

o/0116/25

## TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER UK00004035389

FILED BY LOWERCASE VENTURES MANAGEMENT I, L.L.C.

TO REGISTER THE FOLLOWING MARK IN CLASSES 1, 5, 6, 7, 9, 25, 29, 31, 35, 36, 40, 41, 42 AND 44

UNF\*\*K THE PLANET

## BACKGROUND

1. On the 5 April 2024, Lowercase Ventures Management I, LLC (“the applicant”) applied to register the above word only mark in respect of the following goods and services:

**Class 1:** *Chemicals; Chemicals for use in industry, science and photography, agriculture, horticulture and forestry; Chemical preparations; Chemical byproducts; Chemical agents; Chemical oxidants; Coolants; De-icing fluids; Anti-freeze chemicals; Photographic sensitizers, fixers, dry plates and developers; Unprocessed artificial resins; Unprocessed plastics; Plasticizers; Fire extinguishing and fire prevention compositions; Fire extinguishing preparations; Fireproofing preparations; Tempering preparations; Soldering preparations; Metal welding preparations; Galvanizing preparations; Metals; Metal oxides; Metal oxide powders; Adhesives; Compost, manures, fertilizers; Soil conditioning preparations; Artificial soil; Plant growth regulators; Biological preparations; Biological preparations for use in industry and science; Enzyme preparations; Enzymes; Diagnostic preparations; Amino acid preparations; Nucleic acid preparations; Water treatment preparations; Descaling preparations; Defoaming agents; Degreasing preparations; Oil separating chemicals.*

**Class 5:** *Pharmaceuticals; Pharmaceutical agents; Pharmaceutical preparations; Medical preparations; Medical equipment and apparatus; Dental preparations; Dental equipment; Diagnostic preparations; Diagnostic reagents; Blood; Blood plasma; Stem cells; Antibacterial and antiseptic preparations; Antifungal preparations; Contraceptive preparations; Medicated skincare preparations; Ophthalmic preparations; Deodorants; Deodorizers; Detergents; Veterinary preparations; Veterinary equipment and apparatus; Capsules sold empty; Diapers; Menstruation pads; Menstruation tampons; Nasal preparations; Dietary supplements for human beings and animals; Disinfectants; Germicides; Preparations for destroying vermin; Fungicides, herbicides; Algicides; Insecticides; Biopesticides; Air deodorizers; Air purifying preparations.*

**Class 6:** *Metal materials for building and construction; Common metals; Metal alloys; Beverage cans; Bottle caps; Bottle closures; Bottle fasteners; Cans of*

*metal; Stoppers for bottles; Taps for kegs and casks; Transportable buildings of metal; Prefabricated houses of metal; Non-electric cables and wires of common metal; Metal containers for storage or transport.*

**Class 7:** *Machines; Machine tools; Antifriction apparatus; Electric household machines and appliances; Electric cleaning apparatus; Power-operated tools; Motors and engines, except for land vehicles; Aeronautic engines; Electric planes; Agricultural implements, other than hand-operated hand tools.*

**Class 9:** *Scientific and research instruments and apparatus; Centrifuges used as laboratory apparatus; Distillation apparatus; Navigation instruments and apparatus; Surveying instruments and apparatus; Photographic instruments and apparatus; Audiovisual instruments and apparatus; Optical instruments and apparatus; Signaling instruments and apparatus; Thermometers; Testing instruments and apparatus; Diagnostic testing instruments and apparatus; Life-saving instruments and apparatus; Teaching instruments and apparatus; Teaching robots; Electronic sensors; Infrared sensors; Temperature sensors; Solar tracking sensors; Chargers for electric instruments and apparatus; Telecommunication instruments and apparatus; Computers and computer peripheral devices; Recorded and downloadable media; Recorded computer game programs; Recorded computer operating programs; Labels carrying electronically, magnetically or optically recorded or encoded information; Recorded and downloadable software; Downloadable software; Downloadable mobile application software; Fire-extinguishing apparatus.*

**Class 25:** *Clothing; Footwear; Headwear; Costumes.*

**Class 29:** *Meat, fish, poultry and game; Meat extracts; Meat-based foods; Meat substitutes; Preserved, frozen, dried and cooked fruits and vegetables; Canned meats, fruits, vegetables and nuts; Jellies, jams, and compotes; Eggs; Milk and milk substitutes; Cheese and cheese substitutes; Butter and butter substitutes; Oils and fats for food.*

**Class 31:** *Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; Raw and unprocessed grains and seeds; Natural plants and flowers; Fresh fruits and vegetables; Fresh herbs.*

**Class 35:** *Association services; Promoting awareness of climate change; Online retail services; Brick and mortar retail services; Advertising, marketing and promotional services; Business management, organization and administration; Office functions; Public relations services; Organization of trade fairs and exhibitions for commercial or advertising purposes; Search engine optimization for sales promotion; Commercial administration; Business consultation.*

**Class 36:** *Insurance services; Financial services; Monetary services; Real estate services; Financial, monetary and banking services; Financial transaction and payment services; Financial management; Brokerage services; Capital investment services; Investment services, namely, investment of funds for others; Equity capital investment services; Capital investment services; Global investment research services; Providing venture capital, development capital, private equity and investment funding; Fund investment services.*

**Class 40:** *Treatment of materials; Recycling of waste and trash; Air purification and treatment of water; Printing services; Food and drink preservation services; Custom manufacturing of goods to the order and specification of other.*

**Class 41:** Entertainment services; Educational services; Sporting and cultural activities; Organization of exhibitions for cultural or educational purposes; Arranging and conducting of conferences, congresses and symposiums; Publication of books and texts; Film production services; Ticket reservation and booking services for entertainment, educational, cultural and sporting events; Providing entertainment and educational information.

**Class 42:** Scientific and technological services; Scientific and technological research services; Testing, analysis and evaluation of businesses of others for the purpose of certification; Industrial analysis and industrial research services; Services of engineers and scientists who undertake evaluations, estimates, research and reports in the scientific and technological fields, including technological consultancy; Architectural and urban planning services; Software as a service (SaaS) services; Platform as a service (PaaS) services; Computer and technology services; Design services; Surveying services; Oil, gas and mining exploration services.

**Class 44:** Medical services; Telemedical services; Hospital services; Mental health services; Therapy services; Health spa services; Veterinary services; Hygienic and beauty care services for human beings or animals; Agriculture, horticulture and forestry services; Dietary and nutritional advice; Insect farming services.

2. On the 12 April 2024 the Intellectual Property Office (“IPO”) issued an examination report in response to the application. In the report, the following objection was raised under section 3(3)(a) of the Trade Marks Act 1994 (“The Act”):

#### ***Absolute grounds for refusal***

##### ***Section 3(3)(a)***

*The application is not acceptable in Classes 1, 5, 6, 7, 9, 25, 31, 35, 36, 40, 41, 42 and 44, as there is an objection under Section 3(3)(a) of the Act. This is because the mark contains the expression ‘UNF\*\*K THE PLANET’.*

*UNF\*\*K”, although concealed with two asterisk, is a clear misspelling of the strongly offensive term “UNFUCK”. It is considered the replacement of “UC” with “\*\*” is insufficient to disguise the offensive expression contained within the mark, and therefore, the mark as whole is considered to be contrary to accepted principles of morality.*

*The Act states the following:*

**3(3)a – A mark shall not be registered if it is-  
(a) contrary to public policy or to accepted principles of morality.**

*Accordingly, as your mark consists of an expression which contains an expletive it is considered that the mark may be likely to fall foul of the above provision of the Trade Marks Act.*

The examination report also included some minor classification issues to be addressed, however, as they are not considered relevant to these proceedings, I have chosen not to include them in this document.

3. In line with IPO procedure, a period of two months was allowed in order for the applicant to respond.
4. On the 12 June 2024, Keltie LLP (“The attorney”), acting on behalf of the applicant provided written submissions to the examiner with a view to overcoming the outstanding objection under 3(3)(a) of the Act. The submissions may be summarised as follows:
  - The expression ‘UNF\*\*K THE PLANET’ does not condone, justify or legitimise an illicit act, and as such, the sign is not contrary to public policy.
  - In respect of finding that the sign is contrary to accepted principles of public morality the case law has established the following guidelines:
    - Each case should be determined on its own merits.
    - The thresholds set are at a high level.
    - The level of offence required must lead to public outrage; mere distaste is insufficient to warrant an objection under 3(3)(a).
    - The assessment should be objective and based on the perception of a reasonable person with average thresholds of sensitivity and tolerance.
  - The sign does not include the expletive ‘FUCK’, the expletive merely forms a part of a disguised representation of the slang term ‘UNFUCK’
  - The full expression does not address a specific group or individual and is intended to send a positive message to the viewer of the sign, this reduces the likelihood that the sign will be outrageous.
  - The mere fact that the sign contains a swear word is not a basis for refusal, the decision should be based on social context and factors as this will inform how the public likely perceive the sign.
  - When the sign is viewed in the context of environmental issues the mark would not be understood and running contrary to fundamental morals and standards of society.
  - There are a wealth of products available to consumers which display the term ‘FUCK’ or ‘UNFUCK’ on sites such as Amazon and Etsy which demonstrate that there is a tolerance amongst the public for use of the expletives.
  - Various prior acceptances of marks containing the word ‘FUCK’ (or phonetic equivalents) had been accepted, mostly at the EUIPO. This demonstrated a more permissive acceptance of the word ‘FUCK’.
  - Any potential vulgarity is mitigated by the inclusion of the asterisks within the mark.
5. Upon assessment of the written submissions, the examiner responded to the attorney on 19 July 2024 to confirm that they had not been persuaded to waive the 3(3)(a) objection.
6. On the 18 September 2024 the attorney requested to be heard in respect of the outstanding 3(3)(a) objection. The resulting hearing was scheduled to take place on 17 October 2024 (*alongside co-pending application UK00004035370 for the sign ‘UNFUCK THE PLANET’*), with Mr Gay in attendance on behalf of the attorney.
7. At the hearing, Mr Gay provided oral submissions pertaining to the relevant legal principles to be applied before expanding on the submissions he had made in writing to the examiner in his correspondence of 11 June 2024 (*see para 4*).

8. I deferred my decision at the hearing in order to fully consider Mr Gay's submissions, subsequently rendering my decision to maintain the 3(3)(a) objection in my hearing report which was issued on 28 October 2024. The reasons for maintaining the objection could be summarised as follows:
- Even though the sign included the term 'UNFUCK' (rather than the term 'FUCK'), I considered that this expression would fundamentally be understood by an average consumer as including the expletive 'FUCK'.
  - That even where the totality of a sign is intended to highlight something positive or desirable, such as a positive environmental or social message for example, this did not necessarily lead to a finding that any expletives included in the sign are rendered inoffensive as a result.
  - That even if use of the term 'FUCK' has become more widespread, this did not necessarily equate to a finding that the capacity of the word to cause outrage had been diluted.
  - The best evidence available to me which pertained to social attitudes towards the expletive 'FUCK' stemmed from an Office of Communications (OFCOM) report, which in my view supported a finding that the term 'FUCK' maintained the capacity to cause outrage amongst the general public.
  - That the acceptance of various marks considered relevant by Mr Gay, which were registered at the EUIPO for the most part, did not necessarily have an impact of the assessment before me.
  - In respect of the use of asterisks in 'UNF\*\*K', the level of disguise was insufficient to mask the expletive, resulting in the public continuing to view the expression as 'UNFUCK THE PLANET'. Consequently, the sign had the potential to be equally as offensive as the full, unmodified version of the mark.
9. On the 18 November 2024 a request for a statement of grounds for the registrar's decision was received at the IPO via a form TM5. Having received such a request I now set out my reasons below.

## **The Law**

10. The relevant part of Section 3 of the Act reads as follows:

*(3)A trade mark shall not be registered if it is—*

*(a)contrary to public policy or to accepted principles of morality, or*

*(b)...*

## **The relevant legal principles – 3(3)(a)**

11. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to some decisions of the EU courts which predate the UK's withdrawal from the EU.

12. Pursuant to Article 6 quinquies, paragraph 3 of the Paris Convention 1883 (*as last revised at Stockholm on 14 July 1967*) as well as the corresponding rules under Section 3(3)(a) of the Trade Mark Act 1994 and Article 7(1)(f), the equivalent provision in Council Regulation 40/94 of 20 December 1993 on the Community Trade Mark, trade marks which are contrary to public policy or accepted principles of morality shall not be registered.
13. These articles are expressed in a broad manner which allows for a great deal of interpretive scope. In order to ensure a reasonable application of these provisions, the rights of individuals and organisations to freely use words or imagery for which they wish to seek trade mark protection must necessarily be weighed against the right of the general public not to be confronted with abusive, disturbing, offensive or even threatening trade marks. As was noted in 'FCUK'<sup>1</sup> at para 60(3):

*Section 3(3)(a) should be interpreted and applied consistently with Article 10 ECHR. It follows that registration should be refused only where this is justified by a pressing social need and is proportionate to the legitimate aim pursued. Furthermore, any real doubt as to the applicability of the objection should be resolved by upholding the right to freedom of expression and thus by permitting the registration (Basic Trademark at [3]-[6]).*

14. Interpretive scope of the provision must account for the application of national law (see *section 3 of the Human Rights Act 1998*) and The European Convention on Human Rights and Fundamental Freedoms (see *Article 10 of the ECHR*) which allows for the right of freedom of expression and commercial freedom of expression. Such freedoms may only be restricted in specific instances such as, for example, the prevention of disorder and for the protection of morals. It is recognised that the right to freedom of expression (*including commercial expression*) is fundamental to the functioning of a democratic society and should only face restriction when:

*"...such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority or impartiality of the judiciary<sup>2</sup>".*

15. As was noted by Mr Geoffrey Hobbs QC (*as he was then*) at paragraph 6 in his "JESUS"<sup>3</sup> decision:

*"Section 3(3)(a) seeks to prohibit registration in cases where it would be legitimate for the 'prevention of disorder' or 'protection of ... morals' to regard use of the trade mark in question as objectionable in accordance with the criteria identified in Article 10 ECHR. It does so in terms which disclose no intention to prohibit registration in cases where use of the relevant trade mark would not be objectionable under Article 10 on either or both of those bases. The problem of anti-social branding is, in part, addressed under Section 3(3)(a) by accommodating the concept of 'ordre public' within the 'prevention of disorder' (in the French text of the Convention 'à la defense de l'ordre') under Article 10. That makes it legitimate, for example, to treat the display of 'any writing, sign or other visible representation which is threatening, abusive or*

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<sup>1</sup> FCUK – O/137/06, Para 60(3)

<sup>2</sup> (Casado Coca v Spain (1994) 18 EHRR 1, see Paras 33-37).

<sup>3</sup> Jesus O-021-05

*insulting within the ... sight of a person likely to be caused harassment, alarm or distress thereby' as objectionable: see Section 5(1)(b) of the Public Order Act 1986. However, the right to freedom of expression must always be taken into account without discrimination under Section 3(3)(a) and any real doubt as to the applicability of the objection must be resolved by upholding the right to freedom of expression, hence acceptability for registration".*

16. In light of the above I must ensure that I do not interpret Section 3(3)(a) of the Act too broadly by, for example, considering any sign that has the potential to be offensive to a relevant portion of the UK public as ripe for objection. Such a broad application of the provision would inevitably risk unduly restricting the freedom of commercial expression which applies to trade marks. Conversely, I must also ensure that I do not apply too narrow an interpretation of the provision which may, for example, lead to refusals only where a sign reaches a threshold of breaching criminal law. Such a narrow approach may lead to the registration of signs which are offensive to such a degree that they would give rise to serious indignation amongst the public and would be tantamount to the registrar overlooking the purpose of the provision.
17. In respect of the assessment of the characteristics which are inherent to the sign and the effect of this assessment on the objection taken under 3(3)(a) of the Act, the caselaw on which I relied was conveniently summarised by Mr David Kitchin QC (*now Lord Kitchin*) sitting as Appointed Person in the 'FOOK' case (O-182-05):

*"4. These words were considered by Mr Simon Thorley QC, sitting as the Appointed Person, in Ghazilian's Application [2002] ETMR 631. In upholding the decision of the Registrar to refuse registration of the words TINY PENIS as a trade mark in relation to various articles of clothing he said, at paragraph 21:*

*"... it is only in cases where it is plain that an accepted principle of morality is being offended against that registration should be denied. Mere offence to a section of the public, in the sense that that section of the public would consider the mark distasteful, is not enough."*

*He expanded on this point further at paragraph 31:*

*"In my judgment the matter should be approached thus. Each case must be decided on its own facts. The dividing line is to be drawn between offence which amounts only to distaste and offence which would justifiably cause outrage or would be the subject of justifiable censure as being likely significantly to undermine current religious, family or social values. The outrage or censure must be amongst an identifiable section of the public and a higher degree of outrage or censure amongst a small section of the community will no doubt suffice just as lesser outrage or censure amongst a more widespread section of the public will also suffice."*

18. It is established that registrability of a trade mark must be judged as at the date of its application. Equally, the assessment of the capacity of a sign to cause outrage to the relevant public must also be assessed in light of the morals and societal norms prevalent at the time of filing of the application. As was noted in HALLELUJAH<sup>4</sup>:

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<sup>4</sup> RPC (1976)93 (22) - HALLELUJAH

*“...it seems to me that the Registrar should only follow where others have given a clear lead. While he must not remain isolated from the day-to-day world, frozen in an outmoded set of moral principles, he must equally not presume to set the standard. He must certainly not act as a censor or arbiter of morals, nor yet as a trendsetter. He must not lag so far behind the climate of the time that he appears to be out of touch with reality, but he must at the same time not be so insensitive to public opinion that he accepts for registration a mark which many people would consider offensive.”*

19. As I confirmed at the hearing, the objection under 3(3)(a) of the Act pertains to considerations under principles of morality (and not public policy). In particular, the basis of the objection is that the use of such profane language should face censure because it is generally accepted that such use runs contrary to acceptable principles of morality. As per FCUK at para 61:

*To my mind, there is a tension between proposition (8) and some of the other propositions, in particular proposition (6). In resolving this tension, I consider that proposition (11) is important. As Mr Hobbs explained, the reason why different considerations apply to different categories of marks is that they relate to different types of transgression. That is to say, they offend against different moral principles. It is therefore important to be clear as to the applicable moral principle. The generally accepted moral principle applied in Basic Trademark was that of respect for religious beliefs. The generally accepted moral principle applied in Scranage was the prohibition on the use of swear words, and in particular their use in contexts where children may be exposed to them.*

20. It is also appreciated that when seeking to establish the contemporary societal attitude towards potentially offensive content within a trade mark, the registrar should be mindful to avoid setting too high a threshold by considering the likely reaction of those at the most conservative end of the social spectrum. Equally, they should be mindful of setting too low a barrier by considering the likely response of those members of the public who hold the highest of tolerances for offensive content. Instead, the correct approach requires that the registrar consider the likely reaction of members of the general public with normal levels of sensitivity and tolerance, that is to say, those who occupy the middle ground in society. The reliance on the likely response of these ‘right-thinking’ members of the public was commented on at some length in the ‘TINY PENIS’<sup>5</sup> decision where Simon Thorley QC in his role as appointed persons concluded that:

*“30. In my judgment the matter should be approached thus. Each case must be decided with on its own facts. The dividing line is to be drawn between offence which amounts only to distaste and offence which would justifiably cause outrage or would be the subject of justifiable censure as being likely significantly to undermine current religious, family or social values. The outrage or censure must be amongst an identifiable section of the public and a higher degree of outrage or censure amongst a small section of the community will no doubt suffice just as lesser outrage or censure amongst a more widespread section of the public will also suffice.”*

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<sup>5</sup> TINY PENIS – O/538/01

*“31. Aldous J. in Masterman invoked the concept of right-thinking members of the public. I believe this is a helpful approach. A right-thinking member may himself or herself not be outraged but will be able, objectively, to assess whether or not the mark in question is calculated to cause the “outrage” or “censure” that I have referred to amongst a relevant section of the public. This is the function of the Hearing Officer. The matter must be approached objectively. It does not matter whether the Hearing Officer finds the mark personally unacceptable.”*

*“32. It seems to me that this degree of offence is what OHIM had in mind when writing their guidelines. Section 3(3) is not concerned with political correctness, it is concerned with principles of morality, a different and less readily invoked standard. The Registrar’s Hearing Officers cannot be expected in all cases to form a view without the assistance of evidence. This does not mean that they must have evidence. They are entitled to draw upon their own knowledge of words and upon their own perception of the way in which those words can be used without offending against public morality. They must however be careful not to allow their personal views to deflect them from approaching the matter on the basis of the “right-thinking” person.”*

21. The provisions of Section 3 of the Act (and its subparagraphs) all pertain to the qualities which are inherent to the mark and not to the circumstances surrounding the motives or intentions of the applicant when they applied for the trade mark. Although the ‘LA MAFIA’<sup>6</sup> decision from the General Court dealt with considerations regarding public policy, it is considered the principles below equally apply to matters of accepted principles of morality:

*39. In the third place, the applicant argues, in essence, that the relevant public will not perceive the contested mark as promoting the criminal activities of the Mafia in any way, in so far as the Mafia has often been the subject of fictional accounts in literature and in cinema. The applicant adds that the purpose of the registration of the contested mark is not to shock or offend, in so far as the goods and services it designates are not designed to convey a message to others, but only to allude to the Godfather film series. The applicant specifies that the concept of its themed restaurants is connected to that film series, and that the contested mark has acquired a reputation in Spain.*

*40. In that regard, it should first be emphasised that, when a sign is particularly shocking or offensive, it must be regarded as being contrary to public policy or to accepted principles of morality, irrespective of the goods and services for which it is registered (see, to that effect, judgment of 5 October 2011, PAKI, T-526/09, not published, EU:T:2011:564, paragraph 15). Moreover, it follows from a combined reading of the various subparagraphs of Article 7(1) of Regulation No 207/2009 (now Article 7(1) of Regulation 2017/1001) that they refer to the intrinsic qualities of the mark in question and not to circumstances relating to the conduct of the person applying for the trade mark (judgments of 9 April 2003, Durferri v OHIM — Kolene (NU-TRIDE), T-224/01, EU:T:2003:107, paragraph 76, and of 13 September 2005, Sportwetten v OHIM — Intertops Sportwetten (INTERTOPS), T-140/02, EU:T:2005:312, paragraph 28).*

22. The nature of the goods or services applied for has an impact on the assessment of a sign’s capacity to offend public morality. Where the goods and services are intended

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<sup>6</sup> LA MAFIA – T-1/17

for mass consumption or are likely to be widely available in non-specialist markets, it is more likely that much of the public (including children) may be exposed to the sign. Conversely, it may be the case that in respect of goods or services which target a more specific or specialist public, only members of that niche market will be exposed to the sign and they may be less likely to be outraged by such exposure.

In 'LA MAFIA' it was noted that:

*27. Moreover, the relevant public cannot be limited, for the purpose of the examination of the ground for refusal under Article 7(1)(f) of Regulation No 207/2009, to the public to which the goods and services in respect of which registration is sought are directly addressed. Consideration must be given to the fact that the signs caught by that ground for refusal will shock not only the public to which the goods and services designated by the sign are addressed, but also other persons who, without being concerned by those goods and services, will encounter that sign incidentally in their day-to-day lives (see judgments of 14 November 2013, Efaq Trade Mark Company v OHIM (FICKEN), T-52/13, not published, EU:T:2013:596, paragraph 19 and the case-law cited, and of 26 September 2014, Curve, T-266/13, not published, EU:T:2014:836, paragraph 19 and the case-law cited).*

23. In my view, a fundamental aspect of this case pertains to the tolerance of the term 'FUCK' by 'right thinking' members of the public. In view of this, I am mindful of paragraphs 10 and 11 of 'FOOK'<sup>7</sup>, where the appointed person Mr David Kitchin QC (as he was then) offered his view on the intrinsic nature of the full expletive 'FUCK' and indeed, signs which share a phonetic equivalency to the expletive where he noted:

*10. To my mind, however, the acceptance by the appellant that the word FOOK would be pronounced FUCK in various different regions of the United Kingdom places an insuperable difficulty in the path of the application for the following reasons.*

*11. First, I have no doubt that it would not be appropriate to allow registration of the word FUCK. Although it may be used commonly it is, nevertheless, a swear word and deeply offensive and insulting to many people. It is more than distasteful or smutty. The general use of the word is likely to cause justifiable outrage amongst a significant section of the public. I can see no justification based on the right to freedom of expression or otherwise to allow such a word to proceed to registration.*

### **Application of the relevant legal principles**

24. The objection raised under Section 3(3)(a) of the Act requires me to establish whether a sign comprised of the expression 'UNF\*\*K THE PLANET' contains matter which is contrary to accepted principles of morality. In pursuing this aim it is appreciated that 'accepted principles of morality' refers to a set of contemporary fundamental moral values to which the British public adheres. I am also mindful that account must be taken of societal factors and context in order to assess what society considers to be morally acceptable conduct.

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<sup>7</sup> FOOK – O/182/05

25. I believe that it is essential to consider the impact of the inclusion of asterisks in the 'UNF\*\*K' element of the mark in the first instance. This is because if it is determined that the use of asterisks results in the diminishing of the capacity of the mark to outrage the public, as is claimed by the attorney, then clearly the objection under Section 3(3)(a) must fall away.
26. In seeking to establish the public's likely reception to signs such as 'UNF\*\*K' I am mindful of advice provided by the Advertising Standards Authority ("ASA") and The Committee of Advertising Practice ("CAP")<sup>8</sup>. This advice advocates for restraint when communicating messages containing 'obscured expletives', in line with Code rule 4.1. of the Advertising Code<sup>9</sup> titled 'Harm and Offense' which states:

### **Principle**

*Marketers should take account of the prevailing standards in society and the context in which a marketing communication is likely to appear to minimise the risk of causing harm or serious or widespread offence.*

### **Rules**

#### **4.1**

*Marketing communications must not contain anything that is likely to cause serious or widespread offence. Particular care must be taken to avoid causing offence on the grounds of: age; disability; gender; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. Compliance will be judged on the context, medium, audience, product and prevailing standards.*

*Marketing communications may be distasteful without necessarily breaching this rule. Marketers are urged to consider public sensitivities before using potentially offensive material.*

*The fact that a product is offensive to some people is not grounds for finding a marketing communication in breach of the Code.*

The advice provided by the ASA and CAP in support of maintaining compliance with Code rule 4.1 states that:

### **Obscuring expletives**

*Marketing communications that do not explicitly state full expletives, but obscure part of the word, are still likely to breach the Code if viewers are likely to recognise the word that the ad is referring to, and that word is likely to cause serious or widespread offence. Complaints about an untargeted ad which stated "ever thought about f\*\*\*\*\* working" were upheld by the ASA, which considered that the ads were likely to be seen as referring to a swear word that many would find offensive ([Digital Mums Ltd, 03 January 2018](#)). See also "THE END OF THE F\*\*\*\*\*G WORLD" ([Channel Four Television Corporation, 18 December 2019](#)).*

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<sup>8</sup> Advertising Standards Authority advice - <https://www.asa.org.uk/advice-online/offence-language.html>

<sup>9</sup> CAP advertising code 4.1 - [https://www.asa.org.uk/type/non\\_broadcast/code\\_section/04.html](https://www.asa.org.uk/type/non_broadcast/code_section/04.html)

The ASA and CAP also provide marketing advice specifically relating to the targeting of marketing communications where under the heading 'Targeting' it is stated that:

*The ASA considered the claim "F\*\*K YOU CO2" which appeared in an outdoor poster, and in a double page spread in The Metro, The Week, and The Economist. The ASA considered that, although the word was partially obscured, it clearly referred to the word "fuck", which was likely to offend a general audience, and therefore should not have appeared in the poster or The Metro. However, because this reflected language used elsewhere in The Week and The Economist, both of which had to be actively purchased, it was unlikely to cause serious or widespread offence to the audience of those publications ([BrewDog plc, 18 November 2020](#)).*

27. In the absence of firm evidence from the applicant which specifically addresses the likely response by the British public to the sign 'UNF\*\*K THE PLANET', I consider the above guidance from the ASA and CAP to be the strongest available to me when seeking to establish the tolerance for curse words which have been modified by replacing alphabetical characters with non-standard characters.
28. As I will expand on later in this Statement of Grounds, I consider that given the breadth of goods and service included in this application and their general nature, it cannot be excluded that the public at large may be exposed to the sign, even when they are not necessarily seeking out those goods and services. It is in this context that I reflect on the comments put forward by the ASA in respect of the expression 'F\*\*K YOU CO2' where it was stated that '*The ASA considered that, although the word was partially obscured it clearly referred to the word "fuck", which was likely to offend a general audience, and therefore should not have appeared on posters or in The Metro*'.
29. In light of the above, I consider that the general public are likely to perceive expletives which have been modified with asterisks in the same way as they would an unmodified variant of the swearword. Accordingly, I believe that the capacity of the term 'UNF\*\*K' to shock the public is equivalent to that of the unobscured alternative 'UNFUCK'.
30. Having established that the asterisks do not diminish the capacity of the term to outrage the general public because the sign 'F\*\*K' is understood as equivalent to 'FUCK' in its meaning, I now turn to address the attorney's argument where it was submitted that the mark did not in fact contain the expletive 'FUCK'. This, it was argued, was because the mark included the term 'UNFUCK', being a different word with the result that it did not carry the same negative meaning or connotations as the expletive 'FUCK'.
31. In my view, it is reasonable to conclude that an average member of the public in the UK, who is in the habit of applying the normal rules of English language and grammar, would readily appreciate that the term 'UNFUCK' is simply formed from the prefix 'UN' and the dictionary defined term 'FUCK'. Moreover, in applying those normal rules of English language and grammar, they would understand the prefix 'UN' merely denotes the opposite or reverse of something and that when 'UN' is used to modify the word 'FUCK', the consumer would simply derive an understanding that the term 'UNFUCK' means the opposite of 'FUCK'.
32. It is considered that the word 'FUCK' has a variety of applications depending on the context of its use and that it may not always be the case that its use is intended as negative or to insult, for example, it is often used as an intensifier (e.g., *I was as happy as fuck*). However, even use of the word 'FUCK' in more positive contexts would still be seen as shocking in many public, commercial, or professional settings.

33. Accordingly, given the high level of recognition and breadth of differing applications of the word 'FUCK', many of which would be deemed wholly inappropriate in most circumstances, it appears unavoidable that the term 'UNFUCK', despite it suggesting the opposite of the expletive, would nonetheless be viewed as unacceptable. By incorporating the expletive in full, the term 'UNFUCK' inevitably results in public being confronted by the word 'FUCK' albeit in a modified form.
34. The suggestion that capacity of such a strong expletive (*as identified by Ofcom & the ASA, see paras 29 & 30 below*) to outrage the public would be diminished because it is incorporated into a mark communicating a positive message, is also less than compelling in my view. As indicated previously, the term 'FUCK' may be used in a variety of contexts and is generally deemed to be contrary to accepted principles of morality by the public. Whilst it is clear that the sign 'UNF\*\*K THE PLANET' does speak to the laudable environmental mission statement of the applicant, it appears unrealistic to me to suggest that the offensiveness of the term 'UNFUCK' would be displaced because it has been incorporated into this broader message. In my view, it suffices that I establish whether the mark is offensive to the public to the requisite degree on the basis of the characteristics intrinsic to the mark rather than, for example, the intentions or motivations behind the sign.
35. Having determined that in my view, the mark contains an expletive, I must now seek to establish if the curse-word is likely to be deemed as outrageous to the public. In this regard I appreciate that it can be extremely difficult to ascertain when a sign strays from being merely distasteful and becomes more likely to become deeply offensive. I also acknowledge that I must ensure that the assessment is made accounting for the likely response of members of society who have a reasonable and normal level of tolerance and sensitivity.
36. I am conscious of the comments of the appointed person in 'FOOK' where it was noted that:
- 10. To my mind, however, the acceptance by the appellant that the word FOOK would be pronounced FUCK in various different regions of the United Kingdom places an insuperable difficulty in the path of the application for the following reasons.*
- 11. First, I have no doubt that it would not be appropriate to allow registration of the word FUCK. Although it may be used commonly it is, nevertheless, a swear word and deeply offensive and insulting to many people. It is more than distasteful or smutty. The general use of the word is likely to cause justifiable outrage amongst a significant section of the public. I can see no justification based on the right to freedom of expression or otherwise to allow such a word to proceed to registration.*
37. Clearly, the expletive 'FUCK' was deemed to be wholly unacceptable in the FOOK decision. However, having regard for the fact that this decision is almost 20 years old, I am required to consider the sign in light of contemporary moral and societal norms. I recognise that in respect of the expression 'FUCK', it may now be more commonplace to see or hear the word aired on television (post-watershed) or heard conversationally, for example amongst friends. However, in my view such use is different in context from using such a strong expletive in the course of trade. I believe that ordinary members of the public whose values are representative of society as a whole, would find use of

the term 'FUCK' as outrageous were they to encounter the word unexpectedly in the course of their daily routines. As was noted in 'LA MAFIA'<sup>10</sup>:

*“Moreover, the relevant public cannot be limited, for the purpose of the examination of the ground for refusal under Article 7(1)(f) of Regulation No 207/2009, to the public to which the goods and services in respect of which registration is sought are directly addressed. Consideration must be given to the fact that the signs caught by that ground for refusal will shock not only the public to which the goods and services designated by the sign are addressed, but also other persons who, without being concerned by those goods and services, will encounter that sign incidentally in their day-to-day lives.”*

38. Despite the comments in 'FOOK' being 20 years old, it is my view that public attitudes towards the expletive have not developed to a point where 'FUCK' is no longer capable of shocking the public. I am further emboldened in this view as a result of evidence relied on at the hearing in the form of an Ofcom Report. In September 2021, the Office of Communications (Ofcom) published a report<sup>11</sup> on the public attitudes towards offensive language on television and radio, which was based on research undertaken by Ipsos MORI. This report demonstrated that there was a high degree of recognition for the word 'FUCK' and categorised the use of this language as 'strong'. The report also noted that whilst the expletive was '*...categorised as strong, moderate and mild by different groups of qualitative participants, they largely agreed that it should not be aired before the watershed...*'. I consider that this comment may suggest that even those 'right thinking individuals' who found the word only moderately or mildly offensive still appreciated that it is generally unacceptable to use the expletive in most public settings.
39. Building on the points highlighted by Ofcom, I am also mindful of the online guidance<sup>12</sup> provided by the Advertising Standards Authority ("ASA") and Committee of Advertising Practice ("CAP") which states the following in regard to the tolerance of the public towards expletives such as 'FUCK':

#### ***“Choice of language***

*Marketers should carefully consider the language used in marketing communications and target appropriately. Some expletives, such as “fuck”, are very likely to offend, whereas milder words may be acceptable, depending on the context and media in which they appear.”*

#### ***Expletives to avoid***

*Consumer research conducted [by the ASA](#) and [Ofcom](#) has suggested that some expletives, such as “fuck” and “cunt”, are so likely to offend that they should generally not be used in marketing communications, even if they are relevant to the name of the product. Marketers that include expletives like this must be able to demonstrate that the ads were targeted at an audience that was unlikely to be offended...*

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<sup>10</sup> LA MAFIA – T-1/17

<sup>11</sup> Ofcom Report - <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/tv-radio-and-on-demand-research/tv-research/offensive-language-quick-reference-guide.pdf?v=326908>

<sup>12</sup> ASA & CAP Online guidance - <https://www.asa.org.uk/advice-online/offence-language.html>

*In 2014, the ASA held that products containing expletives or words likely to cause serious or widespread offence, or allusions to such words, should only appear in marketing communications where a clear and prominent warning had been given to potential viewers first ([Firebox.com Ltd, 22 October 2014](#)). Marketers should note that this is only likely to be appropriate in the context of marketing communications with a largely adult audience.*

40. I consider that the above guidance from the ASA and CAP further supports a finding that the tolerance for the expletive 'FUCK' is relatively low. It is interesting to note that they comment that the use of such expletives should be avoided unless '*clear and prominent warnings*' had been issued to potential viewers of the advertising and even then, such warnings would "*only likely to be appropriate in the context of marketing communications with largely adult viewers*".
41. In this regard, I note that the application has been made in respect of a wide range of goods and services which would suggest the mark may be used across many areas of trade including those pertaining to industrial, medical, clothing, food, retail, financial, entertainment and educational sectors. Accordingly, it is clear that the mark may be used across an array of ordinary and everyday goods and services marketed to the public at large and in my view, would inevitably lead to a significant section of the UK public (including children and the elderly) being affronted and outraged at the unsolicited exposure to a sign containing the equivalent of an expletive as strong as 'FUCK'.
42. Turning to the attorney's comments in regard to the range of products available on the websites of online retailers such as Amazon and Etsy. Whilst it cannot be disputed that it is possible to find a range of products on such stores which contain all manner of coarse language and offensive expressions and imagery, I do not consider this to be a justification for the granting of trade mark rights to signs which are outrageous to the public. I consider that the use demonstrated by the attorney merely demonstrates that traders are exercising their right to freedom of commercial expression (as per Article 10 of the ECHR), it does not necessarily serve as evidence that the word 'FUCK' should be afforded trade mark protection. This is because it is established that the freedom to commercial expression is not absolute and as per Article 10(2) of the ECHR, may be restricted on the grounds of, for example, 'the protection of morals'. Moreover, it is of note that the use highlighted by the attorney does not, in my opinion, constitute use commensurate with trade mark use.
43. Additionally, I would suggest that in general, in order to find products adorned with such content (*see examples below, provided by the attorney*), a consumer would ordinarily need to specifically seek out these items rather than finding themselves confronted by the products incidentally, as can be seen in the exhibit below which shows the entry 'FUCK' used by the attorney in the Amazon website's search field.



Figure 1 - Exhibit provided in attorney response to examination report

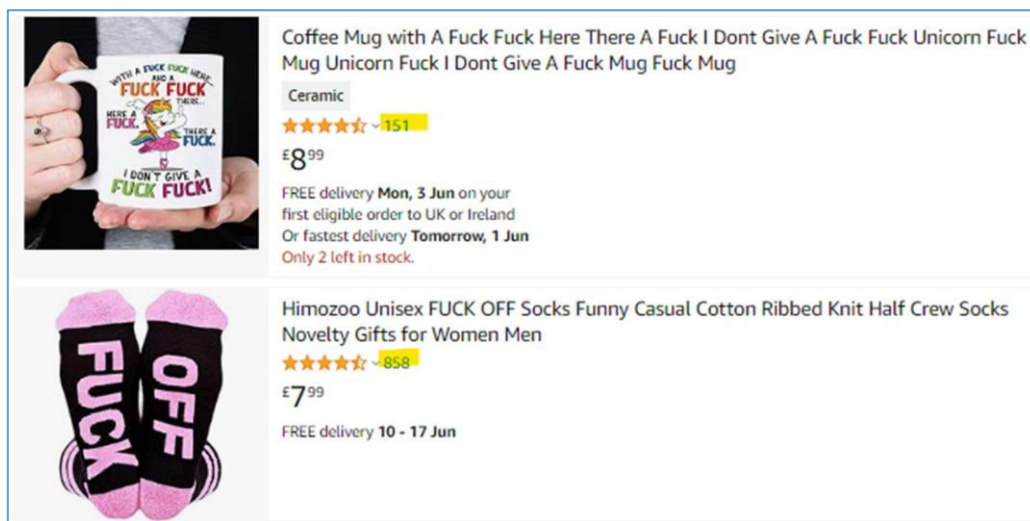


Figure 2 - results from attorney's search of term 'FUCK' on Amazon

44. As a result of the above I do not consider that the examples provided by the attorney showing the availability of products replete with offensive content has a meaningful impact on the assessment before me. In simple terms, it cannot be the case that identifying goods adorned with an offending term will negate an objection pertaining to the protection of morals; such an approach would render any such objection completely without teeth, even where a clear principle of morality is breached.
45. Turning to the attorney's submissions regarding the registration of earlier applications which contained the expletive 'FUCK' (see annex 1 for list of referenced cases). In this regard, it is settled that I am bound to determine the mark's acceptability in accordance with the relevant legal criteria rather than assessing the mark based on the state of the register. This well-established principle in trade mark law was cited in the Treat case and has been summarised more recently in BREXIT O-262-18, where the AP (James Mellor QC) stated:

*'11. In addition, just because a mark is on the Register does not mean it will be held valid when challenged. Furthermore, if the touchstone for registration was to be a comparison with marks already on the register, then registration would come to depend on the lowest common denominator. In any event, it is quite clear that the application of the section 3(1)(b) ground requires an assessment not against other marks on the register, but against the standard laid down in that provision, as interpreted in the case law.'*

And

*'21. The Hearing Officer referred to the previous registrations as 'precedents'. Strictly they are not precedents for the reasons explained above, but I appreciate the desire to maintain consistency in approach.' As I am not privy to the circumstances surrounding the acceptance of the previous registrations, I cannot comment further.*

46. An additional strand to the attorney's arguments in respect of prior acceptances was that the registration of these earlier marks spoke to a more permissive reception to the expletive amongst native English-speaking consumers since there had been no perceptible reaction to these registrations by the public. The attorney commented that it was incongruous that the word 'FUCK' could be held as merely distasteful in The Republic of Ireland (by virtue of the acceptances by the EUIPO) yet found to be 'outrageous' to consumers across the border in Northern Ireland (and by extension, the rest of the UK).
47. In my view, this argument represents a somewhat artificial scenario since it is unclear to me if, where and how the prior registrations in question have been used within the European Union and in respect of the attorney's specific point, whether the marks have been used in the Republic of Ireland in any meaningful way in trade. I will simply observe that whilst it is of course desirable for all offices to endeavour to apply practice which is consistent, it cannot be disregarded that linguistic differences between different communities may be critical in the examination of trade marks and that variations in practice exist between different rights granting authorities. That said, it is perhaps noteworthy that having conducted a search of the Intellectual Property Office of Ireland's register, it does appear that they have not accepted any such marks containing the expletive in question (see screen shots below, taken on 4 Feb 2025).

Oifig Maoine  
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Intellectual Property  
Office of Ireland

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### Irish Trade Mark Database Search [Print this page](#)

**Text:**   e.g. Guinness

**Applicant / Proprietor / Holder:**  e.g. Master Foods

**Goods and Services Classes:**  e.g. 1,2,3

**Figurative Code(s):**  e.g. 01.01.02,05.01.05

**Representative:**  e.g. Joe Bloggs

**WARNING:**  
This database is for information purposes only. Whilst the Intellectual Property Office of Ireland takes all reasonable care in the provision of this service, the Office will not be liable for errors or omissions in the data or for any consequences arising from such errors or omissions, including any loss which may be incurred as a result of reliance on the data. Business decisions should not be made based on this search alone.

Figure 3- Search of 'FUCK' on Republic of Ireland's register



### Trade Mark Database Search Results

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Returned Items: 1

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Current item(s): 1 - 1 / 1

<u>Trademark Number</u>	<u>Trademark</u>	<u>Device</u>	<u>Date of Application / Registration</u>	<u>Status</u>	<u>Applicant / Proprietor</u>	<u>Goods &amp; Services Classes</u>
<a href="#">234689</a>	KOOPLA FUCKLE		14/06/2006	Registered	DES O'BRIEN	25

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Figure 4- Search results for 'FUCK' marks on Republic of Ireland's register

## Conclusion

48. In this decision, I have carefully considered all the submissions and arguments made during the proceedings and, having done so, concluded that for the reasons set out above, the application is refused in respect of the goods and services applied for because it fails to qualify for registration under Section 3(3)(a) of the Act.

**Dated this 11<sup>th</sup> day of February 2025**

**Darren Smith**

**For the Registrar**