

O/0147/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003741283

BY WISTERIA BRIDGE LTD

TO REGISTER:

lilygood lily good

AS A TRADE MARK IN CLASS 25

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 431683 BY

LILYGOOD LTD

BACKGROUND AND PLEADINGS

1. On 10 January 2022, Wisteria Bridge LTD (“the applicant”) applied to register the trade mark shown on the cover of this decision (“the applicant’s mark”) in the UK for the following goods:

Class 25: Clothing.

2. The applicant’s mark was published for opposition purposes on 28 January 2022 and, on 9 March 2022, it was opposed by Lilygood LTD (“the opponent”). The opposition is based on section 3(6) of the Trade Marks Act 1994 (“the Act”).
3. The opponent claims that in filing for its mark, the applicant is attempting to prevent the opponent from using the name ‘lilygood’ and that this was done with the intention of putting the opponent out of business.
4. The applicant filed a counterstatement denying the claims made.
5. The opponent is represented by Silvine Law and the applicant is unrepresented. Only the opponent filed evidence in chief and, in doing so, also filed written submissions. No hearing was requested and both parties filed written submissions in lieu. This decision is taken following a careful perusal of the papers.
6. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

EVIDENCE

7. As above, only the opponent filed evidence. The opponent's evidence in chief came in the form of the witness statement of Ahmet Turk dated 22 July 2022. Mr Turk is the director of the opponent, a position he has held since 13 April 2021. His statement is accompanied by 12 exhibits, being those labelled Exhibits AT1 to AT12.

8. I note that one of the exhibits filed by the opponent includes an email that is written in the Turkish language. On this point, I note that accompanying the opponent's written submissions (and also filed with the notice of opposition – more on this below) was a 'certificate of translation' wherein Miss Arzu Sahan declares and affirms that she has translated the email correspondence of 445 words from the Turkish language into the English language to the best of her ability and understanding. The certificate confirms that since 2010, Miss Sahan has been acting as a freelance translator of English and Turkish in the UK. She is also registered with NRPSI (being the National Register of Public Service Interpreters) and is qualified with a BA in English Literature from Istanbul University, a Diploma in Teaching English as second language and a Diploma in Public Service Interpreting (English Law).

9. I will refer to points from the evidence or submissions where necessary.

PRELIMINARY ISSUES

The applicant's mark

10. I note that the applicant's mark, as applied for, consists of the words "lilygood lily good". It is not clear whether it was the applicant's intention to apply for its mark as a series of marks, however, it was not applied for as one and is, therefore, to be considered in full. Throughout the course of these proceedings, neither party has mentioned the fact that the applicant's mark consists of two separate 'lilygood' elements (albeit the second presented as two words, rather than one) and any

reference made to 'lilygood' is done so in solus. For the avoidance of doubt, I do not consider that the duplication of the word 'lilygood' in the applicant's mark will make any impact on my findings in the present decision.

The notice of opposition

11. In filing its notice of opposition, the opponent included an additional 20 pages of documents that the Tribunal considered as constituting evidence. In communicating the admission of the notice of opposition into proceedings, the Tribunal confirmed to the opponent by way of letter dated 21 March 2022 that this additional material would not be considered due to the fact that it had not been formally filed as evidence. In addition, the Tribunal set out that if the opponent wished to rely on these additional documents, it could either appropriately formalise them in evidence at that time or file them in the correct form at a later date (namely the evidence rounds). I note that while the opponent did go on to file evidence in this matter that was, largely, in line with what was included with the notice of opposition, it was not identical. For the avoidance of doubt, I will only consider the evidence filed under the cover of the witness statement of Mr Turk and the documents filed with the notice of opposition that did not find their way into the evidence will not be considered.

The applicant's counterstatement

12. Aside from including a blanket denial of the bad faith claim against it, the applicant's counterstatement included a number of comments that have no bearing on the outcome of these proceedings. Firstly, the applicant questioned the lack of goodwill in the opponent's brand. The issue of gaining an unfair advantage of a well-known name can be a consideration for 3(6) claims¹ meaning that it is possible for an opponent to rely on goodwill in order to argue that an application was made in bad faith. However, this is not how the opposition has been pleaded so, therefore, the claim that the opponent has no goodwill is disregarded. Secondly, the applicant

¹ *Trump International Limited v DDTM Operations LLC*, [2019] EWHC 769 (Ch).

makes reference to the UK operating a 'first to file trade mark application system' and that as the applicant has filed a trade mark application before the opponent, it is entitled to registration of the same. While that may be the case, there are provisions in law that allow opponents (or cancellation applicants, for that matter) to attack trade marks that are applied for/registered in bad faith (being the claim at issue) or those that are contrary to passing offer (such as claims under 5(4)(a) grounds), for example. Neither of these avenues require the existence of an earlier registered trade mark. Therefore, just because the applicant applied for its mark, it is not automatically entitled to registration of the same.

Translated evidence

13. As discussed in my evidence summary above, the opponent filed what it referred to as a certificate of translation. While I have an issue with the fact that the translation has not been filed in the appropriate manner,² I do not consider that its presence in these proceedings is of any assistance to the opponent. This is on the basis that while the certificate refers to attached emails, no emails are attached. As such, it is not possible for me to determine which emails the certificate relates to. In any event, I note that of the emails filed (being those at Exhibits AT3 to AT5), only one of them is actually in Turkish (being the email sent from Mr Turk to Ms Seda Miranoglu on 6 January 2022 at 08:09) and I note that regardless of the presence of the translation certificate, no translation has actually been provided and I am, therefore, unable to give it any consideration. For the avoidance of doubt, the remaining emails filed are all in English and will be assessed accordingly.

Applicant's submissions

14. On 8 November 2022, the applicant filed its written submissions. Upon review of the submissions by the Tribunal, it was deemed that they included without prejudice materials and, on 17 November 2022, the Tribunal informed the applicant of this issue and gave the applicant the opportunity to re-file the submissions by no

² See paragraph 4.8.4.2 of the Tribunal section of the Trade Marks Manual regarding evidence in foreign languages and the case of *Pollini* (Case BL O/146/02).

later than 24 November 2022. On 22 November 2022, the applicant re-filed the submissions having removed the without prejudice material.

15. In response, the opponent contested the filing of the submissions on the basis that the applicant did not serve a copy of the same on the opponent. The Tribunal wrote to the applicant stating that in order for the submissions to be considered admissible, a copy must be served on the opponent by 8 December 2022. The applicant then served a copy of its submissions on the opponent on 1 December 2022. As a result, the applicant's submissions are admissible. While that may be the case, I have reviewed the submissions filed and am of the view that of the six points raised, only one is of relevance to the present proceedings (I will return to consider this point below). As for the remaining points that I deem irrelevant or of no assistance, I do so for the following reasons:

- a. The applicant states that it has sent the relevant documents to prove that the opponent does not use 'LilyGood' as their brand name and that it is, instead, their company name. I note that the applicant attempted to file some documents with its counterstatement and additionally via email prior to the beginning of the evidence rounds. The applicant was informed by way of a letter from Tribunal dated 8 August 2022 that as this was not filed in the correct format or at the appropriate time, it would not be admitted into proceedings. At this time, the applicant was informed that if it wished to file evidence, it needed to do so in the correct format and by no later than 26 September 2022. No evidence was forthcoming meaning that the applicant is not permitted to rely on the documents referred to;
- b. The submissions argue that the 'LilyGood' trade mark cannot create confusion on the market and, even if it did, it would create confusion with another brand, being the applicant's brand name 'Deresina Headwear'. Firstly, this is not an issue that is relevant to the present proceedings and, secondly, it is not entirely clear what point that applicant is trying to make;
- c. There are allegations of a personal nature that are included within the submissions. While I appreciate that these are serious allegations, the Tribunal

section of the UKIPO is not the appropriate forum to make such claims. As such, they are not relevant to the present proceedings;

- d. The applicant discusses the reasoning behind the selection of the mark at issue and I consider such a statement to be one that should have been given in evidence and supported by a signed statement of truth. This is not, therefore, a valid submission; and
- e. When discussing the topic of the correspondence filed by the opponent, the applicant states that the opponent did not include the entirety of the correspondence between the parties and that the full communication should have been shared. If that was the case then the applicant had the opportunity to respond by filing the full extent of the correspondence itself. It did not do so. As a result, the applicant's comments on this point are of no assistance.

16. Save for the point raised regarding the emails being between Mr Turk and Ms Miranoglu and not the parties at issue, I do not intend to address the applicant's submissions any further.

Costs proforma

17. In reviewing the correspondence sent to the parties, I can see a copy of a blank costs proforma was provided to the opponent's representatives under the cover of a letter from the Tribunal dated 24 October 2022. In response, the opponent did file a completed costs proforma. It is necessary to point out at this stage that when parties are professionally represented, costs are to be awarded (so long as that party is successful) in accordance with the scale published in Tribunal Practice Notice 2/2016. A completed costs proforma is not, therefore, required when a party is professionally represented. It appears to me that the provision to the opponent of a blank costs proforma was an oversight on the part of the Tribunal. For the avoidance of doubt, if the opponent is successful, costs will be awarded on the scale and the costs proforma filed will not be considered.

18. As for the applicant, it is not represented and I note that it also filed a completed costs proforma. In the event that the applicant is successful in these proceedings, I will assess its costs proforma at the conclusion of this decision.

DECISION

Section 3(6): legislation and case law

19. 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”

20. In *Sky Limited & Ors v Skykick, UK Ltd & Ors*, [2021] EWCA Civ 1121 the Court of Appeal considered the case law from *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07 EU:C:2009:361, *Malaysia Dairy Industries Pte. Ltd v Ankenævnetfor Patenter Varemærker* Case C-320/12, EU:C:2013:435, *Koton Mağazacılık Tekstil Sanayi ve Ticaret AŞ*, Case C-104/18 P, EU:C:2019:724, *Hasbro, Inc. v EUIPO, Kreativni Dogaaji d.o.o. intervening*, Case T-663/19, EU:2021:211, *pelicantravel.com s.r.o. v OHIM, Pelikan Vertriebsgesellschaft mbH & Co KG (intervening)*, Case T-136/11, EU:T:2012:689, and *Psytech International Ltd v OHIM, Institute for Personality & Ability Testing, Inc (intervening)*, Case T-507/08, EU:T:2011:46. It summarised the law as follows:

“68. The following points of relevance to this case can be gleaned from these CJEU authorities:

1. The allegation that a trade mark has been applied for in bad faith is one of the absolute grounds for invalidity of an EU trade mark which can be relied on before the EUIPO or by means of a counterclaim in infringement proceedings: *Lindt* at [34].

2. Bad faith is an autonomous concept of EU trade mark law which must be given a uniform interpretation in the EU: *Malaysia Dairy Industries* at [29].

3. The concept of bad faith presupposes the existence of a dishonest state of mind or intention, but dishonesty is to be understood in the context of trade mark law, i.e. the course of trade and having regard to the objectives of the law namely the establishment and functioning of the internal market, contributing to the system of undistorted competition in the Union, in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable the consumer, without any possibility of confusion, to distinguish those goods or services from others which have a different origin: *Lindt* at [45]; *Koton Mağazacılık* at [45].

4. The concept of bad faith, so understood, relates to a subjective motivation on the part of the trade mark applicant, namely a dishonest intention or other sinister motive. It involves conduct which departs from accepted standards of ethical behaviour or honest commercial and business practices: *Hasbro* at [41].

5. The date for assessment of bad faith is the time of filing the application: *Lindt* at [35].

6. It is for the party alleging bad faith to prove it: good faith is presumed until the contrary is proved: *Pelikan* at [21] and [40].

7. Where the court or tribunal finds that the objective circumstances of a particular case raise a rebuttable presumption of lack of good faith, it is for the applicant to provide a plausible explanation of the objectives and commercial logic pursued by the application: *Hasbro* at [42].

8. Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all the factors relevant to the particular case: *Lindt* at [37].

9. For that purpose it is necessary to examine the applicant's intention at the time the mark was filed, which is a subjective factor which must be determined by reference to the objective circumstances of the particular case: *Lindt* at [41] – [42].

10. Even where there exist objective indicia pointing towards bad faith, however, it cannot be excluded that the applicant's objective was in pursuit of a legitimate objective, such as excluding copyists: *Lindt* at [49].

11. Bad faith can be established even in cases where no third party is specifically targeted, if the applicant's intention was to obtain the mark for purposes other than those falling within the functions of a trade mark: *Koton Mağazacılık* at [46].

12. It is relevant to consider the extent of the reputation enjoyed by the sign at the time when the application was filed: the extent of that reputation may justify the applicant's interest in seeking wider legal protection for its sign: *Lindt* at [51] to [52].

13. Bad faith cannot be established solely on the basis of the size of the list of goods and services in the application for registration: *Psytech* at [88], *Pelikan* at [54]”.

21. 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*.

22. The opponent claims that the applicant, in filing its mark, acted in bad faith because it was done so with the intention of preventing the opponent from using the name 'lilygood' on Amazon and other online retail platforms. The opponent argues that this was done in order to put it out of business due to the fact that the applicant

knows that all of the opponent's goods at the Amazon warehouse are labelled as 'LilyGood'. I note that the opponent's submissions make reference to the case of *CKL HOLDINGS NV*, Case BL O/442/17 and its subsequent appeal, being Case BL O/036/18. The appeal case for those proceedings is more commonly referred to as *Alexander Trade Mark* and is an oft quoted case in decisions wherein 3(6) grounds are relied upon. The opponent's position in respect of the *Alexander* case is that it mirrors the position in the present case in that if a trade mark is applied for without the intention to use the mark to distinguish goods from those of other traders but, instead, as part of a blocking strategy directed at other uses of similar marks (either now or in the future) then it is considered to be bad faith. The opponent's argument mentions the fact that as the applicant currently trades under the brand name 'DERESINA HEADWEAR' and owns a trade mark for the same, it can be inferred that this case falls in line with the case of *Alexander*. Whilst also bearing in mind the case of *Copernicus-Trademarks v EUIPO (LUCEO)*,³ I accept that if such a claim is proven, it is capable of resulting in a finding that the applicant acted in bad faith.

23. It is worth pointing out at this stage that the opponent's evidence appears to focus on the conduct of Ms Seda Miranoglu and Ms Serpil Miranoglu, being those that it claims to be directors of the applicant company. While there is no express evidence from the opponent that confirms Ms Seda or Ms Serpil Miranoglu are directors of the applicant (such as a Companies House listing, for example), I note that the applicant's counterstatement and submissions referred to above were filed by Ms Seda Miranoglu. Further, there has been no direct denial by the applicant that either Ms Seda or Ms Serpil Miranoglu are its directors. In light of this, I accept that both Ms Seda and Ms Serpil Miranoglu are directors of the applicant.

24. Having reviewed the opponent's evidence, I note that it confirms that it began trading under the name 'Lilygood', mostly via online retailers (such as Amazon), in October 2021. On 15 December 2021, the opponent claims that it began selling 'chemo caps' under the seller name 'Lilygood'. On 27 December 2021, the

³ See Case T-82/14 wherein the General Court found that the filing of trade marks for the purposes of blocking applications by third parties, without an intention to use the mark, was an act of bad faith.

opponent received an order for a 'pretied bandana', being a product that it sells on Amazon. On 2 January 2022, the opponent received an order for a 'chemo cap'. Both orders were made by a buyer named 'Serpil'. The opponent claims that this was Ms Serpil Miranoglu. On this point, I note that the applicant has not sought to deny this claim and, as such, I consider it reasonable to conclude that it was Ms Serpil Miranoglu, being a director of the applicant. A print-out from the 'Manage Orders' page of the opponent's 'Amazon Seller Central Europe' account that confirms these sales is provided.⁴ At the top of this print-out is a box that says 'Lilyheadwear | United Kingdom'. While I have no evidence or further explanation to suggest what this means, the narrative evidence expressly confirms that 'LilyGood' has been used as the opponent's seller name since it began trading in October 2021.⁵ Further, not only has this not been challenged by the applicant, it has been confirmed as being the applicant's understanding also as, in its counterstatement, it states that "the Opponent uses the mark LILYGOOD in connection with its company name and Amazon seller name only."⁶ I am also of the view that it is not uncommon for traders to use multiple brand names. Therefore, I am content to conclude that despite the presence of the word 'Lilyheadwear' on the print-out provided, the opponent does operate its Amazon store under the name 'LilyGood'.

25. On balance, I find that it is clear from the documents before me in these proceedings that the applicant was aware of the opponent and its use of 'LilyGood' prior to the relevant date. I make this finding on the basis that, at paragraph six of its counterstatement (being that which was quoted in the preceding paragraph), the applicant expressly confirmed that it was aware that the opponent used 'LILYGOOD' as its store name. Additionally, the evidence suggests that Ms Serpil Miranoglu (being a director of the applicant) had, prior to the relevant date, purchased goods from the opponent's Amazon store. While the fact that the applicant was aware of the opponent's business operations in the UK is important to the present case, the mere fact that the applicant knew that the opponent was

⁴ Exhibit AT1

⁵ See paragraphs 2 and 3 of the witness statement of Ahmet Turk

⁶ See paragraph 6 of the applicant's counterstatement

operating in the UK does not establish bad faith in itself and I must be satisfied that the intention of the applicant fell below the standards of acceptable commercial practices when making its application.

26. The opponent then goes on to discuss what it refers to as a 'defamation campaign' in the form of negative reviews and ratings of the opponent's listed products. The opponent claims that this was initiated by the applicant's directors. The reviews were posted on 29 December 2021, 2, 3 and 4 January 2022. Copies of the reviews are provided and I note that they are all listed as being made by accounts that had a 'verified purchase' of the product.⁷ The account names are also included and I note that none of the reviews were listed by Serpil or Seda Miranoglu. There is nothing before me to suggest that these negative reviews were orchestrated by the applicant or its directors. Further, I note the presence of evidence from after the relevant date (which I will discuss further below) includes an email from Ms Seda Miranoglu to Mr Turk dated 28 April 2022 wherein she states that the negative reviews are real,⁸ thereby arguing that it was not the applicant's directors that posted them.

27. Regardless of the applicant's denial (which came at a later date), Mr Turk explains in his evidence that he clearly concluded that the applicant's directors were responsible for the reviews and, therefore, acting maliciously. This prompted him to engage with them by way of email correspondence. Copies of the emails are included within the evidence.⁹ The first correspondence filed is dated 5 January 2022. While I do not intend to go over the content of the first email in great detail, I note that it includes a request to "remove all 3 comments immediately today and stop the attack." In a response dated on the same day, Ms Seda Miranoglu simply states:

"Immoral harasser!

Remove the products, your amazon account will be closed.

⁷ Exhibit AT2

⁸ Exhibit AT7

⁹ Exhibits AT3 to AT5

Don't approach me again!"

28. Continuing the discussion surrounding the correspondence, Mr Turk states that the intention of his emails to Ms Miranoglu was to seek an amicable solution for all parties and to continue listing on Amazon. Further emails were exchanged between the parties and I consider it helpful to the present case to reproduce those in full here. On 5 January 2022 at 11:40, Mr Turk responded to the above quoted email from Ms Seda Miranoglu by stating as follows:

"Since you are writing back with irrelevant accusations, you are angry ... but such greed and anger will cause unnecessary harm both to us and to you. Haven't you, yourselves, already seen it from others and produced it? Why so much greed? I have sincerely explained to you though..."

If you do not remove the negative feedback, comments, and ratings today, we will regret that we will have to start harming you through your mistakes. Believe me, your loss would be much greater than us staying at this business.

There's no need for that..."

29. While the opponent claims that it is the applicant who has been threatening throughout, I am of the view that the second paragraph of the above email includes a somewhat ominous threat. The response to this from Ms Seda Miranoglu on the same date at 14:51 was as follows:

"Let me tell you how you were immoral.

We produced these products, we tried to patent them, but we couldn't because they were clothing. Sleep cap was not previously available anywhere, neither in America. We spent a whole world of money and effort on patterns and fabrics, and I am the first person who produced them. As you are immoral, therefore it's easier for you to come and take it over.

How many people like you have attacked, how many people I have dealt with. If you think that I will present my work to you on a golden plate, you are wrong.

The sooner you leave, the better, rest assured that I won't leave it only with amazon”

30. As a continuation of this email chain, I note that there is a further email from Mr Turk to Ms Seda Miranoglu on 6 January 2022 at 08:09, however, this is in Turkish so I am unable to determine what it says. In response to the Turkish email, there is an email in English from Ms Seda Miranoglu on the same date at 12:14 which states:

“If you find someone who is going to believe the story you wrote, let me know and let's laugh together!

The work that you started by targeting me turned into a mess on your end. I hope you understand that you need to stay away from now on. I said take it easy.”

31. The opponent claims that the nature of the correspondence from Ms Seda Miranoglu is a clear sign that the applicant adopted tactics in order to stop the opponent from trading in the free-market.

32. In response to the evidence of the emails summarised above, the applicant stated in its written submissions (this being the one relevant point alluded to at paragraph 15 above) that the correspondence is between Seda Miranoglu and Ahmet Turk and not the parties at issue. While not expressly stated, it appears to me that the applicant's submissions are in support of an argument that a finding of bad faith can be avoided on the basis that the correspondence was not from the applicant company itself but an individual. This position is noted; however, I remind myself of the case of *Joseph Yu v Liaoning Light Industrial Products Import and Export Corporation* (BL O-013-05) wherein Professor Ruth Annand, sitting as the Appointed Person, stated that:

“ 22. [A] claim of bad faith is not avoided by making an application in the name of an entity that is owned or otherwise controlled by the person behind the application.”

33. As a result, the fact that the correspondence is between individuals does not preclude a finding of bad faith if it is the case that it can be shown that the individual owns or otherwise controls the offending party. As I have discussed at paragraph 23 above, I am satisfied that both Ms Seda and Ms Serpil Miranoglu are directors of the applicant and in light of the case law cited above, I am content to conclude that if I find that either of these individuals acted in bad faith then those actions can be attributed to the applicant.

34. Turning back to the evidence filed by the opponent, I note that Mr Turk states that, after the correspondence between the parties, he was made aware of the application at issue being filed on or around 10 January 2022. This sums up the evidence filed that leads up to the relevant date which, in this case, is 10 January 2022. There is evidence provided that points to activity after the relevant date. I remind myself that evidence of bad faith must be directed at the relevant date but evidence about subsequent events may be relevant if it casts light backwards on the position at the relevant date.¹⁰ Having reviewed the evidence from after the relevant date, I note that it consists of a letter before action from the opponent to the applicant’s directors together with a pre-drafted undertaking that the opponent requested the applicant’s directors sign¹¹ and a response to the same from Ms Seda Miranoglu.¹² Save for my discussion surrounding Ms Seda Miranoglu’s response at paragraph 26 above, I do not consider that this evidence is capable of casting light backwards to the position at the relevant date so will discuss them no further.

¹⁰ *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)

¹¹ Exhibit AT6

¹² Exhibit AT7

35. The opponent's evidence then introduces comments regarding the alleged marketing being prepared by the applicant,¹³ the applicant's allegations of non-use by the opponent and the opponent's listings being labelled as 'Amazon Choice'. I do not consider this is of any assistance to the bad faith claim before me, however, I do note that the evidence regarding use shows a label with a logo including the words 'LilyGood'¹⁴ and the 'Amazon Choice' print-outs show 'LilyGood' as the seller.¹⁵ That being said, the photos of the label are undated and the Amazon print-outs are dated after the relevant date.

36. I remind myself that an allegation of bad faith is a serious one that must be distinctly proven. In reviewing the evidence in full, it is clear to me that there was a pre-existing relationship between Mr Turk and Ms Seda Miranoglu. While I do not intend to go into detail as to the nature of this relationship, it is clear from what is before me that this relationship is animus. Upon Mr Turk engaging in initial correspondence to resolve the issue, Ms Miranoglu provided combative responses that, in my view, indicate that the applicant was intent on getting the opponent's business removed from Amazon. On this point, I refer particularly to the comments from Ms Miranoglu that Mr Turk's Amazon account would be closed if he did not remove the products¹⁶ and that the sooner he left, the better and that he should rest assured that she would not leave it 'only with amazon.'¹⁷ I appreciate that the opponent also made ominous threats to the applicant during the course of this correspondence but this does not extinguish the fact that the applicant may still have acted below the standards of acceptable commercial practices

37. Having reviewed the evidence, I am satisfied on the balance of probabilities that the application was made as a means for it to be utilised as a weapon against the opponent, namely with the intended purpose of the opponent having all of its goods removed from Amazon and to block the opponent from using the sign 'LilyGood'. This finding is made particularly on the basis of the nature of the correspondence

¹³ This point is addressed by the opponent in response to the filing of documents by the applicant outside of the evidence rounds and in an incorrect form. Since none of these documents were filed in the appropriate form at the appropriate time, they are not being considered during the course of this decision.

¹⁴ Exhibit AT11

¹⁵ Exhibit AT12

¹⁶ Exhibit AT3

¹⁷ Exhibit AT4

from Ms Seda Miranoglu together with the comments in the applicant's counterstatement (being those referred to at paragraph 24 above). The comments of Ms Seda Miranoglu were made in the build up to the filing date of the application so, therefore, speak to the intention of the applicant at that time. By owning a trade mark identical to the opponent's business and store names, the outcome of blocking the opponent is, in my view, likely. In addition, the existence of the applicant's mark for a broad range of clothing goods (that will encapsulate the goods that the opponent sells) means that the opponent is also blocked further from making its own application for its goods. All of the above, when taken together, create a *prima facie* case of bad faith. When a *prima facie* case is raised by an opponent, I remind myself of the case of *Hasbro* (cited above) that states that it is for the applicant to provide a plausible explanation of the objectives and commercial logic pursued by the application. Therefore, it is for the applicant to rebut the *prima facie* case against it.

38. While the applicant has not filed evidence in these proceedings, I note comments from its counterstatement wherein it stated that:

"The main purpose of filing any trade mark application is to secure a monopoly over the applied for mark. Use of the Applicant's Mark to cause the Opponent to cease use of the mark LILYGOOD would not be in bad faith but would be within the range of actions that would be legitimately open to the Applicant."

39. I agree that seeking to prevent a party from using an identical mark is a legitimate course of action for an owner of a trade mark to take. That being said, I refer again to the case of *Copernicus* (cited above) wherein the General Court found that the filing of trade marks for the purposes of blocking applications by third parties, and without an intention to use the mark, was an act of bad faith. So while the above comments from the applicant are noted, they are of no real consequence to the present decision.

40. I also note that the applicant has not rebutted the claim that it has no intention to use the mark. In my view, to avoid such a claim, the applicant could have filed

evidence with confirmation of its intentions to trade under the mark at issue. When presented with such a case against it, I consider it reasonable to expect such evidence (if it exists) to be filed. I also note that the parties seem to be in agreement that the applicant trades under the name 'DERESINA HEADWEAR'.¹⁸ I have set out above that it is not uncommon for undertakings to trade under different marks, however in the present case, there is nothing from the applicant to suggest that it has begun any trade in respect of the name 'Lilygood' and neither is there any evidence regarding plans to commence such trade.

41. Taking all of the above into account, I have nothing before me by way of a clear explanation from the applicant as to why it has applied for a trade mark that it knew was being used by the opponent.

42. In the present circumstances, the opponent has demonstrated a *prima facie* case that the applicant was acting in bad faith and the applicant has failed to put forward any evidence or explanation in order to rebut the same. As a result, I hereby find that the application was made in bad faith meaning that the that the opposition based on the 3(6) ground succeeds in its entirety.

CONCLUSION

43. The opposition has succeeded and the application is hereby refused in full.

COSTS

44. As the opponent has been successful, it is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. I have noted above that the opponent filed a costs proforma but, as it is professionally represented, I will disregard this and award costs based upon the aforementioned scale.

¹⁸ See paragraph 3 of the witness statement of Mr Turk and paragraph 2 of the applicant's submissions the applicant confirms that it uses the brand name 'DERESINA HEADWEAR'

45. In the circumstances, I award the opponent the sum of **£1,200** as a contribution towards its costs. The sum is calculated as follows:

Preparing a notice of opposition:	£200
Preparing evidence:	£500
Preparing written submissions in lieu:	£300
Official fees:	£200
Total:	£1,200

46. I hereby order Wisteria Bridge LTD to pay Lilygood LTD the sum of £1,200. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 9th day of February 2023

A COOPER
For the Registrar