



Neutral Citation Number: [2024] EWHC 2947 (IPEC)

Claim No: IP-2023-000087

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY ENTERPRISE COURT

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 21 November 2024

Before:

DAVID STONE
(sitting as an Enterprise Judge)

Between:

LAURA THURGOOD

Claimant

- and -

(1) DANIELLE LAIGHT

Defendants

(2) WASH WIGGLE & WAG LIMITED

Ian Silcock (instructed by Samuels Solicitors LLP) for the **Claimant**
The **First Defendant** represented herself and the **Second Defendant**

Hearing date: 22 October 2024

APPROVED JUDGMENT

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

This judgment is to be handed down by the deputy judge remotely by circulation to the parties' representatives by email and release to the National Archives and Bailii. The date for hand-down is deemed to be 21 November 2024.

David Stone (sitting as an Enterprise Judge):

1. This is my judgment following the one-day trial of this claim for passing off. By a claim form dated 1 June 2021 the Claimant, Laura Thurgood (**Ms Thurgood**) sued the First Defendant, Danielle Laight (**Ms Laight**) and the Second Defendant, Wash Wiggle & Wag Limited (**WWW Limited**) including for passing off in relation to a dog grooming business near Birmingham. Simply and neutrally put, Ms Laight had been involved in Ms Thurgood's dog grooming business, which Ms Thurgood says traded as WASH WIGGLE & WAG within an approximately 30 mile radius of Redditch (the **Territory**). Ms Laight then ceased to be involved in Ms Thurgood's business, and instead groomed dogs on her own under the WASH WIGGLE & WAG name. She incorporated the Second Defendant to do so.
2. Ms Laight denied passing off, arguing in short that:
 - i) Ms Thurgood had not traded sufficiently under WASH WIGGLE & WAG to have established goodwill;
 - ii) Ms Thurgood had traded under other names including SCRUFFY2FLUFFY and DOGGY STYLE such that customers would not recognise her business as WASH WIGGLE & WAG;
 - iii) Ms Laight was the only groomer in Ms Thurgood's business in the Territory, and she built up her own reputation – it was that which brought in custom;
 - iv) No-one was misled because no-one thought that the grooming services (also referred to as “grooms”) offered by Ms Laight after she left Ms Thurgood's business were associated with Ms Thurgood; and
 - v) Any damage to Ms Thurgood's business following Ms Laight's departure was not caused by Ms Laight's actions, but rather by poor customer service within Ms Thurgood's business.
3. The Defendants have admitted that Ms Laight is vicariously liable for WWW Limited's acts and that the Defendants are jointly and severally liable with one another for their respective acts.
4. Ms Thurgood's action was initially filed in the (then) Queen's Bench Division, because it included a claim for “libel and malicious falsehood”. It also included claims for money had and received and breach of confidence. By consent, the matter was then transferred to the Intellectual Property Enterprise Court by order of Master Thornett (and with the consent of the Chancellor and the Intellectual Property Enterprise Court). The issues were then narrowed, such that the only issue for me to determine following the trial is the passing off claim. As this was a split trial, I only need to determine liability.
5. At the trial before me, Ms Thurgood was represented by Mr Ian Silcock (instructed by Samuels Solicitors LLP). Ms Laight represented herself, and, with my permission, WWW Limited. If I may say so, despite her stated misgivings at the start of the trial, Ms Laight did an excellent job of her representation, including cross-examining Ms

Thurgood's witnesses. With appropriate breaks taken at her request, she admirably put her points across, including in her opening and closing speeches. Ms Laight told me at the end of the day that she felt she had properly put her case: I agree. The Defendants had previously instructed Thomas Horton LLP and then Star Legal Ltd. Ms Laight's original Defence was drafted by Dr Robert Whittock of counsel.

6. There were minor variations of WASH WIGGLE & WAG used by both sides (for example, adding commas, or using AND instead of the ampersand). It does not matter for present purposes – the variations are unlikely to be noticed by consumers of the relevant dog grooming services, and do not affect at all the understanding of the signs used. I have therefore used WASH WIGGLE & WAG throughout this judgment, except when quoting from documents in the case.
7. The parties were agreed as to the legal principles I should apply: this case therefore turned entirely on the facts. The law on passing off is well-known, and was set out at length in Ms Thurgood's counsel's skeleton argument. I therefore do not need to set it out here.

List of Issues

8. As is customary in the Intellectual Property Enterprise Court, a List of Issues for determination at trial was attached to the CMC order made by HHJ Hacon on 6 February 2024. It reads as follows (I have deleted the references to the issues which had since been resolved, and I have used the definitions I have used in this judgment):
 1. **Goodwill.** Whether Ms Thurgood owned any goodwill under or in connection with WASH WIGGLE & WAG at any material time during the period from about June 2018 onward, including by reason of the use of WASH WIGGLE & WAG by her and/or on her behalf and/or with her licence and/or consent, and if so, to what extent;
 2. **Misrepresentation.** Whether the Defendants have, or either of them has, caused or are/is likely to have caused, members of the public to be deceived into believing, contrary to the fact, that: (a) the Defendants' respective businesses and/or services (or any of them) are or were those of Ms Thurgood, or vice versa; and/or that (b) the Defendants' respective businesses and/or services (or any of them) are or were endorsed, approved, authorised, licensed or franchised by, or somehow otherwise associated in the course of trade with, Ms Thurgood, or vice versa; and
 3. **Damage.** Whether Ms Thurgood has suffered damage to her said goodwill by reason of the said acts of deception and/or the said likelihood of deception.
9. The Defendants admitted the acts which were said to amount to a misrepresentation, but denied that those acts constituted a misrepresentation.

Witnesses

10. Ms Thurgood relied on two witness statements: her own, and one from her father, Mr Robert Thurgood (also called Bob) (**Mr Bob Thurgood**). Both Ms Thurgood and Mr Bob Thurgood were cross-examined by Ms Laight. They gave their evidence in a straight-forward way, clearly doing their best to assist the Court. No criticism was made of the way in which they gave evidence. Mr Bob Thurgood told the Court that he uses a hearing aid: I was satisfied that he heard the questions put to him and was able to answer them. I accept their evidence.
11. A short statement was also submitted from Ms Thurgood's uncle (Mr Bob Thurgood's brother) Mr James Thurgood (also called Jim) (**Mr Jim Thurgood**). No permission was sought or given for this statement, and Mr Jim Thurgood was not cross-examined. I have therefore given no weight to the contents of this document, although it would not have altered my findings had I done so.
12. The Defendants relied on a witness statement from Ms Laight, who was cross-examined. It was suggested that I should treat Ms Laight's testimony with some care, and prefer Ms Thurgood's version of events where there was conflict. I accept that submission. Having watched and listened to Ms Laight carefully as she gave her oral testimony, she was in my judgment at times evasive. When confronted with questions the answer to which ran contrary to her version of events, she often paused, or asked for the question to be repeated. Sometimes this was followed by an answer that did not, in fact, address the question asked. Ms Laight's version of events from the witness box was not always clear. I have set out below my findings of fact which differ at points from Ms Laight's version of events. From that it will be clear that, where Ms Laight's version of events differed from the written record, I prefer the version set out in the contemporaneous documents.
13. The Defendants also relied on letters written by dog grooming customers which could best be described as character references. The Defendants did not have permission for any further witness statements, so I have not taken these into account (including because their authors were not cross-examined), but it would not have made any difference to my conclusions had I done so.

Partnership

14. There was an issue on the pleadings which was abandoned following Ms Laight's closing speech which it is convenient to deal with first. In her Defence, which was professionally prepared, Ms Laight argued that she and Ms Thurgood had been in partnership in the dog grooming business operated by Ms Thurgood. This, she said, gave her some rights in any goodwill generated by that business. Ms Thurgood, on the other hand, said that Ms Laight had always been an independent contractor, and not a partner in the dog grooming business.
15. At the conclusion of the trial, following Ms Laight's closing speech in which she did not mention the partnership issue, I asked her if she still considered herself to have been a partner in Ms Thurgood's dog grooming business, and she said that she did not. She had explained under cross-examination that she had received some early bad advice, and I took that reference to be to the professional advice that she should claim to have been a partner in the business, because such a claim was, on the facts before me, always hopeless.

16. As the claim was withdrawn, I need say little about it, but it was abundantly clear to me that Ms Laight was not a partner in Ms Thurgood's business. The misstep was likely triggered by the initial advertisement for the role, which was headed Self Employed Mobile Dog Grooming Partner. That of itself was not enough to establish a partnership at law, and was not, on Ms Thurgood's evidence, aimed at doing so. Rather, Ms Thurgood said, it was to indicate the non-hierarchical structure of her business. Thereafter, whilst there was never a written agreement entered into between Ms Thurgood and Ms Laight:
- i) Ms Laight made no capital contribution to the business;
 - ii) Ms Laight was not a decision maker within the business, and was not consulted on decisions such as hiring a new dog groomer to join the business. She was told what to do by Ms Thurgood, Mr Bob Thurgood and Mr Jim Thurgood, and carried out the tasks assigned to her. There were no partners' meetings;
 - iii) Ms Laight was paid a fixed fee per groom (with additional fees for same-day re-bookings, and for bookings she generated);
 - iv) Ms Laight did not receive any profit share from the business;
 - v) Ms Laight provided her own scissors and clippers (and paid for them to be sharpened) but was provided by Ms Thurgood with a mobile dog grooming van, petrol, dog shampoo, towels, muzzles and other fungibles for the dog grooming service;
 - vi) there is nothing on the written record to suggest that Ms Laight considered herself to be a partner of the business until the Defence was filed, and plenty on the written record that indicates that she was not – for example, she responded to the initial job advertisement saying “I am extremely interested in the dog grooming job you have available”. She did not hold herself out as a partner in the business – the customers whose dogs she groomed considered her to be an employee; and
 - vii) Ms Laight's tax returns for the relevant period make no reference to her being in a partnership.
17. I had the benefit of Ms Thurgood's counsel's written skeleton argument addressing the issue of partnership. Had it remained a live issue (or on the basis that matters go further), I would have had no hesitation at all in rejecting on the facts before me any notion that Ms Laight was a partner in Ms Thurgood's business. The allegation was obviously hopeless, and should never have been pleaded.

Background Facts

18. Most of the following facts were not contested, although their impact was. I set out below my factual findings, indicating where a matter was contested.
19. From 2017, Ms Thurgood operated a dog grooming business called SCRUFFY2FLUFFY. There was some dispute as to where that business operated, but

it does not matter for present purposes. That business paused operation in or around April 2018 due to the injury of the business's dog groomer.

20. On 11 June 2018, Ms Laight responded to a job advertisement posted by Ms Thurgood's business. At the time, Ms Laight was operating as a dog groomer from her home. As I have already said, the advertisement was titled Self Employed Mobile Dog Grooming Partner. Ms Laight responded first in writing, before meeting with Mr Bob Thurgood and Mr Jim Thurgood, both of whom worked in Ms Thurgood's business. There were some further meetings, including with Ms Thurgood, and it was agreed that Ms Laight would start working for Ms Thurgood's business as a dog groomer. Ms Laight was engaged as an independent contractor. As noted above, at the time, Ms Thurgood's business was trading as SCRUFFY2FLUFFY.
21. On 3 July 2018, Ms Thurgood purchased a mobile dog grooming van with registration number WG57 DOG. The van had been purchased from an entity which had been trading as WASH WIGGLE & WAG near Northampton. Ms Thurgood gave evidence that the owners of the van did not wish to trade as WASH WIGGLE & WAG any longer, and were happy for her to use that name.
22. Ms Thurgood said that, as WASH WIGGLE & WAG was already printed on the side of the van, it was then adopted, alongside SCRUFFY2FLUFFY, as a name for the dog grooming business. Ms Laight gave evidence that this was only done to save money. I do not consider it matters – what is clear to me is that Ms Thurgood's business started using WASH WIGGLE & WAG thereafter in various ways, including on the side of the van.
23. Thereafter, Ms Laight used the van to provide dog grooming services on behalf of Ms Thurgood. This was done by dog owners contacting the business, often in response to advertisements, or following word-of-mouth referrals (and re-bookings). This appears to have been mostly by telephone, with calls answered by Mr Bob Thurgood or Mr Jim Thurgood. Ms Thurgood gave evidence that she largely left the administrative side of the business to them. Mr Bob Thurgood or Mr Jim Thurgood would then book each groom in a calendar, to which Ms Laight also had access. Ms Laight would attend and groom the dog, then take payment, usually in cash. Ms Laight would record the number of grooms in a hand-written timesheet, which she would submit weekly. The timesheets, which were in evidence before me, show the number of grooms each day, the total received for those grooms and Ms Laight's fixed fee per groom. Ms Laight usually deducted any expenses (petrol, shampoo, muzzles, towels, bows), giving a total for the money to be given by Ms Laight to Ms Thurgood at the end of each week.
24. The van provided a mobile grooming salon. It would usually park near the customer's home, and be connected to mains electricity. The dog was then groomed in or near the van.
25. As noted above, Ms Laight received an additional fee for any customers she introduced to the business. Thus, it was in her interests to promote the business. She did this in part by setting up and operating a Facebook page and an Instagram page to promote the business. Ms Thurgood gave evidence that she did not engage with social media, and was happy for Ms Laight to do this on behalf of the business.

26. Things went well for approximately 18 months – customers were happy with Ms Laight’s grooming, and both Ms Laight and Ms Thurgood appear to have been happy with the arrangement. Ms Laight carried out approximately 2,600 grooms in this time. Ms Laight says that from time to time she asked for a formal written contract to record the arrangement. Mr Bob Thurgood and Ms Thurgood do not recall these requests, but it does not matter for present purposes. Ms Thurgood’s dog grooming business had approximately 838 customers, of whom 700 were regular/return customers, many of whom booked repeat grooms at 6 to 8 week intervals. All customers were within 30 miles of Redditch. Reviews on various websites were positive.
27. There was an issue between the parties as to a tracker which had been put into the van at the request of Ms Thurgood, and with Ms Laight’s knowledge. The tracker was provided by a business in which Ms Laight’s father was involved, and provided weekly email reports to Mr Bob Thurgood showing the whereabouts of the van.
28. The evidence before me of the use of the WASH WIGGLE & WAG name to promote Ms Thurgood’s business was as follows:
 - i) *The use of the van with customers.* As set out above, the van provided a mobile grooming salon. Most customers of the business would have encountered Ms Laight in that context, and would have seen the van whilst their dog was groomed. Pictures of the van were in evidence – each clearly shows the words WASH WIGGLE & WAG on the van. In my judgment, no-one seeing that use would have considered it to be descriptive use – it would have been seen, in context, as indicating the source of the dog grooming services being offered. There was no argument before me that WASH WIGGLE & WAG is descriptive of dog grooming services, or would have been seen as such by the business’s customers. There was no mention on the van of any other service-identifying sign, such as SCRUFFY2FLUFFY;
 - ii) *Use of the van more generally.* There was also evidence before me of at least two occasions on which Ms Laight parked the van at busy shopping centres to help promote Ms Thurgood’s business – she recorded this in writing in correspondence with Mr Bob Thurgood. I accept that the van, driven around the area, will have helped to advertise Ms Thurgood’s business, as potential customers of the business will have seen it, and been able to contact Ms Thurgood’s business to discuss its service offering;
 - iii) *Advertisements.* Ms Thurgood placed advertisements in at least four local newspapers and on the website at Yell.com. The advertisements were in evidence, and clearly show use of WASH WIGGLE & WAG to identify Ms Thurgood’s business: WASH WIGGLE & WAG is followed by MOBILE DOG GROOMING SALON. There is nothing else on the advertisements to indicate another entity – for example, the advertisements do not mention SCRUFFY2FLUFFY. The advertisements list the various dog grooming services provided, alongside an image of the van. There was a suggestion from Ms Laight that the advertisements, which she was sent in draft at the time by SMS, were never actually published. Given Ms Thurgood’s clear evidence that they were, and an invoice for the advertisements which was in evidence, I am unable to accept that submission; and

- iv) *Facebook and Instagram pages.* As noted above, Ms Laight set up, and ran, the Facebook and Instagram pages for Ms Thurgood's business, with Ms Thurgood's consent. Each page included use of WASH WIGGLE & WAG, although SCRUFFY2FLUFFY also appeared. In my judgment, having reviewed the extracts from the pages which were in evidence, it would have been clear to those seeing these pages that WASH WIGGLE & WAG was being used as an indication of source of origin, and not as a tagline or other promotional slogan. In evidence was, for example, a posting about a Covid food collection which Ms Laight signed off with:

“Sending all my love

Danni

Wash wiggle & wag”

29. The business relationship broke down in or about May 2020. The Thurgoods had become concerned that Ms Laight was taking “off-book” appointments – that is, undertaking mobile grooms in the course of her work, but not accounting to Ms Thurgood for the money paid by customers. Mr Bob Thurgood asked Ms Laight to return the van. Ms Laight declined to do so, but said that it could be collected from outside her home. On collecting the van on 22 May 2020, Ms Thurgood found a letter of resignation from Ms Laight. Ms Laight had also emptied the van of any shampoo, muzzles, towels, restraining equipment or other fungibles. She had, quite rightly, retained her own scissors and clippers.
30. The van tracker was deactivated at about this time.
31. Seven days later, on 29 May 2020, Ms Laight incorporated WWW Limited. Ms Laight is, and has at all material times since its incorporation been, its controlling shareholder.
32. I should add at this point that Ms Laight suggested at trial, apparently for the first time, that she had been undertaking “independent” (her word) grooms at her house whilst working for Ms Thurgood's business. This appeared to be news to Ms Thurgood. When I asked Ms Laight whether these were offered under WASH WIGGLE & WAG or some other brand prior to her resignation, her answer was equivocal. Having heard and seen Ms Laight give evidence, and taking into account her evidence and her submissions, it seems to me more likely than not that Ms Laight was not conducting grooms at her home under the name WASH WIGGLE & WAG prior to her departure from Ms Thurgood's business.
33. Having set up WWW Limited, Ms Laight commenced trading in dog grooming as WASH WIGGLE & WAG. She registered the domain name www.washwigglewag.co.uk (which no longer appears to be operational). At the time, the website included the following text:

“My name is Danni and I own Wash Wiggle & Wag Ltd. I have been running a mobile dog grooming service for over four years.”

34. It will be recalled that Ms Laight had control of the Facebook and Instagram pages for Ms Thurgood's business. She chose not to provide passwords etc to Ms Thurgood. Rather, she adopted these pages as her own, and began using them to promote her new dog grooming business under the name WASH WIGGLE & WAG.

35. On 4 June 2020, Ms Laight published on the Ms Thurgood's former Facebook page the following:

“URGENT

After receiving calls from customers it seems the van I was previously using is back in action and covering Solihull areas with a 'new groomer' the owners Robert, Jim and Laura thurgood are pretending I am turning up for grooms, then leaving customers no choice with a new groomer on their doorstep.

As a result of this I have had injured dogs owners on the phone with large vets Bill's now needing to be paid. THIS IS NOT ME AND NO LONGER WORK WITH THEM! [folded hands emoji]

PLEASE PLEASE PLEASE only use my number and my name if you are wanting to book with me. I am on Instagram, facebook, yell this is just one result on day 1 of their new business venture and will be making sure my name 'Wash Wiggle & wag' is no longer used by them.”

36. Ms Laight gave evidence that it was a mistake for this to be published on Ms Thurgood's SCRUFFY2FLUFFY Facebook page – caused by a 24-hour security delay in transferring the page from SCRUFFY2FLUFFY to Ms Laight's new business. She had meant for it to be published only once the page had been transferred to her new business. I do not consider that that matters for present purposes. Identical text was placed on Ms Laight's Instagram page. Ms Laight also sent an SMS message to various of Ms Thurgood's clients in similar terms, but with the following text added at the end:

“As Most of you know im temporarily working from home while my new van is being converted please contact me for a appointments. I will be mobile by july.”

37. I should also record that following her departure from Ms Thurgood's business, Ms Laight retained some £4,000 which she had collected from customers of Ms Thurgood's business. Eventually, HHJ Hacon ordered Ms Laight to pay that money to Ms Thurgood, which she did.

38. Ms Thurgood said that her business deteriorated rapidly during June and July 2020.

39. Some weeks after Ms Laight's resignation, on or about 27 July 2020, the van tracker was re-activated, and Mr Bob Thurgood once again began receiving emails listing the whereabouts of the tracker. At this point, it was not in Ms Thurgood's van, which, as noted above, had been returned. Rather, it appeared to Mr Bob Thurgood to show Ms Laight visiting customers of Ms Thurgood's business. Ms Laight's evidence was

that she had taken with her on resignation the contact details of approximately 250 customers of Ms Thurgood's business, whom Ms Laight then contacted. There was clear evidence before me that (former) customers of Ms Thurgood's business used Ms Laight's services offered under WWW Limited.

40. On 14 September 2020, Ms Thurgood sent a text message to existing customers offering free grooms, to encourage more trade. Shortly thereafter, Ms Thurgood decided to abandon dog grooming under the sign WASH WIGGLE & WAG.
41. Ms Laight raised other issues, including in her questioning of Ms Thurgood and Mr Bob Thurgood. I do not need to deal here with all the issues she raised, but I consider the following to be irrelevant to the issues I must decide:
 - i) The cash nature of Ms Thurgood's business;
 - ii) Ms Thurgood's tax affairs;
 - iii) The Covid 19 regulations that applied to dog groomers at the relevant times; and
 - iv) Whether the van was painted or stickered.

Analysis

42. Goodwill has been described as "the attractive force which brings in custom": *Inland Revenue Commissioners v Muller & Co's Margarine* [1901] AC 217 (HL) per Lord Macnaghten at 223. There is no doubt in my mind that Ms Thurgood's business had established goodwill in the Territory in WASH WIGGLE & WAG in the time between purchase of the van on 3 July 2018 and Ms Laight's departure from the business on 22 May 2020. Ms Thurgood's business had used WASH WIGGLE & WAG in the ways I have set out in paragraph 28 above. Those uses were in trade. They were uses of a sign which was not descriptive of the services being offered. The sign was used to indicate the source of the services being offered by the business and customers would have seen it as such. On the evidence before me, that use gave rise to goodwill in WASH WIGGLE & WAG which I find to have been exclusively associated with Ms Thurgood's business.
43. The van was used throughout this period, coming into contact, as I have noted above, with existing customers, but also serving a general advertising function when driven around the area and parked in high traffic areas. The photographs of the van clearly show the WASH WIGGLE & WAG sign. The van did not include any reference to SCRUFFY2FLUFFY.
44. The WASH WIGGLE & WAG sign was also used in advertising, and on Facebook and Instagram. In relation to Facebook and Instagram, the examples I saw in the evidence also included the SCRUFFY2FLUFFY sign, but, in my judgment, that does not matter. A business can use multiple trade marks to promote its goods and services, and many businesses do. The use of SCRUFFY2FLUFFY does not demote the customer's perception of WASH WIGGLE & WAG to a descriptive term. In my judgment, WASH WIGGLE & WAG continued to create goodwill, even when used with other signs.

45. With the partnership point no longer pressed, the goodwill which I have found to have existed by the time of Ms Laight's resignation must have belonged to Ms Thurgood – she was the owner of the business trading under WASH WIGGLE & WAG. The goodwill did not belong to Ms Laight, who was grooming within Ms Thurgood's business: the goodwill her grooms generated was Ms Thurgood's not Ms Laight's. It follows that I reject Ms Laight's case on goodwill. In summary, there was ample usage to create goodwill within the Territory – particularly the van, the advertisements and the social media pages. The number of customers of the business expanded rapidly, from very few to 700 repeat customers. 2,600 grooms were undertaken. The figures speak for themselves – there was sufficient use to create goodwill, as the repeat customers demonstrate. I also reject Ms Laight's submission that Ms Thurgood traded under other names such that customers would not recognise the business as WASH WIGGLE & WAG. I accept that Ms Thurgood had initially been trading as SCRUFFY2FLUFFY, and continued to use that sign, particularly on Facebook and Instagram. But SCRUFFY2FLUFFY was not used on the van, or in the advertisements placed in local newspapers. I do not consider that the concomitant use of SCRUFFY2FLUFFY on some public facing materials limits the goodwill acquired in WASH WIGGLE & WAG. The mark DOGGY STYLE was only used before Ms Laight started working for the business. I also reject Ms Laight's submission that the goodwill attached to her as a dog groomer rather than to the business for which she groomed. There was uncontested evidence before me that dog grooming businesses often employ dog groomers, either as employees or as independent contractors. Whilst Ms Laight said that customers knew her, and not the business, I do not accept that submission. Customers were clearly aware of the WASH WIGGLE & WAG name, and that Ms Laight was not the proprietor of the business. Whilst there was clearly some personal loyalty to Ms Laight, and positive reviews of her grooming services, that does not detract from the legal position that the goodwill generated was the goodwill of the business, not Ms Laight's personally.
46. I am therefore completely satisfied that Ms Thurgood owned goodwill in WASH WIGGLE & WAG in relation to dog grooming within the Territory.
47. I am also satisfied that Ms Laight's adoption of WASH WIGGLE & WAG as the name for her own business grooming dogs in the Territory constituted (and constitutes) a misrepresentation. The sign used by Ms Laight is identical to that used by Ms Thurgood. It is used for identical services (dog grooming). It is used in relation to the same customers in the same Territory. Customers cannot have thought anything other than that there was a connection in the course of trade between the services offered by the Defendants and the services offered by Ms Thurgood's business. In a passing off case, it is not necessary to bring before the court an example of a witness on whom the misrepresentation has been effective. In this case, the misrepresentation is clear.
48. I am also satisfied that the Defendants' misrepresentation caused damage to Ms Thurgood's business. I do not for a moment accept on the evidence before me that Ms Thurgood's business collapsed because of poor customer service, either from alleged injury to a dog or from the way customers' bookings were taken. There was simply no evidence before me that these issues were difficulties for the business. There was clear evidence that Ms Laight had diverted customers from Ms Thurgood's business to Ms Laight's business – this damaged Ms Thurgood's business. Customer numbers

fell dramatically. The level of the damage is potentially a matter for another day, so I will say no more about it. But I am completely satisfied that there was sufficient damage for the tort of passing off to be made out.

49. It follows that I find for Ms Thurgood: her claim for passing off against the Defendants has been established.