

**O/026/21**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF  
UK REGISTRATION NO. 3369953  
IN THE NAME OF BEAUTY ACADEMY GROUP LTD  
FOR THE FOLLOWING TRADE MARK:**



**AND**

**IN THE MATTER OF AN APPLICATION FOR INVALIDATION THEREOF  
UNDER NO. 502977  
BY TRADES EXHIBITIONS LIMITED**

## **Background and pleadings**

1. The contested registration no. 3369953, in respect of the mark shown on the front page of this decision, stands in the names of Beauty Academy Group LTD (“the proprietor”). The application for the trade mark was filed on 25 January 2019 and the mark was registered on 10 May 2019 in respect of the following goods and services:

**Class 16:** *Leaflets; Catalogues; Printed leaflets; Periodicals; Informational letters; Prospectuses; Printed publications; Magazines [periodicals]; Trade journals; Newspapers; Printed matter; Advertising pamphlets; Magazine covers; Flyers; Printed promotional material; Events programmes; Promotional publications; Printed advertisements; Printed advertising boards of cardboard; Printed advertising boards of paper.*

**Class 35:** *Distribution of advertising, marketing and promotional material; Dissemination of advertisements; Dissemination of advertising matter; Dissemination of advertising and promotional materials; Dissemination of advertising for others; Dissemination of advertising for others via an on-line communications network on the internet; Distribution of advertisements and commercial announcements; Dissemination of advertisements via the Internet; Dissemination of advertising matter online; Distribution of flyers, brochures, printed matter and samples for advertising purposes; Distribution of promotional matter; Distribution of advertising mail and of advertising supplements attached to regular editions; Dissemination of advertising via online communications networks; Dissemination services of advertisement matter; Dissemination of advertising, marketing and publicity materials; Provision of advertising space on electronic media; Rental of advertising space; Provision of space on web-sites for advertising goods and services; Providing advertising space in periodicals, newspapers and magazines.*

**Class 41:** *Provision of electronic publications (not downloadable); Issue of publications; Providing electronic publications from a global computer network or the Internet, not downloadable; Publishing of electronic publications; Publishing of magazines in electronic form on the Internet; Services for the*

*publication of newsletters; Providing on-line electronic publications, not downloadable; Newspaper publication; Publication of magazines; Publication of electronic magazines; Publication of printed matter in electronic form on the Internet; Publication of prospectuses; Publishing of web magazines; Multimedia publishing of journals; Multimedia publishing of magazines; On-line publishing services; Multimedia publishing of printed matter; Multimedia publishing of magazines, journals and newspapers; Publication of catalogues; On-line publication of electronic books and journals; Providing non-downloadable electronic publications; Providing non-downloadable electronic publications from a global computer network or the Internet; Providing on-line electronic publication [not downloadable]; Providing online electronic publications; Providing on-line electronic publications [non-downloadable]; Providing online electronic publications, not downloadable; Providing on-line non-downloadable general feature magazines; Providing on-line non-downloadable images; Providing on-line non-downloadable pictures; Providing on-line non-downloadable video content; Providing on-line publications; Providing on-line publications (non-downloadable); Providing online publications, not downloadable; Providing publications from a global computer network or the internet which may be browsed; Provision of information relating to publishing; Provision of non-downloadable electronic publications; Provision of on-line electronic publications (not downloadable); Provision of online tutorials; Publication of consumer magazines; Publication of electronic books and journals online; Publication of electronic magazines; Publication of journals; Publication of leaflets; Publication of magazines; Publication of medical texts; Publication of periodicals; Publication of prospectuses; Publishing; Publishing of journals; Publishing of magazines in electronic form on the Internet; Magazine publishing; Multimedia publishing of journals; Multimedia publishing of magazines; Multimedia publishing of magazines, journals and newspapers; Multimedia publishing of printed matter.*

2. On 24 December 2019, Trades Exhibitions Limited (“the applicant”) applied to have the contested registration declared invalid under Section 47 of the Trade Marks Act 1994 (“the Act”). The application is based upon Sections 5(4)(a) and 3(6) of the Act

and is directed at all goods and services for which the contested registration is registered.

3. Under Section 5(4)(a), the applicant relies upon the signs 'PROFESSIONAL BEAUTY' and 'PRO BEAUTY', which are said to have been used throughout the UK since 1989 in relation to the following goods and services:

*Electronic publications (downloadable); downloadable electronic publications; downloadable publications in electronic form; electronic magazines; downloadable electronic publications in the nature of magazines; magazines; magazine covers; magazines in the field of beauty; publishing; magazine publishing; electronic publishing; publishing of reviews; multimedia publishing of magazines; publishing of web magazines; publishing services for books and magazines; publishing of magazines in electronic form on the internet; organization of entertainment events; arranging and conducting of entertainment events; organisation of beauty events.*

4. In the Form TM26(l) the applicant claimed that both signs have been used since 1989 in relation to all of the goods and services listed, although, I notice, in its counterstatement the applicant explains that the signs have been used since 1989 for exhibitions and only since 2011 for magazines. The applicant also claims to be the owner of, *inter alia*, two UK trade mark registrations for the marks 'PROFESSIONAL BEAUTY' (UK00003391852) and 'PRO BEAUTY' (UK00003391857) in classes 9, 16 and 41. These marks were filed on 12 April 2019 (which is after the filing date of the contested mark) and achieved registration on 28 June 2019 and 5 July 2019 respectively. According to the applicant:

- The applicant has, since January 2011, published 'PROFESSIONAL BEAUTY', a well-known monthly magazine. The magazine targets professionals in the beauty sector;
- The applicant's website [www.professionalbeauty.co.uk](http://www.professionalbeauty.co.uk) has been used for trading since 1997. The applicant sells subscriptions to its magazines through the website and provides information about its events and beauty awards;

- The applicant has been organising and operating exhibitions, awards and conferences for the salon and spa market for more than 30 years and has acquired goodwill and reputation under its marks in relation to exhibitions;
- The applicant has acquired goodwill under the name 'PROFESSIONAL BEAUTY' and 'PRO BEAUTY'. The applicant intends to file evidence to show that consumers started referring to it as 'PRO BEAUTY' since 2010;
- The proprietor has been publishing and distributing the 'PBL PRO BEAUTY LOFT MAGAZINE' since 2018. The applicant was first made aware of the proprietor's infringing activities in March 2018. The applicant contacted the proprietor's editor, Ms Wioletta Kulak, by letter in March and August 2018 and on 24 January 2019 requesting that the proprietor would not use the name 'PROFESSIONAL BEAUTY', 'PRO BEAUTY' or any confusing similar marks. The proprietor did not respond but filed an application for the contested registration on 25 January 2019 instead. On 19 March 2019 the proprietor informed the applicant that the contested mark had been filed. Since the proprietor did not reply to the applicant's claims but it sought registration of the contested mark without the applicant's permission and in the knowledge of the applicant's claims, this amounts to bad faith under Section 3(6) of the Act.
- Use of the applicant's mark would offend under Section 5(4)(a) of the Act because it would result in misrepresentation and damage to the applicant's substantial reputation and goodwill.

5. The proprietor filed a counterstatement denying the grounds of invalidation. In particular, the proprietor contends that:

- As regards the claim that consumers refer to the applicant's as 'PRO BEAUTY', the applicant cannot claim goodwill in relation to a sign which does not use in the course of trade;
- Mere knowledge on the part of the proprietor of use by the applicant of the name 'PROFESSIONAL BEAUTY' for a professional beauty magazine, does not amount to bad faith, especially given that the proprietor applied for a distinctively different magazine masthead;

- It is denied that there could be any free-riding by the proprietor due to its use of the descriptive terms 'PRO' and BEAUTY' within the context of an overall distinctive sign;
- The proprietor was under no obligation to respond to a threat that it considered unjustified;
- No person adopting proper standards would have expected the proprietor to seek permission from the publisher of a competing magazine with a wholly descriptive title;
- The proprietor has no intention to interfere with the applicant's business and has not done so or threatened to do so.

6. Only the applicant filed evidence in these proceedings. The applicant's evidence consists of the witness statement of Mark Moloney, the applicant's managing director.

7. A hearing took place before me on 4 December 2020. The applicant has been represented throughout these proceedings by BDB Pitmans LLP, but it elected to be represented at the hearing by Mark Moloney; the proprietor was represented by Barbara Cookson of Filemot Technology Law Ltd. Both parties filed skeleton arguments in advance of the hearing.

## **THE APPLICANT'S EVIDENCE**

8. Mr Moloney's witness statement is dated 24 September 2020 and is accompanied by 23 exhibits. I note the following points from Mr Moloney's evidence:

- The applicant has been organising, running and operating market-leading exhibitions, magazines, awards and conferences for the salon and spa market since 2010;
- The applicant publishes 'PROFESSIONAL BEAUTY', the monthly business magazine for beauty, spa, nail and make-up professionals. The magazine is directed at salon owners and spa directors. A selection of covers of the 'PROFESSIONAL BEAUTY' magazine for the period 2011-2019 is produced at

exhibit MM1. The magazine title or masthead always appear in the following form (with the words also being presented in various colours):



Mr Moloney produced an independent brand report from ABC (exhibit MM2) dated 5 September 2018. The report shows that between July 2017 and June 2018, 'PROFESSIONAL BEAUTY' had an average circulation of 23,830 (per issue). It also shows that most of the copies were distributed in the UK, with 85.2% of the copies being free and 12.1% being paid subscriptions;

- The applicant operates an app called 'PROFESSIONAL BEAUTY MAGAZINE' which is available to users of mobile phones and tablets. Users can purchase and download the applicant's monthly magazines through the app;
- The applicant has been hosting its annual 'PROFESSIONAL BEAUTY' exhibitions in the UK since 1989. The event is one of the European leading beauty and spa trade events and now takes place in Ireland, EU, South Africa, India and Dubai. The applicant's 'PROFESSIONAL BEAUTY' exhibitions have a strong reputation in the beauty industry in Europe and attract all the leading beauty brands each year;
- Mr Moloney produces a list of exhibitors for the 'PROFESSIONAL BEAUTY' exhibition which took place in London in 2019 (exhibit MM3). Although the document does not say when, exactly, the exhibition took place, an ABC report produced at exhibit MM4 says that the 'PROFESSIONAL BEAUTY LONDON' exhibition was held on 24-25 February 2019 (which is, as I will say below, after the relevant date for assessing of the applicant's claims) and had 3,161 exhibitors and 25,856 visitors. Other reports (exhibit MM5 and MM6) show that annual 'PROFESSIONAL BEAUTY' events were hosted in Manchester and Dublin in 2018 with 1,192 exhibitors and 13,387 visitors and 838 exhibitors and

6,662 visitors attending, respectively. Exhibit MM7 consists of an article from the applicant's 'PROFESSIONAL BEAUTY' magazine issued in February 2014 about the 'PROFESSIONAL BEAUTY' event celebrating 25 years;

- The applicant uses social media to promote its brand and activities. An ABC report (exhibit MM8) shows that between July 2017 and June 2018, the applicant's 'PROFESSIONAL BEAUTY' accounts had 39,300 twitter followers, 50,479 Facebook likes, and 18,100 Instagram followers. Similar figures for June 2019 are given by Mr Moloney in his narrative; however, these are after the relevant date. Mr Moloney also says that, from 2010, consumers started referring to the applicant as 'PRO BEAUTY' on social media, but no supportive evidence for that statement is provided;
- Examples of online articles mentioning the applicant's 'PROFESSIONAL BEAUTY' magazines and exhibitions are provided (exhibits MM9-MM13). However, they refer to the applicant's magazines and exhibitions only incidentally;
- Examples of promotional material relating to 'PROFESSIONAL BEAUTY' exhibitions held in Dublin (2011-2014), in Manchester (2015) and in London (2016, 2017 and 2018) (exhibits MM14-21) are also provided. The signs used are shown below:



- The table below shows the expenditure on marketing during the period 2014 to 2019. Mr Moloney says it covers the applicant's annual marketing spend relating to the signs:



<b>Year</b>	<b>Annual Marketing Spend</b>
31 March 2014	£347,261
31 March 2015	£427,778
31 March 2016	£436,139
31 March 2017	£415,813
31 March 2018	£353,272
31 March 2019	£369,597

- Revenue relating to the signs was as follows:

<b>Year</b>	<b>Revenue</b>
31 March 2014	£4,485,986
31 March 2015	£4,677,968
31 March 2016	£4,621,965
31 March 2017	£4,642,224
31 March 2018	£4,710,592
31 March 2019	£4,422,414

- Exhibit MM22 contains copies of correspondence between the parties, including three letters which were sent from the applicant's solicitors to the proprietor on 22 March 2018, 2 August 2018 and 24 January 2019, and a letter which was sent from the proprietor to the applicant's solicitor on 19 March 2019 (exhibit MM22).

## **DECISION**

9. Sections 5(4)(a) and 3(6) of the Act have application in invalidation proceedings by virtue of Section 47 of the Act, which states as follows:

47. (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) that there is an earlier right in relation to which the condition set out in section 5(4) is satisfied,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

[...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made: Provided that this shall not affect transactions past and closed.”

## Section 5(4)(a)

10. Section 5(4)(a) 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.”

11. 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.”

12. 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**

13. Whether there has been passing off must be judged at a particular point (or points) in time. 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 Allan 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.' "

14. In the current case, the contested registration was filed on 25 January 2019. No claim has been made by the proprietor to an earlier date and, consequently, I only need to consider the position as of the filing date of the contested registration.

## Goodwill

15. *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL):

“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.”

16. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

“27. There is one major problem in assessing a passing of 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; 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.”

17. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) 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. At the hearing Ms Cookson conceded, on behalf of the proprietor, that the applicant has shown some goodwill in relation to the sign ‘PROFESSIONAL BEAUTY’. However, for the sake of completeness, I will set out my full conclusions and finding in relation to the applicant's goodwill.

*The goods and services to which the goodwill is attached*

19. The applicant publishes a monthly magazine called ‘PROFESSIONAL BEAUTY’ which is distributed to salon and spa owners, managers, therapists and individual involved in the health and beauty industry<sup>1</sup>. It also organises annual professional trade exhibitions called ‘PROFESSIONAL BEAUTY’. The evidence shows that, in the period 2011 to 2019, the applicant's exhibitions took place in different locations in the UK and the EU, namely Manchester, London and Dublin. Typical exhibitors at the applicant's trade shows are brands for hair and skin care and suppliers of products and equipment for beauty salons. Advertising figures are fairly substantial, being approximately £2.4 million in the period 2014 to 2019. Although annual turnover figures are provided, which amount to approximately £27 million in the period 2014 to 2019, they are not broken down in any way. That said, it is possible to conclude from the evidence filed that only a tiny proportion of the turnover was generated by the publishing arm of the applicant's business. This is because the ABC report produced at exhibit MM2 shows

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<sup>1</sup> Exhibit MM2

that 85.2% of the 'PROFESSIONAL BEAUTY' issues distributed between July 2017 and June 2018 were free copies and only 12.1%, were paid subscriptions; this amounts to an average of 2,591 paid copies per month and an annual turnover of approximately £147,000<sup>2</sup>.

20. As regards the task of assessing the goodwill deriving from other trading activities carried out by the applicant's, it is not straightforward. The main issue with this limb of the applicant's case arises as a result of incorrect pleadings in the Form 26(1). In particular, in response to Question 2, under Section C of the form, "*Which goods and services the earlier right has been used for?*" the applicant lists a number of publications, including magazines, and publishing services and a number of services relating to entertainment events, namely "*organisation of entertainment events; arranging and conducting entertainment events and organisation of beauty events*". This is incorrectly pleaded insofar as the applicant's trade exhibitions are not entertainment events or beauty events (which, for classification purposes, would fall within class 41) but are exhibitions for advertising and commercial purposes (which would fall within advertising, marketing and promotional services in class 35). This was supported by what Mr Moloney said at the hearing when he referred, at various points, to the applicant's customers being "*the advertisers and exhibitors*".

21. The point was also raised by the proprietor at paragraph 2 of its counterstatement, where he stated: "*The applicant is put to strict proof of its goodwill in the sign PROFESSIONAL BEAUTY as used for the "class 41" services specified at Q2 Section C of the Form 26(1). If the applicant seeks to rely on goodwill arising in respect of use for Class 16 and 35 services as mentioned in paragraph 5.19 of the statement of grounds, it should apply to amend the grounds*". Paragraph 5.13 of the statement of grounds states that the applicant has acquired substantial goodwill in the signs in relation to exhibitions and paragraph 5.19 states: "*It is submitted that the applicant has acquired a substantial goodwill in the mark in classes 16 and 35 [...]*". It is clear that the pleadings contain an error insofar as the term *entertainment services* is not apt to describe the applicant's trade exhibition services. Dealing with the matter as best I can

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<sup>2</sup> I calculated this at the cost of £4.75 per magazine, as shown in the evidence, but the costs of the subscription may be even lower

and taking into account that 1) the error is of purely semantic nature and 2) it is sufficiently clear from the statements of grounds that the applicant claims goodwill in relation to trade exhibitions, my conclusion is that the description of the services provided in response to Question 2 of the Form 26(l) does not prevent the applicant from relying on the goodwill arising from its trade exhibitions. However, it does prevent it from relying on any goodwill that accrued from its advertising activities (which has not been pleaded and in relation to which no specific evidence has been filed).

22. The issue relating to the pleadings leads to another problem with the applicant's evidence insofar as there is no information relating to the apportionment of the turnover between turnover generated by the provision of advertising activities and turnover generated by the provision of trade exhibitions. Equally, in terms of geographical spread, Mr Moloney says that the applicant's trade exhibitions take place in Ireland, EU, South Africa, India and Dubai but I was given no idea of the turnover generated in the UK, the only UK specific information being that an exhibition held in Manchester in 2018 had 1,192 exhibitors and 13,387 visitors and another held in London in 2017-2018 had 30,182 people attending<sup>3</sup>.

23. Accordingly, my conclusions are as follows:

- Even if the evidence is somehow sketchy, it enough to show that the applicant had, at the relevant date, a protectable goodwill in relation to magazines and trade exhibitions, of a moderate level. However, I am unable to conclude that the applicant's goodwill was a particularly significant or substantial one;
- Average consumers for the purpose of the applicant's case are readers of the applicant's magazine, including those who receive the magazine for free<sup>4</sup>, and exhibitors and visitors who attend the applicant's trade exhibitions. They do not include advertisers who pay money to advertise on the applicant's magazine because, for the reasons explained above, the applicant cannot rely on the goodwill attached to its advertising services.

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<sup>3</sup> Exhibit MM8

<sup>4</sup> *Plentyoffish Media Inc v Plenty More LLP*, [2011] EWHC 2568 (Ch)



The signs relied upon

24. The evidence establishes that the applicant has made use of the words 'PROFESSIONAL BEAUTY' in relation to magazines and trade exhibitions. A distinguishing aspect of the signs used by the applicant on both the masthead of its magazine and the material used to promote its trade exhibitions is the way the words are consistently presented within a logo, i.e. the "get-up", in terms of the styling and the orientation of the words. The word 'PROFESSIONAL' is presented in uppercase but is significantly smaller than the word 'beauty', presented in lowercase. The former is confined to sit within the up-stems of the letters 'b' and 't' in the word beauty. Additionally, the difference in the actual thickness and typeface of the words contributes to the visual appearance to the signs:



25. It is also important to note that the logo used by the applicant has remained the same over the years (with some variation in colours) - at least that appears the case from the evidence showing 'PROFESSIONAL BEAUTY' magazine covers from 2011 to 2019 and from advertising material for 'PROFESSIONAL BEAUTY' exhibitions from the same period. Whilst the applicant has also used the plain words 'PROFESSIONAL BEAUTY' on the side of the masthead, on the footer of the pages of the magazines and as part of its website address (which is reproduced below the masthead), the evidence indicates that they are always shown in a comparatively much smaller size. Consequently, I find that the words 'PROFESSIONAL BEAUTY' in themselves (on

which the applicant relies) are less distinctive in their own right (both inherently and as a result of the use made) of the applicant's goods and services, compared to other signs used by the applicant which incorporate the distinguishing features of the masthead.

26. As regards the inherent distinctiveness of 'PROFESSIONAL BEAUTY', Mr Moloney argued that the term is theirs, by which, I assume, he meant that the applicant coined the term. In particular, Mr Moloney contended that prior to the applicant launching its brand, nobody had heard of the term 'PROFESSIONAL BEAUTY' in respect of what was used to be called "beauticians" or "beauty therapists". Ms Cookson, on the other side, contended that 'PROFESSIONAL BEAUTY' is almost wholly descriptive.

27. Although, I note, that the applicant has managed to register 'PROFESSIONAL BEAUTY' as a trade mark in relation to a range of publications and publishing services as well as in relation to *organisation of entertainment events; arranging and conducting of entertainment events; organisation of beauty events*, the article produced at exhibit MM7 does not support Mr Moloney's argument insofar as, in an interview dated 2014, he himself uses the term "professional beauty industry" and says that by 2004 the beauty industry had come to refer to the applicant's 'PROFESSIONAL BEAUTY' exhibitions as "the Olympia show" from the name of the venue where the exhibitions took place:

"We had two shows at that point - an event for retail buyers, which was the main one, on the ground floor and Professional Beauty above," says Moloney. "The professional side took off and completely outgrew the retail so we focused all our attentions on this market."

The move from the smaller sections of Olympia (Olympia 2, then the National Hall) to the venue's Grand Hall in the mid 1990s, was a turning point for the show and the industry, he adds. "When we moved it was seen as a grown up show. Until then the professional beauty industry had been seen as a small, niche market, for ladies of leisure, so the move helped get recognition from outside the industry that it had graduated to become a serious business."



By 2004, some 44,000 visitors flooded through the doors of Olympia. “The aisles were rammed and we had no room to expand,” says Moloney. “So we took the decision to move to Excel. Not everyone was happy at first as it had been at Olympia for so long but we had to move on. →

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Meanwhile a competitor show launched at Olympia in the dates Professional Beauty usually took, causing confusion in the industry, who had come to refer to Professional Beauty as “the Olympia show”.

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28. Although the words ‘PROFESSIONAL BEAUTY’ used together do not appear in dictionaries, I agree with Ms Cookson that they are, in combination, almost descriptive in relation to the goods and services for which they are used, namely magazines and trade shows directed at professionals and traders from the beauty industry.

29. In the course of his oral submissions, Mr Moloney also argued that anyone can offer treatments as a beauty therapist without having obtained an approved qualification and that the term ‘PROFESSIONAL’ is not descriptive in relation to those providing services in beauty salons. I do not accept this submission. The word ‘Professional’ refers to *“people who have jobs that require advanced education or training”* and, contrary to what Mr Moloney stated, in my view, the average consumer would understand that those providing services in beauty salons need accredited qualifications and training relevant to the treatments they wish to practise; this is all of the more, if one considers that whilst some beauty salons carry out more basic treatments such as facials and waxing, others carry out treatments such laser therapy, micro-dermabrasion and chemical peels that require some knowledge in the field of dermatology. Further, the dictionary definition of ‘beautician’ as *“a person who provides professional services to improve the appearance of the face, body, or hair; a person who works in a beauty salon<sup>5</sup>”* confirms that the concepts of ‘professional’ and ‘professional services’ are relevant to the beauty and salon industry.

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<sup>5</sup> Collins Online Dictionary

30. As regards use of the sign 'PRO BEAUTY', Mr Moloney did not provide any evidence to support his claim that consumers refer aurally to the applicant as 'PRO BEAUTY'. Further, there is no evidence of 'PRO BEAUTY' being used to denote the applicant's magazines and trade exhibitions and although the evidence filed contains a few examples of use by the applicant of 'pro\_beauty' as part of the applicant's Twitter and Instagram accounts<sup>6</sup>, there is no evidence that 'PROFESSIONAL BEAUTY' is commonly abbreviated to 'PRO BEAUTY'. I therefore reject the claim that the applicant's goodwill was, at the relevant date, associated with the sign 'PRO BEAUTY'.

### **Misrepresentation and damage**

31. I will now consider whether the applicant has succeeded in demonstrating misrepresentation and damage. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

“There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc.* [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is

“is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents'[product]”

The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd.* (1941) 58 R.P.C. 147 at page 175 ; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101.”

And later in the same judgment:

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<sup>6</sup> Exhibit MM21

“... for my part, I think that references, in this context, to “more than *de minimis*” and “above a trivial level” are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993) . It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion.”

32. In *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590, Lord Justice Lloyd commented on the paragraph above as follows:

“64. One point which emerges clearly from what was said in that case, both by Jacob J and by the Court of Appeal, is that the “substantial number” of people who have been or would be misled by the Defendant's use of the mark, if the Claimant is to succeed, is not to be assessed in absolute numbers, nor is it applied to the public in general. It is a substantial number of the Claimant's actual or potential customers. If those customers, actual or potential, are small in number, because of the nature or extent of the Claimant's business, then the substantial number will also be proportionately small.”

33. Accordingly, once it has been established that the party relying on the existence of an earlier right under Section 5(4)(a) had sufficient goodwill at the relevant date to found a passing-off claim, the likelihood that only a relatively small number of persons would be likely to be deceived does not mean that the case must fail. There will be a misrepresentation if a substantial number of customers, or potential customers, of the claimant's actual business would be likely to be deceived.

34. Halsbury's Laws of England Vol. 97A (2012 reissue) provides further guidance with regard to establishing the likelihood of deception. In paragraph 309 it is noted (with footnotes omitted) that:

“To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff 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 feature 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 successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court 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 plaintiff and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;

(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 confusion or 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.”

35. In her submissions, Ms Cookson referred me to two decisions, namely *European Ltd v Economist Newspaper Ltd*<sup>7</sup> and *Evegate Publishing Ltd v Newsquest Media (Southern) Ltd*<sup>8</sup>. In the first, the Court of Appeal refused to find that a trade mark consisting of a dove and globe device and the word ‘THE EUROPEAN’ used on the masthead of a newspaper had been infringed by the use of the title ‘European Voice’ for a competing newspaper. In that case the Court found that the word ‘European’ was descriptive. In the second, the High Court rejected a claim for passing off brought by the publisher of the magazine ‘South East Farmer’ against the publisher of another magazine called ‘Southern Farmer’. The Court was not convinced that there had been a misrepresentation likely to deceive a substantial part of the relevant public. Ms Cookson pointed out that in reaching that conclusion the Court took into account various factors which enabled the two titles to be distinguished by the readers, including the differences in the distribution model, size and paper type as well as the differences in the typefaces, font sizes, colours and masthead designs.

36. In the statement of grounds, the applicant put the case about misrepresentation in the following terms: *“In view of the substantial goodwill and reputation in the UK of the applicant’s business under the marks, the proprietor’s use of a similar mark for identical goods in the same field of activity, i.e. beauty and spa market, is likely to deceive the public into a mistaken belief that the proprietor is associated or connected with that of the applicant”*.

37. In his oral submissions, Mr Moloney argued that this was a case of a competitor trying to freeloader on the applicant’s goodwill. Whilst he accepted that the look of the two signs is *“quite different”* and that the proprietor’s mark contains the element ‘LOFT’ which has no counterpart in the applicant’s sign, he argues that in *“[their] business,*

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<sup>7</sup> [1997] 11 WLUK 367

<sup>8</sup> EWHC 1975 (Ch)

looks often change over time”. He also argues that “some people would see the proprietor’s sign as an extension of the applicant’s ‘PROFESSIONAL BEAUTY”, although, he accepted, “not everybody would”. Though he tried to argue that “a few people, both salon owners and exhibitors/customers, have been confused” he accepted that he could not prove confusion.

38. As Ms Cookson put it, the applicant’s case seems to be based on the claim that “somebody seeing the PBL logo would expect it to have something to do with a PROFESSIONAL BEAUTY show or magazine”.

39. The question is therefore whether the signs are sufficiently similar and the elements in common distinctive enough to result in misrepresentation. The signs to be compared are as follows:

The proprietor’s mark	The applicant’s sign
	<p>PROFESSIONAL BEAUTY</p>

40. The proprietor’s mark consists of the verbal element ‘PBL’ written in upper-case letters, in gold, and placed above the word ‘MAGAZINE’ also written in upper-case letters, but in black. The mark also contains the words ‘pro’, ‘Beauty’ and ‘LOFT MAGAZINE’ written vertically into the frame of the letter ‘L’. The word ‘pro’ is presented in a cursive case, in black, above the word ‘Beauty’ which is presented in title case, in gold, with the words ‘LOFT MAGAZINE’ presented in very small, black upper-case letters, underneath. The letters ‘PBL’ are presented in a significantly larger font and will be understood by the relevant public as an abbreviation reproducing the initial letters of the words ‘pro Beauty LOFT’. Due to its large size and position, the dominant visual element of the proprietor’s mark consists of the letters ‘PBL’; it is that element that will strike consumers, whilst the word ‘MAGAZINE’ is descriptive, at least in relation to the registered goods and services which are in the same field of activity of



the applicant's magazines (which represents the applicant's best case). Whilst I cannot ignore the words 'pro Beauty LOFT' they are presented in a much smaller font.

41. On the other hand, the applicant's sign consists of the words 'PROFESSIONAL BEAUTY'.

42. To the extent that the proprietor's mark includes the word 'Beauty', there is some similarity between the two signs. However, the word 'Beauty' is a descriptive term when it comes to titles of magazines targeting the beauty sector, which is what the applicant does.

43. As regards the word 'pro', various English dictionaries define it as informal short for 'professional', however, the term has also other meanings, including that of 'an advantage or argument in favour of something', e.g. the pros and cons of share ownership, and that of 'in favour of' (as preposition), e.g. they were pro the virtues of individualism. Although consumers are likely to be aware that 'pro' is used as an abbreviation for 'professional', there is no reference to the word 'professional' within the proprietor's mark to reinforce that meaning. Further, even if the element 'pro' were to be taken as a short for 'professional', such element has only an ancillary position, by comparison with the dominant sequence PBL. Another problem with the applicant's case is that, although consumers might establish a conceptual relationship between the word 'pro' and the word 'professional', the elements 'pro' and 'Beauty' do not have an autonomous function within the overall impression conveyed by the proprietor's mark. Whilst these elements might have a bearing on the mental process whereby the public remember the proprietor's mark (by explaining what the letters 'PB' in the sequence 'PBL' stand for), they will be seen as part of a complex mark including the sequence 'PBL' and the words 'pro Beauty Loft Magazine'. In conclusion, the signs are visually different.

44. The position regarding aural similarity, is analogous. The dominant element of the proprietor's mark is 'PBL'. That is how consumers will refer to the magazines. If consumers were to pronounce the additional words 'pro Beauty Loft Magazine' there would be an aural similarity to a very low degree.

45. Turning to conceptual similarity, I consider that to the extent that the element 'pro' in the proprietor's mark is perceived as a short for 'professional', there is some conceptual similarity with the applicant's sign. However, because of the link which the public may establish between the letter sequence 'PBL' and the word combination 'pro Beauty Loft', the elements 'pro' and 'Beauty' do not form a separate conceptual unit. This prevents the elements 'pro' and 'Beauty' from being perceived and remembered separately by the public and therefore from contributing significantly to the overall impression of the proprietor's mark that the public will perceive and remember.

46. I will now draw my conclusion on misrepresentation.

47. Some of the goods and services for which the proprietor's mark is registered, namely magazines and publishing services relating to magazines, are in the same field of activity in which the applicant carries out its business. It could also be argued that *rental of advertising space* in the class 35 specification of the proprietor's mark is in the same field of activity of the applicant's trade exhibitions. I have found that the applicant had, by the relevant date, a protectable goodwill of a moderate level. On the basis of the evidence before me, I have accepted that the goodwill was in magazines and trade exhibitions and that the sign relied upon by the applicant, namely the phrase 'PROFESSIONAL BEAUTY', was associated with, or distinctive of, that business. I also found that the words 'PROFESSIONAL BEAUTY' were less distinctive in their own right (both inherently and as a result of the use made) of the applicant's goods and services, compared to other signs used by the applicant which incorporate the distinguishing features of the masthead and that the combination is almost descriptive in relation to the goods and services at issue.

48. Mr Moloney argued that the relevant consumer was not particularly attentive because beauticians "*are not professors at Cambridge*" and could be confused "*particularly on social media*". However, Section 5(4)(a) does not apply to a scenario whereby members of the relevant public are deceived just because they have failed to exercise an ordinary degree of caution. In *Morning Star v Express Newspapers*<sup>9</sup> the court found that a "moron in a hurry" may be deceived, but this will not be sufficient to

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<sup>9</sup> [1979] FSR 113

sustain a claim in passing-off. Further, the relevant context is that of the applicant's consumer encountering the proprietor's registered mark, not different versions of the mark which might possibly be used on social media.

49. Taking into account all of the above, in particular, the differences in the signs, in my opinion no one familiar with the applicant's magazine would be misled into purchasing the proprietor's magazine in the belief that it is the applicant's magazine or it is connected in some way with the applicant's 'PROFESSIONAL BEAUTY' magazine. Even considering the goods and services in the same field of activity, the dissimilarity between the signs militate against the likelihood of a connection being made in the minds of the relevant public. As I have said, the applicant's goodwill is only moderate and the words 'PROFESSIONAL' and 'BEAUTY' are descriptive individually and even, in combination, are of low distinctiveness. The applicant's sign is 'PROFESSIONAL BEAUTY', so the element 'pro' in the proprietor's mark is not the same and there is no evidence that the public has become used to seeing the element 'PROFESSIONAL' being abbreviated to 'pro' in the context of the applicant's business or indeed that the public would abbreviate the title 'PROFESSIONAL BEAUTY' to 'PRO BEAUTY'. Further, the elements 'pro' and 'Beauty' do not form a separate conceptual unit within the proprietor's 'PBL pro Beauty Loft Magazine'. Mr Moloney's argument implies that the public may take the proprietor's mark as a kind of "brand extension" of 'PROFESSIONAL BEAUTY'. But both the sequence 'PBL' and the word 'LOFT' in the proprietor's mark are more distinctive than the common elements and I consider that a brand extension of a magazine would not add a new and more distinctive element to an existing brand.

50. As a final remark, I would say that misrepresentation in the case at issue is even more unlikely if one considers the way the applicant carries out its business. In particular, the evidence shows that the applicant sells only 2,559 paid copies per month in the UK, with all of the applicant's paying readers buying subscriptions to its magazine. It is hard to imagine how any kind of misrepresentation could arise in relation to paid subscriptions as it is entirely improbable that anyone would subscribe to the proprietor's magazine in the mistaken belief that they are renewing a subscription to the applicant's magazine or that the proprietor's magazine is a new magazine offered by the applicant. Of course, the nature of subscription means that it

will be easy for the readers to check the relevant facts, as subscriptions are purchased normally from the magazine's website or through personal dealing with the publisher of the magazine, for example via telephone or email. As regards those readers who receive the magazine free, again, the evidence is that the free copies are sent upon request<sup>10</sup>, which means that anyone requesting a free copy would have to either approach the publisher of the magazine or make the request through the magazine's website. Consequently, any mistake on the part of the reader would be so unlikely or infrequent that it would not meet the threshold of a "substantial number" of consumers. The same goes for the applicant's trade exhibition services which require personal dealing between the exhibitors and the applicant.

51. Without misrepresentation there can be no damage.

**52. The application for invalidation based upon Section 5(4)(a) fails.**

### **Section 3(6)**

53. Section 3(6) of the Act states:

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

54. The relevant case-law covering trade mark applications made in bad faith can be found in the following cases: *Chocoladefabriken Lindt & Sprüngli*, CJEU, Case C-529/07, *Malaysia Dairy Industries*, CJEU, Case C-320/12, *Koton*, CJEU, Case C-104/18P, *Sky v Skykick*, CJEU, Case C-371/18, *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited* and others, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16), *Trump International Limited v DDTM Operations LLC*, [2019] EWHC 769 (Ch), *Copernicus-Trademarks v EUIPO*, General Court of the EU, Case T-82/14, *Daawat Trade Mark*, The Appointed Person, [2003] RPC 11, *Saxon Trade Mark*, [2003] EWHC 295 (Ch), *Mouldpro ApS v EUIPO*, General Court of the EU, Case T-796/17, *Alexander Trade Mark*, The Appointed Person, BL

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<sup>10</sup> Exhibit MM2

O/036/18, *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch) and *Sky v Skykick* [2020] EWHC, 990 (Ch).

55. The law appears to be as follows:

(a) While in everyday language the concept of 'bad faith' involves a dishonest state of mind or intention, the concept of bad faith in trade mark law must be understood in the context of trade: *Sky* CJEU.

[...]

56. The correct approach to the assessment of bad faith claims is as follows. According to *Alexander Trade Mark*, the key questions for determination in such a case are:

(a) What, in concrete terms, was the objective that the applicant has been accused of pursuing?

(b) Was that an objective for the purposes of which the contested application could not be properly filed? and

(c) Was it established that the contested application was filed in pursuit of that objective?

57. The applicant's intention (i.e. objective) is a subjective factor which must be determined objectively by the competent authority. An overall assessment is required, which must take account of all the factual circumstances relevant to the particular case: *Lindt*.

58. The matter must be judged at the relevant date, which is the date of the application for registration: *Lindt*.

59. It is necessary to ascertain what the applicant knew at the relevant date: *Red Bull*. Evidence about subsequent events may be relevant, if it casts light backwards on the position at the relevant date: *Hotel Cipriani*.

60. An allegation of bad faith is a serious allegation which must be distinctly proved, but in deciding whether it has been proved, the usual civil evidence standard applies (i.e. balance of probability). This means that it is not enough to establish facts which are as consistent with good faith as bad faith: *Red Bull*.

61. The only evidence provided by Mr Moloney to support the bad faith claim consists of three letters which were sent by the applicant's solicitors to the proprietor alleging that the proprietor's magazine infringed on the applicant's magazine and a letter sent by the proprietor to the applicant's solicitor claiming its right to use the name 'Pro Beauty Loft Magazine' and advising the applicant that the proprietor was applying for a trade mark and that it would be beneficial for the applicant to oppose it in order to resolve the dispute.

62. The argument was expanded at the hearing Mr Moloney as follows:

*"By all means start a business, but when somebody says to you, "Hold on a minute. You've started this business, but do you realise you are using our trade mark and passing us off?", so then you rush to file your application seems fundamentally wrong on that basis. We think that is total bad faith. First, they didn't bother to respond, which is rude, but secondly to file an application only after we have reminded them that they are passing us off."*

63. In response to Mr Moloney's submission, Ms Cookson contended that the proprietor's response was proportionate because the proprietor did not want to get involved with what seemed to be a very unjustified threat to its business and that the proprietor's only intention in filing the application was its genuine intent to use the mark in relation to the masthead of a magazine and also the desire to *"get Mr Moloney's company off their back by resolving this concern once and for all"*. This, according to Ms Cookson, is not bad faith.

64. In *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07, the CJEU stated that:

“46.....the fact that a third party has long used a sign for an identical or similar product capable of being confused with the mark applied for and that that sign enjoys some degree of legal protection is one of the factors relevant to the determination of whether the applicant was acting in bad faith”.

47. In such a case, the applicant’s sole aim in taking advantage of the rights conferred by a Community trade mark might be to compete unfairly with a competitor who is using the sign which, because of characteristics of its own, has by that time obtained some degree of legal protection.

48. That said, it cannot be excluded that even in such circumstances, and in particular when several producers were using, on the market, identical or similar signs for identical or similar products capable of being confused with the sign for which registration is sought, the applicant’s registration of the sign may be in pursuit of a legitimate objective.

49. That may in particular be the case.....where the applicant knows, when filing the application for registration, that a third party, who is a newcomer in the market, is trying to take advantage of that sign by copying its presentation, and the applicant seeks to register the sign with a view to preventing use of that presentation.

[...]

51. Furthermore, in order to determine whether the applicant is acting in bad faith, consideration may be given to the extent of the reputation enjoyed by the sign at the time when the application for registration as a Community trade mark is filed.

52. The extent of that reputation might justify the applicant’s interest in ensuring wider legal protection for his sign.”

65. In my view, the applicant’s claim based on bad faith is misconceived. There is nothing inappropriate in the proprietor seeking to protect its legitimate business

interests by launching a competing magazine to that contemplated by the applicant making use of a masthead, which, I found, is sufficiently different from that used by the applicant not to cause any misrepresentation and in filing an application to register that very same masthead it intended to use.

**66. The application for invalidation based upon Section 3(6) fails.**

**Outcome**

67. The application for a declaration of invalidity fails on all grounds and UK Trade Mark No. 3369953 remains registered.

**Costs**

68. The proprietor has been successful and is entitled to a contribution towards its costs, based upon the published scale in Tribunal Practice Notice 2/2016. At the hearing Ms Cookson argued that the applicant behaved unreasonably because it had “prolonged the case” since the threats were first issued in 2018 and asked me to make a generous award of costs in favour of her client. I do not accept that there has been anything unreasonable in the applicant’s conduct of the case and I consequently refuse to increase the costs awarded to the proprietor on that basis.

69. The costs breakdown is as follows:

Considering the applicant’s statement and preparing a counterstatement and	£500
Considering the applicant’s evidence	£400
Attending a hearing	£800
Total	£1,700



70. I order Trades Exhibitions Limited to pay to Beauty Academy Group LTD the sum of £1,700. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 12th day of January 2021**

**T Perks**

**For the Registrar,**

**the Comptroller-General**