

O/0981/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004130358

BY WEI LI

TO REGISTER THE TRADE MARK:

SLOPEHILL

IN CLASS 11

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 452474

BY DONGGUANSHIALIDIANZISHANGWUKEJIYOUXIANGONGSI

BACKGROUND AND PLEADINGS

1. On 28 November 2024, Wei Li (“the applicant”) applied to register “slopehill” as a trade mark in the United Kingdom. Registration is sought for the following goods:

Hairdryers; Travel hairdryers; Appliances for drying hair; Hair steamers for use in beauty salons; Hair steamers for beauty salon use. (Class 11)

2. The application was published for opposition purposes on 13 December 2024 and, on 13 February 2025, the application was opposed in its entirety by Dongguanshailidianzishangwukeyijouxiangongsi (“the opponent”) under section 5(4)(a) of the Trade Marks Act (“the Act”).

3. For the purpose of the opposition, the opponent relies upon its SLOPEHILL sign, which it claims to have used throughout the UK since 27 January 2021 in respect of *monoculars* and *hair dryers*. The opponent contends that use of the contested mark would give rise to misrepresentation and cause damage to the goodwill it has established under its SLOPEHILL sign. It claims, for example, that UK consumers may wrongly assume that they are purchasing the opponent’s goods, resulting in a loss of sales and revenue on the opponent’s part.

4. In its counterstatement, the applicant denies each of the claims made. It submits instead that the opponent’s claim to accruing any goodwill in SLOPEHILL is unsubstantiated and denies the opponent’s assertions concerning misrepresentation and damage.

5. The opponent is represented by The Trade Marks Bureau, whilst the applicant is represented by Pawel Wowra. Only the opponent elected to file evidence during the evidential rounds. Neither party requested a hearing and neither filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

Relevance of EU law

6. 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.

Legislation

7. Section 5(4)(a) of the Act states:

“(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.”

8. Subsection (4A) of Section 5 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.”

9. The three elements which the opponent must show to support its claim are well

known. In *Discount Outlet v Feel Good UK*,¹ 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).”

10. Halsbury’s Laws of England Vol. 97A (2021 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 636 it is noted (with footnotes omitted) that:

“Establishing a likelihood of deception generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive indicium used by the claimant has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant’s use of a name, mark or other indicium which is the same or sufficiently similar that the defendant’s goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as two successive hurdles which the claimant must surmount, consideration of these two aspects

¹ [2017] EWHC 1400 (IPEC)

cannot be completely separated from each other.

The question whether deception is likely is one for the court, which will have regard to:

- (a) the nature and extent of the reputation relied upon,
- (b) the closeness or otherwise of the respective fields of activity in which the claimant and the defendant carry on business;
- (c) the similarity of the mark, name etc used by the defendant to that of the claimant;
- (d) the manner in which the defendant makes use of the name, mark etc complained of and collateral factors; and
- (e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.

In assessing whether deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

11. The concept of goodwill was explained in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd*² at 223:

“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.”

The opponent's evidence

² [1901] AC 217

12. The opponent's evidence comprises a witness statement from Mr Jingjing Liu, dated 9 June 2025, and four supporting exhibits (JL1-JL4). Mr Liu has acted as the opponent's legal representative since August 2019. Given that Mr Liu's statement is relatively short, I reproduce below the pertinent paragraphs:

4. Exhibit JL1 contains a printout of the Opponents Amazon sales for its SLOPEHILL hair dryers and monoculares from 1st March 2021 – 31st December 2021 with total sales of £34,883.99.
5. Exhibit JL2 contains printouts of the Opponents Amazon sales for its SLOPEHILL hair dryers and monoculares for March 2022 and December 2022 with total sales for these months of £2492.53.
6. Exhibit JL3 contains printouts of the Opponents Amazon sales for its SLOPEHILL hair dryers and monoculares for March 2023 and June 2023 with total sales for these months of £170.98.

Advertising expenditure

7. The Applicant has used Amazon PPC (Pay Per Click) advertising model to promote its SLOPEHILL hair dryers and monoculares in the United Kingdom. Exhibit JL4 contains two advertising reports from the Opponents Amazon sales account for 2020 and 2021 which show a total sales expenditure of £739.99.

- Alongside the above, at JL1 is an itemized list showing sales of the opponent's products on Amazon, with dates ranging from between 1 March 2021 and 20 December 2021, showing various UK locations and prices. As shown above, Mr Liu calculates that these figures show total sales of £34,883.99 covering the period 1 March 2021 to 31 December 2021. Item descriptions include, for example, *Slopehill Ionic Hair Dryer, Professional Blow Dryer with Powerful Brushless Motor, Oxy and slopehill Professional Hair Dryer, Negative Ions Hair Blow Dryer Powerful 1800W Lightweight Bioceramic with 3 Heating, 2 Speed and Cool Button.*

- At JL2 is an itemized list of products sold on Amazon in March 2022 and December 2022, with sales over these months totalling £2492.53. Products include *Hair Dryer, Slopehill Professional Ionic Blow Dryer and slopehill monoculares.*

- The applicant's Amazon sales in the months of March 2023 and June 2023 total £170.98. All products sold in these months are described as *slopehill monoculares*³.

³ Exhibit JL3

- Exhibit JL4, described by Mr Liu as “advertising reports”, comprises two pages of lists of the opponent’s products, with headings including *Impressions*, *Clicks*, *Click Through Rate* and *Cost Per Click*, as shown in the extract below:

Date	Description	Match Type	Search Terms	Impressions	Clicks	Click Through Rate(CTR)	Cost Per Click	Spend	7 Day Total
Jan 04, 2021	professional hair dryer	BROAD	hair dryer slopehill professional salon	1	1	100.0000%	£0.42	£0.42	£0.00
Jan 09, 2021	professional hair dryer	BROAD	slopehill professional hair dryer	1	1	100.0000%	£0.41	£0.41	£33.32
Dec 26, 2020	hair dryer	PHRASE	slopehill hair dryer	3	1	33.3333%	£0.40	£0.40	£0.00
Dec 28, 2020	hair dryer	PHRASE	slopehill hair dryer	4	1	25.0000%	£0.31	£0.31	£0.00
Dec 31, 2020	hair dryer	PHRASE	slopehill hair dryer	3	3	100.0000%	£0.29	£0.87	£0.00
Jan 02, 2021	hair dryer	PHRASE	slopehill hair dryer	13	2	15.3846%	£0.36	£0.72	£0.00

Start Date	End Date	Description	Match Type	Search Terms	Impressions	Clicks	Click Through Rate (CTR)	Cost Per Click(CPC)	Spend	7 Day Total
Sep 05, 2020	Sep 06, 2020	professional hair dryer	PHRASE	slopehill professional hair dryer	4	3	75.0000%	£0.67	£2.01	£35.82
Aug 12, 2020	Aug 12, 2020	hair dryer	PHRASE	modikakk hair dryer slopehill	2	1	50.0000%	£0.39	£0.39	£0.00
Sep 05, 2020	Sep 05, 2020	hair dryer	PHRASE	slopehill hair dryer spares	1	1	100.0000%	£0.12	£0.12	£26.91
Aug 23, 2020	Aug 23, 2020	hair dryer	PHRASE	hair dryer slopehill	7	1	14.2857%	£0.33	£0.33	£33.32

13. That concludes my summary of the opponent’s evidence, insofar as I consider it necessary.

Relevant date

14. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*⁴, 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. The applicant has not claimed to have used the contested mark prior to the earliest claimed use of the opponent’s alleged earlier sign or the date on which the application

⁴ Case BL O/410/11

in issue was filed. Moreover, no such evidence has been adduced. Therefore, the relevant date for assessing the opponent's claim under section 5(4)(a) is the filing date of the application, that being 28 November 2024.

Goodwill

16. As the case law makes clear, the first hurdle the opponent must overcome is to show that it had the necessary goodwill in "SLOPEHILL" at the relevant date. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)*⁵, Pumfrey J. stated:

"27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent than the enquiry under s.11 of the 1938 Act (see *Smith Hayden & Co. Ltd's Application (OVAX) (1946) 63 R.P.C. 97* as qualified by *BALI Trade Mark [1969] R.P.C. 472*). Thus the evidence will include evidence from the trade as to reputation; 54 evidence as to the manner in which the goods are traded or the services supplied; and so on.

28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur."

⁵ [2002] RPC 19 (HC)

17. However, in *Minimax GmbH & Co KG v Chubb Fire Limited*⁶, Floyd J. (as he then was) stated that:

“[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application.”

18. When considering the strength of the opponent's evidence for the purposes of assessing goodwill, I find its weight fairly limited, and the documented use is not particularly longstanding. I have only the content of Mr Liu's statement reproduced above and some product lists representing sales of the opponent's goods on Amazon. Sales of hair dryers and monoculares between March and December 2021 totalled nearly £35,000; sales of the same in March and December 2022 totalled nearly £2,500 and sales of the opponent's monoculares in March and June 2023 reached a total of £170.98. Whilst I have no clarification of the market share this represents, I do not consider the figures compelling, particularly in the absence of any accompanying exhibits to bolster the evidence. Mr Liu claims to have used the Amazon “Pay Per Click” advertising model as a means of promotion but I have no further explanation nor supporting documentation to show what such a model entails in tangible terms, i.e. via what channels or to what extent the sign was promoted. I have no indication of turnover from the opponent nor is there any indication of an active, independent website, articles or use of social media platforms by which the relied-upon sign has generated any consumer engagement or testimonials, for example. The opponent has not provided any examples of the sign displayed outside of the product descriptions listed in its exhibits (on the associated products or their packaging, for example). I would expect that information or evidence of this nature would have been readily available and relatively easy for the opponent to provide for the purpose of the present proceedings. Whilst the opponent may have achieved a

⁶ [2008] EWHC 1960 (Pat)

number of sales of its SLOPEHILL products in the UK, there is nothing before me by which I can measure the consumer's perception either of these products, or of the undertaking responsible. In other words, I find the evidence is wholly insufficient to support a finding of an attractive force which can be attributed to the opponent's business. Whilst I have taken into account that it is possible for small businesses to demonstrate a goodwill which is more than trivial⁷, in the present case the evidence simply falls short of establishing a protectable goodwill altogether.

19. Without the existence of a protectable level of goodwill in the opponent's business, there can be no misrepresentation or damage. As such, the opponent's claim under section 5(4)(a) of the Act falls at the first hurdle.

CONCLUSION

20. The opposition is unsuccessful. Subject to any successful appeal against my decision, the applicant's mark may proceed to registration for all goods applied for.

COSTS

21. The applicant has been successful and is entitled to a contribution towards its costs. Using Tribunal Practice Notice 1 of 2023 as a guide, I award the applicant costs as follows:

Considering the Notice of Opposition and preparing a counterstatement:	£250
Considering the opponent's evidence:	£300 ⁸
Total	£550

22. I order Dongguanshialidianzishangwukejyoxiangongsi to pay Wei Li the sum of £550. This sum is to be paid within 21 days of the expiry of the appeal period or, if

⁷ See, for example, *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590

⁸ I have taken into account the substantiveness of the opponent's evidence. The applicant did not file any evidence or submissions in reply.

there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 21st day of October 2025

**Laura Stephens
For the Registrar**