

SkyKick UK Ltd and another (Appellants) v Sky Ltd and others (Respondents)

Case ID: 2021/0181

Case summary

Issue

- (1) What is the test for determining "bad faith" in s.3(6) of the Trade Marks Act 1994?
- (2) If such bad faith is found, what is the correct approach to determining the specification that the proprietor of the trademark should be permitted to retain?

Facts

In this long-running trade mark case, Sky brought actions against SkyKick for infringement of its trade marks across a range of goods and services, while SkyKick challenged those trade marks' validity. At this stage in the proceedings, the parties' arguments are focused on whether Sky applied for its trademarks in "bad faith" within the meaning of section 3(6) of the Trade Marks Act 1994, which would render Sky's trade marks invalid. SkyKick alleges that Sky employs a strategy of applying for overly broad trade marks for goods and services which it does not deal in, and for which it has no conceivable commercial rationale. The judge found that Sky had acted in bad faith and that its trade marks were partially invalid, but also found that SkyKick's email migration and cloud storage services infringed Sky's trade marks. The Court of Appeal allowed Sky's appeal and held that it had not acted in bad faith and dismissed SkyKick's cross appeal on infringement. SkyKick now appeals to the Supreme Court on the issue of bad faith.

Judgment appealed

[\[2021\] EWCA Civ 1121](#)

Parties

Appellant(s)

- (1) SkyKick, UK Ltd
- (2) SkyKick, Inc

Respondent(s)

- (1) Sky Ltd (formerly Sky Plc)
- (2) Sky International AG
- (3) Sky UK Ltd

Intervener(s)

Comptroller-General of Patents Designs and Trade Marks

Appeal

Justices

Lord Reed, Lord Lloyd-Jones, Lord Kitchin, Lord Hamblen, Lord Burrows

Hearing start date

28 June 2023

Hearing finish date

29 June 2023

Watch hearing

28 June 2023 [Morning session](#) [Afternoon session](#)

29 June 2023 [Morning session](#) [Afternoon session](#)