BL O/0404/26

Trade Marks Act 1994

ON APPEAL TO THE APPOINTED PERSON

IN THE MATTER OF
Application for Cancellation No. CA000505447 in respect of Trade Mark Registration No. UK00801396439

AND IN THE MATTER OF
Opposition No. OP000426560 in respect of UK Trade Mark Application No. UK00003634426 for KING PROFESSIONAL

DECISION

INTRODUCTION

1. I shall refer to Twins Special LLC as the "Appellant". It is a US Company incorporated in California. I shall refer to Booster Budo & Fitness, B.V.B.A as the "Respondent". It is a Belgian company. In extracts of the Hearing Officer's decision reproduced below, the Respondent is also referred to as "Booster".

2. The Respondent is the proprietor of UK Trade Mark Registration No. UK00801396439 (the "K King" mark). The Appellant is the proprietor of UK Trade Mark Application No. UK00003634426 for KING PROFESSIONAL (the "King Professional" mark). The K King

mark predated date of filing of the King Professional mark.

3. This is an appeal from the Decision of the Hearing Officer, June Raph (the "Decision"). The Decision relates to the following consolidated opposition and cancellation proceedings:

    a) <u>Cancellation Proceedings</u>: here, the Appellant argued that the K King Mark was applied for in bad faith, contrary to section 3(6) Trade Marks Act 1994 ("TMA"). It also argued that the K King Mark should not have been registered since use of the K King Mark in the course of trade would constitute passing off contrary to section 5(4)(a) TMA. For this aspect of its case the Appellant relied on what it submitted was its goodwill in the UK in the signs "KING PROFESSIONAL", "KING", "KING BOXING EQUIPMENT" and (collectively the **"King Unregistered Signs"**).

    b) <u>Opposition Proceedings:</u> here, the Respondent argued that the application for the King Professional mark should be refused pursuant to section 5(2)(b) TMA. For this purpose, it relied upon its earlier registered K King Mark (i.e. the mark which was subject to the cancellation proceedings).

4. The Hearing Officer rejected the application for cancellation finding that both the bad faith and passing off attacks failed.

5. The Opposition was successful, save that the application for the King Professional mark was permitted to proceed to registration in respect of "*Games, toys and playthings; video game apparatus; decorations for Christmas trees;*".

THE FACTS UNDERLYING DISPUTE

6. The background facts to this dispute are complex. To make this decision easier to follow, it is convenient here to summarise the following matters here (none of which were disputed

on appeal).

7. Twins Special Co. Ltd is a Thai company. It is not a party to these proceedings. It was referred to in the Decision and in submissions as “Twins Thailand”. I shall do likewise. The Appellant and Twins Thailand have been involved in what appears to be a much larger dispute outside these proceedings. The Respondent is not party to that dispute.

8. The Respondent has had commercial dealings with Twins Thailand as a distributor of boxing equipment over a considerable period of time. In consequence of these dealings, in or about 2007/2008, Mr. Vyvey of the Respondent registered two trade marks in Belgium, namely No. 863842 for “Top King Boxing Equipment” and No. 863322 for the following figurative mark:

I shall refer to these marks collectively as the Belgian Trade Marks. Their ownership was later transferred to the Respondent. The figurative mark was also used as the basis of an international registration 963953 which was designated in the EU and USA.

9. In June 2010 the Appellant was formed with the following shareholding:

a) 50%: Twins Thailand;
b) 40%: Christopher and Nicholas Mechling, and
c) 10%: the managing partner of the Respondent, Mr. Pavccnvat Wongprascrtlram.

10. The Appellant’s evidence, not disputed by the Respondent, was that the Appellant was formed as a holding company, and was formed to *“own, hold, license and enforce all trademark and other intellectual property”*.

11. In 2011 the Respondent was asked, it said by Twins Thailand, to assign its rights in the Belgian Marks to the Appellant. Quite what led up to this decision was not explained in the

evidence. The assignment is recorded in a document dated 7 July 2011.

12. Following the 2011 assignment, Twins Thailand and the Respondent continued their commercial relationship. However, it appears that the Respondent had no material contact with the Appellant before the present dispute.

13. On 22 January 2016 a production and distribution agreement was entered into between Twins Thailand and the Respondent. That agreement purported to transfer back to the Respondent rights in various trade mark registrations, including the Belgian Registrations. This agreement makes no reference to the reservation of any rights to the Appellant (or indeed to the Appellant at all).

14. A later document dated 3 November 2016, states that the Respondent and Twins Thailand have agreed that *"the King Pro boxing is 100 percent owned by* [the Respondent]" who *"choose where they make the production of these articles*". The letter reproduces the following King Pro Boxing mark:

15. On 5 January 2018 the Respondent applied to register the K King Mark. The Respondent's position was that it made this application in good faith and with the honest belief that the rights it had disposed of in 2011 had been transferred back in 2016. The Appellant's position was that the Respondent knew, or ought as a matter of commercial practice known, that Twins Thailand could not transfer the rights to the Respondent as (a) these rights had been transferred to the Appellant in 2011 and (b) the Appellant was a separate legal entity from Twins Thailand.

16. On 29 April 2021 the Appellant filed the Trade Mark Application.

THE GROUNDS OF THE APPEAL

17. Grounds 1 and 2 of the Appeal are directed to the cancellation proceedings. Ground 1 of the Appeal relates to the Hearing Officer's finding that the K King Mark was not applied for in bad faith, and Ground 2 relates to the Hearing Officer's finding in relation to goodwill and therefore her finding that the application pursuant to section 5(4)(a) failed. Ground 3 addresses what I should do should in relation to the Hearing Officer's decisions in both the cancellation and opposition proceedings should I have acceded to either Ground 1 and/or Ground 2. The Appellant accepted that if the Decision is not overturned in relation to the application for cancellation, then its appeal in relation to the opposition will also fall away.

18. There is no cross-appeal.

THE APPROACH ON APPEAL

19. There was no dispute as to the principles which guide how I should approach this appeal. These principles are well understood and are discussed in detail in *TT Education Ltd v Pie Corbet Consultancy* O/017/17 at [52], *Axogen v Aviv Scientific* [2022] EWHC 95 (Ch), *Lifestyle Equities v Amazon* [2024] UKSC 8 and *Iconix v Dream Pairs* [2025] UKSC 25. The essence of the approach I should take was pithily summarised by Mr. Thomas Mitcheson KC, sitting as the Appointed Person, in SOCIAL WORK NEWS (O/00/50/24) at [13], as follows:

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

20. I also remind myself of the following (relevant to matters I address later), namely that:

    a. I should not treat a judgment as containing an error of principle simply because it could be better expressed (see *Axogen* at [24(viii)]);

    b. I should assume, absent good reason to the contrary, that the Hearing Officer took into account all of the evidence before her (see *Axogen* at [24 (ix)]), and

    c. it is only in a rare care, such as where a conclusion is one for which there was no evidence in support, which was based on a misunderstanding of the evidence, or which no reasonable judge could have reached, that I should interfere with a finding of primary fact (see *TT Education* at [52(iii)]).

21. Finally, and this is primarily relevant to the question of Bad Faith, I remind myself of the way contested but non-cross-examined evidence is to be weighed (see Geoffrey Hobbs QC in *Williams v Canaries Seaschool SLU (CLUB SAIL Trade Marks)* [2010] RPC 32 [35]-[41]).

GROUND 1: S 3(6) – BAD FAITH

22. A trade mark may not be registered if or to the extent that its application was made in bad faith (see s. 3(6) and 47 TMA).

23. By the end of the appeal the Appellant's arguments on bad faith had boiled down to three alternatives, all relating to the Respondent's state of mind when it applied for the K King mark:

    a. the Respondent knew that the Appellant had relevant prior rights. It knew this because (i) it had assigned the rights of the Belgian Trade Marks (and other related marks) in 2011 and (ii) it knew that the 2016 agreement was a sham because Twins Thailand did not own such rights;

b. the Respondent did not know for sure that the Appellant retained the rights assigned in 2011. However, it suspected that it might have and it nonetheless turned a blind eye to this possibility and pressed on with its application to register, and

c. the Respondent genuinely believed that (i) the 2016 agreement transferred back to it the rights it had disposed of in 2011, and (ii) it was therefore entitled to make its application to register the K King Mark. In this case, the Appellant submitted, the Respondent's honest belief did not matter. It submitted that the facts surrounding the 2011 and 2016 transactions were such that even if the belief was honest, it was not a reasonable belief according to the objective standards of acceptable commercial behaviour and therefore the application was nonetheless made in bad faith.

24. The Respondent did not materially dispute that if it knew that the 2016 agreement was a sham or turned a blind eye to the fact it might have been, then its application was made in bad faith. On this point its submission was that (a) such conclusion was at odds with the Hearing Officer's primary findings of fact and (b) there was no basis to interfere with those findings. The Respondent argued that if the facts were as set out in paragraph 23(c) above then, as a matter of law, there could not be a finding of bad faith.

The Law

25. The question of whether an application has been made in bad faith is an issue that has been traversed in numerous cases both in the UK and in the CJEU. Some of the well-known cases were addressed in the Appellant's skeleton. It is however unfortunate that the skeleton did not engage with the most important prior decision, namely that of the Supreme Court decision in *Skykick*. Nonetheless I was very grateful for the cogent oral submissions from Mr. Stobbs (who appeared for the Appellant) which dealt with the points raised by *Skykick* head on and to Ms. Dixon (who appeared for the Respondent) who ably addressed the issue despite having no warning of what the Appellants submissions on *Skykick* might be. I should note here that the Hearing Officer did address the Court of Appeal's decision in *Skykick*

(*Sky Limited & Ors v Skykick, UK Ltd & Ors [2021] EWCA Civ 1121*) but not that of the Supreme Court (*Sky Limited & Ors v Skykick, UK Ltd & Ors* [2024] UKSC 36) as at the time of her Decision that judgment had not been handed down.

26. For present purposes it is sufficient to refer to the following extract from paragraph 240 of Lord Kitchin's speech in the Supreme Court in *Skykick:*

> *(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 EU law of trade marks, namely the establishment and functioning of the internal market, and 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, para45).*
>
> *(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, 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).*

Analysis

27. I start by noting, and this was not materially challenged by the Appellant, that the Hearing

Officer accurately stated the applicable legal principles. That position is not materially changed by the fact that she did not have the opportunity to refer to the Supreme Court's decision in *Skykick*. The Hearing Officer also stated correctly that it is necessary for a party alleging bad faith to prove, on the balance of probabilities, that the proprietor acted in bad faith.

28. Turning to the facts. Underlying this dispute is a clearly complex relationship between the Appellant, the Respondent and Twins Thailand (as the Hearing Officer alluded to in paragraph 50 of the Decision). That relationship is no more than patchily explained in the evidence.

29. The Hearing Officers key finding, for the purposes of the appeal on her decision on bad faith, is at paragraph 53 of the Decision and states as follows:

53…

> *….Twins Special's submission is that,*
>
>> *"whilst it may have been Booster's belief that a presumed connection between the parties [Twins Special and Twins Thailand] would override the fact that they were separate legal entities, the position must be judged not by what Booster thought it know but what it should have understood based on objective standards of reasonableness".*
>
> *This appears to be speculation about what Booster should have known, not what it did know. Twins Special appears to be saying that Booster showed a lack of curiosity or did not undertake due diligence with a company it had already been dealing with for some years but I do not find that this amounts to a dishonest intention on Booster's part. Moreover in November 2016 Twins Thailand signed an agreement that Booster could have ownership of a new trade mark namely which Mr Vyvey claims to have developed independently. This mark eventually evolved to become the contested registration . It strikes me that the behaviour of Twins Thailand in these matters did not raise concerns, which may have strengthened Booster's belief that there was nothing untoward about their actions.* ***On the basis that Mr Vyvey believed that Twins Thailand had the correct standing to enter into agreements with him and they had knowledge of the first K KING mark and had not objected then it appears that Booster believed it had received a 'green light' to proceed. I do not find that Booster had acted in bad faith.***

30. The Appellant criticised this passage as follows:

At paragraph [53], the Hearing Officer dismissed the Appellant's contention that Booster should have known that Twins Thailand could not assign rights that it did not legally or formally own, saying that "this appears to be speculation about what Booster should have known, not what it did know." However, the Appellant contends that the Hearing Officer's own conclusion appears to be based on what Booster speculated and not what it actually knew. Her concluding sentence refers twice to beliefs on the part of Booster ("on the basis that Mr Vyvey believed that Twins Thailand had the correct standing to enter into agreements with him and they had knowledge of the first K KING mark and had not objected then it appears that Booster believed it had received a 'green light' to proceed.") but she does not address whether or not that belief was a reasonable belief according to the objective standards of acceptable commercial behaviour.

31. In my view this passage does not fairly reflect what the Hearing Officer has done. First, it is clear from her earlier analysis she has concluded what Mr. Vyvey knew was what he was told by Twins Thailand. On that basis, she has then, albeit in short form, accepted Mr. Vyvey's evidence of his personal belief (i.e. what he thought based on what he knew). Finally, she has concluded that given Mr. Vyvey's (and therefore the Respondent's) belief there was no bad faith. As I will discuss below, the question of whether Mr. Vyvey's belief was a reasonable one according to the objective standards of commercial behaviour is:
    a. a relevant factor when deciding whether to accept Mr. Vyvey's evidence, and
    b. irrelevant, once the Hearing Officer had nonetheless concluded that Mr. Vyvey's belief was honestly held.

32. There was no dispute that Mr. Vyvey was told by Twins Thailand that they were the owners of the prior rights.

33. The first question is therefore whether the Hearing Officer was entitled to accept Mr. Vyvey's evidence that he believed what Twins Thailand told him:

    a. there clearly was evidence in support of the proposition. This included a) Mr. Vyvey's written evidence and b) the evidence which explained the prior relationship of the Appellant, Respondent and Twins Thailand. This evidence included that:

a. the King Brand originated with Twins Thailand in the 1980s;
b. there was a very long, and apparently amicable, commercial arrangement of distribution between Twins Thailand and the Respondent. That relationship provided an objective reason for Mr Vyvey (and therefore the Respondent) to believe what Twins Thailand told him. Furthermore, the Appellant did not point to evidence which might have suggested to the Respondent that Twins Thailand was not to be believed;
c. Twins Thailand and its managing partner held a majority share (at least at the point of formation) in the Appellant. Given this, and given that the King Brand originated with Twins Thailand, there was nothing inherently implausible in Twins Thailand holding the rights it purported to transfer;
d. the first of the two 2011 agreements indicated that Twins Thailand told Mr. Vyvey that they could transfer the rights to the Respondent, and
e. the second of the two 2011 agreements is consistent with the first.

34. I therefore disagree with the Appellant' submission that the Hearing Officer made a decision that no reasonable decision-maker could have reached. For the same reasons I reject the submission that Mr. Vyvey may have deliberately turned a Nelsonian blind eye to the question of ownership. There is nothing in the evidence that makes that finding of fact an inevitable one for the decision maker.

35. That brings me to the Appellant's final point – and the one that Mr. Stobbs spent longest on in his oral submission: even if Mr. Vyvey's belief was wholly genuine, the Respondent's acts were still in bad faith because it was not *a reasonable belief according to the objective standards of acceptable commercial behaviour.*

36. This submission amounts to saying the following:

a. the respondent believed that it was entitled to apply for registration;

b. the purpose for which registration was applied was to obtain a mark to protect the Respondent's business, and

c. the application was made with the subjective intention of engaging fairly in competition whilst protecting the Respondent's rights and was not made with the subjective intention of undermining, in a manner inconsistent with honest practices, the interests of third parties, and

d. nonetheless the Respondent's honest belief was so unreasonable it amounted to bad faith.

37. In my view these submissions are clearly wrong in law. This is spelt out in the passage from *Skykick* reproduced above (and in the underlying cases cited in Lord Kitchin's speech. As the CJEU made clear in Hasbro Case T-663/19 *Hasbro, Inc. v EUIPO* (cited and applied by Lord Kitchin in *Skykick*, see paragraphs 62, 63 and 67(4)) bad faith has two constituent parts: (a) a dishonest intention or other sinister motive and (b) conduct which departs from acceptable standards of ethical behaviour or honest commercial practices.

38. In short, bad faith can only exist if the relevant subjective intent exists. If Mr Vyvey genuinely believed that Twins Thailand were telling the truth, then his intention can only have been in good faith (as the interests of third parties, and in particular, the Appellant were not in any material way engaged). Of course it is open to the Appellant to argue, as it did argue, that the respondent's supposed belief was so unreasonable it should not be believed, but that is a different question (and one I have dealt with above).

39. For all these reasons Ground 1 of the Appeal fails.

GROUND 2

40. Ground 2 concerns the Hearing Officer's finding that *"the evidence provided is insufficient to demonstrate that [the Appellant] had anything more than a trivial goodwill in the UK*

at the relevant date" (Decision, per para 40)

41. In its skeleton argument, the Appellant addressed primarily the Hearing Officer's factual analysis of goodwill. However, developing a point raised briefly in its skeleton, the Appellant also suggested that the Hearing Officer had misstated the law by relying upon the decision of Mr. Thomas Mitcheson KC., sitting as the appointed person in, *Smart Planet Technologies, Inc. v Rajinda Sharm* BL O/304/20. Thus:

> *THE APPOINTED PERSON: Can I just stop you there for a second. I just want to make sure I have this correctly. Are you saying that Mr. Mitcheson's decision is wrong or are you saying that she misunderstood it or misapplied it?*
>
> *MR. STOBBS: I think I would probably take both of those points. In so far as Mr. Mitcheson's decision is taken to suggest that there is an additional requirement of significant and substantial in relation to goodwill, then Mr. Mitcheson's decision is wrong.*

42. The relevant paragraph of the Decision, paragraph 34, states as follows:

> *34. In Smart Planet Technologies, Inc. v Rajinda Sharm20 Mr Thomas Mitcheson QC, sitting 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."*

43. I reject the submission that there is any inaccuracy in Mr. Mitcheson's summary. The key point repeated in numerous cases (and spelt out in the extract of the cases Mr. Mitcheson cites in paragraphs 30-33 of his decision) is that there will only be sufficient goodwill if the Court/Tribunal is able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon. That is a point that I find the Hearing Officer had clearly in mind. It is also a question that is both qualitative and highly case specific. Thus,

it is necessary to consider the question of sufficiency/substantiality in the context of the nature of the business in question. This was explained by the Court of Appeal explained by Lloyd LJ in *Lumos Skincare Ltd v Sweet Squared Ltd* [2013] EWCA Civ 590 as follows:

> *The point which emerges clearly from what was said in that case, both by Jacob J and by the Court of Appeal, is that the "substantial number" of people who have been or would be misled by the Defendant's use of the mark, if the Claimant is to succeed, is not to be assessed in absolute numbers, nor is it applied to the public in general. It is a substantial number of the Claimant's actual or potential customers. If those customers, actual or potential, are small in number, because of the nature or extent of the Claimant's business, then the substantial number will also be proportionately small. That is another reason why the judge's reference to the Claimant's share of the overall UK skincare beauty market seems not only inapposite but also potentially misleading.*

44. The Appellant's skeleton stated at paragraph 32 as follows (footnotes removed):

> *It is established case law that actionable goodwill may arise in signs which are distinctive of a business even if the business and the consequent goodwill is small. Stannard v Reay, the "Mr Chippy" case, is the classic case which confirms that a small amount of trading may be sufficient to establish an actionable goodwill. More recently, in the Lumos v Sweet Squared case, which involved providers of cosmetics, although the claimant's number of customers and sales of its anti-aging products were described by the trial judge as "very limited', the court was clear that low market share did not preclude the development of goodwill*

45. I do not disagree. Nor do I think that the findings in those cases are inconsistent with Mr. Mitcheson's summary or the approach of the Hearing Officer. What is clear, as the facts in *Stannard v Reay* [1967] FSR 140 illustrate, is that the question is highly fact specific and linked, as *Lumos* make clear, to the Claimant's customers. In certain circumstances, a very small number of customers may indeed generate a protectable goodwill – but it depends on the facts.

46. In this case the Hearing officer summarised the relevant facts as follows (footnotes removed):

> *38. The relevant market for assessing goodwill is the UK. In its notice of invalidation, Twins Special claimed it had sold KING branded products in the UK since 2011 the relevant date Twins Special had two retail websites namely*

twinsfightgear.com and twinsfight.com. Furthermore at the relevant date Twins Special evidenced four invoices, three dating from 2013 and one from 2014, to UK customers for KING branded goods purchased from the twinsfightgear.com website.22 These invoices were presented in US dollars totalling $368.36 and relate to boxing gloves and hand wraps, which I understand are fabric strips for use in supporting and protecting a boxer's hands and knuckles. No explanation was given as to why the invoices were presented in dollars. In his witness statement Mr Mechling states that goods available at the twinsgloves.com website are priced in pounds sterling23 but unfortunately the screenshot is illegible when trying to view the prices even when the screenshot is increased in scale. Moreover the twinsgloves.com website was only registered in 2021 so was not active at the relevant date. Even so no evidence of any UK sales from that website has been provided. In fact no other turnover figures of any description were presented by Twins Special in evidence. Mr Mechling has stated that potential customers can sign up and create a new account and provided an undated screenshot to that effect but has not given any indication of the number of UK customers who have undertaken such an action.

39. Mr Mechling provided web traffic figures which show 56k UK based visitors clicked into the Twins Special websites between 2013 and 2018, and that the average visit lasted around 2.25 minutes. He states that website visitors had "good exposure" to the Twins Special branded goods and the KING branded goods, but provided no evidence to show what web pages those visitors actually looked at or indeed whether any of them looked at the KING branded goods. Moreover no information was provided as to whether any of the visits resulted in a sale of the relevant goods. The evidence also shows that during the same five year period 213-2018, a sum of $842.90 was spent on Google advertising but no other advertising expenditure was set out and no other examples of non-Google advertising were demonstrated.

40. Taking all of this evidence into account I do not find that Twins Special has been able to provide sufficient evidence to establish a protectable goodwill. The four invoices that were provided dated from 2013 and 2014, so some four years before the relevant date. No evidence was provided to show any sales from other years. This factor coupled with the small turnover and the low volume of goods sold, and using the guidance given in Smart Planet regarding low levels of trade and turnover as well as the size of the boxing/MMA equipment market in comparison to the likely impact of Twins Special's own trade in that market, I find that the evidence provided is insufficient to demonstrate that Twins Special had anything more than a trivial goodwill in the UK at the relevant date.

41. I find that Twins Special has not been able to establish goodwill and therefore has failed at the first hurdle. The case has not been made out under section 5(4)(a)

47. The Appellant submitted that this analysis contained a number of important errors. I shall address these individually and then consider their cumulative effect.

48. The first alleged error relates to the Hearing Officer's referral to the invoices exhibited amounting to a total of $368.36. The appellant submitted, and I agree, this is incorrect. The total amount between the invoices is a little over $600. I do not however regard this error as a particularly important one. It appears, at worst, to be a small oversight, or calculation error, on the part of the Hearing Officer. More importantly, and this is a point to which I will return, the corrected figure is still very small in the context of relevant factual matrix.

49. The second alleged error is the Hearing Officer's statement that no evidence was provided of what web pages the visitors looked at. The Appellant submitted that this was wrong as an exhibit (CM10) showed web traffic figures specifically to twinsfightgear.com. These figures, it was submitted, show that were 55,973 new users and over 75,000 sessions on that website during the period 1 January 2013-15 January 2018.

50. There is no force in this submission. It is plain that the Hearing Officer was not addressing the number of visitors to the website, but the question of what pages (and hence what branding exposure) the visitors received. I therefore reject this criticism.

51. The third alleged error is that there was no evidence of (i) whether any visitors looked at King Branded goods on the Appellant's websites and (ii) whether any of the visits documented in the web traffic report resulted in the sale of any relevant goods. This is said to be incorrect because: "*There were clearly both views of KING-branded goods and sales resulting from some of the visits because the sales invoices for KING goods exhibited at CM9, from the years 2013 and 2014, originated with the same twinsfightergear.com website (as confirmed at paragraph [15] of Mr Mechling's witness statement), which is the website forming the subject of the web traffic report*".

52. Again, there is in my view no force in this submission. As the Hearing Officer made clear in paragraph 39 there was no clear link between the web-traffic evidence she was referred to and specific sales. It is also clear she did not forget about the evidence of sales as she

addresses that point in paragraph 38. I therefore reject this criticism as well.

53. Finally, the Appellant submitted that the Hearing Officer should have concluded, effectively on an inference to be drawn from Mr. Mechling's uncross-examined evidence, that there had been far more than the $600 sales. This is in my view a hopeless point. The Appellant had the opportunity to put in evidence of its use in the UK. That use was purportedly over a considerable period. The Hearing Officer was entitled to weigh Mr. Mechling's evidence, and any inferences to be drawn from it, against the material she was provided to evidence that use (see *Williams v Canaries Seaschool SLU (CLUB SAIL Trade Marks)* [2010] RPC 32). She did so and found that the evidence of use was insufficient. As I have found above there is one mistake in her analysis – namely the value of the sales. It is however, one that in my view can make no difference to her analysis. It amounts to at most to failing to take into account an extra $140 received over a period of c. 5 years. Unsurprisingly, the Appellant's evidence did not show that such a sum was material in the context of size of the boxing/MMA equipment market in comparison to the likely impact of Twins Special's own trade in that market.

CONCLUSION

54. As I have rejected Grounds 1 and 2, I do not need to consider Ground 3. The Appeal is therefore dismissed.

55. I will order that the Appellant pay the Respondent the sum of £1500 as a contribution to its costs of this appeal. That, together with the sum of £2400 previously awarded by the Hearing Officer shall be paid by the Appellant to the Respondent within 21 days of the date of this decision.

Geoffrey Pritchard KC.
The Appointed Person
11 May 2026