

**O/0911/25**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3992760**

**BY**

**IDEAL 365 LTD**

**TO REGISTER THE FOLLOWING TRADE MARK IN CLASS 16:**



**AND OPPOSITION THERETO UNDER NO. 446105**

**BY**

**GLOBAL TRADING UK LIMITED**

## BACKGROUND AND PLEADINGS

1. On 18 December 2023, Ideal 365 Ltd (“the applicant”) applied to register the trade mark shown on the cover page of this decision (“the contested mark”) in the UK. The application was published for opposition purposes on 12 January 2024. Registration was initially sought for goods in classes 3 and 16. However, on 29 February 2024, the applicant filed a form TM21B requesting the removal of class 3 from its application, resulting in registration being sought in relation to its class 16 goods only.<sup>1</sup>

2. On 29 February 2024, Global Trading UK Limited (“the opponent”) filed a notice of opposition. The opposition was initially brought under sections 5(1) and 3(6) of the Trade Marks Act 1994 (“the Act”),<sup>2</sup> and was directed at all of the goods in the application. However, as the opponent failed to file evidence in support of the section 3(6) ground, this ground was deemed withdrawn, in accordance with 20(3) of the Trade Mark Rules 2008.<sup>3</sup> Under section 5(1), the opponent relies upon the following UK trade mark (“UKTM”):



UKTM no. 4065402 (“the earlier mark”)

Filing date: 31 August 2023; Registration date: 28 June 2024;

Registered for goods and services in classes 8, 9, 16, 20, 21, 25 and 35;

For the purpose of this opposition the opponent relies upon all its class 16 goods.<sup>4</sup>

3. The opponent claims that the marks and goods at issue are identical. The applicant filed a defence and counterstatement admitting identity between the marks and the goods. However, the applicant submits that they are the creators of the trade mark

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<sup>1</sup> See the goods comparison.

<sup>2</sup> 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. See also Tribunal Practice Notice (“TPN”) 2/2020 End of Transition Period – impact on tribunal proceedings.

<sup>3</sup> Official letter of 17 October 2024.

<sup>4</sup> See the goods comparison.

and provided it to the opponent in order for them to manufacture products bearing the trade mark. I will address this matter as a preliminary issue below.

4. The opponent's mark qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application date for the contested mark, it is not subject to the use provisions contained in section 6A of the Act. Consequently, the opponent may rely upon all the goods for which the earlier mark is registered without having to establish genuine use.

5. Neither party filed evidence. No hearing was requested, and only the opponent filed submissions in lieu of a hearing. This decision is taken following a careful review of the papers before me.

6. The applicant is unrepresented; the opponent is represented by HGF Limited.

#### **PRELIMINARY ISSUE**

7. The applicant has raised a point in its counterstatement that I intend to address as a preliminary issue in order to explain why, as a matter of law, this point will have no bearing on the outcome of my decision.

8. In its counterstatement, the applicant states the following:

"It is agreed that the trademarks are identical in nature and have been registered under that same class to cover the same goods. However it is our argument that Ideal 365 not only created the design for the logo and provided the original to the opponent in the first instance to manufacture products baring [sic] the logo for resale by Ideal365. Email trails between ideal representatives and that of Global will confirm this statement. The brand and logo is now recognisable and the phrase "Simply Green" is a key search return for a number of platforms that these goods are sold on. There is a requirement for our application to bare [sic] the same mark."

9. It is noted that the applicant previously filed an opposition<sup>5</sup> against the opponent's earlier mark under sections 5(4)(a) and 3(6) of the Act, however, as the applicant failed to adequately particularise these grounds in its form TM7 and Statement of Grounds, the sections 5(4)(a) and 3(6) grounds were struck out resulting in the withdrawal of the opposition.

10. Whilst the applicant's claim is noted, I have no evidence before me from the applicant in support of its claim. Furthermore, even if evidence had been filed, this would have no bearing on this opposition. Section 72 of the Act provides that registration shall be taken as prima facie evidence of the validity of a registered trade mark, the opponent's mark must, therefore, be regarded as validly registered and, in these circumstances, the law requires priority to be determined according to the filing dates of the applications for registration. This means that the opponent's mark has priority. Accordingly, I do not consider it necessary to make any further reference to the applicant's claim in my decision.

## **DECISION**

### **Section 5(1)**

11. Section 5(1) of the Act states that:

“A trade mark shall not be registered if because if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier mark is protected.”

### **Identity of goods**

12. The competing goods are as follows:

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<sup>5</sup> OP446519

<b>Opponent's goods</b>	<b>Applicant's goods</b>
<p><u>Class 16</u></p> <p>Packaging materials; flexible plastic packaging; compostable bio-plastic packaging; paper and cardboard packaging; plastic bags for packaging; plastic materials for packaging; packaging wrappers of plastic; packaging materials of plastic; plastic bags for wrapping and packaging; bags for packaging made of biodegradable plastic; bags and articles for packaging, wrapping and storage, of paper, cardboard or plastics; bags of packaging made of biodegradable paper; bags for packaging made of biodegradable plastic; biodegradable paper to go containers for food; refuse bags, bin liners, bags of biodegradable plastic; toilet rolls; paper towels; paper hand-towels; towels of paper for cleaning purposes; bags of plastics for lining refuse bins; Bags of plastics; plastic storage bags; polythene bags; rolls of polythene bags; bin bags; compostable bags; rolls of compostable bags.</p>	<p><u>Class 16</u></p> <p>Packaging materials; flexible plastic packaging; compostable bio-plastic packaging; paper and cardboard packaging; plastic bags for packaging; plastic materials for packaging; packaging wrappers of plastic; packaging materials of plastic; plastic bags for wrapping and packaging; bags for packaging made of biodegradable plastic; bags and articles for packaging, wrapping and storage, of paper, cardboard or plastics; bags of packaging made of biodegradable paper; bags for packaging made of biodegradable plastic; biodegradable paper to go containers for food; refuse bags, bin liners, bags of biodegradable plastic; toilet rolls; paper towels; paper hand-towels; towels of paper for cleaning purposes; bags of plastics for lining refuse bins; Bags of plastics; plastic storage bags; polythene bags; rolls of polythene bags; bin bags; compostable bags; rolls of compostable bags.</p>



13. It is self-evident that the above competing goods are identical, as acknowledged by the applicant in its defence.

## Identity of the marks

14. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, CJEU held that:

“54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.”

15. The marks to be compared are as follows:

Opponent's mark	Applicant's mark
	

16. It is self-evident that the marks are identical, as acknowledged by the applicant in its defence.

## CONCLUSION

17. As the goods are identical and the marks are identical, the opposition under section 5(1) of the Act is successful. Therefore, the applicant's mark is hereby, subject to any successful appeal of my decision, refused registration.

## COSTS

18. As the opponent has succeeded, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice (“TPN”) 1/2023. I award costs to the opponent on the following basis:

Official fee: <sup>6</sup>	£100
Preparing a notice of opposition and considering the counterstatement:	£250
Written submissions in lieu :	£350
<b>Total:</b>	<b>£700</b>

19. I order Ideal 365 ltd to pay Global Trading UK Limited the sum of £700. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 29<sup>th</sup> day of September 2025**

**Sam Congreve  
For the Registrar**

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<sup>6</sup> Although the opponent initially opposed under sections 5(1) and 3(6), the latter ground was struck out without being evidenced, so the case proceeded in respect of section 5(1) only. Therefore, I have reduced the opposition fee accordingly.