

O-133-10

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NUMBER 2523155
BY REANNE WERUCHE OPIA
TO REGISTER THE FOLLOWING MARK IN CLASSES
16, 18, 25, 26, 45:**

**JESUS
JUNKIE**

TRADE MARKS ACT 1994
IN THE MATTER OF Application Number 2523155
By Reanne Weruche Opia
To register the following trade mark in classes 16, 18, 25, 26, 45:



**JESUS
JUNKIE**

Background

1. On 6 August 2009, Reanne Weruche Opia ("the applicant") applied to register trade mark application number 2523155, consisting of the stylised word mark "Jesus Junkie" for the following goods:

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|----------|--|
| Class 16 | Paper, cardboard and goods made from these materials; printed matter; book binding material; photographs; stationery; adhesives for stationary or household purposes; artists' materials; paint brushes; typewriters packaging materials; printers' type; printing blocks; printed publication; paint boxes for children; cheque book holders. |
| Class 18 | Leather and imitations of leather; animal skins, hides; trunks and travelling bags; handbags, rucksacks, purses; umbrellas, parasols and walking sticks; clothing for animals. |
| Class 25 | Clothing, footwear, headgear. |
| Class 26 | Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; badges for wear. |
| Class 45 | Legal services, security services for the protection of property and individuals; social work services; consultancy services relating to health and safety; consultancy services relating to personal appearance. |

2. On 19 August 2007, the UK Intellectual Property Office issued an examination report in response to the application. In the report, an objection was raised under section 3(3)(a) of the Trade Marks Act 1994 ("the Act"), on the basis that the sign was contrary to public policy and accepted principles of morality. The examiner considered that offence would be caused by the fact that an accepted religious value would be likely to be undermined, to a significant extent, if the sign was used as a trade mark.

3. Following a hearing, which was held on 8 August 2009, at which the applicant represented herself, notice of refusal was issued under Section 37(4) of the Trade Marks Act 1994 and I am now asked under Section 76 of the Act and Rules 69(2) of the Trade Mark Rules 2008 to state in writing the grounds of my decision and the material used in arriving at it.

4. No evidence has been put before me. I have, therefore, only the prima facie case to consider.

The applicant's case for registration

5. At the hearing Ms Opia stated that she did not consider the mark to be contrary to public policy and accepted principles of morality. She advised me that the word 'junkie' was being used in a positive way similar to a 'chocolate junkie'. During the hearing Ms Opia referred me to several internet links showing how the mark was being used and considered that the sign would not cause offence when being used in a positive way.

6. Prior to setting out the Law in relation to section 3(3)(a) of the Act, I must emphasise that the following decision will set out my reasons for maintaining the objection by reviewing and assessing the mark applied for.

The Law

7. Section 3(3)(a) of the 1994 Act states:

“(3) A trade mark shall not be registered if it is –

a) contrary to public policy or to accepted principles of morality”

Decision

8. In the decision by Simon Thorley Q.C. in the Tiny Penis case BL O/538/01, guidance was provided at paragraphs 30 to 32 in respect of Section 3(3)(a) and the test that must be applied in deciding the issues arising from this application:

“In my judgement the matter should be approached thus. Each case must be decided with on its own facts. The dividing line is to be drawn between offence which amounts only to distaste and offence which would justifiably cause outrage or would be the subject of justifiable censure as being likely significantly to undermine current religious, family or social values. The outrage or censure must be amongst an identifiable section of the public and a higher degree of outrage or censure amongst a small section of the community will no doubt suffice just as lesser outrage or censure amongst a more widespread section of the public will also suffice.

Aldous J. in *Masterman* invoked the concept of right-thinking members of the public. I believe this a helpful approach. A right thinking member may himself or herself not be outraged but will be able, objectively, to assess whether or not the mark in question is calculated to cause the “outrage” or “censure” that

I have referred to amongst a relevant section of the public. This is the function of the Hearing Officer. The matter must be approached objectively. It does not matter whether the Hearing Officer finds the mark personally unacceptable.”

9. No evidence has been placed before me regarding the significance of the word JESUS in the United Kingdom as a surname or as a forename. I am however aware that JESUS is a popular forename in a number of countries but I am not aware of it being in common use as a forename in the United Kingdom.

10. Although I accept that a number of consumers of the United Kingdom will identify JESUS as an ordinary surname or forename, I am of the view that they are in the minority. In fact I consider them to be in a very small minority.

11. 15. Collins English Dictionary (5th. Edition first published 2000) has the following extract within its primary definition of the word JESUS:

“n. 1. Also called; Jesus Christ; Jesus of Nazareth; ?4b.c.–?29 a.d., founder of Christianity; born in Bethlehem and brought up in Nazareth as a Jew. He is believed by Christians to be the Son of God and to have been miraculously conceived by the Virgin Mary, wife of Joseph.....He is believed by Christians to have risen from his tomb after three days, appeared to his disciples several times, and ascended to Heaven after 40 days.”

12. I also refer to The Acts Of The Apostles in The New Testament, Chapter 4 v10,11 which underlines the significance the name of Christ has for Christians; it is the portal for salvation:

"It is by the name of Jesus Christ of Nazareth, whom you crucified but whom God raised from the dead, that this man stands before you healed. He is 'the stone you builders rejected, which has become the capstone.' Salvation is found in no one else, for there is no other name under heaven given to men by which we must be saved."

13. Although there are a large number of different religious beliefs held and practised within the United Kingdom I am of the view that a substantial number of the population in the United Kingdom are Christians in that they believe in the teachings of the Christian faith. It is still a subject which is taught in schools throughout the United Kingdom and is worshipped in churches throughout the country. In my view this substantial number of the United Kingdom's population would attribute only one meaning to the word JESUS and that is the one set out above i.e. JESUS CHRIST.

14. Given my finding that a substantial percentage of consumers in the United Kingdom would not place surname, forename or any other significance on the word JESUS, but would identify it as signifying JESUS CHRIST, the Son of God, I have to consider their reaction to the word when used as an element of a trade mark in respect of the goods and services for which registration is sought. In doing this I must put aside any personal views that I may hold in relation to the mark applied for and consider the matter by assessing the position through the eyes of right-thinking members of the public. What would be their reaction when encountering the sign

JESUS JUNKIE in use in advertising. In the Tiny Penis decision Simon Thorley Q.C. commented:

“I must contemplate the use of the words Tiny Penis in television advertisements going out before the general public, in advertising bill boards in public places, perhaps even on the side of the well known Clapham omnibus.”

15. Clearly there will be some members of the general public who will not be offended when encountering the word JESUS in use as a trade mark. However, I find it equally clear that many would find such use distasteful. However, the test to which I referred to earlier in this decision makes it clear that mere distaste is insufficient. As Simon Thorley Q.C. put the question:

“Would they be outraged? Would they feel that the use should properly be the subject of censure?”

16. In addition to the decision of Simon Thorley, far more relevant guidance in respect of such marks has been provided by Geoffrey Hobbs Q.C. in the Jesus case BL O-021-05; paragraphs 6 & 20;

6. Section 3(3)(a) seeks to prohibit registration in cases where it would be legitimate for the ‘prevention of disorder’ or ‘protection of ... morals’ to regard use of the trade mark in question as objectionable in accordance with the criteria identified in Article 10 ECHR. It does so in terms which disclose no intention to prohibit registration in cases where use of the relevant trade mark would not be objectionable under Article 10 on either or both of those bases. The problem of anti-social branding is, in part, addressed under Section 3(3)(a) by accommodating the concept of ‘ordre public’ within the ‘prevention of disorder’ (in the French text of the Convention ‘à la defense de l’ordre’) under Article 10. That makes it legitimate, for example, to treat the display of ‘any writing, sign or other visible representation which is threatening, abusive or insulting within the ... sight of a person likely to be caused harassment, alarm or distress thereby’ as objectionable: see Section 5(1)(b) of the Public Order Act 1986. However, the right to freedom of expression must always be taken into account without discrimination under Section 3(3)(a) and any real doubt as to the applicability of the objection must be resolved by upholding the right to freedom of expression, hence acceptability for registration.

20. I agree with the proposition advanced on behalf of the Applicant to the effect that religious significance is not always or necessarily sufficient to render a mark unregistrable under Section 3(3)(a). However, branding which employs words or images of religious significance can quite easily have a seriously troubling effect on people whose religious beliefs it impinges upon and others who adhere to the view that religious beliefs should be treated with respect in a civilised society. In this connection I was referred to the Help Note on Religious Offence published by the Committee of Advertising Practice under the auspices of the Advertising Standards Authority in April 2003. I found the following observations to be particularly pertinent in the context of the exclusion from registration I am now considering:

Some aspects of religion are so sacred to believers that it is rarely going to be acceptable to use them in marketing without causing serious offence. For some, the linking of the central tenets or most sacred symbols and icons of a particular faith with unrelated commercial messages is likely to outrage believers and cause offence. To take an example from Christianity, marketers should be particularly careful when using images of the crucifixion, especially when that depiction could be construed as mocking. Although the ASA has not received many complaints, marketers should be aware that the dismissive or irreverent depiction of sacred symbols, such as spiritual figures or gods (e.g. Buddha, Vishnu or the Prophet Mohammed), sacred texts (e.g. the Koran), holy places, rituals or festivals, can all cause serious or widespread offence. The use of other aspects that are less central to the core of a religion e.g. many familiar stories from the Bible, which are part of the cultural 'furniture', are less likely to cause offence.

Although the general public tend to be forgiving of the use of Christian references, those with strong religious conviction from other faiths (eg Islam, Sikhism, Hinduism, Judaism and Buddhism) may not be quite so accepting of references to their religion. Marketers should treat the symbols, images or beliefs of all religions with care but should be particularly aware of the possibility of causing serious or widespread offence to those of minority faiths.

Although the degree to which marketers can safely use religious imagery and words will vary according to context, religion, etc., the nature of the product being marketed can influence whether the marketing communication will cause serious or widespread offence. Although marketers can still provoke complaints, least offence is likely to be generated when the approach is clearly relevant to the product and not disrespectful. Marketing communications that seem to exploit religious imagery for purely commercial purposes can be problematic but the most offence is likely to be felt when the product itself conflicts with the beliefs of that faith. For example, it is unlikely to be acceptable to use Catholic references to advertise birth control products, Hindu or Buddhist symbols to advertise meat products or for Muslim imagery to advertise alcohol. The gratuitous use of religious signs and icons to advertise a product that neither relates to, nor conflicts with, the religion itself may be acceptable if the marketing communication is not seen to be unduly mocking religion or belittling the symbolic relevance of those icons.

These paragraphs help to explain why it is altogether too narrow a view of the matter to say, as the Applicant in the present case says, that trade marks cannot be regarded as objectionable under Section 3(3)(a) simply by virtue of the degree of religious significance they possess.

17. This is clearly not an easy decision and in order to try to help determine whether the sign is contrary to public policy and accepted principles of morality and how it would be perceived by members of the Christian Community, a question was posted on the web site www.Shipoffools.com. This is a popular, online Christian website and which consists of a Christian magazine and forum.

The question posted on the forum by a member was;

If you click the link below, you'll find an application for a trade mark which is being considered by the UK trade mark registry...

<http://www.ipo.gov.uk/domestic?domesticnum=2523155>

In these days of religious offense, do you find the sign offensive... or do you think Christians would? Apparently, the mark is being applied for by a committed Christian, and it looks like it might be applied mainly to clothes. Although the mark isn't referring to Jesus himself, but to someone "addicted" to him, is the juxtaposition of Jesus with word the word "junkie" ok? (turning addiction into a metaphor, as in golf-junkie, chocaholic, etc).

The Intellectual Property Office is keen to know responses to the proposed trade mark by religious people, so your comments will be of interest to them.

18. In answer to the question, a total of 29 responses were posted by members of the forum, some of which have been helpful in determining the outcome of this decision. Of the 29 respondents, it must be said that the majority found the term to be in bad taste rather than offensive. Comments such as 'tacky' 'uncomfortable' and 'provocative' were used, one or two responses, even considered that the sign as a public statement of faith. However five of the 29 respondents were clearly outraged by use of the sign as a trade mark. This figure amounts to 17% of the number of respondents, which on the face of it, may appear relatively low. However, as stated in the decision of Simon Thorley Q.C in *Tiny Penis* BLO/538/01 at paragraph 30;

*"In my judgement the matter should be approached thus. Each case must be decided with on its own facts. The dividing line is to be drawn between offence which amounts only to distaste and offence which would justifiably cause outrage or would be the subject of justifiable censure as being likely significantly to undermine current religious, family or social values. **The outrage or censure must be amongst an identifiable section of the public and a higher degree of outrage or censure amongst a small section of the community will no doubt suffice just as lesser outrage or censure amongst a more widespread section of the public will also suffice.***

19. In view of the vociferousness of the comments from the 17% of respondents who were outraged, I consider that this equates to a 'higher degree of outrage or censure amongst a small section of the community', as referred to above and thus, which would significantly undermine current religious, family or social values.

20. One respondent stated, "In a secular society, I wouldn't give it too much notice. However, from a Christian perspective, I find it horrifying, because branding is about making money. This is using the Lord's name in vain- to make money". Relevant to this post are the comments of Geoffrey Hobbs Q.C. in *Jesus*, case BL O-021-05; paragraphs 25 and 26;

25. The power of a trade mark to produce a reaction inevitably varies according to the nature and intensity of the perceptions and recollections triggered by the relevant mark. JESUS is the ultimate Christian name. It commands the highest degree of reverence and respect among committed Christians. The view that their religious beliefs should be respected is, I am sure, deep-seated and widespread. The very idea that the name JESUS should be appropriated for general commercial use as a trade mark is, I am equally sure, anathema to believers and those who believe in the need to respect the religious sensibilities of others. Their reactions would no doubt vary in terms of the way in which they handled their thoughts and feelings. I think the common response among such people would be a mixture of anger and despair according to temperament.

26. It follows, in my view, that the Hearing Officer was right to conclude that use of the word JESUS as a trade mark would cause greater offence than mere distaste and do so to a significant section of the general public. The use of it as a trade mark should – to use the expression I have used several times already - be regarded as seriously troubling in terms of the public interest in the 'prevention of disorder' and 'protection of morals' under Article 10 ECHR. It is legitimate to apply the prohibition in Section 3(3)(a) of the 1994 Act to branding which is anti-social by reason of its ability to undermine an accepted social and religious value to a significant extent. That is the position here. There will be cases where the need to adopt a proportionate response to the problem of antisocial branding requires less than 100% rejection of the request for registration. This is not one of them. The power of the word JESUS to give rise to the relevant concern is not diminished by the nature of the goods in the different categories specified by the Applicant in the present case.

21. It is clear from the use of the sign at www.myspace.com/jesusjunkieclothing and which Ms Opia referred to at hearing, that the sign is intended to shock when used on clothing. Whilst the motives and intentions behind using the word 'junkie' may be in the positive sense of being 'addicted' to Jesus, I do not consider that the motives and intentions of such use, would be carried into the market place.

22. Having considered the matter through the eyes of the "right-thinking" member of the public I have concluded that use of the word JESUS JUNKIE as presented in the form of application and used as a trade mark, in relation to the goods and services

for which registration is sought, would cause greater offence than mere distaste to a significant section of the general public. That offence is caused by the fact that an accepted social and religious value is likely to be undermined to a significant extent. This value is the belief that the word JESUS is the name of JESUS CHRIST who is believed by Christians to be the Son of God and whose name should not be debased by use in the context of the trade mark for the goods and services in question.

Conclusion

23. In this decision I have considered all the documents filed by the applicant and all the arguments submitted to me in relation to this application and, for the reasons given, I therefore conclude that the trade mark applied for is contrary to public policy or to accepted principles of morality and is therefore excluded from acceptance by Section 3(3)(a) of the Act.

Dated this 04 day of May 2010

Bridget Whatmough
For the Registrar
The Comptroller General