

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 2043266 BY  
ULTIMATE ANSWERS TELECOMMUNICATIONS LIMITED TO  
REGISTER A TRADE MARK IN CLASS 38**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 44881 BY VODAFONE GROUP PLC**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF application no. 2043266  
by Ultimate Answers Telecommunications Limited  
to register a trade mark in Class 38**

**and**

**IN THE MATTER OF Opposition thereto  
under no. 44881 by Vodafone Group PLC**

**DECISION**

On 2 November 1995 Ultimate Answers Development Limited (later changed to Ultimate Answers Telecommunications Limited) applied to register the mark THE ULTIMATE ANSWER 07000 PERSONAL NUMBERS AGENCY in respect of:- Telecommunication services all in Class 38.

The application is numbered 2043266.

On 10 July 1996 Vodafone Group PLC filed notice of opposition to this application. The grounds of opposition are in summary:-

- i) by virtue of an earlier trade mark in the ownership of the opponents. This goes to Section 5(2)(b) of the Act;
- ii) under Section 3(3)(b) in that the mark is liable to deceive the public into believing that the applicants are the proprietors of the 07000 series of telephone numbers;
- iii) under Section 3(6) in that the applicants applied for the mark in bad faith;
- iv) under Section 5(4)(a) in that the applicants are passing themselves off as proprietors of the 07000 series of telephone numbers.

The opponents ask that the application be refused and an award of costs be made in their favour.

The applicants did not file a counterstatement in response to these allegations nor did they file any evidence in support of their application.

The opponents filed evidence in support of the grounds set down in their notice of opposition and asked the Registrar to give a decision on the basis of the papers filed, without recourse to a hearing. Acting on the Registrar's behalf and after a careful study of the papers I now give this decision.

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The opponents evidence consists of a Statutory Declaration dated 25 September 1997 by Mr Stephen Roy Scott, Secretary of Vodafone Group PLC, who states that he is authorised to make the declaration.

10 Mr Scott explains that the 07000 series of telephone numbers have been allocated by OFTEL exclusively to Vodafone Limited, a wholly owned subsidiary of the opponents. At Exhibit SRS1 he provides a letter from OFTEL dated 2 February 1995 to Vodata Limited (now called  
15 Vodafone Value Added Services Limited) reserving the 7000 number for personal numbering services for Vodata Limited. At Exhibit SRS2 is a subsequent letter from OFTEL dated 6  
15 November 1995 confirming the allocation of 7000 SABC Code to Vodafone Limited (the 7000 SABC code equates to the telephone number 07000).

20 Mr Scott states that the 07000 personal numbering service was launched in December 1995 and at Exhibit SRS3 he provides a brochure outlining the operation of the 07000 personal numbering service. Mr Scott goes on to say that the number of subscribers since the launch of the service has grown to be significant and turnover in the first full financial year was substantial. At  
25 Exhibit SRS4 he provides a section of a full-page advertisement in the Sunday Times of 7 September 1997 run by one of the service providers appointed by Vodafone Value Added Services Limited. Also at Exhibit SRS5 he provides examples showing the 07000 personal numbering service in use.

As stated above the applicants did not file any evidence in response to the opponents evidence; I therefore turn to consider the grounds of opposition and deal first of all with the ground under Section 3(6) which states:-

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Section 3(6). A trade mark shall not be registered if or to the extent that the application is made in bad faith.

35 The opponents have provided evidence to indicate that Vodafone Limited, their wholly owned subsidiary, are the exclusive proprietors of the 07000 series of telephone numbers and that the reservation, and publication of the reservation, was made well before the date when the applicants applied to register their mark. They, therefore, state in their evidence that the applicants are not entitled to obtain registered rights in a mark incorporating the 07000 number.

40 The applicants have filed no evidence in rebuttal. In my view it is incumbent upon applicants for registration, when faced with an opposition under the provisions of Section 3(6), to file a counterstatement and defence. In this case the applicants have not sought to take part in these proceedings and therefore have not attempted to counter the claims made by the opponents which, in my view, have been substantiated by their evidence.

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On the basis of the facts before me, I conclude that the applicants have sought to register, in bad faith, the trade mark the subject of this application for registration. The opponents are therefore successful in their ground of opposition under Section 3(6) of the Act.

5 As my finding under Section 3(6) effectively decides the matter I see no need to consider the opponents remaining grounds of opposition.

The opponents have succeeded in this matter. I order the applicants to pay them the sum of £535 as a contribution towards their costs.

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Dated this ..9... day of January 1998.

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20 D C MORGAN  
For the Registrar  
the Comptroller General