

O/0974/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003887149

IN THE NAME OF VEHICLES FOR CHANGE

FOR THE FOLLOWING TRADE MARK:

RevoLOOtion

The logo consists of the word "RevoLOOtion" in a sans-serif font. The letters "Revo" and "tion" are in light blue, while "LOO" is in pink. The second "O" is replaced by a stylized pink silhouette of a person riding a bicycle.

IN CLASSES 10, 12 AND 44

AND OPPOSITION THERETO UNDER NO. 441374

BY MOBILOO CIC

BACKGROUND AND PLEADINGS

1. On 9 March 2023, Vehicles for Change (“the applicant”) applied to register the trade mark shown on the cover page of this decision, in the UK. The application was published for opposition purposes on 24 March 2023 and registration is sought for the following goods and services:

Class 10 Lifting appliances for the disabled; Assistive devices adapted for persons with disabilities; Disability lifts; Disability hoists.

Class 12 Vehicles adapted for the disabled; Vehicles for the physically handicapped and those of reduced mobility; Mobility vehicles.

Class 44 Charitable services, namely, providing medical services to needy persons.

2. On 8 June 2023, the application was opposed by Mobiloo CIC (“the opponent”) based upon section 5(4)(a) of the Trade Marks Act 1994 (“the Act”).¹ The opponent claims to have used the sign **RevoLOOtion** throughout the UK since July 2018 in relation to exactly the same goods and services to which the application relates. The opponent claims that use of the application would be contrary to the law of passing off.

3. The applicant filed a counterstatement denying the claims made and putting the opponent to proof.

4. Neither party requested a hearing and neither filed written submissions in lieu. This decision is taken following a careful consideration of all the papers on file.

REPRESENTATION

5. The opponent is unrepresented.

¹ The Form TM7 was originally filed in the incorrect name, which was raised by the applicant in its Form TM8. The opponent was given an opportunity to amend this, which it did.

6. The applicant is represented by Johnathan Pallas.

EVIDENCE

7. The opponent's evidence in chief took the form of:

- a. The first witness statement of James Hugh Brown dated 3 May 2024, which is accompanied by 5 exhibits (JHB1 to JHB5). Mr Brown is the Director of the opponent.
- b. The witness statement of Karen England dated 1 May 2024, which is accompanied by 2 exhibits (KE1 and KE2). Ms England is the parent of a disabled person who has used the opponent's MOBILOO product and services on numerous occasions.
- c. The witness statement of Rachel George dated 1 May 2024. Ms George is another parent of a disabled person who has used the opponent's MOBILOO product and services.

8. The applicant's evidence took the form of the witness statement of Alexander Heron dated 25 July 2024, which is accompanied by 7 exhibits (VFC01 to VFC07). Mr Heron is a member of the Board of Trustees of the applicant charity.

9. The opponent's evidence in reply took the form of the second witness statement of Mr Brown dated 28 September 2024, which is accompanied by 3 exhibits (JHB6 to JHB9).

RELEVANCE OF EU LAW

10. 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.

DECISION

11. Section 5(4)(a) of the Act states as follows:

“5(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 -

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.”

12. Subsection (4A) of section 5 of the Act 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.”

13. 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)."

Relevant date

14. 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.'

15. As explained above, the relevant date in a case of this kind is the filing date of the application i.e. 9 March 2023. However, where the applicant has used the mark prior to the filing date, it is also necessary to consider the position at the start of the

behaviour complained of.² In this case, the applicant has filed evidence to attempt to demonstrate that their use of the sign in issue pre-dates that of the opponent. The evidence relied upon in this regard is a screenshot of a Facebook post from an account called “Mobiloo” dated 20 August 2018 which uses the hashtag “RevoLOOtion” – “are you joining the #RevoLOOtion?”³ Mr Heron claims that this post was made by the applicant. However, in his evidence in reply, Mr Brown claims this post was made by the opponent. Whilst the applicant has filed evidence of advertising payments which it states relates to the Facebook account from which that post was made, it is not apparent from the document filed to which Facebook account it relates; the document does not appear to be linked with any particular account.⁴ Indeed, this is a matter that has been challenged by the opponent in its evidence in reply.

16. In the absence of any evidence to clarify ownership of the account in question, I am not in a position to make a finding as to which party made this post. However, nothing will turn on this. This is because I am not satisfied that the opponent has demonstrated the requisite goodwill at the prima facie relevant date (being 9 March 2023), for the reasons set out below. The effect of this is that its claim cannot succeed, irrespective of which party used the sign in issue first.

Goodwill

17. 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.”

² *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11

³ Exhibit VFC04

⁴ Exhibit VFC06

18. Much of the evidence filed by the parties relates to the relationship between the parties, the use of the sign MOBILOO and who owns that sign. Whilst that might be relevant in terms of demonstrating that the parties' respective businesses have generated goodwill, it is not of assistance in proving whether the sign relied upon by the opponent has become distinctive of that goodwill. For the purposes of this decision, I will focus upon use of the sign in issue.

19. The evidence filed by the opponent which shows use of the sign in issue consists of a series of Facebook posts showing people holding signs which bear the words "*I'm joining the RevoLOOtion*" or "*I'm joining the #RevoLOOtion*".⁵ In Mr Brown's own words:

"In 2018, my company launched a campaign to highlight the lack of toilet facilities for disabled people, in particular the issues disabled people face if they wanted to attend events, visit tourist attractions or get out and about. This campaign was called the REVOLLOOTION."

20. Mr Brown goes on to explain that his company "has not used the name REVOLLOOTION since November 2018". It therefore appears that any use that was made of the sign in issue by the opponent was short-lived (being over a period of only 4 months). I have very little evidence before me relating to the use of this sign specifically; revenue figures are not specific to activities carried out under the sign in issue. In order to succeed, the opponent would need to satisfy me that it had residual goodwill at the prima facie relevant date (which is almost 4 and a half years after the last use by the opponent). In this regard, the opponent relies on the evidence of Ms George and Ms England who state that they associate the sign REVOLLOOTION with the opponent. However, the fact that two individuals who were heavily involved in the opponent's campaign associate the name of the campaign with the opponent does not, in my view, assist the opponent in demonstrating the views of the relevant public at the relevant date.

⁵ Exhibit JHB3

21. In any event, the main issue for the opponent is that it must show that it has goodwill, and that the sign relied upon is distinctive of that goodwill, in relation to the goods and services relied upon. However, the only use that the opponent has shown of the sign in issue relates to a campaign to promote awareness of a particular issue. It has shown no use of that sign in relation to any goods, let alone the goods it claims goodwill for. It appears that any goods that have been offered are sold under the sign MOBILOO. I recognise that part of the opponent's claim relates to its reliance upon charitable services (which, arguably, could include activities to raise awareness about these particular issues). However, the specific type of charitable services relied upon are the provision of medical services. There is no evidence of the sign relied upon being used in relation to those services.

22. Taking all of this into account, the opponent's claim falls at the first hurdle.

CONCLUSION

23. The opposition is dismissed and, subject to appeal, the application may proceed to registration.

COSTS

24. The applicant has been successful and is, therefore, entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of **£1,250**, calculated as follows:

Preparing a counterstatement and considering the Notice of opposition	£400
Preparing evidence and considering the other side's evidence	£850
Total	£1,250

25. I therefore order Mobiloo CIC to pay Vehicles for Change the sum of **£1,250**. This sum is to 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 20th day of October 2025

S WILSON

For the Registrar