O/0452/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3828994
IN THE NAME OF PAULINE HODSON
TO REGISTER THE FOLLOWING TRADE MARK:

IN CLASSES 25 & 36

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 438062
BY CAMP BEAGLE

Background and pleadings

1. On 13 September 2022, Pauline Hodson ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK, under number 3828994 ("the applicant's mark"). Details of the application were published for opposition purposes on 23 September 2022. Registration is sought for the following goods and services:

Class 25: Hoods [clothing]; belts [clothing]; clothing; combinations [clothing]; ready-made clothing; gloves [clothing]; knitwear [clothing]; waterproof clothing; jerseys [clothing]; stuff jackets [clothing]; jackets [clothing]; clothing of imitations of leather; embroidered clothing.

Class 36: Charitable fund raising; crowdfunding.

2. On 15 December 2022, Camp Beagle (Members of the Camp Beagle unincorporated charitable association) ("the opponent") opposed the application in full under sections 5(4)(a) and 3(6) of the Trade Marks Act 1994 ("the Act").

3. Under section 5(4)(a), the opponent claims that it has substantial goodwill in relation to which it has used the sign **CAMP BEAGLE** throughout the UK since July 2021. The sign is said to have been used in connection with *clothing; hats; stickers; badges; fridge magnets; organising charitable fundraising activities and events; crowdfunding events and activities*. The opponent contends that use of the applicant's mark would constitute passing off.

4. Under section 3(6), the opponent claims that it established a protest camp in July 2021 outside a dog breeding facility in Cambridgeshire and had been operating under the 'CAMP BEAGLE' sign for more than a year by the time the applicant filed her application. The applicant is said to have been an active participant in the campaign until she left in February 2022. The opponent argues that the applicant filed the application to dishonestly present herself as the face of the "official" campaign, to restrict the opponent's use of the 'CAMP BEAGLE' sign in the UK, and to obtain an

unfair advantage over the opponent. On this basis, the opponent submits that the application was filed in bad faith.

5. The applicant filed a counterstatement, denying the grounds of opposition and all the claims made by the opponent.

6. The opponent represents itself through John Curtin, whereas the applicant is represented by Camp Beagle Official Ltd.[1] Both parties filed evidence. No hearing was requested but both parties filed written submissions in lieu. This decision is taken following careful consideration of all the papers before me.

Relevance of EU law

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

Evidence and submissions

8. The opponent's evidence in chief consists of the following:

(i) The witness statement of Christine Sanger and Exhibits CS1-CS7. Ms Sanger describes herself as a long-term core member of 'CAMP BEAGLE'. She says she first went to the camp on 8 July 2021.

(ii) The witness statement of Emma Clark and Exhibit EC1. Ms Clark also describes herself as a core, long-term member of 'CAMP BEAGLE'. She says

[1] I note that the opponent was professionally represented by Elys IP Limited when it filed the Form TM7. However, by email dated 22 May 2023, that firm informed the Tribunal that it was no longer acting for the opponent. Christine Sanger and Mr Curtin then appointed themselves as the opponent's representatives on 25 August 2023 and 8 January 2024, respectively. The applicant represented herself until Camp Beagle Official Ltd was appointed as her representative on 15 November 2023.

she became aware of the camp on Facebook in July 2021 and attended her first ‘demo’ the following week.

(iii) The witness statement of Fiaz Ahmed and Exhibits FA1-FA11. Mr Ahmed says that he is a long-term member of the core team of ‘CAMP BEAGLE’.

(iv) The witness statement of Jacqui Ahmed and Exhibits JA1-JA5. Ms Ahmed describes herself as a long-term member of the core team of ‘CAMP BEAGLE’.

(v) The witness statement of Jay Charlton and Exhibits JC1-JC4. Ms Charlton is founder of Viva La Vegan, a clothing and merchandise company. She provides evidence about merchandise created for ‘CAMP BEAGLE’.

(vi) The witness statement of Mr Curtin and Exhibits JohnC1-JohnC6. Mr Curtin says he is a founder of ‘CAMP BEAGLE’ and describes himself as the most recognisable public face of the camp. He says that he arrived at the camp’s location in early July 2021.

(vii) The witness statement of Maria Iriart and Exhibits MI1-MI12. Ms Iriart says she is a long-term, core member of ‘CAMP BEAGLE’ and considers herself “one of the many founders”, having an active role since July 2021.

(viii) The witness statement of Perry Sanger and Exhibits PS1-PS5. Mr Sanger says that he is a long-term, core member of ‘CAMP BEAGLE’, having been involved since early July 2021.

(ix) The witness statement of Philip Green and Exhibits PG1-PG4. Mr Green describes himself as “the human father of Scarlett Beagle”, the beagle ambassador for ‘CAMP BEAGLE’ since June 2022.

(x) The witness statement of Shannon Keith and Exhibits SK1-SK3. Ms Keith says that she is the President and Founder of Beagle Freedom Project, which commenced in late 2010. She gives evidence as to her visit to ‘CAMP BEAGLE’ from California in November 2022.

9. Unless otherwise indicated, the witnesses provide their own accounts of events since the founding of the camp and dealings between the parties.

10. The opponent's evidence in chief was accompanied by written submissions.

11. The applicant's evidence in chief comprises the following:

(i) The witness statement of Pauline Hodson and Exhibits PH1-PH24.[2] Ms Hodson is the applicant in these proceedings. She says that she founded 'CAMP BEAGLE' and is Director of Camp Beagle Official Ltd and Camp Beagle Supporters Ltd. Ms Hodson gives her own account of events.

(ii) The witness statement of Tarnia Wilson and Exhibits TW1-TW7. Ms Wilson says that she joined the campaign in July 2021 and is the Research Lead of 'CAMP BEAGLE'. She gives her own account of events.

12. The opponent filed the following evidence in reply:

(i) The second witness statement of Ms Sanger and Exhibits CSa1-CSa3.

(ii) The second witness statement of Ms Clark and Exhibits ECL1-ECL3.

(iii) The joint witness statement of Mr and Mrs Ahmed.

(iv) The second witness statement of Mr Curtin and Exhibits JCurtin1-JCurtin12.

(v) The second witness statement of Mr Sanger and Exhibit PSa1.

(vi) The joint witness statement of Mr Green and Janie Green and Exhibit PGreen1. Ms Green states that she is also a "human parent" of Scarlett Beagle. Their statement provides Ms Green's account of events.

[2] Although the applicant introduces herself as Polly Hodson at the beginning of the witness statement, she clarifies that she is Pauline Hudson. The witness statement is signed in the name of Pauline Hodson.

(vii) The second witness statement of Ms Iriart and Exhibits MariaI1-MariaI4.

(viii) The witness statement of Alka Chandna. Dr Chandna confirms he is Vice President of Laboratory Investigations Cases for People for the Ethical Treatment of Animals ("PETA"). He says that 'CAMP BEAGLE', PETA and others worked together on an exposé of imports of research dogs into Europe. He says that PETA's contact for the 'CAMP BEAGLE' campaign is Mr Curtin.

13. The opponent also filed further written submissions alongside its evidence in reply.

14. Following a request for leave to file additional evidence, which was granted by the Tribunal, the applicant filed the second witness statement of Ms Hodson along with Exhibit Polly Whole Video. Ms Hodson seeks to provide further context to the video in Ms Clark's evidence in reply.

15. Both parties filed written submissions in lieu of a hearing.[3]

16. I have taken all the evidence and submissions into account in reaching my decision and will refer to them below where necessary. I also confirm that I have watched the exhibits consisting of videos (namely, Exhibit ECL2 and Exhibit Polly Whole Video) and will refer to them below where necessary.

Section 5(4)(a)

Legislation and case law

17. Section 5(4)(a) of the Act states:

"(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented-

[3] I note that the applicant's submissions were filed by Humphreys & Co. solicitors. However, no request to appoint Humphreys & Co. as the applicant's representative has been made.

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

(aa) […]

(b) […]

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark."

18. Subsection (4A) of section 5 states:

"(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application."

19. In *Discount Outlet v Feel Good UK* [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

"55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the Jif Lemon case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56. In relation to deception, the court must assess whether "a substantial number" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

20. Halsbury's Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

> "Establishing a likelihood of deception generally requires the presence of two factual elements:
>
> > (1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and
> >
> > (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other indicium which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.
>
> While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects cannot be completely separated from each other.
>
> The question whether deception is likely is one for the court, which will have regard to:
>
> > (a) the nature and extent of the reputation relied upon,
> >
> > (b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;
> >
> > (c) the similarity of the mark, name etc used by the defendant to that of the claimant;
> >
> > (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action".

Relevant date

21. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O/410/11, Mr Daniel Alexander QC, as the Appointed Person, endorsed the Registrar's assessment of the relevant date for the purposes of section 5(4)(a) of the Act, as follows:

"43. In SWORDERS TM O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows:

'Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.'"

22. The *prima facie* relevant date is the filing date of the applicant's mark, that being 13 September 2022. Although the opponent's case is that the applicant left the campaign in February 2022 to set up a parallel project in the UK, I will focus on the position at the relevant date, only considering the position at the earlier date if it becomes necessary to do so.

Goodwill

23. In *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL), goodwill was described in the following terms:

> "What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start."

24. I note at this juncture that a large proportion of the evidence filed in these proceedings goes to past dealings between the parties, the breakdown in their former relationships, money claims, differences in campaigning styles, accusations of trolling and harassment, and accusations of criminal acts. None of this evidence is relevant to an assessment as to whether the opponent has established that it had goodwill at the relevant date. For this purpose, I will focus on the actual activities of 'CAMP BEAGLE'. I should add that a significant amount of evidence is also from after the relevant date. Unless this casts light back on the position at the relevant date, it cannot be relied upon.

Had any goodwill been accrued by the relevant date?

25. The opponent's witnesses who identify as members of 'CAMP BEAGLE' state that it is the name of a physical protest camp located outside a beagle breeding facility in Cambridgeshire, as well as an associated campaign to close the facility.

26. Ms Sanger says that 'CAMP BEAGLE' is a collective, grass roots group which holds weekly meetings and has "tens of thousands" of supporters. Ms Sanger explains that, following prior demonstrations outside the facility, the camp and campaign were founded in July 2021. A printout of a 'Free the MBR Beagles' Facebook post is not inconsistent with this timeline: it states that, whilst a campaign by 'Free the MBR Beagles' began in 2019, the camp was set up outside the facility following footage

being released in April 2021 and subsequently published by *The Mirror*.[4] Ms Sanger says that the camp has celebrity and influencer supporters. A printout of an article from *The HUNTS Post*, dated 9 December 2021, says that the actor and comedian Alan Davies donated 'CAMP BEAGLE' a caravan.[5]

27. Ms Clark says she first heard of the camp via Facebook in July 2021. She says that, through Mr Curtin, 'CAMP BEAGLE' does live streams on social media, speaks to the media, manages social media accounts, and creates and publishes videos to raise awareness. Ms Clark also says that 'CAMP BEAGLE' organises demonstrations, online actions, petitions and outreach events. She provides a timeline,[6] in which she says that, *inter alia*, *The Independent* used 'CAMP BEAGLE' footage in an article (5 June 2022) and that supporters completed a 330-mile walk (10 September 2022).

28. Mr Ahmed says that the members of 'CAMP BEAGLE' have ordered and paid for promotional materials and campaign equipment on its behalf, being reimbursed when it had sufficient funds. Mr and Mrs Ahmed say that the 'CAMP BEAGLE' name appears on the promotional materials. Mr Ahmed provides a spreadsheet of 'CAMP BEAGLE' expenses.[7] It appears that, between 7 January 2022 and 14 July 2022, around £8,000 was spent on "Printed Materials", most of which had been reimbursed. Invoice numbers for each transaction are provided, but not copies of the invoices. Further expenses are listed for "P&P" (possibly postage and packaging for outreach packs) and security cameras. Mr Ahmed also describes how 'CAMP BEAGLE' assisted a separate campaign, For Life on Earth ("FLOE"), in getting MP signatories for an Early Day Motion (2021/2022) for a government-mandated public scientific hearing on animal experimentation, as well as signatures for two parliamentary debates. A letter from Mr and Mrs Ahmed (on behalf of 'CAMP BEAGLE'), dated 14 September 2022, mentions donations, but no documentary evidence has been provided in support.[8] Mrs Ahmed states that she set up a Facebook page for the camp on 29 June 2021 and describes this as an important campaigning tool.[9] A printout of the page is provided,

[4] Exhibit CS1
[5] Exhibit CS3
[6] Exhibit EC1
[7] Exhibit FA1
[8] Exhibit FA4
[9] Ms Wilson also states that the Facebook account was created on 29 June 2021, whilst Ms Hodson has provided an extract of the 'Camp Beagle' Facebook page which confirms this (Exhibit PH02).

although it is undated.[10] She says that the 'CAMP BEAGLE' Facebook and Instagram pages have 36,000 and 22,100 followers, respectively; however, this was at the date of her statement (1 October 2023), i.e. after the relevant date. I note that the actor Tom Hardy posted an Instagram story with a link to an online petition to end the use of animals for toxicity tests and a link to the @thecampbeagle Instagram account.[11] This account was also promoted by a Tom Hardy fan account.[12] Mrs Ahmed says that Tom Hardy has 9.6million followers on Instagram.

29. Mr Curtin says that he arrived at the camp in early July 2021. Having been little organisation at the beginning, the people there decided to start having regular meetings. At one of the early meetings, the name 'CAMP BEAGLE' was decided on. He says that early protests attracted hundreds of people. A selection of press stock photographs from Alamy, dated 13 July 2021, has been provided, in which the physical protest camp is depicted.[13] The caption refers to it as 'Camp Beagle'. The caption of a photograph of Mr Curtin from Getty Images, dated 18 October 2021, also refers to 'Camp Beagle'.[14] Mr Curtin says he was invited to do a talk at Vegan Camp Out in August 2021. Although one image of this shows the words 'FREE THE MBR BEAGLES', another suggests that the topic of Mr Curtin's talk was "The Camp Beagle Phenomenon […]".[15] Mr Curtin also provides extracts from press references to 'CAMP BEAGLE'.[16] Whilst several are from 2023 or do not refer to 'CAMP BEAGLE', I note that it featured in *Wisbech Standard* on 14 January 2022 and on the Anna Webb website on 2 May 2022.

30. Ms Iriart provides information about a number of petitions broadly aiming to end animal testing. I note that 'CAMP BEAGLE' supported and campaigned to gain signatures for a petition by FLOE to change the law to include laboratory animals in the Animal Welfare Act. It appears that the petition opened in July 2021 and achieved over 100,000 signatures.[17] Ms Iriart says that it was debated by the Government on 7

[10] Exhibit JA4
[11] Exhibit JA3
[12] Exhibit JA3
[13] Exhibit JohnC2
[14] Exhibit JohnC3
[15] Exhibit JohnC1
[16] Exhibit JohnC3
[17] Exhibit MI3

February 2022. On that date, she says that 'CAMP BEAGLE' held a protest at Parliament Square. Ms Iriart says that she created a petition to ban commercial breeding for laboratories, the first created and approved by 'CAMP BEAGLE'. It appears that it was opened in March/April 2022 and, whilst it was not debated until January 2023, it had over 80,000 signatures by the relevant date.[18] According to Ms Iriart, 'CAMP BEAGLE' conducted research and coordinated with PETA USA and a number of European campaigns for an exposé aimed at stopping the transport of beagles for research purposes. Printouts of websites which discuss the investigation have been evidenced; they credit 'The Camp Beagle' with the data, though none is clearly aimed at the UK or from before the relevant date.[19] Dr Chandna gives narrative evidence that PETA USA worked with, *inter alia*, 'CAMP BEAGLE' on the exposé (citing Mr Curtin as their contact). In minutes provided by Ms Iriart from a meeting held on 26 July 2022, the finance update states that 'CAMP BEAGLE' had £3,974 in the bank, £10,000 from an anonymous donor, £20,000 from a "legacy" and £609 received from regular monthly donors; the minutes also say that 300,000 leaflets had been printed and distributed across the UK, and £15,000 was spent on this since January 2022.[20] In her second statement, Ms Iriart states that 'CAMP BEAGLE' has a long-term relationship with cosmetics company Lush. Lush is said to have funded toilets for 'CAMP BEAGLE' "in the early days"; granted 'CAMP BEAGLE' £2,000 to assist with a parliamentary petition; invited members to speak at a staff training day; and invited members to a flagship store to promote the campaign. Emails from Lush are in evidence, informing 'CAMP BEAGLE' of Lush's £2,000 donation and inviting 'CAMP BEAGLE' to deliver a talk at a staff training event.[21] However, these emails are dated 27 April 2023 and 10 October 2023. There are also 'Camp Beagle' Facebook posts about the staff training talk and a stall at a Lush store in Birmingham, though they are not dated.[22]

31. Mr Sanger says that he runs, maintains and updates the thecampbeagle.com website. He also processes merchandise orders and donations received through the website. According to Mr Sanger, since he took over running the website on 6

[18] Exhibit MI4
[19] Exhibit MI8
[20] Exhibit MI9
[21] Exhibit MariaI1
[22] Exhibit MariaI1

September 2022, it has appeared as the top Google search result for “Camp Beagle” and “MBR Acres”. In addition to the website, Mr Sanger says that he is responsible for the financial accounting, producing monthly accounts and paying cash into the bank account. A treasurer’s bank account was opened and its first deposit from a donor (£1,000) was made on 8 September 2022. A letter from Lloyds Bank addressed to ‘FRIENDS OF CB’ has been provided; it is listed as a treasurer’s account and provides a balance as of 30 September 2022, though the details of monies paid in and out are redacted.[23]

32. Ms Charlton does not claim to be a member of ‘CAMP BEAGLE’. She says that, in the summer of 2021, she created a range of printed apparel and merchandise for ‘Free the MBR Beagles’. Production began in September 2021. These products were marketed and sold via the Viva La Vegan website. In October 2021, the merchandise was updated to reflect the name change to ‘CAMP BEAGLE’. She says that the products are labelled as official ‘CAMP BEAGLE’ merchandise, with links to the website. A printout dated 2 November 2021 from thecampbeagle.co.uk, obtained via The Wayback Machine, confirms that official merchandise was by Viva La Vegan; the words ‘Camp Beagle’ in plain font and in the form of the applicant’s mark can be seen on the webpage.[24] Ms Charlton says that all proceeds (less the costs of production, marketing and postage and packaging) were passed to ‘CAMP BEAGLE’ periodically as donations to support the camp and associated campaign (including a payment of £2000 on 2 September 2022). A profit/loss sheet for ‘CAMP BEAGLE’ merchandise for 10 October 2021 to 14 January 2022 shows a profit of around £2,700 for sales of, *inter alia*, beanies, badges and calendars.[25] A profit/loss sheet for 15 January 2022 to 31 August 2022 shows a profit of around £3,000 for sales of, *inter alia*, t-shirts, hoodies, sweatshirts, beanies, patches and badges.[26]

33. Mr Green is another individual who does not claim to be a member of ‘CAMP BEAGLE’. Rather, he explains that Scarlett the Beagle – who he describes as a survivor of the animal testing industry and a blood relative of the beagles bred at the

[23] Exhibit PS3
[24] Exhibit JC1
[25] Exhibit JC2
[26] Exhibit JC1

facility in question – became an ambassador for 'CAMP BEAGLE' in June 2022. A post from the 'Camp Beagle' Facebook, dated 27 June 2022, about this had over 900 reactions.[27] The post also contains photographs of protestors at the roadside. A photograph of Scarlett with the actor, comedian and writer Ricky Gervais has been provided,[28] which has been labelled as featuring in *K9 Magazine*.

34. For the applicant's part, Ms Hodson does not dispute that there is goodwill associated with the sign 'CAMP BEAGLE'; she states that this was built from the end of June 2021, when the campaign adopted the name. She says that the 'Camp Beagle' name is on placards, leaflets, t-shirts, and other merchandise, as well as on the website and Facebook page. The applicant also says that the camp was the winner at VegFest 2022 for work carried out between September 2021 and 2022.

35. Although goodwill traditionally arises from trading activities, in *Wadlow on the Law of Passing-Off* (6th edition), Professor Christopher Wadlow observed, at paragraph 3-114, that "[…] charities and other non-profit or non-trading organisations such as churches, political parties and interest groups, do depend on the financial contributions of their members and the general public. To that extent, they may be said to have something corresponding sufficiently closely to the goodwill of trading organisations in so far as they are able to attract money (or money's worth) which would otherwise have been kept, spent or bestowed elsewhere". With this in mind, I consider that the applicant's position represents a concession as to the existence of goodwill, or something sufficiently similar. However, she does not comment on the nature or extent of that goodwill. I also note that there is a dispute as to who the rightful owner of that goodwill is.

Who owns the goodwill?

36. I note that the opposition has been brought under the name of "Camp Beagle (Members of the Camp Beagle unincorporated charitable association)". The issue is

[27] Exhibit PG3
[28] Exhibit PG1

whether it was that unincorporated association or the applicant which held any goodwill that had been accrued by the relevant date.

37. In *John Williams and Barbara Williams v Canaries Seaschool SLU ("Club Sail"),* BL O/074/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, provided the following guidance:

> "26. […] I make the general observation that goodwill can be and frequently is built up and acquired by means of economic activities carried out collectively. By using the word 'collectively' I am intending to refer to all of the various ways in which alliances may be formed between and among individuals or corporate bodies in pursuit of shared interests and objectives. It is appropriate in this connection to refer to the following observations in the judgment of the Court of Appeal delivered by Hughes LJ in R v. L(R) and F(J) [2008] EWCA Crim. 1970; [2009] 1 Cr. App. R 16:
>
> > Unincorporated associations
> >
> > 11. There are probably almost as many different types of unincorporated association as there are forms of human activity. This particular one was a club with 900-odd members, substantial land, buildings and other assets, and it had no doubt stood as an entity in every sense except the legal for many years. But the legal description "unincorporated association" applies equally to any collection of individuals linked by agreement into a group. Some may be solid and permanent; others may be fleeting, and/or without assets. A village football team, with no constitution and a casual fluctuating membership, meeting on a Saturday morning on a rented pitch, is an unincorporated association, but so are a number of learned societies with large fixed assets and detailed constitutional structures. So too is a fishing association and a trade union. And a partnership, of which there are hundreds of thousands, some very large indeed, is a particular type of unincorporated association, where the object of the association is the carrying on of business with a view to profit.

12. At common law, an unincorporated association is to be distinguished from a corporation, which has a legal personality separate from those who have formed it, or who manage it or belong to it. The most numerous species of corporation is the limited liability company, but there are of course other types, such as chartered professional associations, local government bodies and indeed bishops. At common law, as the judge succinctly held, an unincorporated association has no legal identity separate from its members. It is simply a group of individuals linked together by contract. By contrast, the corporation, of whatever type, is a legal person separate from the natural persons connected with it.

13. This is an apparently simple legal dichotomy duly learned by every law student in his first year. But its simplicity is deceptive. It conceals a significantly more complicated factual and legal position.

14. As to fact, many unincorporated associations have in reality a substantial existence which is treated by all who deal with them as distinct from the mere sum of those who are for the time being members. Those who have business dealing with an unincorporated partnership of accountants, with hundreds of partners world-wide, do not generally regard themselves as contracting with each partner personally; they look to the partnership as if it were an entity. The same is true of those who have dealings with a learned society, or a trade union, or for that matter with a large established golf club. Frequently, as Lord Phillips of Worth Matravers C.J. pointed out in R. v. W. Stevenson & Sons (a partnership and others) [2008] EWCA Crim. 273; [2008] 2 Cr. App. R. 14 (p.187) (at [23]) third parties will simply not know whether the organisation being dealt with is a company or some form of unincorporated association.

[…]

The judgment in that case related to the operation of the general rule that in any enactment passed after 1889 the word ‘person’ includes ‘a body of persons

corporate or unincorporate' unless the contrary intention appears: Section 5 and Sch. 1, Interpretation Act 1978."

38. It can be seen from the above that unincorporated associations are collectively capable of owning goodwill. As such, it is the members of the association called "Camp Beagle" that have standing and that could jointly hold the goodwill. There is no documentary evidence before me regarding the membership of 'CAMP BEAGLE', such as, for example, contemporaneous constitutions or articles of association. All I have is the narrative evidence from both sides, which gives the impression of an informal and, at times, transient membership. This is best illustrated by the following passage from Mr Curtin's first witness statement:

> "4. I arrived to stay in early July 2021. At first there was little organisation and many people were turning up every day from all over the country. We decided to start regular meetings to take group decisions. During one of these early meetings we as a group agreed to use the name Camp Beagle. The meetings initially were face to face with whoever was at camp, but later changed to zoom so those at home were not excluded. There has never been a sole decision maker or leader; we make decisions as a group. Pauline Hodson (Polly) was one of many people who were there from the start up of camp and might want to refer to themselves as founding members."

39. Save for Ms Charlton, Mr Green and Ms Keith, all the opponent's witnesses claim to be long-term core members of 'CAMP BEAGLE', referencing its founding in July 2021. Although the applicant claims to have founded the camp, she does not dispute that any of the witnesses also joined it and the associated campaign. In fact, in her first witness statement, she confirms that others joined and acknowledges that the opponent's witnesses (or, at least, "the Campaigners who are named in the opposition") attended the site. On the balance of probabilities, it seems to me that initially there was a group of individuals with a common purpose, namely protesting for the closure of the beagle breeding facility. This is evident from the narrative evidence from both parties, as well as some of the documentary evidence, including photographs of Mr Curtin and the applicant at 'CAMP BEAGLE' in July 2021 and on

stage together at Vegan Camp Out in August 2021.[29] As far as I can tell, this group appears to have been made up of some of the opponent's witnesses, the applicant, Ms Wilson, and others not directly involved in these proceedings. Whether or not the applicant was the first one to set up camp outside the facility, in legal terms this would have constituted an unincorporated association operating under the name 'CAMP BEAGLE'. This appears to have largely been the status quo for several months.

40. Although there are contrary narratives of events which then took place, it at least appears to be common ground that a split occurred. The applicant describes a situation whereby she was the (sole) founder of 'CAMP BEAGLE'; others joined and then instigated a hostile takeover, appropriating control of the Facebook page and the website in September 2022. However, the only documentary evidence which the applicant points to regarding the so-called takeover of the Facebook page by the opponent's witnesses is a printout showing insights of its performance between 20 July 2022 and 16 August 2022.[30] The number of followers, or the page's potential reach, does not establish that the account was misappropriated. There is also reference in the evidence to certain accounts being banned from the Facebook and the '.co.uk' website being replaced with the '.com' website.[31] However, it is difficult to follow what this evidence actually shows and this has not been adequately explained. Without more, I do not consider this to be evidence that a hostile takeover took place. Mr and Mrs Ahmed say that the 'CAMP BEAGLE' Facebook page was set up and is owned by Mrs Ahmed. This appears to have been acknowledged by the applicant in a Whatsapp message in a group entitled "Beagle Moving On 2…":[32]

> "Here is an initial LIST of Social Media Owners ! whatever that means ! Please alter and send back and Ill keep on a data base for future alterations. LIST OF SOCIAL MEDIA. OWNER/CONTROLLER ??!!
>
> FACEBOOK: JacQui. […]"

[29] Exhibits JohnC1 and JohnC2
[30] Exhibit PH08
[31] Exhibit PH09
[32] Exhibit FA6

41. The same information can be seen in what appears to be an agenda for a Zoom meeting held on 8 September (no year, but likely to be 2022) in the applicant's evidence.[33] The acknowledgement by the applicant that Mrs Ahmed was the owner of the Facebook page arguably undermines the line of argument that she (amongst others) improperly took over the channel.

42. In any event, I find more support in the evidence for the opponent's position. The opponent's case is that, in February 2022, the applicant left the campaign to set up a separate operation due to differences of opinion and the influence of other organisations (mainly FLOE). In a Facebook post evidenced by the opponent, the applicant herself stated as follows:[34]

> "As a Founder of CAMP BEAGLE I feel I need to explain my Splinter from Camp. So here it is x polly." (my emphasis)

43. The applicant then provided an explanation, which can best be described as a difference in opinion as to how 'CAMP BEAGLE' should proceed after the success of its involvement in the Early Day Motion and parliamentary debates. She says that a vote was held at a meeting, resulting in a "mostly unanimous" vote to turn away from the influence of FLOE. She then said:

> "I was Floored. ! But Not Out – I had No Choice but to Splinter from what I saw as a Ruinous Direction and form another group […] I know it was the right way to go." (my emphasis)

44. The post is dated 15 February. Although no year is visible, the date is consistent with when the opponent's witnesses say the applicant left 'CAMP BEAGLE', i.e. that day in 2022.

45. I also note that, in a Whatsapp conversation on 9 September 2022, the applicant states that "I have a new campaign emerging and They will Not be part of it".[35] I infer

[33] Exhibit PH10
[34] Exhibit FA11 and Exhibit PS1
[35] Exhibit PS2

that here she was referring to the continuing group. Although the evidence is in the form of a transcript (rather than printouts from Whatsapp), the applicant has not challenged the accuracy or veracity of it. Facebook posts by the applicant, albeit after the relevant date (7 November 2022 and 9 November 2022), also refer to other campaigns or groups: "At Operation Liberation outside MBR" and "The Rise of Operation Liberation at MBR. New Life. New Spirit. New Ideas. New Welcomes".[36]

46. On the balance of the evidence, I find that 'CAMP BEAGLE' operated as a collective until February 2022 when the applicant decided to leave. The collective continued to operate under the name 'CAMP BEAGLE' thereafter. For instance, Ms Iriart created a petition on behalf of the campaign in March or April 2022 and, around the same time, Mr Curtin spoke to Anna Webb on behalf of the campaign. In the summer of that year, meetings appear to have taken place and Scarlett the Beagle became the campaign's ambassador. Payments to 'CAMP BEAGLE' for merchandise and spending on promotional materials continued throughout 2022.

47. Later in *Club Sail,* Mr Geoffrey Hobbs QC provided the following explanation as to what happens to the collectively owned goodwill when membership of one or more members of an alliance ceases:

> "27. I consider that the starting point for the purposes of analysis in the present case is the general proposition that the goodwill accrued and accruing to the members of an alliance such as I have described is collectively owned by the members for the time being, subject to the terms of any contractual arrangements between them: Artistic Upholstery Ltd v. Art Forma (Furniture) Ltd [2000] FSR 311 at paragraphs 31 to 40 (Mr. Lawrence Collins Q.C. sitting as a Deputy High Court Judge). When members cease to be members of an ongoing alliance they cease to have any interest in the collectively owned goodwill, again subject to the terms of any contractual arrangements between them; see, for example, Byford v. Oliver (SAXON Trade Mark) [2003] EWHC 295 (Ch); [2003] FSR 39 (Laddie J.); Mary Wilson Enterprises Inc's Trade Mark Application (THE SUPREMES Trade Mark) BL O-478-02 (20 November 2002);

[36] Exhibit CS2

[2003] EMLR 14 (Appointed Person); Dawnay Day & Co Ltd v. Cantor Fitzgerald International [2000] RPC 669 (CA); and note also the observations of Lord Nicholls of Birkenhead in Scandecor Development AB v. Scandecor Marketing AB [2001] UKHL 21; [2002] FSR 7 (HL) at paragraphs [42] to [44]. This allows the collectively owned goodwill to devolve by succession upon continuing members of the alliance down to the point at which the membership falls below two, when 'the last man standing' becomes solely entitled to it in default of any other entitlement in remainder: see, for example, VIPER Trade Mark (BL O-130-09; 13 May 2009) (Appointed Person, Professor Ruth Annand)."

48. What this means in the present case is that, upon leaving the group, the applicant did not take any of the goodwill associated with the 'CAMP BEAGLE' sign with her.

Was the goodwill sufficient?

49. I acknowledge that a small business can protect signs which are distinctive of that business under the law of passing off even though its goodwill and reputation may be small.[37] However, the goodwill must be more than trivial in extent. In *Hart v Relentless Records* [2002] EWHC 1984 (Ch), Jacob J (as he then was) stated that:

"62. In my view the law of passing off does not protect a goodwill of trivial extent. Before trade mark registration was introduced in 1875 there was a right of property created merely by putting a mark into use for a short while. It was an unregistered trade mark right. But the action for its infringement is now barred by s.2(2) of the Trade Marks Act 1994. The provision goes back to the very first registration Act of 1875, s.1. Prior to then you had a property right on which you could sue, once you had put the mark into use. Even then a little time was needed, see per Upjohn L.J. in BALI Trade Mark [1969] R.P.C. 472. The whole point of that case turned on the difference between what was needed to establish a common law trade mark and passing off claim. If a trivial goodwill is enough for the latter, then the difference between the two is vanishingly small.

[37] *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590

> That cannot be the case. It is also noteworthy that before the relevant date of registration of the BALI mark (1938) the BALI mark had been used "but had not acquired any significant reputation" (the trial judge's finding). Again that shows one is looking for more than a minimal reputation."

50. In *Smart Planet Technologies, Inc. v Rajinda Sharma*, BL O/304/20, Mr Thomas Mitcheson QC, as the Appointed Person, reviewed the following authorities about the establishment of goodwill for the purposes of passing off: *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2015] UKSC 31, paragraph 52, *Reckitt & Colman Product v Borden* [1990] RPC 341, HL and *Erven Warnink B.V. v J. Townend & Sons (Hull) Ltd* [1980] R.P.C. 31. After reviewing these authorities, Mr Mitcheson concluded that:

> "[…] a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon."

51. The witnesses of both parties are consistent in their evidence that 'CAMP BEAGLE' (the physical camp and associated campaign) was established in Cambridgeshire at the end of June/the beginning of July 2021. The photographs from Alamy show the existence of the physical camp by 13 July 2021. The witnesses say that regular meetings commenced around this time, whilst a Facebook page was also created. This all demonstrates that the camp had only been in existence for a little over a year by the relevant date. In other words, use of 'CAMP BEAGLE' had not been longstanding.

52. As for the activities conducted, I note that 'CAMP BEAGLE' assisted with getting the FLOE campaign signatures for an Early Day Motion and parliamentary debate prior to the relevant date. 'CAMP BEAGLE' also created a petition of its own, which had over 80,000 signatures at the relevant date. 'CAMP BEAGLE' is also said to have organised demonstrations, outreach events and a 330-mile walk, but there is no supporting evidence of these having been conducted before the relevant date.

Similarly, Mr Curtin is said to do live streams on social media, along with speaking to the media, but there is no evidence of this from before the relevant date. I do note that Mr Curtin did a talk at Vegan Camp Out before the relevant date, in which 'CAMP BEAGLE' was a topic. However, there is no evidence as to how widely this event is known or how many people attended.

53. Further, I note that a website for 'CAMP BEAGLE' has been in operation. However, no printouts of what the website looked like prior to the relevant date are in evidence. Neither are there any visitor numbers. Whilst Mr Sanger says the website appears as the top Google search result, it is my understanding that internet searches use algorithms which become tailored to a user based upon their search history; search results will also vary over time and are dependent upon who is doing the search. As such, I place no weight on this.

54. Mr Ahmed's evidence (both narrative and documentary) suggests that the opponent spent around £8,000 by 14 July 2022 on promotional materials featuring the 'CAMP BEAGLE' name. There is no evidence of the promotional materials, or any information about how many were circulated or where. According to the meeting minutes provided by Ms Iriart, this spend had increased to £15,000 by 26 July 2022, at which time it was stated that 300,000 leaflets had been distributed across the UK. These figures, whilst not insignificant, only represent a small marketing effort. 'CAMP BEAGLE' was also referred to in a local newspaper and featured on an online blog prior to the relevant date, though there is no information as to the readership of the former or visitors of the latter.

55. As for finances, the aforementioned meeting minutes suggest that, as of 26 July 2022, 'CAMP BEAGLE' had received £10,000 from an anonymous donor, £20,000 from a "legacy" and £609 received from regular monthly donors. Mr Sanger's evidence about the bank account suggests that there was another £1,000 donation shortly before the relevant date. The meaning of the reference to a "legacy" donation has not been explained and there is no solid evidence of the donations being received. Even taking this into consideration, the total sum stands at £31,609. Whilst not economically insignificant, this figure seems low.

56. I note the claim that ‘CAMP BEAGLE’ has “tens of thousands” of supporters but there is no supporting evidence of this. I also acknowledge the evidence about celebrity supporters. However, I do not consider this to be demonstrative of a substantial or significant goodwill having been accrued. Whilst Alan Davies may have donated a caravan to the camp, there is no indication as to how many individuals would have been aware of this through reading *The HUNTS Post*, or any explanation of how the donation *per se* would have generated goodwill. Moreover, although Tom Hardy linked the ‘CAMP BEAGLE’ Instagram account in a post, and he is a very famous individual, there is no information as to how many of his purported 9.6million followers saw the post or how many of them are based in the UK. Follower numbers for the ‘CAMP BEAGLE’ Facebook and Instagram pages are provided. However, they are from after the relevant date. Even accepting that some of them were likely to have been following the pages before the relevant date, I cannot ascertain how many of them were based in the UK. Likewise, I acknowledge the Facebook post about Scarlett the Beagle, but this only had around 900 reactions, with no indication given as to how many were from the UK. I also note that Scarlett was photographed with Ricky Gervais, but this does nothing, in and of itself, to establish that ‘CAMP BEAGLE’ had a substantial or significant goodwill.

57. In my view, there is also an issue with the goods and services the opponent relies upon under this ground in the context of the evidence which has been adduced. I remind myself that the opponent claimed use of the sign in relation to *clothing; hats; stickers; badges; fridge magnets; organising charitable fundraising activities and events; crowdfunding events and activities*. From the evidence, the sign appears to have been used as the name of a physical protest camp and associated campaign, and any donations appear to have been made in support of this (such as, for example, maintaining the camp, covering its operating costs and producing leaflets which promote the cause). It appears to be a political campaign, i.e. not a charity. There is no evidence of the opponent using the sign in connection with organising any fundraising or crowdfunding events or activities, and organising demonstrations and petitions cannot be fairly described as the same. Moreover, although there is evidence that clothing and other merchandise was sold by Viva La Vegan, this was to promote and support the campaign itself, i.e. the opponent has not operated a business in respect of these goods.

58. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J stated:

> "27. There is one major problem in assessing a passing of claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent that the enquiry under s.11 of the 1938 Act (see Smith Hayden & Co. Ltd's Application (OVAX) (1946) 63 R.P.C. 97 as qualified by *BALI Trade Mark [1969] R.P.C. 472*). Thus the evidence will include evidence from the trade as to reputation; evidence as to the manner in which the goods are traded or the services supplied; and so on.
>
> 28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur."

59. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J (as he then was) stated that:

> "[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the

application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application."

60. Taking the guidance above and all the evidence into account, it is my view that the evidence is insufficiently solid for the purposes of establishing that any goodwill generated in connection with the 'CAMP BEAGLE' sign was substantial or significant enough at the relevant date to mount a successful claim for passing off. Due to the nature of the evidence and the deficiencies that I have already outlined (including but not limited to the amount of it which is undated, from after the relevant date, not contextualised and/or not corroborated), I cannot conclude with any degree of certainty that sufficient goodwill has been demonstrated. As a result, the opponent's passing off claim cannot proceed.

Conclusion

61. The opponent's claim under section 5(4)(a) is dismissed.

Section 3(6)

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

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

63. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1) ("SkyKick")* [2024] UKSC 36, Lord Kitchin summarised the general principles applicable to bad faith at paragraph 240 as follows:

"(i) […]

(ii) The date for assessing whether an application to register [a] trade mark was made in bad faith is the date the application for registration was made (*Lindt*, para 35).

(iii) Bad faith in this context is an autonomous concept of EU law which must be given a uniform interpretation […], and must be interpreted in the context of Directive 89/104 in the same manner as in the context of Regulation 40/94 ([*Malaysia Dairy Industries Pte Ltd v Ankenaevnet for Patenter og Varemaerker* (C-320/12) EU:C:2013:435 ("*Malaysia Dairy*")], para 29; [*Sky plc v SkyKick UK Ltd* (C-371/18) EU:C:2020:45 ("*Sky CJEU*"), para 73).

(iv) While, in accordance with its usual meaning in everyday language, the concept of bad faith presupposes the presence of a dishonest state of mind or intention, the concept must also be understood in the context of trade mark law, which involves the use of marks in the course of trade. Further, it must have regard to the objectives of the […] law of trade marks, namely the establishment and functioning of […] a system of undistorted competition in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable consumers, without any possibility of confusion, to distinguish those goods or services from those which have a different origin (*Lindt*, para 45; [*Koton Mağazacilik Tekstil Sanayi ve Ticaret AS v European Union Intellectual Property Office (EUIPO)* (C-104/18) EU:C:2019:724 ("*Koton*")], para 45).

(v) Consequently, the objection will be made out where the proprietor made the application for registration, not with the aim of engaging fairly in competition but either (a) with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties; or (b) with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, and in particular the essential function of indicating origin (*Koton*, para 46; *Sky CJEU*, para 75).

(vi) The intention of the applicant is a subjective matter, but it must be capable of being established objectively by the competent administrative or judicial authorities having regard to the objective circumstances of the case ([*Hasbro Inc v EUIPO, Kreativni Dogaaji d.o.o. (intervening)* (Case T-663/19) EU:T:2021:211 ("*Hasbro*")], paras 39 and 40; *Koton*, para 47).

(vii) The burden of proving that an application for a registered mark was made in bad faith lies on the party making the allegation. But where the circumstances of the case may lead to a rebuttal of the presumption of good faith, it is for the proprietor of the mark to explain and provide a plausible explanation of the objectives and commercial logic pursued by the application for registration (*Hasbro*, paras 42 and 43).

(viii) Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all of the factors relevant to the particular case (*Lindt*, para 37).

(ix) The applicant for a trade mark is not required to indicate or to know precisely when the application is filed or examined, the use that will be made of it (*Sky CJEU*, para 76; [*AS v Deutsches Patent-und Markenamt* (C-541/18) EU:C:2019:725], para 22).

(x) Nevertheless, the registration by an applicant of a mark without any intention to use it in relation to the goods and services covered by the registration may constitute bad faith where there is no rationale for the application in the light of the aims referred to in Regulation 40/94 and Directive 89/104 (*Sky CJEU*, para 77).

(xi) Such bad faith may, however, be established only where there are objective, relevant and consistent indicia tending to show that, when the application was filed, the applicant for registration had the intention either of undermining, in a manner inconsistent with honest practices, the interests of third parties, or of obtaining, without targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark (*Sky CJEU*, para 77).

(xii) It follows that the bad faith of the applicant cannot be presumed on the basis of a mere finding that, at the time of filing the application, the applicant had no economic activity corresponding to the goods and services referred to in the application (*Sky CJEU*, para 78).

(xiii) When the absence of an intention to use the mark in accordance with the essential functions of a trade mark concerns only certain goods or services referred to in the application for registration, that constitutes making the application in bad faith only in so far as it relates to those goods or services (*Sky CJEU*, para 81).

(xiv) If, at the end of the day, the court concludes that, despite formal observance of the relevant rules and conditions for obtaining registration, the purpose of the rules has not been achieved, and that there was an intention to take advantage of the rules by creating artificially the conditions laid down for obtaining the registration, this may amount to an abuse sufficient to find that the application was made in bad faith (see, for example, *Hasbro*, para 72).

(xv) Directive 89/104 does not preclude a provision of national law under which an applicant for registration must state that the mark is being used in relation to the goods or services in relation to which it is sought to register the mark, or that the applicant has a bona fide intention that it should be used, provided that infringement of such an obligation cannot constitute a ground for invalidity. It may, however, constitute evidence for the purposes of establishing possible bad faith on the part of the applicant when the application was filed (*Sky CJEU*, paras 86 and 87)."

64. According to *Alexander Trade Mark*, BL O/036/18, the key questions for determination in a claim of bad faith are:

(i) What, in concrete terms, was the objective that the applicant has been accused of pursuing?

(ii) Was that an objective for the purposes of which the contested application could not be properly filed?

(iii) Was it established that the contested application was filed in pursuit of that objective?

65. It is necessary to ascertain what the applicant knew at the relevant date.[38] In these proceedings, that is 13 September 2022. Evidence about subsequent events may be relevant if it casts light backwards on the position at the relevant date.[39]

66. The opponent's pleaded case under this ground is as follows:

> "At the time that the Application was filed on 13 September 2022:
>
> (i) the Opponents had been operating under the sign CAMP BEAGLE in the UK for more than a year and had acquired substantial goodwill as a result of the intense use made of the sign in relation to the work of the association in promoting the campaign and raising funds (e.g. through events, CAMP BEAGLE merchandising etc.) to financially support the association's causes as well as the running costs of the physical camp. The Opponents have a significant number of supporters and have received substantial donations since the camp was set-up.
>
> (ii) the Applicant had been an active participant of the Camp Beagle campaign and left the campaign in February 2022.
>
> (iii) the Applicant set-up a limited company without the permission or knowledge of the Opponents. The Applicant is the director of this company with three other directors who are not members of the Camp Beagle association and are not known to the Opponents. The unauthorised company was created to take over ownership of all the assets and campaign tools including vehicles donated to the camp and the campaign social media accounts.
>
> (iv) the Applicant made false representations to two outgoing members of the Association to have substantial donation funds transferred to the Applicant personally, allegedly on behalf of the unauthorised company.

[38] *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch)
[39] *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited* and others, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).

(v) the domain name thecampbeagle.co.uk as well as access to the official campaign website www.thecampbeagle.co.uk were transferred to the Applicant's name and control, respectively, under similar pretexts.

It is clear that the Applicant filed the Application in her own name to dishonestly present herself as the face of the official Camp Beagle campaign. The dominant and distinctive element of the Application are the words CAMP BEAGLE. By filing the Application, the Applicant's objective was to restrict the Opponent's freedom to use the mark CAMP BEAGLE in the UK and to obtain an unfair advantage over the Opponents.

The filing of a trade mark that is identical or highly similar to the sign used by the Opponents in order to obtain campaign funds destined for the Opponent is indicative of behaviour that falls short of the standards of acceptable commercial behaviour. This is particularly so in the context of charitable goods and services where brand integrity is especially important."

67. In concrete terms, it appears that the objective the applicant is accused of pursuing is applying for her mark after leaving 'CAMP BEAGLE' to dishonestly present herself as the face of the campaign, to block the opponent's use of its sign and to gain an unfair advantage over the opponent. If so proven, this is an objective for which the applicant's mark could not be properly filed.

68. At this juncture, it is worth noting that a large proportion of the evidence and arguments advanced in these proceedings are not strictly relevant to the filing of the applicant's mark, or whether this was done in bad faith. Similarly, many of the issues raised by the parties appear to fall outside the scope of this tribunal and what I must consider. As explained by Lord Kitchin earlier in *SkyKick*:

"152. In seeking to identify the relevant principles, it is necessary to have in mind two fundamental aspects of trade mark law to which I have already referred: first, it is concerned with the use of marks in trade to denote the origin of goods and services. Secondly, the aim of the trade mark regime is to contribute to a system of undistorted competition in which businesses are able

to attract and retain customers by the quality of their goods and services, and for that purpose are able to have registered signs which enable consumers to distinguish the goods and services of one undertaking from those of another. Such a system must also provide an incentive and protection for the investment by a brand owner in the quality and other beneficial aspects of its goods and services, and so allow it to develop a goodwill in its business relating to their sale and supply.

153. Against this background, the essence of the objection that an application to register a mark was made in bad faith may be understood: it is that the motive or intention of the applicant was to engage in conduct that departed from accepted principles of ethical behaviour or honest commercial practices having regard to the purposes of the trade mark system which I have described. Whether the conduct was undertaken with that motive or intention and did indeed depart from such ethical behaviour or honest commercial practices must be assessed having regard to all the objective circumstances of the case: see, for example, *Koton Mağazacilik Tekstil Sanayi ve Ticaret AS v European Union Intellectual Property Office (EUIPO)* (C-104/18) EU:C:2019:724 ("*Koton*"), paras 46 and 47 […]."

69. The opponent's evidence as to the motivations of the applicant in filing the application is extremely limited. However, it is obviously wrong to expect the party bringing the claim to give direct evidence of the motivation of someone else, in this case the applicant.[40]

70. I have already found that 'CAMP BEAGLE' operated as a collective until February 2022 when the applicant decided to leave. I have also found that, although the evidence was not sufficiently solid for the purposes of substantiating a passing off claim, any goodwill accrued through use of the sign 'CAMP BEAGLE' would have been held by that collective (the members of the unincorporated association) at the relevant date. Having previously been a member of the collective, which continued after the applicant left, it is reasonable to assume that the applicant would have been aware of

[40] *Maya Appliances Pvt. Ltd v Prapaharan Sivaratnam*, BL O/0052/25, paragraph 27

the opponent's intentions to carry on using the name 'CAMP BEAGLE'. Intellectual property is a key asset, and the registration of a trademark is a monopoly right. The effect of the applicant having applied for her mark was to exclude all others, including the ongoing collective, from being able to use it. I acknowledge that the applicant's mark is not simply the words 'CAMP BEAGLE'; it is a composite mark. However, the words 'CAMP BEAGLE' remain the dominant and distinctive element of the mark. The other elements of the applicant's mark play a minimal, if any, role in its overall impression, comprising a website address, a campaign slogan and decorative embellishments. The registration of this mark would, in effect, exclude the opponent from continuing its campaign under the name 'CAMP BEAGLE', since it could be used as a legal weapon against the continuing collective. On the balance of probabilities, I find that the opponent has raised a rebuttable presumption of a lack of good faith.

71. The applicant's response, insofar as it is relevant to these proceedings, is brief; it is also light on evidence of what her intentions were with regard to the filing of the trade mark. The applicant's response to the opponent's case under this ground is largely predicated on her belief that she is entitled to register the trade mark because she was the founder of the camp/campaign. I have already discussed and dismissed the applicant's case of her being the rightful owner of the goodwill accrued in relation to the 'CAMP BEAGLE' sign. Aside from this, the only real explanation the applicant has provided is her narrative that she "filed for the Trademark in September 2022 on the advice of a Trademark solicitor to protect our Brand". The applicant clearly feels that it was reasonable to apply for the mark. However, her own feelings about her conduct are not relevant: the assessment is from the perspective of honest people in the relevant trade. As Mr Thomas Mitcheson KC, sitting as the Appointed Person, noted in *Tetra Laval Holdings & Finance SA v Dr William N Johnson*, BL O/0943/23, "subjective intent is not the relevant indicia for judging bad faith. What is important is the objective assessment of the requirements for bad faith as a matter of trade mark law".

72. It is my view that the applicant has failed to provide any legitimate reason why, having chosen to leave the campaign in February 2022, she chose the mark at issue. Even if the applicant feels that she was entitled to register a 'CAMP BEAGLE' trade mark for her own "splinter" campaign, this was, objectively, a departure from accepted

principles of ethical behaviour or honest commercial practices. In choosing a trade mark which features the words 'CAMP BEAGLE' as its dominant and distinctive element, and in failing to adequately explain her rationale for doing so (aside from asserting that it is hers to register), it seems to me that the only obvious reason for the application was to take advantage of the goodwill which had been built up in the name 'CAMP BEAGLE', such as it was, for her own "splinter" campaign and to frustrate the collective's ongoing activities. For what it's worth, I find at least some support for this in the documentary evidence. On 9 September 2022, a few days before the applicant filed the application, she was engaged in a Whatsapp conversation with Ms Wilson and others.[41] The topic of the conversation was whether the new campaign ought to come up with a new name or "keep" 'CAMP BEAGLE'. After suggestions from others, the applicant said, "Camp Beagle Revamped […] I think we should just carry on until they're Squeezed out". This sentiment of 'squeezing out' the members of the collective she had previously been a member of is consistent with the objective intention being to obtain a registration for a mark which the applicant knew the collective had an interest in, with the hopes of it being unable to continue under the 'CAMP BEAGLE' name. In light of all this, I find that the application was filed in bad faith.

Conclusion

73. The opponent's claim under section 3(6) is successful.

Overall outcome

74. The opposition, insofar as it is based upon section 3(6) of the Act, has been successful. Subject to any appeal against my decision, the applicant's mark will be refused.

Costs

75. The opponent has been successful and is entitled to a contribution towards its costs. As a matter of practice, unrepresented parties are asked to complete a costs

[41] Exhibit PS2

proforma if they intend to make a claim for costs. One was filed by the opponent on 16 April 2024. Within the same, the opponent outlined the number of hours spent on these proceedings. There is no right to be awarded the amount claimed. This is subject to an assessment of the reasonableness of the claim. The Tribunal awards costs on a contributory, not compensatory, basis; account must be taken of this when assessing the claim made.

76. I note that, within its costs proforma, the opponent made a request for off-scale costs on the basis of the applicant's conduct in these proceedings. In its written submissions dated 10 January 2024, the applicant's unreasonable conduct was said to comprise (i) making the application in the knowledge that it would be opposed, (ii) filing evidence from an unrelated money claim, (iii) changing arguments throughout the proceedings, (iv) attempting to limit costs by appointing a limited company as her representative, and (v) making untrue statements in her evidence. In its written submissions in lieu of a hearing, the opponent highlighted further "falsehoods" which, it feels, show the applicant's unreasonable conduct.

77. Rule 67 of the Trade Marks Rules 2008 provides:

> "The registrar may, in any proceedings under the Act or these Rules, by order award to any party such costs as the registrar may consider reasonable, and direct how and what parties they are to be paid."

78. Tribunal Practice Notice ("TPN") 4/2007 indicates that the Tribunal has a wide discretion when it comes to the issue of costs, including making awards above or below the published scale where the circumstances warrant it. The TPN stipulates that costs off the scale are available "to deal proportionately with wider breaches of rules, delaying tactics or other unreasonable behaviour". However, unrepresented parties are not awarded costs in line with the scale since they may receive costs in excess of what they have reasonably incurred; unrepresented parties generally incur lower costs because they are not required to pay legal fees. Since the standard position in this case would not be costs 'on the scale', it follows that I will not make an 'off-scale' costs award as such. It remains open to me, however, to award costs to account for the time spent dealing with any unreasonable conduct in these proceedings. I will, therefore,

take the opponent's submissions into account when considering its costs claim, but should say at this juncture that I do not think there is any merit in arguments (i) or (iv). There is no evidence that the applicant filed the application knowing that it would be opposed or that she has attempted to limit or avoid costs by appointing a limited company as her representative.[42]

79. The opponent claims to have spent 37 hours on preparing its Form TM7A and Form TM7 (notice of threatened opposition and notice of opposition, respectively). It has claimed a further six hours for considering the applicant's Form TM8 (notice of defence and counterstatement). Firstly, I do not consider that any time spent on preparing the Form TM7A is recoverable, since it is simply a means by which a party may be notified of another party's intention to oppose their application; that activity does not form part of the proceedings. Moreover, I note that the opponent was represented by Elys IP Limited when the Form TM7 and the applicant's Form TM8 were filed. Therefore, it would not be appropriate to award the opponent costs for any time that it, itself, spent on these activities (if, indeed, there was any). As the opponent was professionally represented at this time, I award costs for this activity based upon the scale published in TPN 2/2016. Considering the nature, relevance and complexity of the forms, I award the opponent the sum of £250 as a contribution towards the costs of these activities.

80. I also note that the opponent has claimed two hours for considering the applicant's Form TM33 (change or appointment of representative). I do not consider any time spent on this activity to be recoverable. Appointing or changing a representative is, of course, related to the administration of the proceedings, but it does not form part of the proceedings. I make no award in respect of it.

81. The opponent has claimed 43 hours in relation to preparing its evidence in chief and the written submissions filed alongside. I consider this to be excessive. Although the opponent filed evidence from 10 witnesses, the evidence was not particularly

[42] It should be noted that appointing the limited company as her representative has had no impact on the applicant's liability for paying costs in any event. A representative in Tribunal proceedings is just that: an entity which administers a claim (or a defence thereto) on behalf of a party in the proceedings. The representative does not take that party's place in the proceedings or become liable for costs.

lengthy and, in some places, quite repetitive. Moreover, some of the evidence was not relevant to the matters to be determined. The written submissions were not lengthy or particularly complex. Taking all of this into account, I find 12 hours to be reasonable.

82. Considering the applicant's evidence in chief is said to have taken 25 hours. The applicant filed two witness statements. Neither was particularly lengthy. As such, I consider the time claimed to be excessive. However, a large proportion of the applicant's evidence was not relevant to these proceedings. For instance, as highlighted by the opponent, most of the applicant's evidence in chief comprised a bundle of documents filed with the courts for a money claim. Despite it not being material to these proceedings, the opponent would have undoubtedly spent time considering it. In addition, the allegations which the opponent claims were manifestly untrue (see point (v) above) were largely not relevant to the proceedings. Regardless of whether the allegations were true or untrue, the opponent still spent time considering and responding to several irrelevant allegations. In the circumstances, I consider 10 hours to be reasonable overall.

83. The opponent claims to have spent 45 hours preparing its evidence and written submissions in reply. I consider this to be excessive. I note that the evidence in reply consisted of a further eight witness statements. However, the evidence was not particularly lengthy and some of it was not relevant to these proceedings. The written submissions were not lengthy or particularly complex. They were also quite repetitive. In light of this, I find 10 hours to be reasonable.

84. An additional four hours are claimed for considering the applicant's letter dated 13 January 2024. I note that this correspondence was filed following the filing of the opponent's evidence in reply. It contained a variety of criticisms of the same, outside of the timetable for doing so. It also included a request for the applicant to file additional evidence. I consider four hours to be excessive for considering the contents of this correspondence and, instead, award one hour. I note that the opponent claims one hour for preparing its response to this correspondence. This stemmed from the applicant alleging that one of the opponent's witnesses (Ms Clark) had not given her real name. This prompted a request by the Tribunal for the opponent to confirm whether that was the case. The opponent then filed a brief witness statement from Ms

Clark confirming her identity. As the time spent on this resulted from an allegation made by the applicant, I consider this claim to be entirely reasonable. I award one hour for this activity.

85. Considering the applicant's additional evidence (both as originally filed and as amended) is said to have taken 8 hours. The official letter dated 2 February 2024 gave the applicant permission to file additional evidence in the form of a video. The applicant then filed additional evidence, which originally included other materials in respect of which permission had not been given. Whilst the applicant's additional evidence was brief, the Tribunal indicated that no other evidence would be admitted into the proceedings, only the applicant's version of the video. Therefore, although it would not have taken the opponent a substantial amount of time to review the evidence, I am content to award four hours. This is to reflect the opponent having to review two versions of the evidence because of the applicant's failure to follow the Tribunal's clear direction.

86. The opponent is said to have spent 37 hours preparing its written submissions in lieu of a hearing. It is true that the written submissions were 27 pages long. Nevertheless, the submissions repeated many of the arguments made previously in the proceedings, and some of the arguments were not relevant to the matters to be determined. I consider four hours to be reasonable.

87. The opponent has claimed £200 in official fees. This is a reasonable claim for the recovery of the fees paid in connection with the filing of its Form TM7.

88. I note that the opponent has also made a claim for payments in the sum of £960 made to Elys IP Limited. Given the contributory approach to costs in proceedings before the Tribunal, it would not be appropriate to compensate the opponent for the total costs of instructing legal representation. Moreover, I have already made an award to cover a contribution to the costs of the activities conducted whilst Elys IP were the opponent's representatives. Any other fees paid to Elys IP are not recoverable as the firm has not been on record since 22 May 2023.

89. In relation to the hours spent on these proceedings, I note that the Litigants in Person (Costs and Expenses) Act 1975 (as amended) sets the minimum level of compensation for litigants in person in court proceedings at £19 per hour. I can see no reason to award anything other than this.

90. Taking all of the above into account, I award the opponent the sum of £1,248, which is calculated as follows:

Preparing a notice of opposition and considering the applicant's counterstatement:	£250
Preparing evidence and submissions and considering the applicant's evidence[43]	£798
Official fees	£200

91. I order Pauline Hodson to pay Camp Beagle (Members of the Camp Beagle unincorporated charitable association) the sum of £1,248. This sum should be paid within 21 days of the expiry of the appeal period, or within 21 days of the final determination of the proceedings if any appeal against this decision is unsuccessful.

Dated this 23rd day of May 2025

James Hopkins
For the Registrar

[43] Calculated on the basis of 42 hours at £19 per hour.