

EIP

Stone v Wenman: The Trademark Battle of Two Spiritual Therapists, 'Archangel Alchemy'

Claire Stone ("Stone") pursued a trademark infringement case against Alexandra Wenman ("Wenman") for the use of the sign "ARCHANGEL ALCHEMY". Wenman made a counter claim for passing off which succeeded as goodwill and misrepresentation were established and damage was admitted. Stone's trademark registration was declared invalid as it was held Stone did not have the right to register the trademark in the first place.

Background

Stone is a spiritual author and holistic therapist. She began marketing an online course under the brand 'Archangel Alchemy' around July 2019. Stone registered the mark 'Archangel Alchemy' on 3 October 2019. When it came to her attention that Wenman had begun marketing and offering for sale online courses by reference to that sign on her website and social media accounts, Stone brought a claim against Wenman. Stone argued the registration was infringed as the services offered with reference to the sign were identical and consent was not sought.

In response, Wenman counterclaimed for passing off arguing she had offered spiritual and holistic courses by reference to the sign "Archangel Alchemy" since 2010 and goodwill had been accrued. Wenman further sought a declaration of invalidity of Stone's mark on the ground of "earlier right" of the mark within the meaning of section 47(2)(b) of the Trade Marks Act 1994, given Wenman had acquired unregistered rights prior to the date of application for registration by Stone.

Evidence

Wenman relied on various pieces of evidence to prove her goodwill in the mark which Her Honour Judge Melissa Clarke considered carefully.

1. Wenman wrote 33 monthly full-page columns for Prediction Magazine titled "Archangel Alchemy" between 2010 and 2013.
2. Wenman had workshops called "Archangel Alchemy" which were very popular. She had 7-day retreats called "Gateway to success – Archangel Alchemy...". These workshops were evidenced by posters and by videos taken by Wenman and her clients, who also provided witness statements.
3. Wenman sold meditation CDs called "... Archangel Alchemy". She also sold e-courses.
4. Wenman attended exhibitions, created a podcast and wrote a book with the name "Archangel Alchemy".

Stone argued that the Wenman's brand was "Alexandra Wenman" and the signs were not used as a brand indicator and in any event any goodwill which arose was de minimis. For example, Stone argued Wenman only sold four copies of her e-courses and the remaining trade was minimal. Stone further criticised the evidence from the witness statements as being subjective.

Outcome

The Judge held that the sign was being used as an indicator of origin. Even if all the trade was the sale of four copies this still gives rise to goodwill. Wenman's work generated sufficient actual goodwill to be capable of damage by reason of misrepresentation. The Judge further emphasised that subjective evidence from customers is valuable evidence of reputation and goodwill. Stone's registration was invalid because of Wenman's prior right.

Points to note

Potential claimants should ensure they undertake sufficient research about the activities and rights of a potential defendant in advance of beginning proceedings to prevent being in receipt of a legitimate counterclaim.

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