

BL O/0432/24

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NUMBER 3,876,291 MADE BY
NEWS HUB LIMITED

IN THE MATTER OF AN APPEAL FROM THE DECISION OF MELANIE OLIVER
(O/1068/23) DATED 9 NOVEMBER

DECISION

Introduction

1. This is an appeal from the decision of Melanie Oliver (O/1068/23) dated 9 November 2023 where she upheld the examiner’s objection under section 3(1)(b) and (c) of the Trade Marks Act 1994 in relation to an application by News Hub Limited to register the following trade mark (No 3,876,291) in relation to “Publishing and Online Publishing; News Reporting” in Class 41:



Standard of appeal

2. The standard of appeal is by way of review. Neither surprise at a Hearing Officer’s conclusion nor a belief that the Hearing Officer has reached the wrong decision will suffice to justify interference in this sort of appeal. Before that is warranted, it is necessary for me to be satisfied that there was a distinct and material error of principle in the decision in question or that the Hearing Officer’s findings were rationally insupportable. The principles to be applied were summarised by Joanna Smith J in *Axogen Corporation v Aviv Scientific Ltd* [2022] EWHC 95 (Ch), [24] and in relation to findings of fact this should now be read in light of the summary of Arnold LJ in *Lidl Great Britain Ltd v Tesco Stores Ltd* [2024] EWCA Civ 262, [110] and in terms of evaluative decisions the Supreme Court’s recent guidance in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8, [49].

3. When considering this appeal, and applying these principles, it is important to remember the high bar set.

Grounds of appeal

4. The Appellant raised three grounds of appeal. The first and main ground of appeal is that the definition of “hub” adopted by the Hearing Office is rationally insupportable. The second ground of appeal was that the graphical element of the sign was not considered properly. The third ground was based on the registry failing to consider state of the register evidence in relation to marks containing the word “Hub”.

The definition of HUB

5. The Hearing Officer referred to the *Oxford English Dictionary* for the meaning of NEWS and HUB and then held at Decision, [28]:

In my view, the combination of these words merely results in a descriptive whole that will be understood as meaning a general hub (centre) relating to all things connected with news...

6. This finding was challenged by Mr Syed, for the Appellant, on the grounds it was rationally insupportable.
7. First, he submits that there is “no such thing” as a news hub and the sign is not in general use by the public. Even if this submission were correct this is not sufficient to overcome an objection under section 3(1)(c). As the Court of Justice made clear in *C-108/97 Windsurfing Chiemsee* [1999] ECR I-2779, [31], an objection under section 3(1)(c) can be made out where it is reasonable to assume that the sign may be seen as descriptive *in the future*.
8. Secondly, Mr Syed goes on to submit that a “hub”, as a centre of something, must be part of a whole. He says the Hearing Officer wrongly considered that a “hub” must have a physical location, area or “centre” which is significant for a particular activity.
9. Turning to the second limb first, the Hearing Officer never said in her decision that the hub must have a “physical” location. There is, therefore, no basis for this submission whatsoever. There were, of course, physical hubs for the claimed services. Fleet Street was for many years the physical centre or “hub” of the British newspapers industry and in an earlier time Paternoster Row was seen as such for the publishing industry. However, the industries have moved away from these locations. But this is immaterial as I do not agree a “hub” must represent a physical place and I see no reason to conclude that this was the basis of the Hearing Officer’s decision.
10. It is easy to imagine news websites being described as hubs for news. This might be the case where these websites are writing their own stories or aggregating news stories from other sources. This bringing together of stories from various sources to one place seems to me to be a normal use of the words “news hub”.

11. The “part of the whole” argument also does not really help Mr Syed. Any news reporting involves the editorial selection of information from all the things that happened over a day (or longer period). The selection of “part” of the news from “all” of the news that could be reported.
12. For completeness, Mr Syed submits that news aggregation was not claimed. But I see no reason why simple news aggregation would not be included in news reporting and (at least) online publishing. And as I mentioned above, all news reporting involves some form of aggregation.
13. Finally, Mr Syed referred to the inclusion of the word “THE” before “NEWS HUB” and submits that this makes the sign more distinctive. I entirely agree with the Hearing Officer that the inclusion of the definite article adds no distinctive character to the mark.
14. In conclusion, I think the factual finding as to the meaning of the words NEWS HUB reached by the Hearing Officer was entirely reasonable. From this factual finding, the objection under section 3(1)(c) was almost inevitable. I therefore reject this ground of appeal.

Stylisation

15. The second ground appeal was that the Hearing Officer failed to consider properly the blue lines above and below the words THE NEWS HUB. The Hearing Officer concluded, and I agree, that these blue lines have little visual impact or distinctive character (Decision, [34]). Accordingly, it is my view the Hearing Officer was right to suggest the words THE NEWS HUB speaks “loud and clear” within the sign and the blue lines do not sufficiently divert away from the words to make the sign distinctive (Decision, [36]).
16. The stylisation is not, therefore, sufficient to bring distinctiveness to the descriptive words “THE NEWS HUB”. I therefore reject the second ground of appeal as well.

State of the register evidence

17. The final ground of appeal was one based on what is commonly called “state of the register” evidence, namely the Appellant puts forward a list of marks including “hub” which are on the register and submits that this suggests the mark THE NEWS HUB is not descriptive.
18. While “state of the register” evidence is admissible it is also the case that it is usually both “irrelevant” to what is being considered by the tribunal (*BREXIT* (O/262/18 at [10]; *British Sugar plc v James Robertson & Sons Ltd* [1996] RPC 281 at 305) and “worthless” in terms of evidential weight: *Lifestyle Equities CV v Royal County of Berkshire Polo Club Ltd* [2022] EWHC 1244 (Ch).
19. The Hearing Officer considered the state of the register evidence but did not give it any weight: Decision, [12 and 13]. This approach was entirely appropriate. I therefore reject the third ground of appeal.

Conclusion

20. For these reasons, I reject the appeal in its entirety and uphold the Hearing Officers decision. The mark is therefore rejected in relation to “Publishing and Online Publishing; News Reporting” in Class 41.

PHILLIP JOHNSON
THE APPOINTED PERSON
10 May 2024

For the Appellant: Kashif Syed of Beck Greener.