

INNOCENT CRIMINAL on appeal before the appointed person

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- The appointed person has confirmed that there was no likelihood of confusion between INNOCENT CRIMINAL and CRIMINAL for Class 25 goods
- Despite the strikethrough of the word ‘innocent’, the word remained legible and visually prominent
- The phrase ‘innocent criminal’ is conceptually unique and not a logical brand variant of CRIMINAL

The appointed person, Daniel Alexander KC, has [upheld](#) the hearing officer’s decision in an appeal filed by Criminal Clothing Limited, which had opposed registration of INNOCENT CRIMINAL (stylised and device) on the basis of its earlier rights in CRIMINAL, both marks being in Class 25.

The case examines in detail conceptual similarity, consumer perception and direct and indirect confusion. Criminal Clothing claimed that registration of the mark INNOCENT CRIMINAL conflicted with its own CRIMINAL mark – in essence, that ‘criminal’ was the dominant part of the mark and that the average consumer would see INNOCENT CRIMINAL as an extension or sub-brand of CRIMINAL, especially given the stylised strikethrough of the word ‘innocent’.

Background

Relande Barrett-Gordon applied to register the trademark INNOCENT CRIMINAL (stylised and device) in Class 25, covering a broad range of clothing items. Criminal Clothing opposed the application on the basis of its registered mark CRIMINAL, also in Class 25. The opposition was dismissed, with the hearing officer concluding that the marks were “materially different visually, orally and conceptually – and sufficiently so for confusion to be unlikely”.

Criminal Clothing appealed, maintaining that the average consumer would naturally associate the mark INNOCENT CRIMINAL with CRIMINAL, particularly due to the strikethrough of the word INNOCENT, which Criminal Clothing argued would be disregarded

CRIMINAL

Opponent's trademark

**INNOCENT
CRIMINAL**

Applicant's trademark

Appeal decision

Alexander KC upheld the hearing officer's decision and rejected the appeal, awarding no costs. Criminal Clothing's primary contention was that the strikethrough on the element 'innocent' would cause consumers to overlook it, effectively perceiving the mark as CRIMINAL alone. Alexander KC did not agree and determined that, despite the strikethrough, the word 'innocent' remained legible and visually prominent, adding to the overall impression of the mark. The strikethrough, he reasoned, was more of a "stylistic element" than an indicator of nullification. Thus, whilst there was strikethrough of 'innocent', a consumer would still read and enunciate the word and would not simply omit it.

He further found that INNOCENT CRIMINAL carried its own distinct conceptual meaning, separate from CRIMINAL. The juxtaposition of the two words created an oxymoron, reinforcing its uniqueness rather than diluting it. Alexander KC also dismissed the idea that the mark could be perceived as a sub-brand or extension of CRIMINAL, pointing out that the phrase 'innocent criminal' is conceptually unique and not a "natural" or logical brand variant of CRIMINAL. This led to the decision that there was no direct or indirect confusion.

Key takeaways

This decision is a significant reminder for brand owners and practitioners alike that sharing a common element may not be sufficient for a finding of direct or indirect confusion if the overall presentation and conceptual impact are distinct. Further, a strikethrough through a word does not automatically erase consumer perception of that word. The average consumer is more discerning and capable of understanding the full conceptual impact of a composite mark.

The case is also a useful reminder of the principles of direct and indirect confusion, examining when a mark may be considered as a brand extension. A mark is more likely to be denoted as a sub-brand/brand extension if it is descriptive in nature – Alexander KC gave the example of YOUNG. The word 'innocent' does not fall in that category.

Finally, Alexander KC reiterated the dangers of "over-examining" a case. Whilst a range of situations must be considered in evaluating whether confusion is likely, such consideration "does not require a microscopic analysis of individual consumers or possible kinds of situation" where the marks may be used. This is a welcome reminder not only that a "natural reading" of marks should be made (dissecting them is contrary to the way they are perceived), but also that overall consideration should not be taken too far.

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