

**TRADE MARKS ACT 1994
Before the Appointed Person**

IN THE MATTER OF APPLICATION
No. 40151453, in the name of Planted
Ventures, LLC
AND
IN THE MATTER OF OPPOSITION
No 449999, made by CROP'S N.V

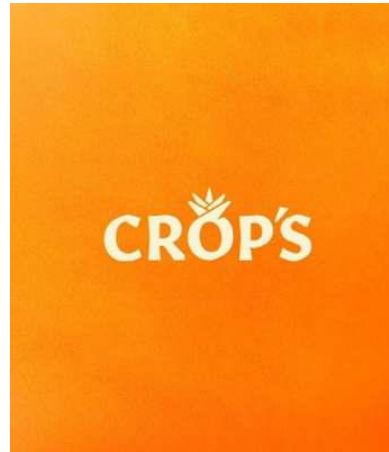
DECISION

1. This is an appeal from decision O/1112/25 in this matter, made by K Serravalle (the “Hearing Officer”), and dated 27 November 2025 (the “Decision”).
2. In the Decision, the Hearing Office rejected the opposition in its entirety. In addition, the Hearing Officer ordered that the opponent pay the applicant a sum of £900 by way of contribution to its costs; such order being stayed in the usual way pending the outcome of this appeal.
3. Hereafter, I shall refer to the opponent as the Appellant and the applicant as the Respondent.

The Marks in Question

4. The Respondent has applied for the word mark “PEOPLE WHO GIVE A CROP” for various goods under classes 29 and 30 (see Decision, paragraph 1). Registration was opposed by the Appellant under section 5(2)(b) on the basis of two earlier marks, both of which were registered for various goods in classes 29 and 30. There earlier marks were:
 - a. UK TM No. 80137900 for “CROP’S” (the “UK Mark”), and

- b. International Registration No. 1633739 (the “International Mark”) for



5. The Hearing Officer based her decision on the UK Mark. She did so having found that if the Appellant could not succeed on the basis of the UK Mark, it could not succeed on the basis of the International Mark (Decision, paragraph 11). I agree with that finding, which was in any event, not challenged materially on appeal. I need therefore only consider the UK Mark for the remainder of this decision.
6. The Respondent was put to proof on the issue of genuine use of the UK Mark. This was an issue not decided by the Hearing Officer. Instead, the Hearing Officer assumed genuine use and then decided that there was no likelihood of confusion (Decision, paragraph 11). It was clear that she would have returned to the issue of genuine use had she reached a different conclusion on the likelihood of confusion. Furthermore, she considered the evidence of use in the context of the issue of enhanced distinctiveness.

The Appeal

7. Both before me, and before the Hearing Officer, matters were dealt with by way of written submissions.
8. The Decision, and the manner in which it is challenged on appeal, can be summarized as follows:

ISSUE	DECISION	Contention on Appeal <i>(refs to the sections of the grounds of appeal)</i>
Genuine Use	No finding	Genuine use (s.2, page 5)
Comparison of Goods	Variously: a) identical b) medium to high similarity c) low similarity	Not challenged (s.3, page 7)
Relevant Public - Degree of Attention	Low to medium	Not challenged (s. 2.2, page 8) ¹
Similarity of Marks	a) Visually similar to a low degree b) Aurally similar to a low degree c) Small but not distinctive conceptual overlap.	a) Visually similar to more than a low degree b) Strongly aurally similar, c) Strong conceptual link. (s. 2.3)
Inherent distinctiveness of UK Mark	Low	Normal level (s. 2.4)
Enhanced distinctiveness	None	Not challenged (s. 2.4, page 11)
Likelihood of confusion	No	Yes (s. 2.5)

9. In none of these challenges did the Appellant suggest that the Hearing Officer had made an error of law.

Applicable Principles on Appeal

¹ Note – the internal numbering in the Grounds of Appeal appears to be incorrect as section 2.2 follows section 3.0.

10. The principles I must apply when considering this appeal are well understood and are discussed in detail in *TT Education Ltd v Pie Corbet Consultancy* O/017/17 at [52], *Axogen v Aviv Scientific* [2022] EWHC 95 (Ch), *Lifestyle Equities v Amazon* [2024] UKSC 8 and *Iconix v Dream Pairs* [2025] UKSC 25. For the purposes of this appeal, the approach to be taken when no error of law is asserted can be taken from the decision of Mr. Thomas Mitcheson KC, sitting as the Appointed Person, in *SOCIAL WORK NEWS* (O/00/50/24) at [13], where he stated as follows:

Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible". In the case of a multifactorial assessment and in the absence of a distinct error of principle, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere.

Points Taken on Appeal

Visual Comparison of Marks

11. At paragraph 47 the Hearing Officer stated as follows:

47. The competing marks are visually similar as they both contain the word "CROP". The competing marks visually differ as the opponent's mark contains an apostrophe and an S. The applicant's mark contains four additional words preceding the word "CROP", namely "PEOPLE WHO GIVE A". The beginnings of words or phrases tend to have more visual and aural impact than the ends, which, in my view, results in the visual difference created by the additional words "PEOPLE WHO GIVE A" within the applicant's mark being more significant. The opponent's mark is also relatively short, whereas the applicant's is much longer. Bearing in mind my analysis of the marks' overall impressions, I am of the view that the competing marks are visually similar to a low degree.

12. The Appellant criticises this finding on the basis that it fails to take sufficient account of the incorporation of the same verbal element, CROP, which it asserts is the distinctive and dominant element of both marks. The Appellant did not contend that the Hearing Officer failed to take into account any matters she should have done, or took into account matters she should not have done. The only question is therefore whether her conclusion, as expressed in paragraph 47, lies within the range of reasonable

conclusions open to her. In my view it does. I therefore reject the Appellant's contention that the Hearing Officer's visual comparison was flawed.

Aural Comparison of Marks

13. The Hearing Officer's aural comparison is set out at paragraphs 48 and 49 of the Decision as follows:

48. In its statement of grounds, the opponent argues that there is a high degree of aural similarity between the competing marks on the basis that they "share the highly identical verbal elements 'CROP'". In its submissions filed within the evidence rounds, the applicant argues that the marks are aurally dissimilar due to the additional words within the applicant's mark that are not present in the opponent's mark, and the addition of the apostrophe and S in the opponent's mark.

49. The competing marks are aurally similar as they both contain the word "CROP". The competing marks differ aurally as the opponent's mark contains an S. The applicant's mark also contains four additional words preceding the word "CROP", namely "PEOPLE WHO GIVE A". As explained above, the beginnings of words or phrases tend to have more visual and aural impact than the ends, which, in my view, results in the aural difference created by the additional words "PEOPLE WHO GIVE A" within the applicant's mark being more significant. The opponent's mark is also only one syllable whereas the applicant's mark is longer, with six syllables. Bearing in mind my analysis of the marks' overall impressions, I am of the view that the competing marks are aurally similar to a low degree.

14. On appeal, the Appellant advanced effectively the same reasons as are set out in paragraph 48 of the Decision (reproduced above). It therefore did not contend that the Hearing Officer failed to consider matters she should have done, or took into account matters she should not have done. Again, in my view her conclusion again lies within the range of reasonable conclusions open to her, and I therefore reject this limb of the appeal.

Conceptual Comparison of Marks

15. The Hearing Officer's analysis of the conceptual comparison of the Marks is set out at paragraphs 50 and 51 of the Decision as follows:

50. In its statement of grounds, the opponent submits that the competing marks are "very similar" conceptually on the basis that they share the

identical word “CROP”. In its submissions filed within the evidence rounds, the applicant argues that the marks are conceptually dissimilar on the basis of the applicant’s mark being a play-on-words using the colloquial phrase “who gives a crap” using the word “crop”. It argues that this is “an entirely different concept” to the opponent’s mark, which it states is a reference to a person. In its submissions filed within the evidence rounds, the opponent argues that the interpretation of “CROP’S” as a reference to a person called CROP “is not the only possible interpretation”. It submits that the term could also be interpreted as “something belonging to crops, such as ‘CROP’S yield’ or ‘CROP’S quality’”.

51. The word “CROP” is defined by The Cambridge Dictionary as a noun meaning “(the total amount collected of) a plant such as a grain, fruit, or vegetable grown in large amounts”. It is my view that the opponent’s mark “CROP’S” would be understood as the possessive form of the dictionary-defined word CROP, e.g. something originating from a crop. The applicant’s mark “WHO GIVES A CROP” also contains the word “crop”, which will also be understood as per its dictionary definition. I am of the view that the average consumer would understand the phrase “WHO GIVES A CROP” as a playful reference to the phrase “who gives a crap” (meaning “who cares?”) but with “crap” replaced with “crop”. On this basis, it is therefore my view that the applicant’s mark as a phrase using a play-on-words is conceptually dissimilar to the opponent’s mark when taken in totality, but there is a small conceptual overlap due to the shared use of the word “CROP”. However, given that the overlapping element “CROP” is strongly allusive of the class 29 and 30 goods, it is my view that it is not a distinctive overlap.

16. The Appellant submitted as follows:

With respect to conceptual similarity, the term "CROP" carries multiple meanings, all of which are relevant to the goods at issue. It may refer to a harvest, a cultivated plant such as a cereal, fruit, or vegetable grown in large quantities, or metaphorically to a group or amount of related items, as in "the current crop of musicians." The use of "CROP" in both marks therefore creates a strong conceptual link between them. Although the Defendant's mark incorporates a play on words ("WHO GIVES A CROP"), this does not eliminate the conceptual overlap arising from the dominant shared element. The conceptual connection is particularly important in the context of the goods concerned, which are primarily foodstuffs derived from plants, as it reinforces the perception of a link between the marks.

17. The argument on appeal therefore turns on the conceptual importance of the shared element CROP. It is clear, as paragraphs 50 and 51 of the Decision show, that the Hearing Officer took effect of this shared element into account. Unlike the Appellant, she downgraded the conceptual similarity flowing from that

shared element because that element was allusive of the goods specified. In my view she was entitled to do so, and her ultimate conclusion on conceptual similarity lies within the range of reasonable conclusions open to her. For those reasons I reject this limb of the appeal.

Distinctiveness of the UK Trade Mark

18. The Hearing Officer found the UK Mark to be distinctive of class 29 and 30 goods to a low degree for the following reasons:

- a. the mark was of low inherent distinctiveness because it was a word strongly allusive of the class 29 and class 30 goods, and
- b. there was insufficient evidence of enhanced distinctiveness (per Decision, paragraph 54).

19. The Appellant accepted the finding in relation to enhanced distinctiveness but challenged the finding in relation to inherent distinctiveness asserting, without further elucidation, that the “[Hearing Officer] *underestimates the perception of the mark by the relevant public. The marks “CROP’S” is a distinctive word mark*”.

20. In my view the conclusion that “CROP’S” for the class 29 and 30 goods was of low inherent distinctiveness was clearly the range of reasonable findings available to the Hearing Officer (not least because of the word is strongly allusive of class 29 and 30 goods). I therefore dismiss this limb of the appeal.

Global Assessment of the Likelihood of Confusion

21. The Appellant does not challenge the Hearing Officer’s findings of law. Instead, relying upon its earlier contentions in relation to the comparison exercise (i.e. those contentions rejected above), it argues that the Hearing Officer should have found there to be a likelihood of confusion. Its written submissions do not attempt to argue that if it is wrong on those earlier contentions, there is nonetheless a relevant error which would allow me to overturn the Hearing Officer’s finding. It follows that this limb of the appeal must also fail. For completeness I note that in my view the findings of the Hearing Officer in

relation to the likelihood of confusion disclose no error of approach that would entitle me to interfere with her conclusion, and furthermore that conclusion lies firmly within the range of reasonable conclusions open to her.

Proof of Genuine Use

22. For the reasons stated above I, like the Hearing Officer, do not need to consider the issue of genuine use.

CONCLUSION

23. For the reasons given above I dismiss this appeal.

24. I make the following order in relation to costs – all of which are to be paid by the Appellant to the Respondent within 21 days of the date of this decision:

- a. the £900 ordered by the Hearing Officer, and
- b. a further £200 in relation to the written submissions made on this appeal.

GEOFFREY PRITCHARD KC

THE APPOINTED PERSON

22 September 2026