving and teaching apparatus and instruments; spectacles and sunglasses. Class 14 Precious metals and their alloys; badges of precious metal, busts of precious metal, figures of precious metal, key chains of precious metal, key holders of precious metal, ornaments of precious metal (not including Christmas tree ornaments); trophies of precious metal, statues of precious metal, sculptures of precious metal and works of art of precious metal; jewellery; earrings, cufflinks, chains, charms, bracelets, brooches, pins, rings and trinkets in the nature of charms of precious metals or coated therewith, cufflinks of precious metal, hat ornaments of precious metal, ingots of precious

	metals, insignias of precious metal and tie-pins of precious metal; tie-pins of precious metal; clocks; watches; containers of precious metal; ornamental baskets and boxes made of precious metal, and jewellery and watch cases; coins; collectible coins; commemorative coins; non-monetary coins; figurines of precious metal; diamonds; gold and imitation gold objects, namely, bracelets, brooches, earrings and necklaces; medals and semiprecious stones; pearls, ornamental gems; badges of precious metal; precious and semiprecious stones; precious metal alloys; trophies, namely silver plate; horological and chronometric instruments. Class 16 Photographs, stationery, musical greeting cards, gift cards, iron on and plastic transfers and decals; printed matter and publications; photographic books and materials; educational brochures, pamphlets, exhibition catalogues and story books; educational publications in the nature of educational training books and brochures; printed visuals in the nature of promotional materials; printed periodicals; artists' materials; paint brushes; plastic materials for packaging. Class 25 Articles of clothing, shirts, sweaters, scarves, ties, jackets; pants, t-shirts, sweatshirts, hooded shirts, polo shirts, jeans, sportswear, ski wear and track suits; footwear; headwear, caps. Class 28
--	--

	Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees. Class 35 Advertising; business management; business administration; office functions; retail and wholesale services relating to apparatus and equipment for recording, transmitting, storing, processing or reproducing sound, data or images, magnetic data carriers, recording discs, audio and video discs, tapes and cassettes, compact discs, gramophone records and audio cassettes, computer software, digital media, downloadable recordings and publications, lifesaving and teaching apparatus and instruments, spectacles and sunglasses, precious metals and their alloys, badges of precious metal, busts of precious metal, figures of precious metal, key chains of precious metal, key holders of precious metal, ornaments of precious metal (not including Christmas tree ornaments), trophies of precious metal, statues of precious metal, sculptures of precious metal and works of art of precious metal, jewellery, earrings, cufflinks, chains, charms, bracelets, brooches, pins, rings and trinkets in the nature of charms of precious metals or coated therewith, cufflinks of precious metal, hat ornaments of precious metal, ingots of precious metals, insignias of precious metal and tie-pins of precious metal, tie-pins of precious metal, clocks, watches, containers of precious metal, ornamental baskets and boxes made of precious metal, and jewellery and watch cases, coins, collectible coins, commemorative coins, non-monetary coins, figurines of precious metal, diamonds, gold and imitation gold
--	---

	objects namely bracelets, brooches, earrings and necklaces, medals and semiprecious stones, pearls, ornamental gems, badges of precious metal, precious and semiprecious stones, precious metal alloys, trophies namely silver plate, horological and chronometric instruments, photographs, stationery, musical greeting cards, gift cards, iron on and plastic transfers and decals, printed matter and publications, photographic books and materials, educational brochures, pamphlets, exhibition catalogues and story books, educational publications in the nature of educational training books and brochures, printed visuals in the nature of promotional materials, printed periodicals, artists' materials, paint brushes, plastic materials for packaging, articles of clothing, shirts, sweaters, scarves, ties, jackets, pants, t-shirts, sweatshirts, hooded shirts, polo shirts, jeans, sportswear, ski wear and track suits, footwear, headwear, caps, games and playthings, gymnastic and sporting articles and decorations for Christmas trees. Class 38 Communications services, namely, transmitting streamed sound and audio-visual recordings via the internet; digital streaming of audio and video content from the internet. Class 41 Education; providing of training; entertainment; sporting and cultural activities; arranging, conducting and hosting of shows, events, exhibitions and competitions; publication services.
--	--

Section 5(3)

10. Under this ground the opponent claims that the application and the earlier mark are highly similar. Further, it claims that the opponent's earlier mark MANDELA is widely-known in the UK for all of the registered goods and services and is associated with Nelson Mandela. It submits:

“25...For example, the Opponent provides archiving, exhibitions, research projects, education services, events and related goods to UK consumers. UK consumers will have received significant exposure to the MANDELA and NELSON MANDELA trade marks through education and events such as Mandela Day, an annual international event to celebrate the life of Nelson Mandela and other memorial events.”

11. The opponent claims that the average consumer would make an unwarranted link and commercial connection between the respective marks and the purchasing decision would be affected.

12. With regard to damage the opponent submits:

“27...The use of such a similar mark would allow the Applicant to effectively piggy-back off of the distinctive character and repute of the earlier trade mark and the significant investment of the Opponent in its promotion.

28. The use of such a similar mark beyond the control of the Opponent would also degrade the reputation and distinctive character that the Opponent has established in its trade marks. The Opponent's trade marks have a reputation for being associated with social work and activism and the seriousness of this reputation would be harmed by the general commercialisation of the name and association with the Applicant's products, namely energy and vitality drinks, which are general consumer goods and have also been associated with health risks. The Opponent's trade marks are also at risk of dilution if such a similar trade mark could be used in relation to general commonplace consumer goods such as energy

and vitality drinks. The Opponent has deliberately chosen not to license out the trade marks for commercial purposes for these reasons”.

Section 3(6)

13. With regard to its bad faith claim, the opponent submits the following:

“36. The Opponent contends that the grant of registration in relation to the Application would be contrary to the provisions of Section 3(6) of the Act, namely that it has been filed in bad faith.

37. There is a history of prior discussions between the parties regarding the POWER MANDELA trade mark, and the timeline is as follows:

i. The Applicant approached the Opponent prior to the filing of the Application to obtain its authorisation to use POWER MANDELA for an energy drink, and to partner with the Opponent in this venture.

ii. The Opponent met with the Applicant 's representatives on 11 January 2023. The Opponent immediately declined and advised that the MANDELA and NELSON MANDELA trade marks are never licensed out for commercial gain purposes, to according the wishes of the late Nelson Mandela who it was explained was deeply uncomfortable with his name being exploited for commercial purposes. At the meeting, the Applicant undertook not to make public the energy drink.

ii. The Applicant subsequently filed the Application on 7 February 2023 and has filed corresponding trade mark applications for POWER MANDELA in other territories including South Africa.

38. The Applicant therefore intended to make a connection to the Opponent's trade marks with its use of POWER MANDELA for its energy drink goods and understood that a license was required, but filed its own trade mark application when such a license was refused by the Opponent.

The Opponent met with the Applicant's representatives, therefore it can be inferred that the Applicant had taken advice on the matter but subsequently decided to proceed without the Opponent's consent.

39. Such actions fall short of the standards of acceptable commercial behaviour observed by reasonable traders and therefore constitutes bad faith. As such, the Application should be refused in its entirety on the basis of Section 3(6) of the Act.”

14. The applicant filed a counterstatement in which it denied all of the grounds of opposition and put the opponent to proof of use and reputation. With regard to the 3(6) ground the opponent submits:

“41. The historic discussions that took place between the Applicant and the Opponent referred strictly to South Africa only. Other countries were not the subject of these discussions. We submit that the Opponent’s claims at paragraphs 37(i) - (iii) of its Statement of Grounds are irrelevant to the current proceedings.”

15. A hearing took place before me at which the opponent was represented by Lauren Somers of HGF Limited. The applicant was represented by Mewburn Ellis LLP and filed submissions in lieu of attendance at the hearing. Both sides seek an award of costs in their favour.

DECISION

16. Although the UK has left the European Union (EU), section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark law.

The opposition under section 5(3)

17. Section 5(3) of the Act is as follows:

“A trade mark which–

(a) is identical with or similar to an earlier trade mark,

[...]

shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.”

18. The conditions of section 5(3) are cumulative. Firstly, the marks at issue must be identical or similar. Secondly, the opponent must satisfy me that the earlier mark has achieved a level of knowledge/reputation amongst a significant part of the relevant public by the relevant date (17 January 2023). Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier mark being brought to mind by the application. Fourthly, assuming that the first three conditions have been met, section 5(3) requires that one or more of the three types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods/services be similar, although the relative distance between them is one of the factors that must be assessed in deciding whether the public will make a link between the marks.

Reputation

19. In *General Motors Corp v Yplon SA*, the Court of Justice of the European Union (CJEU) held that:²

“24. The public amongst which the earlier trade mark must have acquired a reputation is that concerned by that trade mark, that is to say, depending on the product or services marketed, either the public at large or a more specialised public, for example traders in a specific sector.

² Case C-375/97

25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation 'in the Member State'. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation 'throughout' the territory of the Member State. It is sufficient for it to exist in a substantial part of it."

The opponent's evidence of reputation

20. The opponent's evidence is given by Tamyn Mary-Loo Sass, General Counsel for The Nelson Mandela Foundation. Her statement is dated 15 January 2024. She refers to the opponent as 'the Foundation'. The relevant points from her evidence follow.

21. The Nelson Mandela Foundation was established in 1999 by Nelson Mandela as a base for his charitable works, including building schools, research into education and HIV/AIDS work.

22. In 2004/2005 the Foundation changed its focus to what Ms Sass refers to as legacy work, described in the following terms:

“The Foundation works to provide the world with information on the life and times of Nelson Mandela and to promote the finding of sustainable solutions to critical social problems”.

23. The Foundation is active in 135 countries, with 163 current donors.

24. The Nelson Mandela Foundation website provides further details about the history and mission of the Foundation, as follows:³

“Founding principles of the Nelson Mandela Foundation

- The creation, establishment, protection and preservation of a Centre of Memory about Mr Mandela, which contains an archive of the life and times, works, and writings of the Founder
- Convening dialogue around critical social issues, including particular issues regarding human rights and democracy, in order to contribute to a just society
- The promotion of, or engaging in, philosophical activities, including discussion regarding issues pertaining to human rights and democracy
- The raising of funds in furtherance of the Trust's objectives
- The provision of support services to, or the promotion of the common interests of, public benefit organisations”

25. Ms Sass describes Nelson Mandela as a civil rights activist who became the President of South Africa and provides extracts from, inter alia, The New York Times and Encyclopedia Britannica in support of her submission.⁴

26. Ms Sass provides details of more than 250 awards, honours and honorary doctorates given to Nelson Mandela.⁵ The first was in 1964 when Nelson Mandela was elected honorary president of the Student’s Union at the University of Leeds. The

³ See exhibit NM1

⁴ See exhibit NM2

⁵ See exhibit NM4

last is the UN Nelson Mandela Decade of Peace that began in 2019 and runs until 2028. Other examples include the freedom of many international towns and cities, for example, Glasgow in 1981, Dublin in 1988, Sydney in 1987 (being the first person to receive the award), London in 1996 and Cardiff in 1998. Nelson Mandela was also awarded honorary citizenship of many international locations including Rome in 1983, Rio de Janeiro in 1985 and Canada in 2001.

27. Human rights awards for Nelson Mandela include the British Red Cross Humanity Medal in 2003, the Anne Frank medal for human rights and tolerance, awarded on 15 August 1994 and the South African Red Cross Society Humanitarian award 2006. In 2009 the United Nations General Assembly made 18 July (Nelson Mandela's birthday) Mandela Day.

28. Nelson Mandela was awarded the Congressional Gold Medal in Washington in 1998, the Grand-Croix degree of the National Order of the Legion of Honour of France in 1994 and was made an honorary member of The Order of Merit by Queen Elizabeth II in 1995.

29. Nelson Mandela has buildings, parks and roads named after him, with statues of him erected in countries around the world. He also has a nuclear particle named after him and a species of trapdoor spider.

30. In 1993, Nelson Mandela won a Nobel Peace Prize for his work towards the peaceful termination of the apartheid regime and for laying the foundations for a new democratic South Africa.⁶

31. Ms Sass submits that Nelson Mandela is known globally and was the inspiration behind a Netflix series called 'Live to Lead'. An extract from the Netflix preview for the series is dated 31 December 2022 and reads:⁷

⁶ See exhibit NM3

⁷ See exhibit NM4A

“Inspired by Nelson Mandela and produced in part by Prince Harry and Meghan, Duchess of Sussex, Live to Lead puts the spotlight on seven leaders who’ve dedicated their lives to social justice...”

32. A Wikipedia article about the series includes the following:⁸

“The series will feature interviews with world leaders and influencers, including Ruth Bader Ginsburg, Greta Thunberg, Bryan Stevenson, Jacinda Ardern, Siya Kolisi, Gloria Steinem, and Albie Sachs...The idea behind the series was conceived by Blackwell and Ruth Hobday as they worked on a project about Nelson Mandela in 2018. Titled ‘I Know This to Be True’, the project is a collaboration between Nelson Mandela Foundation and Blackwell & Ruth and involves a series of interviews with leaders and public figures that were released in 2020 as a series of books. In a statement, Blackwell said that the series aimed “to honor Mandela’s values by surfacing the stories of leaders who distinguish themselves through their moral courage, the conviction of their ideals and values, and their prioritization of others.”

33. The Foundation’s work is said to be very varied. Ms Sass submits that it includes:

“...campaigns to identify and support educational establishments in South Africa, publishing and making available the works of the late Mr Mandela online for global access, engaging with the public on critical social issues, leadership development services, exhibitions and the provision of lectures”.

34. Pages from the Nelson Mandela Foundation website show its work under the headings, “Early childhood development”, “Archives”, “Critical Dialogues”, “Leadership Development”, “Exhibitions”, “Annual Lectures”, “Mandela Day” and “Goodwill collection”. The pages were accessed on 10 December 2023, after the relevant date.

⁸ As above

35. News articles and events are shown for dates the relevant date. For example, “Critical Dialogue Series: Does Land Still Matter?” – join the foundation for a discussion, 2 November 2023; “Nelson Mandela is Dead”, an exhibition by the Nelson Mandela Foundation, 30 November 2023 and “The 21st Nelson Mandela Annual Lecture”, on 5 December 2023 in Johannesburg.

36. A report from the Nelson Mandela Foundation for the period January 2019 to 6 December 2023 shows visitors from the UK to the website www.nelsonmandela.org to be approximately 50,000. The number of visitors from South Africa is the highest at just under 500,000 and the United States has the second highest visitor numbers with 200,000 visitors.⁹

37. Ms Sass states that the Foundation manages the archive of Nelson Mandela, which includes handwritten documents and papers, some of which have been digitized. The website describes it as, “*an archive of the life, time, works and writings of its Founder, the late Mr. Nelson Mandela*”. A print is provided that is said to show a YouTube video that guides users on how to use the archive. It is titled, ‘Nelson Mandela Centre of Memory Online Archive – Introduction.’ Ms Sass says that it was made available in March 2019, though the date cannot be seen. It had had 1.7k views at the time it was printed.¹⁰

38. The Nelson Mandela Foundation website also includes a list of Nelson Mandela Lectures that have taken place each year in South Africa. The first was delivered by Bill Clinton in July 2003. Ms Sass says that the lectures are delivered by prominent people and receive global press attention. The second lecture was delivered by Archbishop Emeritus Desmond Tutu in November 2004. The 2018 lecture was delivered by Barak Obama in July.¹¹ . The latest was given in Johannesburg on 5 December 2023, by Nobel Peace Laureate Malala Yousafzai.

39. Ms Sass states that the foundation hosts exhibitions and events about the life and teachings of Nelson Mandela and the apartheid struggle and democracy in South

⁹ See exhibit NMF6

¹⁰ See exhibit NMF7

¹¹ See exhibit NMF8

Africa. Pages from the Foundation's website show a list of 29 past exhibitions, staged at the Centre of Memory in Johannesburg. They are dated from 1 March 2012 to 31 August 2023. They include, 'Comics Exhibition', the story of Nelson Mandela's life through comics (2 March 2012); 'The Life and Times of Nelson Mandela' (25 October 2014); 'Between States of Emergency', The Nelson Mandela Foundation's photographic exhibition (8 November 2016); 'Unthreading Mandela', tracing his life through his carefully constructed image (4 May 2018); 'Mining Bodies', about the South African mining industry (15 October 2019) and 'Negotiating Democracy', online exhibition drawing on the archives to explore South Africa's pre-democratic negotiation process (24 June 2020).¹²

40. Ms Sass states that the Nelson Mandela Foundation has endorsed the use 'of the MANDELA name' in relation to exhibitions arranged and hosted by third parties. In 2024 an exhibition titled, 'MANDELA THE OFFICIAL EXHIBITION' was put on in London and toured other cities and US states such as Berlin, New Mexico, Oregon, Texas, Missouri and Dearborn. It appears to have been put on by, or for the benefit of, the Royal House of Mandela.¹³

41. Ms Sass also submits that:

"The Foundation also endorsed the use of the name MANDELA and NELSON MANDELA in relation to an annual international day in honour of the late Mr Mandela. In November 2009, the United Nations declared 18 July (Mr Mandela's birthday) Nelson Mandela International Day. The day sparks global charitable and positive personal initiatives each year, this year including a call to tackle climate change and overcome food insecurity."

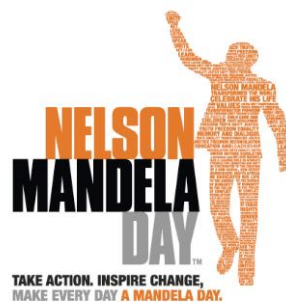
42. The website www.mandeladay.com is operated by the Nelson Mandela Foundation. It provides information about the day and its aims and helps people to get

¹² See exhibit NMF9

¹³ See exhibit NMF10

involved. Website traffic data for the page shows there were 2680 users from the UK between 1 January 2019 and 6 December 2023.¹⁴

43. Ms Sass submits that the Foundation allows use of the Nelson Mandela Day logo by third parties as long as they ‘accord with certain guidelines’. I presume the logo referred to is the one shown below, which features on the Mandela day web pages, though an example is not provided in the witness statement or described by Ms Sass:



44. The guidelines referred to include the following:¹⁵

“Reputational guidelines have been designed to ensure that all parties implementing Mandela Day initiatives function within a framework (guidelines) respectful of the late Founder of the NMF, and the ethos that is true to the intent and purpose of the campaign. Our aim is to honour and embrace Nelson Mandela’s values and legacy.

These guidelines include that:

a. The name and/or image of Mr Mandela (and any re-iterations thereof) are not directly associated with any product, brand, or commercial promotion.

...

d. Nelson Mandela’s image should not be used in promotional material or branded publicity material. The branding should rather make use of the Mandela Day iconography, logos and words ‘in support of Mandela Day’.

¹⁴ See exhibit NMF11

¹⁵ See exhibit NMF12

e. All such material should be sent to the Nelson Mandela Foundation for approval prior to use via mandeladay@nelsonmandela.org.

f. The Mandela Day campaign and the Mandela Day branding nor any other link with Mandela Day should not be used to further narrow political and ideological interests nor any commercialization or retail activity.”

45. Examples are given of organisations and businesses taking part in Mandela Day. The first is British Council South Africa (undated), the second is Anti-Apartheid Legacy (18 July 2022) and the third is Nandos (undated).¹⁶

46. Ms Sass provides examples of publicity for Mandela Day in the UK.¹⁷

- Unesco (undated) - information about Nelson Mandela and the importance of Mandela Day.
- BBC Newsround – information about Nelson Mandela’s life and work. Includes links to interviews with children in 2020 who were asked what Nelson Mandela means to them. Links at the end of the article are ‘Mandela’s most famous speeches’, dated 18 July 2018 and Newsround in South Africa, ‘Mandela’s Children’, dated 13 December 2013.
- UN – European website - Secretary General’s message for Mandela Day in 2023 (after the relevant date).
- UN – European website – 15-minute video filmed at the UN General Assembly, informal meeting, ‘Prince Harry, The Duke of Sussex, on Nelson Mandela’, 18 July 2022.
- The Standard, ‘Nelson Mandela Day: When is it and what is the theme for 2023?’, 14 July 2023 (after the relevant date).

47. Ms Sass states that the Foundation has consented to the use of MANDELA in relation to educational services offered by third parties. These include:

¹⁶ See above

¹⁷ See exhibit NMF13

Mandela Magdalene Memorial Fellow and Scholarships at Cambridge University

48. The memorial fellowship was established in 2017 in memory of Nelson Mandela who was an honorary fellow. Scholarships were established in 1994 and are awarded annually to three postgraduate students from South African universities.¹⁸

49. An article published on www.heart.co.uk, which appears to be a local news provider in Cambridge, includes the following:

“The Mandela Magdalene College Scholarships were announced in 1995. The aim was to assist South African students with training and to return to their country as skilled men and women. Mr Mandela then visited the college in 2001 to be formally installed as an Honorary Fellow. On that day he also met his scholars and formally approved the use of his name in the programme.”

A Mandela Scholarship at the University of Sussex

50. Established in 1973 to protest against the injustice of apartheid and raise the profile of Nelson Mandela’s struggle for freedom.¹⁹ A print is provided from SABC News. It is said to contain a transcript from a YouTube video, though only 19 seconds of the print seem to relate to a transcript. The title of the video is 50th Mandela Scholarship with University of Sussex: with Professor Sasha Roseneil. The video has not been provided in the evidence, so I have been unable to watch it.

Nelson Mandela Primary School

51. A print from *Twitter* is titled, ‘Nelson Mandela Primary School’ and includes the following under the heading, ‘Our History’:²⁰

¹⁸ See exhibit NMF14

¹⁹ See exhibit NMF15

²⁰ See exhibit NMF16

“Nelson Mandela School in Birmingham opened its doors to pupils on 7 September 1987. It was officially opened by Archbishop Desmond Tutu on 22 April 1988. Nelson Mandela visited our school.”

52. A photograph showing Nelson Mandela meeting schoolchildren is dated 6 December 2013.

Nelson Mandela Lecture Theatre at the University of Oxford

53. An article from the *Guardian* Higher Education section is dated 10 April 2002 and is titled, “Mandela honored at Oxford”. It includes the following:²¹

“Nelson Mandela will give a lecture at the University of Oxford on Saturday when its newest lecture theatre, in the Saïd business school is named in his honour... Oxford was one of eight British universities to present Mr Mandela with an honorary degree in a ceremony at Buckingham Palace in July 1996.”

54. Ms Sass states that the Foundation has authorized use of the name MANDELA in relation to a bronze statue of Nelson Mandela in Parliament Square in London and a memorial in Princes Park in Liverpool.

55. A *Guardian* article, dated 30 August 2007, reported Mr Mandela attended the unveiling of a statue of himself in Parliament Square. It includes the following:²²

“Mr Mandela, now 89, accepted that the figure, 2.7 meters (9ft) tall and clad in a flowered shirt, with arms outstretched, was a likeness of him.

But the former South African President and Nobel Prize winner said it spoke to something greater. ‘Although this statue is of one man it should in actual fact symbolize all those who have resisted oppression, especially in my country.’”

²¹ See exhibit NMF17

²² See exhibit NMF18

56. The Mandela memorial in Princes Park, Liverpool, unveiled 18 July 2023, was commissioned by a charitable organization called Mandela8. The patrons of the charity include The Nelson Mandela Foundation and The Desmond and Leah Tutu Legacy Foundation.

57. In addition to the two statues referred to above, The Nelson Mandela Scottish Memorial Foundation is raising funds for a statue of Nelson Mandela and an education project.²³

58. Ms Sass states that The Nelson Mandela Foundation is affiliated to the Nelson Mandela Legacy Trust based in the UK:²⁴

“This trust was created by the Foundation and its sister foundations in South Africa, Mandela Rhodes Foundation and Nelson Mandela Children’s Trust, to assist with international fundraising in the UK for these foundations.”

Conclusions on reputation

59. The evidence shows that the Nelson Mandela Foundation manages the legacy of the man, Nelson Mandela. I accept on judicial notice that Nelson Mandela is well known as the former President of South Africa and as an activist and anti-apartheid campaigner.

60. I remind myself at the outset of this assessment that it is necessary for the opponent to demonstrate that MANDELA has been used in such a way that it gives the relevant public information about the commercial origin of the claimed goods and/or services.

61. Having considered the evidence as a whole, it is clear that there is no evidence of the sale of goods under any trade marks. Consequently, I am bound to find that the

²³ See exhibit NMF18

²⁴ See Ms Sass’s first witness statement , at paragraph 34.

opponent has no reputation in the MANDELA trade mark for goods in classes 9, 14, 16, 25 or 28.

62. There is no evidence of the opponent using MANDELA (or any trade mark) to provide advertising, business management, business administration, office functions or retail and wholesale services at all. Accordingly, I cannot find that the opponent has a reputation in the MANDELA trade mark in class 35.

63. The remaining services for which a reputation is claimed are communication services in class 38 and services in class 41 that include events, exhibitions and education.

64. Ms Sass provides evidence about Nelson Mandela Day, which was established by the UN and falls on what was Nelson Mandela's birthday. In her witness statement, Ms Sass states that the Foundation gave the UN permission to use its trade marks for this purpose. There is no evidence to support this claim. In establishing Nelson Mandela Day, the UN was likely aiming to honour the man and this does not appear to have any relevance to the Foundation's trade mark registrations.

65. The evidence does show that the Foundation provides guidelines for those involved in the day itself. The Foundation endorses the use of the 'Nelson Mandela Day logo' as long as third parties abide by the guidelines. Several 'logos' appear in the evidence, but I have not been told what the logo referred to in the guidelines looks like, or who owns it. It is clearly not the mark relied on for these proceedings, which is the plain word MANDELA. In any case, the visitors to the Mandela Day website page from the UK between 1 January 2019 and 6 December 2023 are 2680. This is certainly not significant when trying to establish that the Foundation has a reputation amongst the relevant UK public.

66. Permissions are said to have been given by the Foundation for use of MANDELA for several statues erected in honour of Nelson Mandela, for example, the statue of Nelson Mandela in Parliament Square. No evidence has been provided to show that the Foundation granted licenses or gave permission for statues to be erected. Press reports show that Mr Mandela attended the unveiling of the statue and made a speech

at the event to celebrate the occasion. This is not an example of use of MANDELA as a trade mark for statues. It is evidence of a statue that acknowledges the life and legacy of Nelson Mandela as a former President of South Africa and as a campaigner and activist.

67. Similarly, the Foundation is said to have given permission to Oxford and Cambridge Universities to name a lecture theatre after Nelson Mandela and to establish scholarships and a chair in his name. Rather than being examples of use of the trade mark MANDELA to create a market for particular goods and/or services, these are examples of organisations and institutions honouring the life and work of Nelson Mandela. In my experience, this is not uncommon within academic institutions where, for example, rooms, buildings and scholarships are named after those famous in a particular field.

68. The Nelson Mandela Foundation organises an annual lecture called ‘The Nelson Mandela Annual Lecture’. Historical information on the website lists previous lectures, all of which appear to have been organised by the Nelson Mandela Foundation and were delivered in a number of locations across South Africa. The relevant public’s perception of these lectures is that they are organised by the Nelson Mandela Foundation. This is not evidence of use or reputation in the trade mark MANDELA for organising lectures. It is also not clear to me how many of the relevant public, in the UK or elsewhere, have engaged with the lectures, either in person or via the website. Web traffic figures are provided but it is not clear which pages the visitors engaged with and numbers of UK visitors are low.²⁵

69. In short, despite claims that permission has been given by the Foundation for third party organisations to use the MANDELA trade mark, there is no evidence of any trade mark licence agreements for MANDELA or any other trade marks. Much of the evidence is undated and relates to events in South Africa. To the extent that there is a clear originator for any of the claimed services, the perception of the relevant public would be that the services are provided by third parties, such as Cambridge University

²⁵ Website figures for the UK show 50,000 visitors to the Nelson Mandela Foundation website between 1 January 2019 and 6 December 2023.

or, in the case of the lectures and archives of Nelson Mandela's documents, from the Nelson Mandela Foundation itself. I have no evidence of turnover, advertising spend, examples of specific goods and/or services supplied by the opponent under the earlier MANDELA mark (whether in the UK or elsewhere). I have no evidence that shows to whom goods and services have been offered, nor any indication of the size of the relevant markets.

70. Consequently, I cannot conclude that at the relevant date the opponent had the necessary reputation in the MANDELA trade mark for any of the goods and services on which it relies. The objection brought by the opponent under the provisions of section 5(3) of the Act fails at the first hurdle.

71. As I have found that the trade mark MANDELA has not been used for any goods or services relied on, I need not consider the opponent's claim under section 6(1)(c) of the Act, that MANDELA is a well-known trade mark.

The opposition under section 3(6) of the Act

72. Section 3(6) of the Act reads:

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

73. The relevant case law can be found in *SkyKick UK Ltd & Anor v Sky Ltd & Ors*²⁶ in which 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).

²⁶ (Rev1) [2024] UKSC 36

(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).

(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)."

74. In *Alexander Trade Mark*,²⁷ Geoffrey Hobbs KC sitting as the Appointed Person outlined the key questions for determination in a claim of bad faith, which are:

- (a) What, in concrete terms, was the objective that the applicant has been accused of pursuing?
- (b) Was that an objective for the purposes of which the contested application could not be properly filed? and
- (c) Was it established that the contested application was filed in pursuit of that objective?

²⁷ BL O/036/18

75. It is necessary to ascertain what the applicant knew at the relevant date: *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch). Evidence about subsequent events may be relevant, if it casts light backwards on the position at the relevant date: *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited* and others, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).

76. I remind myself that the concept of bad faith presupposes the existence of a dishonest state of mind or intention, but dishonesty is to be understood in the context of trade mark law. I also take account of the concept of bad faith that, so understood, relates to a subjective motivation on the part of the trade mark applicant, namely a dishonest intention or other sinister motive. It involves conduct that departs from accepted standards of ethical behaviour or honest commercial and business practices.

The opponent's case

77. In simple terms the opponent's case is that the applicant 'essentially' asked permission to use the trade mark MANDELA at a meeting with the Foundation in which the applicant outlined its plans for an energy drink named POWER MANDELA. The Foundation refused, on the basis that Nelson Mandela and those responsible for his legacy do not allow his name to be used for commercial purposes. Having been refused, the applicant applied for the contested trade mark POWER MANDELA in bad faith.

78. The opponent's evidence is contained within Ms Sass's witness statement. She states that the applicant contacted the opponent in December 2022 to arrange a meeting. The email from the applicant confirming the meeting said:²⁸

"Our idea is to develop THE PRODUCT with your Fo[u]ndation, to make it known, to manage it together. We aim at A PARTNERSHIP and the benefits of the PRODUCT have to be shared together, in a win-win part."

²⁸ See exhibit NMF19

79. A meeting was held on 10 January 2023 in Johannesburg. Ms Sass attended the meeting with the acting CEO of the Foundation, Verne Harris, another person from the Foundation and Ludovic Dakossi and Ralph Thon of the applicant.

80. She states that at that meeting the applicant advised that its proposed product was an energy drink that it intended to brand as POWER MANDELA. It wished to partner with the Foundation and *“essentially have the Foundation authorize its use of the trade mark MANDELA for the drink, with the Foundation to share in the profits.”*

81. Ms Sass states that a business card was presented and an email account had been activated. There was no website and the business had not been registered. The business card appears as follows:²⁹



82. Ms Sass states that the Foundation communicated ‘unequivocally’ during the meeting that it does not licence the names MANDELA and NELSON MANDELA to third parties for commercial purposes. She concludes:

“Therefore, the Foundation would not authorise the Applicant’s use of MANDELA for the proposed energy drink product, or indeed any product. The Foundation made it clear to the Applicant that should it go ahead with applying the sign POWER MANDELA to an energy drink, that it would object as appropriate”.

83. Ms Sass states that the applicant confirmed it would not use the name MANDELA without authorisation from the Foundation and, *“...acknowledged the Foundation’s intellectual property rights to MANDELA and NELSON MANDELA”.*

²⁹ See exhibit NMF20

84. On 16 January 2023, the applicant sent the opponent a letter (I note that the letter head reads JOHANN RADAUER Natural Casings).³⁰ The first paragraph of the letter reads as follows:

Power Mandela® - Example of consumer communication and relation

Nelson Mandela. Everyone knows him as one of the greatest fighters against oppression (and racial discrimination). He fought a lifelong battle to accomplish his goals - freedom and equal chances for everyone - and thereby created a far more just world. Nelson Mandela was an idealist who spent 25 years in prison for the achievement of his goals. But even during this time he never gave up.

85. The last paragraph reads:

- To give justice to *Mandela's* legacy and continue his mission **Power Mandela®** is working with the *Nelson Mandela Foundation*. By donating to local boxing-clubs and building a studentship-program, we want to create chances together, especially for young people.

86. Ms Sass provides copies of pages taken from the applicant's website, which include the following:



87. The applicant's evidence is given in the witness statement of Johann Radauer, dated 13 March 2024. Three exhibits are attached to his statement, namely JR1, JR2 and JR3. Mr Radauer is the Managing Director of the applicant and owns 50% of the company. He states that his company is incorporated in Austria and specialises in energy drinks.

³⁰ See exhibit NMF21

88. He states:

“My intentions when inventing the drink to be branded under the trade mark ‘Power Mandela’ are evidenced through the Name Use Agreement entered into with Pastor Mandela Amoako Boafo.”

89. Mr Radauer provides a copy of a Name Use Agreement (or licence), between him and Pastor Mandela Amoako Boafo. The agreement is dated 19 April 2019 and is signed by both parties to it. The preamble to the agreement reads:

“About 13 years ago Ralf Thon met with Mr Mandela Amoako Boafo in Ghana. They discussed a beverage that falls under the category of energy drink and initially named it VITAL ENERGY. At that time, Mr Mandela Amoako Boafo said he wanted to do something for his community with this drink and that he would gladly give his name for it, whereupon the two interlocutors together came up with the sign POWER MANDELA. A year later, around 12 years ago, during a visit of Mr Ralf Thon in Salzburg, Mr Thon told Mr Radauer about this matter. Mr Radauer subsequently agreed to implement this project.”

90. The purpose of the agreement is described in the following terms:

“The aim is to establish a foundation that will use part of the proceeds from the sale of the POWER MANDELA beverage for charitable purposes, e.g. the construction of kindergartens, schools, wells, etc.”

91. The licence gives the licensee the right to use the name MANDELA for beverages, in particular energy drinks. Part (2) of the licence gives the licensee the right to, ‘...affix the contractual trademark to the products and their packaging, to market the products so marked and to advertise them using the name MANDELA, in particular to operate a homepage for product advertising’.

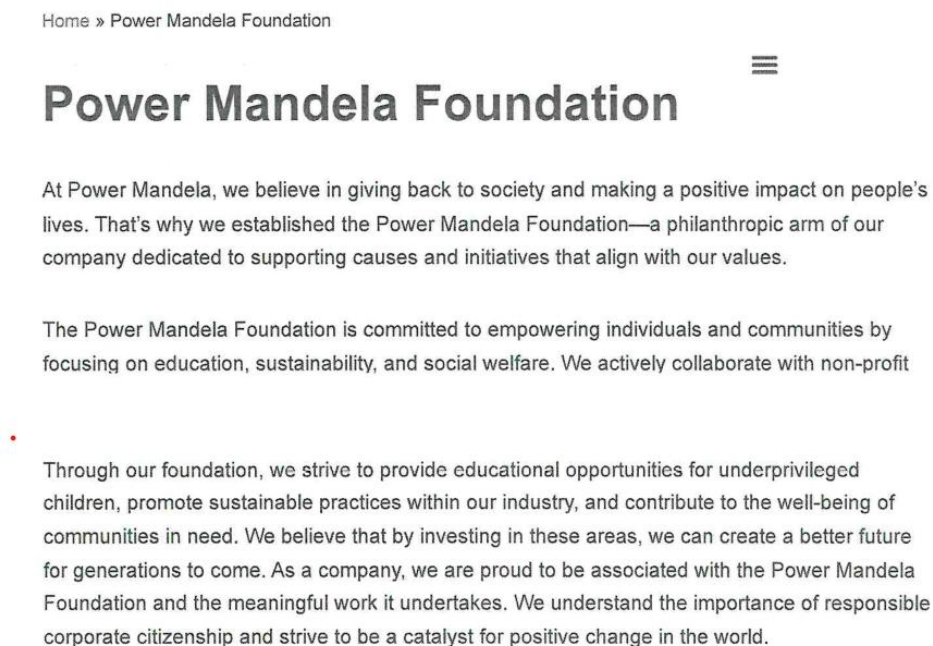
92. Mr Radauer describes the aims of his company as follows:

“4. Alongside producing and offering affordable drinks in a competitive market, my company's aim is to contribute to the betterment of society through a continual contribution to social responsibility activities.

5. Using the income from the sale of products, my company aims to support local projects, especially in Africa. For example, projects such as well-drilling for people in need of water.

6. My company has also established the Power Mandela Foundation, which strives to provide educational opportunities for underprivileged children, promote sustainable practices within our industry, and contribute to the well-being of communities in need.”

93. Undated prints taken from the applicant’s website show the following:³¹



94. Mr Radauer concludes that the Licence Agreement was entered into before any discussions with the Trustees for the time being of the Nelson Mandela Foundation

³¹ See exhibit JR2

Trust ('the Opponent'). With regard to his company's interaction with the opponent, Mr Radauer states:

“10. When creating the POWER MANDELA brand for energy drinks, we sought not to collide with the Opponent.

11. I confirm that no discussions took place with the Opponent before 2022.

12. In 2022, I contacted the Opponent for discussions relating to South Africa. The purpose of the meeting was to build a joint project in South Africa to support the Nelson Mandela Foundation. I had received a very positive reception to my meeting with the Opponent in 2022.

13. During this time, countries aside from South Africa were not discussed. As such, I assumed that the Opponent would not oppose distribution within other countries.”

95. Ms Sass filed a witness statement in reply to Mr Radauer's evidence, dated 10 July 2024. In her statement Ms Sass takes issue with Mr Radauer's statement that he 'received a very positive reception to my meeting with the Opponent in 2022'.

96. She responds:

“a) The Foundation has never met with Mr Radauer personally.

b) No meeting took place in 2022. An approach was made by Ludovic Dakossi in December 2022 requesting a meeting, that did not take place until January 2023.

c) The Foundation made it explicit at the meeting on January 2023 that the Foundation would not authorise the Applicant's use of MANDELA for the proposed energy drink product, or indeed any product, and action would be taken should the use proceed.”

97. And:

“20. Contrary to paragraph 13 of Mr Radauer’s Witness Statement, it was clearly communicated by the Foundation during the meeting that took place on 10 January 2023, that the Foundation would oppose distribution in South Africa and any other country. As mentioned, Mr Radauer was not present.

21. The Foundation has never at any time given the authorisation for the Applicant to apply the sign POWER MANDELA to an energy drink or agreed to collaborate with the Applicant in any way, and has made its objections clear.”

98. In its submissions in lieu of attendance at the hearing, the applicant submitted that at various points in both side’s evidence they talk of the purpose of the meeting being to discuss a joint project or partnership, from which they would both benefit. The applicant concludes that the parties are in agreement on this point.

99. With regard to the opponent’s claim that the applicant sought permission from the Foundation to use POWER MANDELA in relation to energy drinks, the applicant makes four points:

(i) The Applicant secured a licence from Pastor Mandela Amoako Boafo which granted ‘the right and authority to use his name for commercial purposes’, including the worldwide use of the name MANDELA for the labelling of beverages, in particular energy drinks, under the conditions outlined in the Licence Agreement.” (paragraph 8 of the Witness Statement of Johann Radauer).

ii) During the meeting the parties’ discussions were confined to South Africa.

iii) Nowhere in the opponent’s evidence does it show that the applicant referred to authorisation of its POWER MANDELA mark.

iv) The opponent's earlier marks do not cover drinks or any other goods/services that are remotely similar to the applicant's. It concludes:

"...In view of this, it would be far-fetched and perhaps also somewhat bizarre, for the Applicant to deem that was necessary to obtain the Opponent's authorisation to market energy drinks (a good that shares no association whatsoever with the person of Nelson Mandela, the Opponent's business or the Opponent's Earlier Marks) under the mark POWER MANDELA".

100. On the first point I agree with the applicant that the parties had the same understanding of the purpose of the meeting between them in January 2023 and that was to discuss a joint project of some sort.

101. I note Ms Sass's statements that Mr Radauer was not at that meeting, though nothing turns on this. Mr Thon, who was at the meeting, is the general manager of POWER MANDELA, which is owned by Mr Radauer's company. The relationship between them is clear.

102. The opponent has not filed any evidence to support its claim that the applicant was seeking permission to use MANDELA in its mark POWER MANDELA trade mark other than Ms Sass's statement that the applicant was, 'essentially asking permission'.

103. The applicant clearly has a business in the energy drinks market. In 2019, some three and a half years before the meeting between these parties, the applicant established an agreement with Mr Mandela Amoako Boafo to use his name for its energy drink. The applicant aims to raise money for charities and communities primarily in Africa and the agreement appears to be part of this strategy. At the time of requesting the meeting with the opponent, the applicant had a reasonable belief that it was entitled to use Mr Boafo's name for its energy drink POWER MANDELA, which was referred to specifically in the 2019 agreement. The letter from Mr Radauer to the Foundation that mentions Nelson Mandela appears to be nothing more than an outline of why it would be valuable for the parties to work together to further Nelson Mandela's

legacy and financially benefit charitable causes. At no point does the applicant ask for permission from the Foundation to use MANDELA.

104. Against this background it is difficult to see what advantage the opponent was seeking by applying for a trade mark that it reasonably believed it could use, for goods that bear no resemblance to the work of the Nelson Mandela Foundation. Nothing in the applicant's evidence and submissions or in the opponent's evidence points away from the applicant having acted in good faith. The burden is on the opponent to show a prima facie case that the applicant was acting in bad faith by applying for its POWER MANDELA trade mark. It has not done so.

105. The applicant's claim under section 3(6) of the Act fails.

CONCLUSION

106. This opposition has failed under sections 5(3) and 3(6) of the Act against trade mark number 3875464.

COSTS

107. The applicant (Johann Radauer GmbH) has been successful and is entitled to a contribution towards its costs. I bear in mind that the applicant did not attend the hearing and award costs on the following basis:

Preparing a statement and considering the other side's statement:	£400
Preparing evidence and considering the other side's evidence:	£800
Preparation of submissions filed in lieu of attendance at a hearing:	£400
TOTAL	£1600

108. I order The Trustees for the time being of the Nelson Mandela Foundation Trust to pay Johann Radauer GmbH the sum of £1600. These costs should be paid within 21 days of the date of this decision or, if there is an appeal within 21 days of the conclusion of the appeal proceedings (subject to any order of the appellate tribunal).

Dated this 19th day of August 2026

Al Skilton

For the Registrar,

The Comptroller-General