O/0782/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK NO. UK00003481775
REGISTERED IN THE NAME OF GOLF BRANDS IP LIMITED
IN RESPECT OF THE FOLLOWING TRADE MARK:

lightning

IN CLASS 28

AND

THE LATE FILING OF FORM TM8(N)
FILED IN DEFENCE OF THAT REGISTRATION
IN REVOCATION PROCEEDINGS UNDER NO. 509805
BY PARSONS XTREME GOLF, LLC

Background

1. This decision follows the procedural hearing that took place before me via telephone conference, on 14 August 2026, in order to consider the implications of GOLF BRANDS IP LIMITED's ("the Proprietor") Form TM8(N) having been filed late in these proceedings.

2. The procedural hearing was attended by Mr Josh Little of Bird & Bird LLP, on behalf of Parsons Xtreme Golf, LLC ("the Applicant"). The Proprietor elected not to attend the hearing but filed written submissions in lieu of the same on 11 August 2026. The Applicant filed a skeleton argument in advance of the hearing.

3. On 16 April 2020 the Proprietor applied to register the trade mark shown on the cover page of this decision, in the UK. It was registered on 11 August 2020 in respect of goods in class 28.

4. At the point of registration, the contested mark stood in the name of 'Kevin Woolgar' ("Mr Woolgar"). However, ownership of the mark was assigned to 'GOLF BRANDS IP LIMITED' ("the Proprietor") on 09 March 2026. This change in ownership was recorded on the Register on 20 March 2026.

5. On 04 December 2025, the Applicant applied to have the registration revoked in full, under sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 ("the Act").

6. On 22 December 2025, the Tribunal served the Form TM26(N) on Mr Woolgar, by both post (via Royal Mail's "Signed for" service) and by email. In accordance with Rule 38(6) of the Trade Mark Rules 2008 ("the Rules"), Mr Woolgar was informed that he had two months from the date of the official letter in which to file his Form TM8(N) and counterstatement.

7. The result of the letter from the Tribunal was that the deadline for the proprietor to file its counterstatement stood as 23 February 2026. However, Mr Woolgar, who was unrepresented, did not file a Form TM8(N) by the prescribed deadline.

8. On the 08 March 2026, the Tribunal sent an official letter advising both parties of its preliminary view to treat Mr Woolgar as not opposing the application for revocation and to revoke the registration. If either party disagreed with the preliminary view, it was to provide full written reasons and request a hearing by 23 March 2026.

9. On 09 March 2026, a Form TM16 was filed, assigning ownership of the mark to the now Proprietor 'GOLF BRANDS IP LIMITED'. This change in ownership was recorded on the Register on 20 March 2026. At the same time, Bison River Limited were appointed as representatives for the Proprietor.

10. Additionally, on 20 March 2026, Bird & Bird LLP were appointed as representatives for the Applicant.

11. On 23 March 2026, the Proprietor filed a witness statement in the name of Simon Millington, the founder and director of the Proprietor, GOLF BRANDS IP LIMITED, which was accompanied by three exhibits (SM1 to SM3).[1] In addition, the Proprietor filed a late counterstatement in respect of the revocation proceedings.

12. The witness statement set out the reasons for missing the TM8(N) deadline, the pertinent paragraphs are as follows:

> 10. At the time the cancellation action was filed and notified to the recorded proprietor, Mr Woolgar had already been declared insolvent as referred in paragraph 3 and shown at Exhibit SM1 and his interests on the Registration had vested on the Trustees. The recorded address on all matters pertaining to Mr Woolgar's IP portfolio was that of the Trustees referred in paragraph 3. It is my understanding that the Trustees had not been notified of the cancellation action and were unaware of the existence of any deadline pertaining to such action. Otherwise, such an encumbrance would have been disclosed during negotiations and prior to the assignment of the Registration to my company.
>
> 11. The circumstances surrounding the cancellation action are extremely unusual as Golf Brands has been negotiating since 01 October 2025 with the Trustees to purchase the Registration for a considerable amount with the sole purpose of using the Registration in relation to the products it is registered.
>
> 12. From the above it is shown that there was a failure to receive the cancellation action (Form TM26(N) by the Trustees and this should be considered extenuating circumstances which

[1] A Form TM9R was also filed, however, as this form was not appropriate to the stage of proceedings, the form was refunded. This action was communicated to the parties in the official letter of 13 May 2026.

prevented them to comply with a deadline that they were unaware of. As the new proprietor of the Registration and having only recently been informed of the existence of the cancellation action, I kindly ask the Registrar to exercise its discretion and grant the relief from the sanction and allow a retrospective extension of time to allow me to defend the Registration from the Cancellation. I am therefore attaching the Form TM8 and my counterstatement.

13. In addition, exhibit SM1 contains a copy of a bankruptcy order issued on 15 August 2025, stating that Mr Jacob Beake, of BTG Begbies Traynor (London) LLP was appointed as main Insolvency Practitioner. I note that Mr Millington's witness statement states that Mr Jacob Bake and Mr Gary Shankland were appointed as Insolvency Practitioners ("Trustees") with effect from 26 September 2025.

14. Exhibit SM2 contains a redacted copy of the Deed of Assignment between the Trustees and Golf Brands, dated 06 March 2026.

15. Exhibit SM3 contains a copy of the Form TM16 and official letter of 20 March 2026 confirming that the change of ownership had been recorded by the Registry.

16. On 13 May 2026, having given due consideration to the reasons set out in Mr Millington's witness statement, the Tribunal wrote to the parties informing them of its preliminary view. The pertinent paragraphs of the letter are as follows:[2]

"**I acknowledge receipt of the Form TM8N** and the Witness Statement with Exhibits filed on 23 March 2026 explaining why the TM8N was filed late.

I also note that the parties have filed a TM9R **and late TM8N** with the appropriate witness statement setting out the reasons for the TM8N being filed outside of the period. I note that the new registered proprietor has set out that they were not aware of the ongoing cancellation proceedings when in the process of obtaining the rights to the trademark registration.

[2] The official letter also requested the Proprietor provided undertakings, namely (1) that they have had sight of any forms filed, (2) stand by the statements made in the counterstatement and confirm that where the name of the original holder appears, this should be read as though it is made in their name and (3) are aware of and accept the liability for costs for the whole proceedings in the event that the cancellation action is successful. The Proprietor confirmed undertakings in their letter of 27 May 2026.

In light of the information provided in the Witness Statement, **it is the Tribunal's preliminary view to accept the late filed Form TM8N** and counterstatement into the proceedings.

If either party disagrees with the preliminary view, they should provide full written arguments against the preliminary view and request a hearing on or before **27 May 2026**." (emphasis added)

17. As neither party requested a hearing by the prescribed deadline, the Tribunal's preliminary view was confirmed.

18. However, on 24 June 2026 an official letter from the Tribunal advised the parties that upon a review of the documents filed by the Proprietor on 23 March 2026, it was noticed that although the Proprietor had filed a counterstatement and witness statement, they had omitted to include a Form TM8(N). The Proprietor was therefore directed to file the missing Form TM8(N) by 15 July 2026.

19. On 24 June 2026, following receipt of the Tribunal's letter, the Proprietor promptly filed its Form TM8(N), stating that it had been omitted in error from its correspondence of 23 March 2026.

20. Following this, in an email of 30 June 2026, the Applicant objected to the Form TM8(N) being admitted into proceedings. On 01 July 2026 the Proprietor filed comments in reply.

21. In the official letter of 14 July 2026, the Tribunal noted both parties' comments and after due consideration gave a preliminary view to admit the Form TM8(N) filed on 24 June 2026 into proceedings. The parties were permitted until 28 July 2026 to request a hearing if they disagreed. The Applicant subsequently requested a hearing on 28 July 2026.

22. A hearing was appointed for 14 August 2026, the details of which were sent by the Tribunal to both parties in an official letter dated 29 July 2026.

The hearing

23. As stated above, prior to the hearing the Applicant filed its skeleton argument.

24. Whilst they have been carefully considered, I will not reproduce the entirety of the submissions that were made but will highlight those which are pertinent.

25. The Proprietor’s submissions in lieu can be summarised as follows:

- The Form TM8(N) was omitted due to human error.
- The fact that a Form TM8(N) was inadvertently missed when the documents were scanned and sent to the UK IPO cannot be construed as it having no intention to defend its newly acquired trade mark.
- The Proprietor filed a substantive defence on 23 March 2026. While the Form TM8(N) was omitted, there is no detail regarding how this affects the substance of the case, as the counterstatement filed addressed the cancellation action.

26. At the hearing, I clarified that its purpose was to consider whether the Proprietor’s Form TM8(N) should be admitted into the proceedings.

27. During the hearing, Mr Little reiterated the points raised in his skeleton argument which can be summarised as follows:

- The behaviour of the original proprietor and the new proprietor has been unreasonable throughout these proceedings and does not justify the leniency that has been shown by the office.
- As the new proprietor was able to file a witness statement and exhibits, plus a form TM9R on 23 March 2026, they must have been aware of the cancellation action prior to this date.
- The Registrar is only entitled to exercise discretion in allowing a late filed defence if there are extenuating circumstances sufficient to justify the

exercise of this discretion. Human error is not a sufficient reason to exercise discretion.

- The prejudice to the Applicant is real and ongoing, with more than six months having elapsed since the revocation proceedings were filed.

28. In response, I asked the Applicant to expand on why they considered that the Proprietor's behaviour during the proceedings had been unacceptable. The Applicant confirmed that it was based on continued missed deadlines by the Proprietor.

29. In this regard, I note that the Proprietor submits[3] that they complied with all the Tribunal's stipulated deadlines since being recorded as the new proprietor of the contested mark.[4] In response, Mr Little submitted at the hearing that although by the wording of the letters the Proprietor may have complied with the directions given, however, it is necessary to take a step back and look at the proceedings as a whole.

30. In response, I asked Mr Little why the Applicant was raising an objection at this stage, considering that no objection had been filed to the Tribunal's original preliminary view, dated 13 May 2026. Mr Little advised that the Applicant was unable to consent to the late filing of a form which was not filed, adding that it was not the job of the Applicant to check whether the other party had filed everything they claimed to have filed. In this regard, Mr Little made no suggestion that the Applicant sought to retrospectively challenge the admittance of the Proprietor's documents received on 23 March 2026, which were subject to the prior preliminary view.

31. At the conclusion of the hearing, I reserved my decision to give me an opportunity to properly reflect on the submissions put forward by the parties and all the circumstances of the case.

[3] Submissions in lieu of a hearing, filed on 11 August 2026.
[4] Submissions in lieu, page 1.

Decision

32. The filing of the Form TM8(N) and counterstatement in revocation proceedings is governed by Rule 38 of the Trade Mark Rules 2008 ("the Rules"). The applicable parts to these proceedings are:

"38. -(3) The proprietor shall, within two months of the date on which he was sent a copy of Form TM26(N) by the registrar, file a Form TM8(N), which shall include a counter-statement.

(4) Where the proprietor fails to file evidence of use of the mark or evidence supporting the reasons for non-use of the mark within the period specified in paragraph (3) above the registrar shall specify a further period of not less than two months within which the evidence shall be filed.

(6) Where the proprietor fails to file a Form TM8(N) within the period specified in paragraph (3) the registration of the mark shall, unless the registrar directs otherwise, be revoked."

33. Additionally, the combined effect of Rules 77(1), 77(5) and Schedule 1 of the Rules mean that the time limit in Rule 38, which sets the period in which the defence must be filed, is non-extensible other than in the circumstances identified in Rule 77(5) which states:

"A time limit listed in Schedule 1 (whether it has already expired or not) may be extended under paragraph (1) if, and only if—

(a) the irregularity or prospective irregularity is attributable, wholly or in part, to a default, omission or other error by the registrar, the Office or the International Bureau; and

(b) it appears to the registrar that the irregularity should be rectified."

34. As previously stated, the reason for the initial late filing of the Proprietor's Form TM8(N) was set out in Mr Millington's witness statement, and there was no suggestion that the late filing of the Form TM8(N) and counterstatement was originally due to an irregularity, default, omission or other error on the part of, inter alia, the Tribunal. Consequently, the only basis on which the proprietor may be allowed to defend the revocation proceedings is if I exercise in its favour the discretion afforded to me by Rule 38(6).

35. In approaching the exercise of discretion in these circumstances, I consider the decisions of the Appointed Person in *Kickz AG v Wicked Vision Limited ("Kickz")*[5] and *Mark James Holland v Mercury Wealth Management Limited ("Mercury")*[6] i.e. I must be satisfied that there are extenuating circumstances which justify the exercise of the discretion in the proprietor's favour.

36. In *Music Choice*, the Court indicated that a consideration of the following factors (underlined below) is likely to be of assistance in reaching a conclusion as to whether or not discretion should be exercised in favour of a party in default. That is the approach I intend to adopt, referring to the parties' submissions to the extent that I consider it necessary.

<u>The circumstances relating to the missing of the deadline including reasons why it was missed and the extent to which it was missed</u>

37. As outlined above, the filing of a late defence in these proceedings was subject to the preliminary view issued on 13 May 2026. This preliminary view was to admit the late defence filed on 23 March 2026 into proceedings. This decision was not challenged by either party, nor did the Applicant seek to retrospectively challenge this preliminary view at the hearing.

38. Consequently, as the initial preliminary view was not challenged by the prescribed deadline, I consider it confirmed. The Proprietor's unchallenged counterstatement filed on 23 March 2026 has already been admitted into proceedings.

[5] BL/O/035/11
[6] BL/O/050/12

39. This decision therefore only concerns whether the late Form TM8(N), filed on 24 June 2026, may be admitted into proceedings, keeping in mind that this form was originally omitted in error by the Proprietor when it filed its counterstatement and witness statement by the stipulated deadline. Further, it is also important to recall that on receipt of the Proprietor's counterstatement, the Tribunal had not noticed that the Form TM8(N) was missing, but instead, in an official letter to the parties, dated 13 May 2026, confirmed receipt of the Proprietor's Form TM8(N), counterstatement and witness statement. It was only later in the proceedings that the Tribunal noticed that the Form TM8(N) was missing, prompting the Tribunal to issue an official letter, dated 24 June 2026, notifying the parties of the missing form.

40. It is noted that on receipt of this letter, the Proprietor immediately submitted the missing Form TM8(N), on 24 June 2026, and apologised for the error, submitting that it was due to a scanning mistake and was purely human error. Whilst they acknowledge the Form TM8(N) was lost in the transmission of the papers, they submit that the counterstatement filed on 23 March 2026 addressed the cancellation action.

41. I note that the counterstatement filed on 23 March 2026 included the following information:
    - Application number
    - Cancellation number
    - Name of Registered Proprietor
    - A denial of the Applicant's claims
    - A statement that the registration was put to genuine use and that evidence of such use will be provided within a further period specified by the Registrar in accordance with Rule 38(4) of the Trade Marks Rules 2008.

42. The Applicant submitted at the hearing that ‘the new proprietor’s deadline under Rule 38(3) to file its Form TM8(N) was no later than 23 May 2026’.[7] However, this deadline was neither prescribed to the parties nor directed by the Tribunal.

The nature of the Cancellation Applicant’s allegations in its statement of grounds

43. The revocation action at hand (proceedings number CA000509805) has been brought under section 46(1)(a) and 46(1)(b) of the Act, in respect of the Proprietor’s trade mark number UK00003481775, on the basis of non-use. Whilst it is not for me to determine the merits of the case at present, there is nothing to suggest that the revocation action is without merit.

The consequences of treating the registered proprietor as defending or not defending the revocation

44. If the Proprietor is permitted to defend the revocation application, the proceedings will continue. Ordinarily, the Proprietor would be provided a period within which to file evidence, however, I note the Applicant requests that, in the event that the Registry decides to admit the Form TM8(N), the Proprietor should not be permitted any further period in which to file its evidence. I will return to this point later in this decision.

45. If the defence is not admitted into the proceedings, the registration will be revoked in full to the earliest effective date.

Any prejudice caused to the Cancellation Applicant by the delay

46. The Applicant has identified that the revocation proceedings were commenced over six months ago, and that the continued delay has caused prejudice to them. However, the Applicant has not identified what prejudice has resulted specifically from the delay in receiving the Proprietor’s defence.

[7] Applicant’s skeleton argument, paragraph 19.

47. As previously stated, upon a review of the file, I note that the Tribunal's letter of 13 May 2026 erroneously acknowledged receipt of the Form TM8(N), despite the form not being filed. The Proprietor's filing of 23 March 2026 contained a counterstatement and witness statement, and the covering email referred to a Form TM8(N), despite it not being attached. However, I must consider that the subsequent delay caused by the omission of this form was, at least in part, a result of the Tribunal acknowledging that the form had been filed when in fact, it had not been received.

48. As set out earlier in this decision, once requested, the Proprietor filed a copy of the Form TM8(N) on the same day. I am therefore unable to identify any prejudice caused to the Applicant beyond the delay between 23 February 2026 and 23 March 2026 which had already occurred, and was subject to the earlier, unchallenged preliminary view.

Any other relevant considerations such as the existence of related proceedings between the parties

49. There are no other relevant considerations.

Conclusion

50. In reaching my decision, I take account of the circumstances that caused the late filing of the Form TM8(N). I consider that if discretion is not exercised in the Proprietor's favour, the cancellation action will automatically succeed, and the Proprietor's mark will be revoked, removing it from the register. Whilst I acknowledge that there are always consequences as a result of a failure to comply with a non-extendible deadline, I consider that the prejudice to the Proprietor of refusing to admit the Form TM8(N) would be vastly disproportionate to any prejudice caused to the Applicant by the late filing of the said Form.

51. I acknowledge that the requirement to file a Form TM8(N) is subject to a strict, non-extendible deadline and that a failure to comply will not ordinarily be excused. However, this is not a case of complete inaction. While I appreciate that the

Tribunal has already afforded leniency to the Proprietor in admitting into proceedings their late counterstatement filed on 23 March 2026, I consider it clear from the filing of this counterstatement that a genuine attempt to defend proceedings was made by the Proprietor.

52. The Applicant submits that it took the Proprietor over a month after being recorded as the Proprietor to file its Form TM8(N), however, as previously stated, the Tribunal did not notify the Proprietor that the form had been omitted until 24 June 2026. I note that the Proprietor acted swiftly in filing its Form TM8(N) when notified by the Tribunal that it had not been received.

53. Further, I consider that the Proprietor's counterstatement, filed on 23 March 2026, contained all of the information necessary to allow the Applicant and the Tribunal to understand that the Proprietor sought to defend the claim, and the basis for that defence. Although human error of itself is not ordinarily sufficient to justify the late filing of a defence, I bear in mind that a counterstatement had already been filed and admitted into proceedings; that the Tribunal had incorrectly notified the parties that the Form TM8(N) had been received when in actual fact it had not been filed; the Proprietor's prompt filing of its Form TM8(N) when made aware of its omission by the Tribunal; and the absence of any identified substantive prejudice.

54. Accordingly, having given full consideration to the above, I am satisfied that the Tribunal should exercise its discretion under Rule 38 to direct otherwise and admit the late-filed Form TM8(N). Consequently, I am of the view that, in such circumstances, the Form TM8(N) filed on 24 June 2026 shall be admitted into the proceedings.

<u>Evidence</u>

55. As set out in paragraph 44, the Applicant submitted at the hearing that, in the event that the Registry decides to admit the Form TM8(N), the Proprietor should not be permitted any further period in which to file its evidence, on the basis that the

Proprietor's evidence should have been filed by 23 July 2026 and as such the deadline for filing its evidence of use has now expired.[8]

56. In this regard, while the Proprietor could have filed its evidence with its Form TM8(N), it is not obliged to do so. In such circumstances, under Rule 38(4) the Tribunal will specify a further period of not less than two months for the Proprietor to file its evidence. However, due to the issues regarding the admittance of the Proprietor's Form TM8(N), no such evidence period has formally been set in these proceedings.

57. Accordingly, in view of the above, I consider that it would be procedurally unfair to deprive the Proprietor of a further period to file evidence where the Tribunal has not yet formally set a prescribed deadline, keeping in mind that proceedings have been paused by the Applicant's challenge to the admittance of the Form TM8(N).

Conclusion

58. The Proprietor's Form TM8(N) filed on 24 June 2026, will be admitted into the proceedings and assessed accordingly. Provided no anomalies are identified, it will be formally served upon the Applicant, and the revocation action will proceed and a timetable will be set for the filing of evidence.

Costs

59. Costs will be determined at the conclusion of the substantive proceedings.

Dated this 27th day of August 2026

Emma Rees

For the Registrar

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[8] Applicant's skeleton argument, paragraph 27 and 33.