

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK REGISTRATION NO 3103695 IN THE NAME OF MOHAMMED SALIM**

**AND IN THE MATTER OF AN APPLICATION FOR A DECLARATION OF INVALIDITY THERETO UNDER NO. 501279 BY MR COMPENSATOR LIMITED**

---

**DECISION**

---

**Introduction**

1. This is an appeal against the decision of Teresa Perks, acting on behalf of the Registrar dated 4 July 2017 (O-304-17). In her decision the Hearing Officer dismissed the application for a declaration of invalidity and ordered that Mr Compensator Limited pay Mohammed Salim the sum of £700 as a contribution towards his costs.
2. On 13 April 2015, Mohammed Salim applied to register the mark:

**MR. COMPENSATOR**

3. The mark completed its registration process on 11 December 2015 and was registered for a wide range of services in Class 35, 36, 38, 39 and 45.
4. On 29 July 2016 Mr Compensator Limited ("*the Applicant*") filed an application to have this trade mark declared invalid. It did so pursuant to sections 47(2)(b) and 47(1) in combination with sections 5(4)(a) and 3(6) of the Trade Marks Act 1994 ("*the Act*").
5. For the purposes of section 5(4)(a) of the Act the Applicant claimed to be the proprietor of the unregistered mark 'MR. COMPENSATOR' which it stated had been used throughout the United Kingdom in relation to claims management services, provision of hire cars and temporary replacement vehicles, roadside recovery and breakdown services, vehicle storage services and accident handling, management and consultation services. The Applicant maintained that as a result of the use it had acquired goodwill under the sign and that Mr Salim's use of an identical mark for identical or highly similar services was likely to result in misrepresentation and damage such that it could be restrained under the law of passing off.
6. The basis for the claim by the Applicant that the mark had been filed by Mr Salim in bad faith was stated in the Form TM 26(I) to be as follows:

## O-597-17

Our client Mr Compensator Limited operates from branches based in Bradford, Halifax, Leeds, Manchester and Sheffield. Our client's business was established in 2013.

Our client opened its Manchester office [in] February 2015 following extensive pre-launch advertising and promotion of the business and the brand MR COMPENSATOR in Manchester throughout January and February 2015.

Mohammed Salim filed the application to register MR COMPENSATOR in April 2015. Mr Salim is also based in Manchester and lists an address neighbouring that of our client.

Our client contends that Mr Salim filed the UK trade mark application fully aware of the prior use of the brand by our client and fully aware that our client was the true proprietor of the brand. Mr Salim has not made any use of the trade mark MR COMPENSATOR and we contend that Mr Salim did not have any bona fide intention to use the trade mark when the application was filed.

It is our client's belief that Mr Salim has obtained the registration in bad faith and that his behaviour falls below the standard of honest practices required in commercial matters. Our client contends that Mr Salim is engaged in a pattern of such behaviour. Evidence will be filed in the proceedings to substantiate these claims.

7. A Counterstatement was filed on behalf of Mr Salim it stated as follows:

My client has legitimately purchased the Registered Trade Mark Mr Compensator.

My client intends to operate a call centre which generates marketing leads in Industrial Disease/Medical Negligence/Employer's Liability, the business will not be dealing with any Road Traffic Accident or Hire claims or offer any claims management type services. The business model is entirely different to the Cancellation Applicant and there cannot be any confusion between the two businesses due to the very nature of the work undertaken by my client.

It is disputed that this will cause any damage to the goodwill of the Cancellation Applicant client and it cannot constitute 'passing off' as my client offers services which are entirely different to those of the Cancellation Applicant and even the target audience is different to that of the Cancellation Applicant.

If the Cancellation Applicant was that concerned about his goodwill he has had the better part of 3 years to register the mark and failed to do so.

8. The Applicant filed evidence in the form of a witness statement from Yasir Mahmood Kayani, director of the Applicant. No materials other than the Form TM8 were filed by or on behalf of Mr Salim.
9. Neither party requested a hearing however the Applicant filed written submissions in lieu of a hearing. The Hearing Officer therefore decided the application for invalidity on the basis of the papers before her.

**The Hearing Officer's Decision**

10. The Hearing Officer first considered the section 5(4)(a) ground. Having set out the relevant law in her Decision, which quite rightly is not challenged on this appeal, the Hearing Officer went on to apply the law to the materials that were before her as follows:

25. In its pleadings, the applicant states that the earlier mark has been used in relation to “claims management services, provision of hire cars and temporary replacement vehicles, roadside recovery and breakdown services, vehicle storage services, accident handling, management and consultation services”. While the evidence is sufficient to establish the existence of a business of some description, a very real difficulty with the applicant’s case is that there is no direct evidence to show that it actually provides the services on which it relies. There is no evidence as to how the business is run and/or how the services are provided to customers and there is no supporting documentation such as invoices, or evidence from customers or the trade. Further, there is no indication of fees or service charges.

26. The evidence relating to the services provided consists essentially of advertising material and turnover figures. However, this cannot be read as evidence that any turnover was necessarily generated in relation to any of the specific services for which use (and goodwill) is claimed. There are two main flaws in the evidence. Firstly, the applicant did not give any helpful indication of how much of its overall turnover relates to the range of services identified in its pleadings. In circumstances where a business offers a range of services, providing total turnover figures is not helpful, particularly when, as in this case, there is no other evidence that can be objectively measured. The only unambiguous piece of evidence provided by the applicant is a photograph of a branded recovery vehicle, however, there is no indication of any income

## O-597-17

generated by the provision of vehicle recovery services and in any event, these services were introduced after the relevant date.

27. Secondly, though the applicant purports to be a ‘one-stop-shop’ in terms of all aspects of road accident claims, i.e. management, handling and consultation, vehicle hire, roadside recovery and vehicle storage, with its own fleet of hire vehicles and dedicated legal team, both the turnover and the staffing figures appear extremely small for the claimed number of offices and services. Further, it is not clear from the evidence whether all of the services are provided by the applicant directly or whether specific activities are carried out by third party companies, e.g. solicitors and hire companies. For example, some of the signage implies that the applicant has its own legal team, i.e. “Specialists in Disputed Accidents” and “Dedicated Legal Team”, and some of the advertising material clearly indicates that the applicant has a team of Solicitors, i.e. “within our team we have Solicitors”, however, there is no indication that the applicant is in fact regulated by the Solicitors Regulation Authority nor is there any evidence that the applicant carries out any of the legal or litigation work involved in the handling of the claims. The applicant says that it provides vehicles storage services, but there is no evidence that it owns any storage yard/s. The signage refers to “hire specialist” and the Facebook page contains the text “you won’t be disappointed with our fleet”/“fleet in excess of 500 vehicles” which, again, implies that the applicant provides vehicle hire services, but there is no evidence of the sign being used at rental locations and Mr Kayani only refers to the mark being used on two recovery vehicles and 25 black cab taxis (and the evidence relating to the taxi vehicles is not clear).

28. The print from Companies House describes the nature of applicant’s business as “advertising agencies” and “other services not elsewhere classified”. Further, it is clear from the advertising material that the applicant offers referral fees and that it seeks out “agents nationwide”. This, combined with the distribution figures and the advertising spent would suggest a strong focus of the business on marketing activities aimed at capturing new claims but it is unclear as to what happen next.

29. Having carefully considered all of the above, it seems to me that the evidence raises more questions than it answers. Though the evidence demonstrates that the applicant is a customer-facing business which provides some sort of services in relation to road accident claims, it fails completely to establish: (1) the nature of the services supplied and (2) that the applicant’s turnover is generated by the provision of the services relied upon. Accordingly, I find that the applicant has failed to

demonstrate on the evidence that, at the application date, it had goodwill in any of the services relied upon. The case falls at the first hurdle with the result that the application for invalidation under Section 5(4)(a) fails.

11. Having correctly identified that the section 3(6) ground was put forward on two bases namely that Mr Salim (1) knew or ought to have known at the date that the application was made of the prior use of the mark by the Applicant; and (2) had no intention of using the mark when he applied for it the Hearing Officer went on to state as follows (footnotes not included):

34. An allegation of bad faith is a serious allegation and a person is presumed to have acted in good faith unless the contrary is proved. Therefore there is an onus on the applicant when basing a ground of invalidation on Section 3(6) to provide cogent evidence. It is a matter for the applicant to make good its claim by the filing of evidence: it is not a matter for Mr Salim to prove that the application was made in good faith.

35. Insofar as the first heading is concerned, i.e. that Mr Salim knew or ought to have known of the applicant's prior use of the mark, one of the factors in the global assessment of bad faith is the degree of legal protection of the claimant's mark in the jurisdiction concerned. The sign relied upon here is an unregistered mark, however, given my finding in relation to Section 5(4)(a), the applicant has failed to establish that the mark enjoys any degree of legal protection or reputation in relation to the services relied upon. As there is no prior earlier right, there cannot be bad faith. However, even if the applicant had established a protectable right, there is no evidence of Mr Salim's personal knowledge of the applicant's mark and/or commercial activities at the date of the application. The applicant's use is far from longstanding and only two months lapsed between the time when the applicant launched its Manchester office and when the application was filed. There is no evidence of an earlier direct or indirect relationship between the parties. There is simply nothing in the documentation filed establishing a presumption that Mr Salim could be aware of the applicant's mark and the geographical location, by in itself, is insufficient to allow for such a presumption. Likewise, the fact that the signs at issue are identical does not establish, by itself, bad faith on the part of Mr Salim.

36. Moving on to the second heading, i.e. that Mr Salim had no intention of using the mark when he applied for it, there is no evidence which enable me to determine what Mr Salim's intention was when he filed his application. The fact that Mr Salim has not used the mark since obtaining registration is not sufficient by itself to permit the conclusion that Mr Salim had

## O-597-17

no intention of using the mark when he applied for it. Likewise, there is no evidence relating to the trade marks numbers 3076099 (TIPU SULTAN) and 3099933 (GELATO PASSION) and the circumstances surrounding their registration. Consequently, the application for invalidation under Section 3(6) also fails.

### **The Appeal**

12. On 1 August 2017 an appeal against the Decision was filed on behalf of the Applicant under section 76 of the Act.
13. The grounds of appeal were in essence:
  - (1) That the Hearing Officer had misdirected herself with regard to the evidence filed on behalf of the Applicant and was plainly wrong in her finding that the Applicant had not demonstrated on the evidence that, as of the application date, it had a protectable goodwill in any of the services relied upon; and
  - (2) The Hearing Officer's decision in relation to the bad faith ground was inextricably linked to her findings under section 5(4)(a) and on the basis that those findings were wrong the section 3(6) ground should be reviewed upon appeal.
14. No Respondent's Notice was filed by or on behalf of Mr Salim.
15. At the hearing of the appeal Mr Andrew Marsden of Wilson Gunn appeared on behalf of the Applicant. Mr Salim did not appear and was not represented at the hearing.

### **Standard of review**

16. The appeal against decisions taken by the Registrar is by way of review. Neither surprise at a Hearing Officer's conclusion, nor a belief that she has reached the wrong decision suffice to justify interference in this sort of appeal. Before that is warranted, it is necessary for me to be satisfied that there was a distinct and material error of principle in the decision in question or that the Hearing Officer was wrong. See Reef Trade Mark [2003] RPC 5; BUD Trade Mark [2003] RPC 25; and more recently the decision of Geoffrey Hobbs Q.C. sitting as the Appointed Person in ALTI Trade Mark (O-169-16) at paragraphs [19] to [20]; the decision of Daniel Alexander Q.C. sitting as the Appointed Person in Talk for Learning Trade Mark (O-017-17) referred to by Arnold J. in Apple Inc v. Arcadia Trading Ltd [2017] EWHC 440 (Ch); and the judgment of Daniel Alexander Q.C. sitting as a Deputy Judge in the High Court in Abanka D.D. v. Abanca Corporación Bancaria S.A. [2017] EWHC 2428 (Ch).

17. In Fine & Country Ltd v Okotoks Ltd (formerly Spicerhaart Ltd) [2013] EWCA Civ 672; [2014] FSR 11 Lewison LJ said:

50. The Court of Appeal is not here to retry the case. Our function is to review the judgment and order of the trial judge to see if it is wrong. If the judge has applied the wrong legal test, then it is our duty to say so. But in many cases the appellant's complaint is not that the judge has misdirected himself in law, but that he has incorrectly applied the right test. In the case of many of the grounds of appeal this is the position here. Many of the points which the judge was called upon to decide were essentially value judgments, or what in the current jargon are called multi-factorial assessments. An appeal court must be especially cautious about interfering with a trial judge's decisions of this kind. There are many examples of statements to this effect. I take as representative Lord Hoffmann's statement in *Designers Guild Ltd v Russell Williams (Textiles) Ltd* [2000] 1 WLR 2416 , 2423:

'Secondly, because the decision involves the application of a not altogether precise legal standard to a combination of features of varying importance, I think that this falls within the class of case in which an appellate court should not reverse a judge's decision unless he has erred in principle.'

18. It is necessary to bear these principles in mind on this appeal.

### **Decision**

#### **Section 5(4)(a): passing off**

19. In essence, this appeal is concerned with the Hearing Officer's approach to the assessment of the evidence put forward by the Applicant in support of the claim for passing off.
20. In its pleadings and on this appeal the Applicant maintained that it had used the mark Mr. Compensator in relation to '*claims management services, provision of hire cars and temporary replacement vehicles, roadside recovery and breakdown services, vehicle storage services, accident handling, management and consultation services*'.
21. It was, in my view quite rightly, not disputed on this appeal that as the Hearing Officer found in paragraph [20] of her decision that the relevant date for the assessment that she was required to make was the application date, namely 13 April 2015.
22. As noted by the Hearing Officer the evidence in support of that plea was in the form of the witness statement of Mr Kayani, director of the Applicant. Mr Kayani, as a

director of the Applicant, would have been well placed to give the relevant evidence. There was no challenge to that evidence.

23. The evidence in the witness statement of Mr Kayani is, as the Hearing Officer found, in very general terms. There are a number of exhibits. Some of the evidence contained in the witness statement and some of the exhibits contain materials that post-date the application date and are therefore of no relevance to the issues to be determined by the Hearing Officer. For example the print outs provided with no accompanying explanation in the witness statement with respect to:

- (1) The website at [www.mrcompensator.co.uk](http://www.mrcompensator.co.uk) : The only evidence provided in relation to what was actually shown on the website was in the form of an undated home page which indicated that the '*website under construction*'. In any event the print out lists 6 offices including Birmingham. As Mr Kayani states in paragraph 6 of his witness statement the Birmingham office did not open until 28 August 2016 and therefore this webpage postdates the application date.
- (2) The face book page at [www.facebook.com/MRCOMPENSATOR](http://www.facebook.com/MRCOMPENSATOR) : Undated print outs of the relevant face book were exhibited. Whilst some services were listed on the print outs (see further below) the front page identified an office located Birmingham and therefore the material postdates the application date.
- (3) The twitter account at <https://twitter.com/mrcompensator?lang=en>: The dates of the tweets included in the print out are all in 2016 and therefore the material postdates the application date.
- (4) The Instagram account at <https://www.instagram.com/mrcompensator/hl=en>: The print out carries a copyright notice for 2017 and therefore postdates the application date.

I note that whilst the printouts postdate the application date the evidence of Mr Kayani is that the various accounts referred to above were launched and operated by the Applicant before the application date. However, there is no evidence as to what was on the website/social media accounts before the relevant date and there is no explanatory evidence given by Mr Kayani as to the position.

24. The only paragraph in which Mr Kayani makes some attempt to describe the services that the Applicant provides is paragraph 6 in which he states as follows '*Mr Compensator is a claims management business providing a wide range of services relating specifically to motor vehicle accident claims and associated services*' which in itself raises questions as to what the specific services are that are said to be provided by the business.



## O-597-17

25. As the Hearing Officer correctly notes in paragraphs [25] and [26] of her decision there is no evidence given by Mr Kayani by way of explanation as to how the business is actually run and/or how any of the services are provided to customers. There are no invoices exhibited providing details of any of the services provided. Nor is there any indication of fees or service charges for any of the services that are said to be provided.
26. The turnover figures are stated by Mr Kayani to be '*in respect of services provided in the United Kingdom under the trade mark MR COMPENSATOR*' and are provided in global form without any breakdown. In some cases turnover evidence of this type might be sufficient for the purposes for which such material was filed. However it seems to me that it was open to the Hearing Officer to find, as she did, that it was not sufficient in circumstances where a range of different services were being relied upon and no explanation was given as to what the turnover related to. Further breakdown and explanation was required. This is all the more the case given the particular circumstances set out below; and as noted above in the absence of any invoices providing details of any of the services that are said to have been supplied by the Applicant.
27. As the Hearing Officer correctly notes, the only unambiguous piece of evidence of services being provided under and by reference to the mark is the photograph of a branded recovery vehicle. However as she also notes there is no evidence as to any income generated by such a vehicle and from the evidence in paragraph 10 of the witness statement of Mr Kayani it is clear that the branded recovery vehicles only came into operation in October 2015 i.e. after the application date.
28. The Hearing Officer quite correctly refers to the Facebook page in paragraph [27] of her decision. The Facebook page made reference to the following products supplied by the Applicant as being '*Claims Management, Accident Replacement Vehicles, Vehicle Storage and Vehicle Recovery*'. The primary services were also identified as including road side recovery, vehicle storage, replacement vehicles, document collection & sign up and locus reporting. The pages indicated that the replacement vehicles came from a '*Fleet in excess of 500 vehicles*'.
29. However other than the photograph of the recovery vehicle referred to above there was no other material to show any use of the mark in relation to the actual provision of the services claimed. As the Hearing Officer correctly observed there was no evidence that the Applicant had any storage facilities and no evidence of the sign being used at rental locations. No narrative explanation as to the content of the various downloads relied upon was given by Mr Kayani in his witness statement. In any event as noted above the print out of the Facebook page was dated after the application date.

## O-597-17

30. Reference is also made to a range of services on some of the Applicant's office signage which are shown in photographs exhibited by Mr Kayani. It is not clear when these photographs were taken and which offices they are. Again this was expressly considered by the Hearing Officer in paragraph [27] of her decision. The services identified on the signage are either '*Claims Management*', '*Accident Management Specialist*' or listed as follows:

- Taxi, Prestige & 4 x 4 Hire Specialist
- 24/7 Recovery
- Specialist in Disputed Accidents
- Dedicated Legal Team

31. Some of the advertising/promotional material relied upon by the Applicant contains the same or similar wording describing the services said to be provided. Other advertising/promotional material refers to '*referral fees*' and indicated that '*agents are required nationwide*'.

32. As the Hearing Officer correctly identified in paragraph [27] of her decision this list, in addition to the points set out above, raises another issue with the evidence that was before her, namely which services were being provided directly by the Applicant or were some of the services being provided by third party companies such as solicitors. As she rightly stated in paragraph [27] of her decision there is no indication that the Applicant is in fact regulated by the Solicitors Regulatory Authority nor is there any evidence that the Applicant carried out any legal or litigation work that might be involved in the handling of claims.

33. Further ambiguity as to the services that the Applicant actually provides is raised by the statement contained in some of the promotional material relied upon by the Applicant and referred to by the Hearing Officer in paragraph [10(ii)] of the Decision:

*'We are not authorised or regulated by the MOJ, we do not conduct regulated activities'*

This statement is not explained in the evidence but suggests some limitation as to the services that the Applicant is providing. This further highlights the need for there to be proper evidence as to exactly what services the Applicant was providing to its clients/customers at the relevant time.

34. Four points of particular criticism were made of the approach of the Hearing Officer to the evidence on this appeal which I turn to now.

35. First, with regard to the Hearing Officer's assessment that the staff numbers and turnover '*appear extremely small*' in paragraph [27] of her decision. It is suggested

that this might indicate that the Hearing Officer was taking the size of the operation to the question of whether or not the Applicant was the proprietor of an unregistered trade mark protectable by way of a claim for passing off. I do not think that is the position. At the time the witness statement was given the Applicant had 6 offices. As noted above the range of services that were identified on the signage of such offices was wide ranging and included a '*dedicated legal team*'. I note also that one of the pieces of promotional material relied upon contained the following '*Our legal team specialise in resolving the most complex cases, within our team we have Solicitors, Engineers, Forensic Experts & Investigator who will get you the desired results*' (also referred to in paragraph [10(ii)] of the decision).

36. It was in that context that the Hearing Officer considered that the turnover and number of employees appeared '*extremely small*' and raised an issue, in the absence of any explanation, as to what services the Applicant was providing. A point that she went on to consider in more detail.
37. In any event the Hearing Officer was fully aware that the small size of a business did not mean *per se* that it could not bring an action for passing off as was expressly stated by her, supported by the relevant case references, in paragraph [24] of her decision.
38. Second, with regard to the Hearing Officer's assessment of the evidence in relation to taxis. In paragraph [10(i)] of the decision the Hearing Officer in summarising the evidence the Hearing Officer referred to photographs showing the Applicant's branding on the side of taxis. The Hearing Officer went on to state '*Mr Kayani does not explain how these vehicles were used in connection with the business; therefore it is not clear whether the taxis are used to provide taxi services or taxi replacement services or simply to promote the brand*'. The Applicant submits that this is an error which shows that the Hearing Officer was not approaching the assessment of the evidence correctly.
39. The Applicant is correct that with regard to the specific photographs this is an error by the Hearing Officer. The evidence of Mr Kayani is clear in paragraph 10 of his witness statement Mr Kayani stated as follows:

Mr Compensator Limited has promoted and advertised the brand MR COMPENSATOR extensively. Attached marked exhibit MC4 are:

- Photographs of Manchester and Sheffield taxis with MR COMPENSATOR branding applied. We applied the branding to 20 black cab taxis in Manchester and 5 black cab taxis in Sheffield on 09 January 2015 which is still ongoing and continuous.

40. It is therefore clear from Mr Kayani's statement that the branding on the taxis an example of which was in the exhibit was purely promotional use. In this connection I note that the promotional message shown in the photograph on the side of cab contained the wording '*Had an Accident? £3000 referral fee paid*' above '*Mr Compensator*' above a telephone number and therefore provides no assistance as to the issue of what would happen if a consumer rang the telephone number.
41. However I do not regard this error in the summary of the material before her as a material one given (1) the reasoning set out in paragraphs [25] *et seq* of her decision and in particular her holding in paragraph [28] of her decision that '*the advertising spend would suggest a strong focus of the business on marketing activities aimed at capturing new claim but it is unclear what would happen next*'; and (2) the references, for example on the office facia and in some promotional material before her, to the Applicant being taxi hire specialists, although there was no explanation in the witness statement or other supporting material in relation to these references, rendering the position with regard to taxis unclear as noted by the Hearing Officer in paragraph [27] of her decision.
42. Third, the Hearing Officer's approach to the evidence in the form of the print out from Companies House referred to in paragraph [28] of her decision. It is submitted on behalf of the Applicant that there is a question as to the relevance of the description at Companies House to the assessment that had to be made. In my view there are two points on this submission. Firstly, the evidence of the print out from Companies House was filed as an exhibit to the statement of Mr Kayani and therefore must have been regarded as relevant by the Applicant. Secondly, it is clear from the Hearing Officer's Decision that her concern was not that there was no business conducted by the Applicant but what that business consisted of. It seems to me that in such circumstances she was fully entitled to have regard to the description of the Applicant's business filed at Companies House.
43. Fourth, with regard to the Hearing Officer's finding in paragraph [28] of her decision that it was not clear what happened after the '*capturing of new claims*' it was submitted that there was an explanation namely a description of '*The Process*' contained in one of the examples of promotional material exhibited to Mr Kayani's statement. The promotional material exhibited is not in the form of a copy of an actual flyer but appears to be final print dated October 2013 for a flyer that had been prepared for distribution in Bradford. No explanation is given as to how many of these leaflets was produced or how or whether they were distributed. Nor is there any explanation of '*The Process*' given in Mr Kayani's witness statement. There is no reference in the material to '*claims management*'.
44. Whilst there is a general description of various steps that would be gone through in '*The Process*' it unclear exactly what they relate to and which of them are actually

provided by the Applicant given for example the reference to *'our legal team'* which, for reasons identified by the Hearing Officer and noted above, are not services that would appear to have been provided by the Applicant as opposed to a third party. Whilst there is a reference to paperwork and the provision of a contract guaranteeing a referral fee payment in the promotional material no examples of paperwork or contractual materials prepared for or issued by the Applicant to its clients have been referred to or exhibited by Mr Kayani. It therefore seems to me that this material takes the Applicant no further with regard to an explanation as to the specific services it provides. I further note that the Hearing Officer has this material in mind in reaching her decision as the relevant promotional material setting out *'The Process'* is set out in full in paragraph [10(ii)] of her decision.

45. In the end it seems to me that it was open to the Hearing Officer to come to the view that she did that although the evidence demonstrated that the Applicant is a customer-facing business which provides some sort of services in relation to road accident claims, it failed to establish: (1) the nature of the services supplied; and (2) that the Applicant's turnover is generated by the provision of the services relied upon that is to say *'claims management services, provision of hire cars and temporary replacement vehicles, roadside recovery and breakdown services, vehicle storage services, accident handling, management and consultation services'*.
46. In those circumstances, it was open to the Hearing Officer to conclude that the Applicant had failed to demonstrate on the evidence that, as at the application date, it had goodwill in any of the services relied upon and on that basis to dismiss the application for invalidity under section 5(4)(a) of the Act.
47. In the premises, the appeal against the findings under section 5(4)(a) is dismissed.

**Section 3(6): bad faith**

48. The Ground of Appeal in the TM55P relied upon with respect to the section 3(6) ground stated as follows:

The decision in relation to the Bad Faith Claim is inextricably linked by the Hearing Officer to the passing off claim and goodwill issue. Therefore, the decision is plainly wrong in relation to the bad faith claim and must also be reviewed.

49. For the reasons I have set out above I have upheld the Hearing Officer's decision in relation to the application for invalidity under section 5(4)(a) of the Act i.e. the passing off claim and goodwill issue. In circumstances where on this appeal, no basis other than the finding under section 5(4)(a) is raised as a challenge to the Hearing Officer's finding under section 3(6) of the Act, it follows that the appeal on the section 3(6) ground should likewise be dismissed.

**Conclusion**

50. For the reasons set out above I am satisfied that it was open to the Hearing Officer to come to the view that she did that the Applicant had not established on the evidence, as at the application date, that it had any goodwill in the services upon which it relied. In the result the appeal fails.
51. Since the appeal has been dismissed Mr Salim is entitled to a contribution to his costs. In advance of the hearing Mr Salim's representatives indicated that there would be no attendance by Mr Salim at the hearing of the appeal and indicated their client's position that the decision of the Hearing Officer should be upheld. Neither side has asked for any special order as to costs. The Appellant's Notice is short. No Respondent's Notice was filed. I will therefore make an order that Mr Compensator Limited pay to Mr Salim a contribution of £50 towards his costs of the appeal. This sum should be paid in addition to the costs of £700 ordered by the Hearing Officer below. I therefore order Mr Compensator Limited to pay £750 to Mohammed Salim within 14 days of the date of this decision.

EMMA HIMSWORTH Q.C.

Appointed Person

27 November 2017