

O/159/19

TRADE MARKS ACT 1994

**TRADE MARK APPLICATION NO. 3222966
BY STORIES OF I DO LIMITED**

AND

**OPPOSITION NO. 409769
BY ELOUISA GEORGIU**

AND

**TRADE MARK APPLICATION NO. 3223843
BY ELOUISA GEORGIU**

AND

**OPPOSITION NO. 409813
BY STORIES OF I DO LIMITED**


BACKGROUND AND PLEADINGS

1. As may readily be inferred from the title to these consolidated proceedings, they concern two parties opposing each other's trade mark application.

2. The first opposition (no. 409769) was made on 13 July 2017 by Elouisa Georgiou (hereafter "Ms Georgiou") against application no. 3222966 filed on 4 April 2017 by Stories Of I Do Limited (hereafter "SOIDL") to register 'Stories Of I Do' as a trade mark for *photography services* in class 41. The opposition consists of a single ground based upon Section 5(4)(a) of the Trade Marks Act 1994 ("the Act") with Ms Georgiou alleging that use of the applied for mark would be liable to be prevented by virtue of the law of passing off. Ms Georgiou claims earlier rights in the business name 'The Story of I Do'



THE STORY OF
I DO

and associated branding, including the website logo . She claims to have been carrying on her wedding photography business under this sign since July 2015 (before SOIDL began using the 'Stories of I Do' mark), and to have acquired goodwill under the signs. Use of the trade mark applied for would therefore be a misrepresentation to the public and result in damage to the aforementioned goodwill.

3. On 17 July 2017, a few days after Ms Georgiou had filed her opposition to SOIDL's application, SOIDL launched, in turn, opposition proceedings (no. 409813) against Ms Georgiou's application no. 3223843 filed on 7 April 2017 to register the (nearly identical) mark 'Story of I Do' in respect of *photography services* in class 41. SOIDL claims that registration of Ms Georgiou's mark would be contrary to Section 5(2)(b) of the Act, relying on its earlier pending application no. 3222966, which is opposed by Ms Georgiou.

4. The parties filed counterstatements denying the grounds of opposition put forward by the other party.

5. Both parties made allegations against each other. These include allegations of evidence being fabricated, online posts being backdated, fake likes being purchased on social media and malicious comments being posted online. I intend to deal with

those matters only to the extent that they are material to the key issue I have to determine, which is about Ms Georgiou's goodwill.

6. By way of background, both parties operate a photography business in Leeds. Ms Georgiou is a professional photographer. SOIDL is a limited company owned by Mr Jonathan Charles Fee and his wife. It was incorporated on 5 January 2017 to carry on Mr and Mrs Fee's existing business which specialises in wedding photography. Both parties claim to have traded under their respective marks, i.e. 'Stories of I Do' and 'Story of I Do', for some time prior to the dates of their applications. I note, in particular, that:

- Ms Georgiou claims that she registered the 'Story of I Do' domain name on 8 July 2015 and that, at the date the statement of grounds was signed, i.e. 11 July 2017, she had booked 14 weddings under the mark 'Story of I Do', the first being on 17 July 2015. According to Ms Georgiou, by the time SOIDL registered their domain name on 15 September 2015, she had already completed four weddings using the mark 'Story of I Do'. Further, SOIDL did not begin trading until late 2016; in this connection Ms Georgiou alleges that SOIDL's website states that the owners only discovered their passion for wedding photography after their own wedding (which was in summer 2016) by which point, she claims, she had been trading under the mark 'Story of I Do' for over a year;
- SOIDL denies that Ms Georgiou's use of the mark 'Story of I Do' pre-dates Mr and Mrs Fee's actual use of the mark 'Stories of I Do'. According to SOIDL, Ms Georgiou's public use of the mark 'Story of I Do' does not appear to have taken place before 2017, whereas Mr and Mrs Fee first used the mark 'Stories of I Do' in relation to wedding photography in September 2015.

7. The oppositions were consolidated. Both parties filed evidence. Both parties have been professionally represented throughout, Ms Georgiou by Kennedys Law LLP and SOIDL by Wilson Gunn. A hearing took place on 18 January 2018 at which Ms Georgiou was represented by Mr Sam Carter of Counsel, instructed by Kennedys Law LLP, and SOIDL by Mr Terry Rundle from Wilson Gunn.

ELOUISA GEORGIU'S EVIDENCE

8. Elouisa Georgiou's evidence consists of two witness statements by Elouisa Georgiou (the second of which was filed in reply to SOIDL's evidence) and one by Matthew Steer, who is Director of Lancar Limited.

Elouisa Georgiou's first witness statement

9. In her first statement dated 6 August 2018, Ms Georgiou says that she first used the marks 'Story of I Do' and/or 'The Story of I Do' in relation to wedding photography services in July 2015. According to Ms Georgiou she has been a professional photographer since 2008 and has been photographing weddings since 2011. She has been carrying on her photography business located in Leeds as a sole trader since 2010. The name of the business is 'Elouisa Georgiou Photography of Duke Studios'.

10. Ms Georgiou states that she first came up with the concept of 'The Story of I Do' in the first half of 2015. She explains that she wanted to separate the different types of photography services she provides and wanted to base her wedding photography services around the theme of story books. According to Ms Georgiou, she also developed a logo incorporating chess pieces and crowns, which similarly relate to the theme of story books and fairy tales. Ms Georgiou further explains that she came up with the idea that each client's story would be told in a blog post; this would be developed into a message from the bride and the groom which they would write to each other before the wedding in a letter or note; the letters/notes would then be delivered to the couple after their wedding in a box displaying the 'Story of I Do' logo with a USB storage device containing the wedding photos.

Bookings

11. Ms Georgiou describes how wedding bookings are made. She states that clients are initially sent a booking form. This was done via an email attachment until July/August 2016 when she moved to a booking system called 'Tave'. She explains that the email signature she uses when replying to enquiries displays her contact details and different brands, including 'The Story of I Do', with hyperlinks to the relevant

Facebook page or website. She attaches (Exhibit EG1) a screenshot of an email she sent on 12 August 2015 from her personal email address, i.e. elouisa@elouisageorgiou.co.uk, with a booking form attached. The email address of the individual recipient is not visible, but she said it was sent to a wedding client called Danni. Also attached is a screenshot of another email received by Ms Georgiou on 4 January 2016, which, she asserts, returned a wedding booking form. In both emails, the words 'The Story of I Do' appear in a hyperlink underneath Ms Georgiou's name which, she says, "was linked" to 'The Story of I Do' Facebook page since August 2015:



12. Ms Georgiou has not provided any booking form so I cannot say whether the form used displayed the mark 'Story of I Do'.

13. Ms Georgiou says that when she switched to the 'Tave' booking system the mark 'The Story of I Do' and the logo were displayed at the top of the booking form as well as on the header and footer of each page. She attaches (Exhibit EG2) a copy of an online contract (redacted) for a wedding photography package costing £1,399 dated 19 August 2016. The contract is between ELOUISA GEORGIOU PHOTOGRAPHY



and a wedding couple identified as Becky and Antony. The logo appears at the top of the first page; the words "The Story of I Do by Elouisa Georgiou" and the website address [https://tave.com/thestoryofido/contact/view/\[...\]](https://tave.com/thestoryofido/contact/view/[...]) are displayed on the header and footer of each page, respectively.

The website

14. Ms Georgiou then moves on to talk about the creation of 'The Story of I Do' website. Her evidence is that she purchased the domain name 'thestoryofido.com' on 8 July 2015 from Matthew Steer of Lancar Ltd, whom, she says, she had purchased domain names for other lines of her photography business (Exhibit EG3). According

to Ms Georgiou, on the same day she received her 'WordPress' login details to allow her to add content to the site (Exhibit EG3). She also states that she picked a template for the website from a selection Mr Steer had sent her but provides no information as to whether (or when) any content was actually added to the website.

15. Exhibits EG4 and EG5 are copies of 'Whois' search results for the domain names 'thestoryofido.com', i.e. Ms Georgiou's domain name, and 'storiesofido.com', i.e. SOIDL's domain name. Ms Georgiou points to the fact that she registered her domain name before SOIDL registered theirs; this can be seen from the two 'creation dates' which are 8 July 2015 and 15 September 2015, respectively. The results also display two 'updated dates'; those are 5 April 2017 and 17 February 2017, respectively.

16. Ms Georgiou further states that she displayed the website address www.thestoryofido.com on her LinkedIn profile soon after it was created and "*used [her] Facebook page to host [her] portfolio and advertise the brand whilst [she] gathered content for the website*". She attaches a screenshot (Exhibit EG6) dated 24 July 2015 of an online application she submitted for a photographer job listing www.thestoryofido.com as part of her portfolio, together with the websites www.elouisageorgiou.co.uk and www.businessviewyorkshire.com.

17. Ms Georgiou states that the 'Story of I Do' logo "*was not in the process of formally being designed until February 2016*". She explains that on 7 February 2016 she contacted a company called Fiverr saying that she "*was looking for a logo for [her] company The Story of I Do*" (Exhibit EG7). She did not like the design and eventually ended up designing the logo herself. According to Ms Georgiou, the final version of the logo was uploaded on the 'Story of I Do' Facebook page on 16 June 2016. Exhibited at EG8 is a screenshot of a picture displaying the 'Story of I Do' logo posted by Ms Georgiou on 16 June 2016:



18. Ms Georgiou states that she changed the name of her Facebook page for her wedding photography business to the 'Story of I Do' on 11 August 2015. She provides a screenshot of a Facebook page displaying the message "*We have responded to The Story of I Do's request: I need to change the name of my page*"; she also provides copy of a confirmation email sent by Facebook to Ms Georgiou saying "...*Your Page's name has been changed on Facebook*", both of which are dated 11 August 2015 (Exhibit EG9). According to Ms Georgiou, at the time that profile had 3,900 "people on it", however there is no evidence of how widely that profile was used. She also states that she operated other accounts, including a personal Facebook page with roughly 4,600 'likes' on it, a personal Instagram page with 1,200 'likes' and a Elouisa Georgiou photography business Facebook page with over 3,000 'likes'.

19. Ms Georgiou further states that on 11 August 2015 she announced on Facebook that her weddings would be "*running under the brand The Story of I Do*" and that she posted a link to The Story of I Do's Facebook page inviting people to like it. She attaches a screenshot of that post (Exhibit EG10):



20. The post shows 16 likes and 4 comments. Ms Georgiou says that the post was subsequently shared out and had about 4,500 'likes' in November 2016 but there is no evidence of this.

21. She also provides other screenshots (Exhibit EG11) of Facebook posts including:

- Three posts sharing some wedding photographs. The first post is from Ms Georgiou's Facebook page. It is dated 4 December 2015 and shows the same photos being shared by 'The Story of I Do'. The post identifies the wedding couple as Lilian and Ian; it has no 'like' and says: *"For my wedding work please like my new page The Story of I Do"* and *"For wedding prices and packages contact elouisa@elouisaorgiou.co.uk"*. The second post seems to be from 'The Story of I Do' Facebook page. It is dated 22 February 2016 and identifies the wedding couple as Candiece and Richard. It has 1,693 people reached but only one 'like' and displays the text *"Photography by The Story of I Do & Elouisa Georgiou Photography"*. The third post is also from Ms Georgiou's Facebook page. It is dated 22 August 2016 and identifies the wedding couple as Becky and Ant. It displays the text *"Photo: Elouisa Georgiou @ The Story of I Do"* and has 62 likes and 3 comments.
- A post which it is said to tag *"The Story of I Do' page on the Facebook group 'Looklikefilm'"* which allegedly has 66,000 followers. The post is said to have

been posted on 4 December 2015 but, due to the very poor quality of the print, is mostly illegible;

- A post from The Story of I Do's Facebook page dated 6 April 2017 sharing some wedding photos. The wedding couple is identified as Alice and Dave. The post is said to have reached 1,818 people but has only one 'like';
- Screenshots of an online conversation between Ms Georgiou and someone who enquired about her wedding photography work. The copy is mostly illegible but Ms Georgiou says the conversation took place on 1 March 2016. Ms Georgiou was asked: *"Do you have a website where your photos are available to see?"*. She replied: *"I am just going through a rebrand as my wedding photography gets moved over [illegible] but I'll send you over some full examples of weddings"* and *"as I rebrand I put the highlight on here, theres a few bits on there but much more to come"* and inserted a link to 'The Story of I Do' Facebook page.

22. Ms Georgiou states that between 13 November 2015 and 15 November 2017 'The Story of I Do' Facebook page had about 4,5k 'likes' however, there is no information about how those 'likes' were spread over the 2-year period.

23. Ms Georgiou states that in September 2016 she *"redesigned the website www.thestoryofido.com using the website builder Showit for professional photographer"* and *"shared a preview link of the new website on [her] Facebook page on 12 September 2016."* She explains that this remains the current design. At Exhibit EG12 she attached a screenshot of that Facebook post. It states: *"My website/blog for my wedding photography brand is starting to look good! Not bad to say I've done this by the pool!"* and has 61 'likes'. Also attached are other 2 documents, most of which are illegible, which are supposed to show (reproduced as worded) (a) *"test email function on new website shows preview link -13 March 2017"* and (b) *"Wayback [machine] when screen catche[s] 21st March 2017 for preview site http://thestoryofido.showpreview.com/home."* The item at (a) includes a screenshot of a page which shows the logo mark, the picture of a wedding couple and some content;

this, as I understand it, was hosted on a preview link 'showit' at <http://thestoryofido.showitpreview.com/home> on 21 March 2017.

Trading

24. Ms Georgiou states that the mark 'The Story of I Do' has been used in relation to wedding photography services throughout the UK and abroad since July 2015. She says that on 17 July 2015 she carried out her first photography shoot under the mark 'The Story of I Do' for wedding clients Emma and Greg. Ms Georgiou says that the couple was made aware of the name change in their pre-wedding consultation and was told that they would receive USB boxes with the new branding; however, there is no other evidence of that than Ms Georgiou's own statement.

25. Ms Georgiou goes on to provide a list of 28 wedding clients, whom, she claims, she provided photography services under the mark. Some of the wedding dates provided by Ms Georgiou are after the date when SOIDL's application was filed, i.e. 4 April 2017, and as such, are clearly outside any date which would be relevant for assessing Ms Georgiou's goodwill for the purpose of her Section 5(4)(a) objection to SOIDL's application (see below). I also recognise that the services would likely be bought up to a year in advance, a point to which I shall return later. The services Ms Georgiou claims to have provided, up to April 2017, include, inter alia:

Date of Shoot	Couple Name (first names only to protect client data)	Location	Invoice amount billed £'s
17/07/2015	Emma & Greg	Manchester/Kendal	£803.70
09/08/2015	Alice & Dave	Bolton/Oldham	£750
14/08/2015	Lorna & Nick	Wetherby/Barnsley/Leeds	£750
05/09/2015	Lilian & Ian	Birmingham/Coverly	£890.80
16/01/2016	Dani & James (engagement shoot)	Sheffield	Included in package
16/04/2016	Muneeb & Sarwat (ceremony only)	Stockport	£350
06/08/2016	Joanna & Clive (cancelled deposit taken)	Sheffield	£999 (Deposit only kept £200)
20/08/2016	Becky & Antony	Sheffield/Dronfield	£1,399
21/08/2016	Alex & Jess	Sheffield/Chester	£850
22/4/2017	Second Shooter for Martyn Hand	Harrogate/York	£200

26. No supporting invoices or contracts are provided. In this connection, Ms Georgiou states:

For the avoidance of doubt, whilst these services were provided under my mark The Story of I Do, the invoices and contracts with these clients show Elouisa Georgiou Photography. This is purely for invoicing/accountancy/insurance purposes as the finances for all my lines of photography services fall under Elouisa Georgiou Photography. Story of I Do is a trading style of Elouisa Georgiou Photography. Many professional photographers trade in this way. For example, Sheffield photographer Shelley Richmond trades under Shelley Richmond Photography but promotes her weddings under Kindred Photography.

27. Ms Georgiou provides the following annual sales and promotional figures under the mark 'Story of I Do':

Year	Sales value	Promotional spending
April 2015 - April 2016	£3,194.5	£272.98
April 2016 - April 2017	£2,799	£656.65
April 2017 - April 2018	£4,573	£513.60

28. According to Ms Georgiou, the total value of the services provided under the mark to the date of her trade mark application on 8 April 2017 was £5,993.5 and the promotional spent for the same period was £929.63.

29. Ms Georgiou claims that she has promoted her mark using flyers, cards, a website, "USB boxes" and example albums, however, she states, she has "*largely promoted [her] mark through [her] reputation and word of mouth*". Once again, there is no other evidence of that other than Ms Georgiou's own statement.

Dispute with SOIDL

30. Ms Georgiou explains the history of the dispute with SOIDL and provides a chronology of events. The following points emerge:

- In April 2017 Ms Georgiou became aware that SOIDL was trading under the almost identical name Stories of I Do. She contacted them via Facebook on 4 April 2017. SOIDL did not reply and proceeded to make an application to register the mark on the same day. Ms Georgiou told SOIDL that she had

researched their business and it appeared to her that they had no work prior to October 2016;

- SOIDL created various posts on their Facebook page on 5 April 2017 and backdated them to various dates in 2012, 2013 and 2014; these posts show use of the mark 'Stories of I Do' in relation to wedding photography services and received no 'likes' or comments. Attached at Exhibit EG14 are screenshots of these posts. They appear to have been published in 2013 and 2015 but show the text "*added on 5 April 2017*";
- In order to protect her mark, Ms Georgiou incorporated the company 'Story of I Do' at Companies House - following a complaint from SOIDL, the name was later changed to TSOID. This is a dormant company and was registered by Ms Georgiou only to protect the mark. She also set up an Instagram account in the name The Story of I Do, however, she states that "*Facebook was [her] primary choice of social media to promote [her] brand*";
- In April 2017, SOIDL's solicitors, DWF, sent pre-action protocol letters to Ms Georgiou alleging passing off. On 12 July 2017, Ms Georgiou's solicitors, Kennedys, responded denying the claims and arguing that Ms Georgiou had an action for passing off against SOIDL. Copies of the pre-action protocol letters are exhibited (Exhibits EG15-16);

Use of the mark by SOIDL

31. Ms Georgiou claims that SOIDL did not begin to use their website storieofido.com until September 2016. She claims that SOIDL's websites initially stated that Mr and Ms Fee "*discovered their passion for wedding photography after their own wedding*", which, she states, took place in August 2016. According to Ms Georgiou, the first post on SOIDL's website was in September 2016 and the first wedding published on SOIDL's website took place in November 2016.

Social media

32. Ms Georgiou states that she “*obtain[s] a lot of [her] bookings by word of mouth, through past clients and reputation rather [than] website or social media, which are largely for advertising purposes*”. She also states:

61. The first photographs I put on my website www.thestoryofido.com were from a wedding which took place in July 2014. I used some of my older weddings as examples because the pictures are to hand and I own the copyright to all of them. I do not put every wedding on the website as some clients wish for their wedding photos to remain personal and I do not believe it is appropriate to use. I am also a very busy fully booked photographer and have been for a number of years with my corporate and personal clients, so I do not have time to constantly update the website and social media. I also do not heavily rely on marketing to get work as I am fully booked throughout the year.

Mr Matthew Steer’s witness statement

33. Mr Steer explains that its company, Lancar Limited, is a IT company which build websites for small businesses. Mr Steer states that he has known Ms Georgiou for around 14-15 years and that she started her career as a self-employed photographer. He reiterated Ms Georgiou’s account that she contacted him on 8 July 2015 to request some domain names, including www.thestoryofido.com (Exhibit MS1), and that he provided Ms Georgiou’s with the WordPress logins to add content to the site. Mr Steer states that he “*believe[s]*” Ms Georgiou built the website herself after she was provided with the domain and the template and recall she was self-sufficient at building sites, having done so for other lines of her photography work. He provides no further information about when the website might have gone live.

Ms Georgiou’s second witness statement

34. Ms Georgiou’s second witness statement, dated 7 October 2018, contains a number of clarifications relating to points which are not material and I do not intend to summarise here. However, it is worth mentioning that at paragraph 4 of her second statement, Ms Georgiou states: “*[...] Mr Fee alleges that the website www.storyofido.com was not live until 22 March 2017, according to the Wayback machine. The Wayback machine does not catch websites as soon as they go live, neither does Google. The first capture of www.storiesofido.com on Wayback is on 4*

April 2017, which if using Mr Fee's logic means that their website would have gone/pushed live on the same day".

SOIDL'S EVIDENCE

35. SOIDL's evidence consists of two witness statements by Jonathan Charles Fee (the second of which was filed in reply to Elouisa Georgiou's evidence).

Jonathan Charles Fee's first witness statement

36. Mr Fee is a Director of SOIDL. He explains that him and his wife have worked together for a company called White Mill Media Limited producing a broad range of photography work, films, animation, logo design, PR and websites as well as SEO (search engine optimization) and running social media accounts for corporate businesses. Having photographed a few friends/families wedding, they wanted to expand into wedding photography and the 'Stories of I Do' was started to keep the wedding photography separated. Mr Fee does not say how he choose the name 'Stories of I Do'.

37. Mr Fee says that on 15 September 2015 they registered the domain name storiesofido.com. He states that from that date they developed the website and the brand and began showcasing work and taking bookings through the website. He also says that they began advertising through the website (though he does not say when SOIDL's website went live) and Facebook as well through word of mouth. Mr Fee says that on 29 September 2016 they collected their brand uniforms; on the same day they wore those uniforms and took printed leaflets to display at a wedding fair in Bradford. He provides at Exhibit JCF-01 pictures of himself and his wife wearing t-shirt bearing the Stories of I Do logo; however, there is no record of how many people attended the event¹.

38. Mr Fee states that on 3 October 2016 they started their Instagram account to showcase their work and purchased the domain name storiesofido.co.uk as an SEO

¹ Ms Georgiou challenges this evidence however, the point is not material for the outcome of this decision.

tactic. According to Mr Fee *“all this advertising”* generated bookings and they took booking for the end of 2016 and the following years; the majority of the booking were taken at least a year in advance. Mr Fee states that as the business was becoming so successful they arranged a meeting with their accountant for the earliest date in the New Year. SOIDL was incorporated on 5 January 2017. On the following day, they purchased 2,000 business cards and on 18 January 2017 they opened a bank account. There is no information as to where and when the business cards were distributed. Mr Fee states that from 1 February 2017 SOIDL began running targeted Google adverts and renewed the domain name (Exhibit JFC-02). No further details of the adverts are provided.

39. Mr Fee states that *“[their] Facebook page is by far [their] largest way of getting leads”*. According to Mr Fee they have a large number of followers on Instagram, maintain and update their social media, run Facebook and Google AdWords and appear on the first page of Google for Leeds Wedding Photographers; they have won awards, are mentioned on other websites, distribute business cards and pay for adverts in local flyers. However, no evidence is provided about these.

40. Mr Fee states that between September 2015 and 7 April 2017, “Stories of I do” took no less than 39 bookings for wedding and engagement shoots. These are listed at Exhibit JCF3. The list actually shows that the first booking took place on 19 November 2016 and that there are only 5 bookings within the period indicated, all of the remaining 34 bookings being between 21 April 2017 and 4 November 2018.

41. Mr Fee states that *“the Wayback machine proves that [Ms Georgiou]’s website was not live until 22 March 2017”*². Exhibit JFC-04 consists of screenshots from the Wayback machine showing thestoryofido.com page on 21 March and 8 April 2017. The screenshot dated 21 March 2017 shows a page the only content of which is the text *“wedding photography that tells the tale Hello world! 8 July 2015 Welcome to WordPress. This is your first posts. Edit or delete it, then start blogging”*. The screenshots dated 8 April 2017 displays a home page featuring the ‘Story of I Do’ logo, as well as pricing list, wedding pictures and a “get in touch” page. Ms Georgiou’s

² §11 of Mr Fee’s first witness statement

response to this evidence³ was that “*the Wayback machine does not cache websites as soon as they go live*” but she said nothing about when her website did actually go live.

42. Mr Fees’s evidence of SOIDL’s trading prior to 7 April 2017 includes:

- Exhibit JCF-07: Copies of two invoices issued by SOIDL dated 13 March 2017 and 15 May 2017 respectively. The invoices feature the mark ‘Stories of I Do’ but all of the relevant details, i.e. customers name and address and amounts paid have been redacted;
- Exhibit JCF-08: Undated copies of business cards showing the mark ‘Stories of I Do’ as well as copy of an email confirmation sent to mail@storiesofido.com for an order of 2,000 business card placed on 6 January 2017;
- Exhibit JCF-10: Copy of an email confirmation sent to Mary Fee at mail@storiesofido for some photographic supplies dated 3 February 2017 and amounting to £292.

43. Mr Fee did not provide any turnover figures or marketing spent.

Jonathan Charles Fee’s second witness statement

44. With his second witness statement, Mr Fee includes copy of correspondence sent by his solicitors to Mr Georgiou’s solicitors (Exhibits JCF11-12), upon which he relies⁴. Whilst I have noted the content, I do not propose to summarise it in detail. Nevertheless, one of the facts which emerged from that correspondence (and was confirmed by Mr Rundle at the hearing) is that Mr and Mrs Fee agreed that they had backdated four Facebook posts. The explanation given by Mr and Mrs Fee as the reason for doing so was that they suspected Ms Georgiou had backdated a number of her posts and wanted to test whether it could be done. The remaining evidence in Mr Fee’s statement includes:

³ §4 of Ms Georgiou’s second witness statement

⁴ Paragraph 37 of skeleton arguments

- Exhibit JFC-13: consists of screenshots from Ms Georgiou’s wedding photography website at www.elouisageorgiou.co.uk (undated). It also contains screenshots from Ms Georgiou’s Instagram and Facebook accounts as they appeared on various dates in November/ December 2015 and August 2016. As Mr Fee points out, all of the pages are about wedding photography services provided by Elouisa Georgiou and there is no reference at all to the mark ‘Story of I Do’;
- Exhibit JFC-15: Copies of email correspondence between Mr Fee and Showit. Mr Fee asked whether it would be possible to know when Ms Georgiou’s website thestoryofido.com went live. Showit replied on 6 April 2017 saying *“I don’t have a specific date that I am able to see when the design might have been published because the user in question opted to self-configure their own domain approximately 13 days ago. Based off that knowledge, I am assuming the site went live 10-13 days ago with the design built on out (sic) platform”*;
- Exhibit JFC-15: Copy of an email sent by Mr Fee to Tave where he asked whether the secure domain address can be changed. Tave replied *“the secure domain normally cannot be changed by you after it’s first created, but we can change it manually for you”*. In this connection, Mr Fee alleges that *“the contact details, header and footer can be changed at any point and [the contract exhibited by Ms Georgiou at EG2] only proves what it looked like on the day of printing (6 August 2018)”*;
- Exhibit JFC- 17: it consists of a screenshot from Ms Georgiou’s Facebook page dated 12 September 2018. The page contains a reference The Story of I Do, in relation to which Ms Georgiou claims to be the Founder *“since 2010”*. According to Mr Fee, this evidence shows that Ms Georgiou has doctored her Facebook account.
- Exhibit JCF-18: it consists of the screenshot below:



Elouisa Georgiou updated her status.
21 September 2016 · 1

I'm looking for loads of people nationally who offer professional wedding services to feature on my website and refer to clients The Story of I Do. Hair, Makeup, Video, entertainment, bands etc. PLEASE REPLY BELOW in the comments (no messages to busy too reply at the moment) with your BUSINESS NAME, LOCATION, and SERVICE + a link to your portfolio. So I can start building the database of the best people.
Thanks!

According to Mr Fee it shows that 'The Story of I Do' was to be a wedding blog, not a wedding photography company and that Ms Georgiou was developing it as a wedding blog for clients to book on her personal website and supply hints and tips for wedding.

DECISION

45. Bearing in mind that the only earlier right relied upon by SOIDL is the application opposed by Ms Georgiou, it is logical to consider this matter first. This is because, should Ms Georgiou's opposition no. 409769 to SOIDL's trade mark succeed, SOIDL's opposition will necessarily fall away.

OPPOSITION NO. 409769

SECTION 5(4)(A)

46. Section 5(4)(a) states:

"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, or

(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."

47. 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).”

THE RELEVANT DATE

48. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC as the Appointed Person considered the relevant date for the purposes of Section 5(4)(a) of the Act and concluded as follows:

“39. In *Last Minute*, the General Court....said:

‘50. First, there was goodwill or reputation attached to the services offered by LMN in the mind of the relevant public by association with their get-up. In an action for passing off, that reputation must be established at the date on which the defendant began to offer his goods or services (*Cadbury Schweppes v Pub Squash* (1981) R.P.C. 429).

51. However, according to Article 8(4) of Regulation No 40/94 the relevant date is not that date, but the date on which the application for a Community trade mark was filed, since it requires that an applicant

seeking a declaration of invalidity has acquired rights over its non-registered national mark before the date of filing, in this case 11 March 2000.’

40. Paragraph 51 of that judgment and the context in which the decision was made on the facts could therefore be interpreted as saying that events prior to the filing date were irrelevant to whether, at that date, the use of the mark applied for was liable to be prevented for the purpose of Article 8(4) of the CTM Regulation. Indeed, in a recent case before the Registrar, *J Sainsbury plc v. Active: 4Life Ltd* O-393-10 [2011] ETMR 36 it was argued that *Last Minute* had effected a fundamental change in the approach required before the Registrar to the date for assessment in a s.5(4)(a) case. In my view, that would be to read too much into paragraph [51] of *Last Minute* and neither party has advanced that radical argument in this case. If the General Court had meant to say that the relevant authority should take no account of well-established principles of English law in deciding whether use of a mark could be prevented at the application date, it would have said so in clear terms. It is unlikely that this is what the General Court can have meant in the light of its observation a few paragraphs earlier at [49] that account had to be taken of national case law and judicial authorities. In my judgment, the better interpretation of *Last Minute*, is that the General Court was doing no more than emphasising that, in an Article 8(4) case, the *prima facie* date for determination of the opponent’s goodwill was the date of the application. Thus interpreted, the approach of the General Court is no different from that of Floyd J in *Minimax*. However, given the consensus between the parties in this case, which I believe to be correct, that a date prior to the application date is relevant, it is not necessary to express a concluded view on that issue here.

41. There are at least three ways in which such use may have an impact. The underlying principles were summarised by Geoffrey Hobbs QC sitting as the Appointed Person in *Croom’s TM* [2005] RPC 2 at [46] (omitting case references):

- (a) The right to protection conferred upon senior users at common law;

- (b) The common law rule that the legitimacy of the junior user's mark in issue must normally be determined as of the date of its inception;
- (c) The potential for co-existence to be permitted in accordance with equitable principles.

42. As to (b), it is well-established in English law in cases going back 30 years that the date for assessing whether a claimant has sufficient goodwill to maintain an action for passing off is the time of the first actual or threatened act of passing off: *J.C. Penney Inc. v. Penneys Ltd.* [1975] FSR 367; *Cadbury-Schweppes Pty Ltd v. The Pub Squash Co. Ltd* [1981] RPC 429 (PC); *Barnsley Brewery Company Ltd. v. RBNB* [1997] FSR 462; *Inter Lotto (UK) Ltd. v. Camelot Group plc* [2003] EWCA Civ 1132 [2004] 1 WLR 955: "date of commencement of the conduct complained of". If there was no right to prevent passing off at that date, ordinarily there will be no right to do so at the later date of application.

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.'

49. The *prima facie* date for determination of Ms Georgiou's goodwill is the date on which the contested mark was applied for, i.e. 4 April 2017. A second date may be relevant and there is a potential dispute about this point; Ms Rundle and Mr Carter agree that it should be an earlier date (although they disagree on the precise date), however, the relevance of this date is dependent upon whether Ms Georgiou is able

to establish the necessary goodwill. I will consider the date point later only if it is necessary to do so.

GOODWILL

50. In *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.”

51. 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.”

52. 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.”

53. Goodwill must be of more than a trivial nature. In *Hart v Relentless Records* [2002] EWHC 1984 (Ch), Jacob J. (as he then was) stated that:

“62. In my view the law of passing off does not protect a goodwill of trivial extent. Before trade mark registration was introduced in 1875 there was a right of property created merely by putting a mark into use for a short while. It was an unregistered trade mark right. But the action for its infringement is now barred by s.2(2) of the Trade Marks Act 1994. The provision goes back to the very first registration Act of 1875, s.1. Prior to then you had a property right on which you could sue, once you had put the mark into use. Even then a little time was needed, see per Upjohn L.J. in BALI Trade Mark [1969] R.P.C. 472. The whole point of that case turned on the difference between what was needed to establish a common law trade mark and passing off claim. If a trivial goodwill is enough for the latter, then the difference between the two is vanishingly small. That cannot be the case. It is also noteworthy that before the relevant date of registration of the BALI mark (1938) the BALI mark had been used “but had not acquired any significant reputation” (the trial judge's finding). Again that shows one is looking for more than a minimal reputation.”

54. However, a small business which has more than a trivial goodwill can protect signs which are distinctive of that business under the law of passing off even though its reputation may be small. In *Stacey v 2020 Communications* [1991] FSR 49, Millett J. stated that:

“There is also evidence that Mr. Stacey has an established reputation, although it may be on a small scale, in the name, and that that reputation preceded that of the defendant. There is, therefore, a serious question to be tried, and I have to dispose of this motion on the basis of the balance of convenience.”⁵

55. There is no dispute between the parties that the services in question are identical and that the marks in questions are nearly identical and Mr Rundle accepted that if the goodwill was established, then Ms Georgiou would win her case⁶. The issue on which this case turns is, therefore, whether Ms Georgiou had acquired any protectable reputation and goodwill in the mark ‘Story of I Do’ by the relevant date.

56. Before making my findings, it is appropriate to make a few points on the evidence. As I have already explained, both parties made a number of allegations against the other. Unfortunately, the focus of the case seems to have shifted towards the allegations, with each party filing a considerable amount of evidence in order to discredit the other party’s version of the events, but surprisingly thin evidence in support of their own claim. A real problem in dealing with Ms Georgiou’s passing off claim is that the supporting documentation is deficient in a number of respects. Ms Georgiou’s witness statement is, of course, evidence but there is a lack of corroborative materials. At the hearing Mr Carter submitted that whilst it was “*slightly regrettable*” that no documentary evidence had been provided to substantiate some of Ms Georgiou’s statements, I ought not disbelieve her; in this connection, he pointed out that Ms Georgiou’s witness statements were verified by statements of truth. I do not accept Mr Carter’s submission. In *VOGUE Trade Mark*, BL O/154/07, Mr. Geoffrey Hobbs QC sitting as the Appointed Person said:

⁵ See also: *Stannard v Reay* [1967] FSR 140 (HC); *Teleworks v Telework Group* [2002] RPC 27 (HC); *Lumos Skincare Limited v Sweet Squared Limited and others* [2013] EWCA Civ 590 (COA).

⁶ Although both Mr Rundle and Mr Carter referred to an earlier date, that being September 2016 (in Mr Rundle’s submission) and November 2016 or, alternatively, January 2017 (in Mr Carter’s submission), this was only for the purpose of assessing Ms Georgiou’s goodwill and Mr Rundle did not make any specific submissions (or counterclaim) to an earlier goodwill as a defence to the passing off claim.

“[...] As I pointed out in the *WILD CHILD* case, the Registrar is often required to act upon evidence that might be regarded as less than perfect when judged by the standard applied in High Court proceedings. That is also on a daily basis the position in civil tribunals up and down the country. It does not follow that assertions without any real substantiation must be accepted as sufficient to support the contentions of those who put them forward. It is none the less necessary to assess the evidence that has been presented and decide whether it is or is not sufficient to enable the decision-taker to reach a conclusion on the civil standard as to what the outcome should be.”

57. Doing the best I can with the evidence available, the categories of alleged use are as follows:

1. Registration of the domain name and website
2. Email signature
3. Bookings
4. “USB boxes”
5. Facebook posts
6. Ms Georgiou’s reputation and word of mouth

58. I will consider these categories in turn including the criticisms made by SOIDL in relation to each category of use.

1. Registration of the domain name and website

59. Ms Georgiou relies on the purchase of the domain name www.thestoryofido.com on 8 July 2015. However, the purchase (or ownership) of a domain name is not, by itself, evidence of goodwill and cannot (without anything more) create goodwill and reputation in a name or mark which is similar to the domain name. In *Boxing Brands Ltd v Sports Direct International Plc & Ors*⁷, a case to which Mr Carter referred me in the course of the hearing (see below), Mr Justice Birss addressed the issue of the

⁷ [2013] EWHC 2200

evidential weight that should be given to the registration of a domain name in the context of a passing-off case:

“44. It is clear that these domain names were registered but it is not clear there was ever a website associated with any of them at any material time. The fact a domain name has been registered does not mean a webpage is necessarily available or at least does not mean a webpage other than a holding page placed by the registration company is available. There is a later email which implies no website had been launched at this time but Mr La Mura maintained that there had been at least a page of information available to anyone who went to the domain www.queensberryboxing.com in this period. Mr La Mura was adamant that a webpage was available but I am not prepared to place reliance on his testimony. There is evidence of a draft webpage headed "Manage, Promote, Mentor" but I am satisfied that this page was never available on the internet. There is no evidence anyone ever paid any hosting fee. There are emails in October 2007 between a web designer Richard Billington and Mr La Mura which imply that something was visible at the relevant domain after it had been registered which indicated that it might be a shop but I am not satisfied there was anything relevant on the website at that time. The fact that in the email Mr Billington says he assumed Mr La Mura wished to sell a range of boxing clothes does not establish he learned that from looking at a website rather than being told it by Mr La Mura. I reject the submission that there was any kind of website prior to May 2008 which could assist the defendants in this case.”

60. Mr Carter accepted at the hearing that until 12 September 2016 there was no content on the website. Mr Rundle submitted that the website remained dormant until March 2017 and relied on the screenshots provided at Exhibit JFC-04 showing a landing page at www.thestoryofido.com, as it existed on 21 March 2017. The landing page contains no reference to the ‘Story of I Do’ mark other than in the web address. Though there is, on the page, a reference to the services provided, i.e. “*wedding photography that tells the tale*”, there is no way for anyone who see the site to make an enquiry and/or a booking as no contact details are available. Ms Georgiou’s only response to this evidence was that “*the Wayback machine does not cache websites as soon as they go live*”, but failed to give any indication of when the final fully

functional website went live. In this connection, it is noted that Ms Georgiou filed two rounds of evidence and so had plenty of opportunity in relation to this matter. For the sake of completeness, I should mention that whilst it is noted that Ms Georgiou provided a screenshot from the Way back machine (Exhibit EG12) showing a homepage of her website on 21 March 2017 (which displays the logo mark and some content), this was from a preview site at <http://thestoryofido.showitpreview.com/home> and there is no evidence that it was available to on the Internet.

61. Accordingly, I find that the page identified as existing on 21 March 2017 (which is only two weeks before the relevant date) was not part of a fully functioning website promoting Ms Georgiou's photography services under the mark 'Story of I Do'. The reasonable inference that can be drawn from this is that Ms Georgiou did not actively use the website to trade under the mark 'Story of I Do' until 21 March 2017. In any event, even if Ms Georgiou had established (which she had not) that her website had gone live after September 2016 (when, Mr Carter admitted, the website had no content), it would not assist her. This is because, the last wedding shoot allegedly provided (under the mark 'Story of I Do') before the relevant date was carried out before September 2016, i.e. on 21 August 2016, and the next one did not take place until after the relevant date, i.e. 22 April 2017. In this connection, it is noted that Ms Georgiou provided details of other 18 weddings in relation to which she allegedly provided her photography services after the relevant date, i.e. between 1 May 2017 and 28 September 2019. Whilst, as I pointed out earlier, the services may have been booked up to a year in advance⁸ (which means that weddings that took place less than a year after the relevant date may still indicate some trade prior to the relevant date) in the absence of specific evidence as regards to (i) when the website went live (ii) when and how the services were booked and (iii) how the website was used to promote the services, I am not prepared to make any assumption in favour of Ms Georgiou.

⁸ In this respect I note SOIDL's evidence that its bookings were taken a year in advance, which concurs with my own experience. Whilst I note that the copy of the Tave online contract exhibited by Ms Georgiou (see below) was signed the day before the wedding, I do not consider that it is the norm, in the sector of wedding photography, that contracts stipulating the terms and conditions of services provided are put into place the day before (or shortly before) the wedding.

2. Email signature

62. Ms Georgiou claims that she began trading under the mark ‘Story of I Do’ in July 2015 and that she used the words ‘The Story of I Do’ (underlined) in her email signature until July/August 2016, when she moved to the ‘Tave’ booking system. In this connection, Mr Carter submitted that Ms Georgiou “*promoted THE STORY OF I DO website in her email signatures from as early as August 2015*”⁹. Leaving aside the fact that Mr Carter’s submission does not tally with Ms Georgiou’s evidence¹⁰ that the underlined words were a hyperlink to the ‘Story of I Do’ Facebook page (not the website, which, it was admitted, had no content until September 2016), the first problem with this submission is that there is no evidence of how widely the signature was used. Secondly, the evidence shows that the address used by Ms Georgiou to trade, i.e. elouisa@elouisageorgiou.co.uk, does not incorporate the mark. Thirdly, there is no evidence of how many consumers (or potential consumers) clicked on the hyperlink and were directed to the ‘Story of I Do’ Facebook page. In this connection, I did not understand Mr Carter to argue that the ‘Story of I Do’ Facebook page (assuming that it existed) should be treated as an integral part of Ms Georgiou’s email signature by way of the hyperlink, but even if he did, I would have rejected the submission. Finally, there is no suggestion (or evidence) that the mark ‘The Story of I Do’ was used on the wedding booking forms. In those circumstances, I doubt that use in a hyperlink (without anything more) would have resulted in a retained recollection of the mark. Accordingly, I find that it is not likely that users (or potential users) of Ms Georgiou’s photography services would remember the sign used in that manner or would associate it with Ms Georgiou’s business.

3. Bookings

63. Ms Georgiou’s case is that by the relevant date she had conducted eight wedding shoots under the mark ‘Story of I Do’. The evidence supporting her claim consists of a list detailing the first names of the couples, the dates and locations when the weddings allegedly took place and the amounts billed on the invoices. Supporting

⁹ § 27.7

¹⁰ § 14

invoices should be available but none has been produced. In this connection, Ms Georgiou explains that *“whilst these services were provided under [the mark ‘Story of I Do’] the invoices and contracts with the clients show Elouisa Georgiou Photography”*.

64. It is therefore obvious that neither the invoices nor the contracts featured the mark ‘Story of I Do’. In this respect, the only concrete evidence of the mark being used in the context of the services being supplied to consumers, is the copy of the ‘Tave’ online contract with the couple “Becky and Antony”. This is dated 19 August 2016, the day before the wedding allegedly took place. Mr Rundle challenged this evidence by saying that the parts of the contract displaying the words ‘Story of I Do’, i.e. secure domain, header and footer, could be changed, however, there is no direct evidence of the contract exhibited being altered. Mr Rundle also argued that the contract shows that the booking was made with Ms Georgiou, not with ‘Story of I Do’. I will deal with the issue when I make my finding in relation to the goodwill, but for now it suffices to say that whilst other booking could have been made between July/August 2016 (when Ms Georgiou claimed to have moved to the ‘Tave’ online booking system) and 4 April 2017, it was for Ms Georgiou to adduce evidence to show that to be the case. No such evidence was put forward.

4. “USB boxes”

65. This point can be dealt very briefly. Ms Georgiou says that she carried out her first photography shoot under the mark ‘The Story of I Do’ for wedding clients Emma and Greg in 2015. She said that the couple was made aware of the name change in their pre- wedding consultation and was told that they would receive USB boxes with the new branding. However, there is no record of it and Ms Georgiou’s account is not supported by any evidence. Although it is claimed that branded USB boxes have been used since 2015, no example was provided.

5. Facebook posts

66. Ms Georgiou’s claims under this heading can be summarised as follows:

- (a) That on 11 August 2015 she changed the name of her Facebook page for her wedding photography business to the 'Story of I Do'. On the same day she announced on Facebook that her wedding photography services would be running under the brand 'The Story of I Do' and shared The Story of I Do's Facebook page inviting people to like it;
- (b) That she shared a number of Facebook posts incorporating a reference to the mark 'Story of I Do';
- (c) That she shared a preview of the 'Story of I Do' website page on Facebook on 12 September 2016;

67. Mr Rundle alleged that Ms Georgiou purchased 'likes' to Facebook posts to try and bolster her position in these proceedings. In this connection, he referred to two posts which reached hundreds of people but then only received one "like"; according to Mr Rundle, this is indicative of fake "likes". Regardless of whether Ms Georgiou purchased fake like or not, the conclusion that can be drawn from the evidence is that 'Story of I Do' was not publicised extensively through Facebook. In this connection I note:

- i. That Ms Georgiou's post of 11 August 2015 received only 16 likes and 4 comments (Exhibit EG10);
- ii. That, as Mr Rundle pointed out, the other two posts which allegedly reached 1,693 and 1,818 people received only one like;
- iii. That the website preview was shared by Ms Georgiou from her personal Facebook page (not from that of the Story of I Do) and obtained only 61 likes;
- iv. That Ms Georgiou stated that she is a busy photographer and does not have time to constantly update the website and social media and does not heavily rely on marketing to get work as she is fully booked. Such statement suggests that neither Facebook nor the website were key means of promoting the mark 'Story of I Do'.

68. Accordingly, I find that Ms Georgiou's Facebook posts and 'The Story of I Do' Facebook page only attracted an extremely limited audience (the only measure of it being the number of "likes"). There is no evidence of exposure to a wider audience.

Consequently, I reject any suggestion that Ms Georgiou could have established a reputation (even slight) in the mark 'Story of I Do' through use on Facebook.

6. Ms Georgiou's reputation and word of mouth

69. Ms Georgiou's method of trade, as indicated by her evidence, relies heavily on word of mouth and personal recommendations, however, she has put forward no evidence in this regard. Consequently, there is no way of determining how people who are making verbal recommendations refer to Ms Georgiou's business. Further, there is no evidence that a verbal recommendation would be for 'Story of I Do' or whether for Ms Georgiou's photography business which is run under her own name and enjoys an established reputation.

FINDING OF FACTS

70. The evidence supports Ms Georgiou's claim that she was the first person to come up with the name 'Story of I Do' in 2015; she was also the first person that register that name as a domain. However, for the reasons I gave in the preceding paragraphs, the evidence fails to establish that Ms Georgiou actually used and promoted 'Story of I Do' as a brand for wedding photography services in a way (and to an extent) that, by the relevant date, she would have established a goodwill associated with that name.

71. The high point of Ms Georgiou's case is the online booking form. This was issued almost 18 months prior to the relevant date, it is not supported by any invoice and, taking the evidence in the round, it is, in my view, insufficient to carry Ms Georgiou's case. Even taking the most generous view possible of the evidence, Ms Georgiou's business under the sign would be no more than trivial. That booking form shows at best one booking under the sign (in any event it is only a quotation and does not establish that the services were actually provided) but this is so trivial that it would not be sufficient to decide the matter in Ms Georgiou's favour since the law of passing off does not protect a goodwill of trivial extent. In this connection, Mr Carter argued that his client's goodwill is "*more than trivial*" and drew attention to two cases, *Boxing Brands Ltd v Sports Direct International Plc & Ors* and *Mr. Chippy Mobile Fish and*

*Chip Shop*¹¹. However, Mr Carter's submission was based on the assumption that his client had established that she provided photography services under the sign to eight wedding couples before the relevant date, an assumption which I am not prepared to accept. In any event, both cases turn on some very specific facts; these concerned a clothing brand and a fish and chip van which had traded in the Isle of Wight for 3 weeks and there is a marked difference between the cases cited and the facts in suit here.

72. Mr Carter argued that through the use made, 'Story of I Do' has become associated with Ms Georgiou's business carried out under her own name. I have already discussed the various categories of use above. Here I only need to add that even assuming that Ms Georgiou has a reputation and goodwill in the business run under her own name, the evidence is insufficient to establish a trade connection, i.e. that users (or potential users) would associate the name 'Story of I Do' with Ms Georgiou's photography services. Consequently, even if Ms Georgiou had a goodwill associated with her own name, she failed to establish that she had goodwill associated with 'Story of I Do' or that 'Story of I Do' was a name distinctive of her wedding photography services.

73. I have no hesitation in concluding that Ms Georgiou had no protectable goodwill under the mark as of the application date and the ground under Section 5(4)(a) cannot succeed. Consequently, it is not necessary for me to consider the issue of SOIDL's earlier goodwill. The opposition is dismissed. Subject to appeal, SOIDL's application will proceed to registration.

OPPOSITION NO. 409813

74. Mr Carter sensibly conceded (both in his skeleton arguments and at the hearing) that his client does not dispute confusing similarity. On that basis, he accepted that if SOIDL's application is permitted to proceed to registration, his client's application must be dismissed. Accordingly, given my finding that SOIDL's application can proceed to registration, SOIDL's opposition to Ms Georgiou's application succeeds in its entirety. Consequently, subject to appeal, Ms Georgiou's application is refused.

¹¹ [(1967) RPC 587]

CONCLUSIONS

75. Ms Georgiou's opposition (no.409769) to SOIDL's application (no. 3222966) fails and SOIDL's application will proceed to registration.

76. SOIDL's opposition (no. 409813) to Ms Georgiou's application (no. 3223843) succeeds and Ms Georgiou's application is refused.

COSTS

77. SOIDL has been successful and is entitled to a contribution towards its costs. Awards of costs are governed by Tribunal Practice Notice (TPN) 2/2016. Using that TPN as a guide, I award costs to the opponent on the following basis:

Official fees:	£100
Preparing a statement and considering the other side's statement (x2):	£600
Filing evidence and considering the other side evidence:	£1,000
Attending a hearing:	£500
Total:	£2,200

78. I order Elouisa Georgiou to pay Stories Of I Do Limited the sum of £2,200 as a contribution towards its costs. This sum is to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case, if any appeal against this decision is unsuccessful.

Dated 25 March 2019

Teresa Perks
For the Registrar
The Comptroller – General