

# EIP



## Therapists' passing-off claims, libel and harassment allegations unravelled

This article first appeared in WTR Daily, part of World Trademark Review, in (month/year). For further information, please go to [www.worldtrademarkreview.com](http://www.worldtrademarkreview.com).

- Ms Crosbie alleged that Ms Ley manipulated online business directories to unlawfully redirect Ms Crosbie's clients to herself; Ms Ley counterclaimed for defamation and harassment
- Ms Crosbie's case was dismissed in its entirety, while Ms Ley succeeded in her counterclaim
- The court recognised that inaccurate and unintentional listing of similar businesses by Google is a known problem

On 1 November 2023 the High Court dismissed claimant Siobhain Crosbie's passing-off claim in Crosbie v Ley, deeming it entirely without merit. In contrast, defendant Caroline Ley's counterclaim for defamation and harassment were substantiated, resulting in a significant £75,000 award for damages. The court also mandated an injunction to restrain any further publications by the claimant.

### **Background**

Ms Crosbie and Ms Ley are therapists. Ms Ley initially trained, qualified and worked at Ms Crosbie's 'APS Psychotherapy and Counselling centre' ('APS') from 2008. However, she moved on in 2012 to start her own practices, 'Buckhurst Hill Counselling and Psychotherapy' ('BHCP') and later 'Cherry Tree Therapy Centre'.

Ms Crosbie observed a decline in her business from 2011, which she attributed to Ms Ley

after discovering in March 2016 that Google and Psychotherapy Expert directories included Ms Ley's phone number on the APS listings. Upon notification, Ms Ley deleted the inaccurate Google listing which Ms Ley acknowledged included a mix of information from hers and Ms Crosbie's practice.

Ms Crosbie reported the matter to the police, who, after investigation, concluded that the damage was immaterial, and no criminal charges were deemed appropriate. Ms Crosbie then made social media posts on Twitter, Facebook and Go Fund Me detailing her perspective, sent threatening letters via solicitors, complained to professional therapy bodies and contacted East London University where Ms Ley worked.

In December 2020 Ms Crosbie filed a lawsuit seeking damages of roughly £1,400,000 plus interest, alleging that Ms Ley manipulated online business directories to misrepresent her business and unlawfully redirect Ms Crosbie's clients to BHPC. In response, Ms Ley counterclaimed for defamation and harassment.

## **Decision**

To succeed in passing off, Ms Crosbie's would have to succeed on three requirements. She would need to show, first, that Ms Crosbie has sufficient goodwill associated with her practice; second, that Ms Ley acted to create misrepresentation leading to confusion in the therapy-seeking public; and, finally, that Ms Crosbie suffered damage due to that misrepresentation.

Mr Justice Knowles assumed that Ms Crosbie possessed sufficient goodwill given her years of trading as APS. However, Ms Crosbie failed to provide any effective evidence that Ms Ley made any actionable misrepresentation. In the absence of evidence from Google or expert testimony, the judge could not ascertain how BHCP's phone number found its way onto APS' listing, although he did widely accept Ms Ley's theory that Google's directory incorrectly merged the parties' listings together, through no fault of Ms Ley.

Key to his acceptance of this theory was the review for APS featured in the merged Google listing:

"There was no hypothesis put forward by this claimant - nor can I think of one - as to how information relating to an APS therapist came to feature on the merged listing, other than by having come from the APS listing"

Further, the inaccurate and unintentional listing of similar businesses by Google is a known problem, as evidenced by Ms Ley's responses to pleadings.

Finally, the judge found that there was no evidence that Ms Crosbie had suffered any

damage whatsoever. Ms Ley provided the court with her yearly income reports after leaving the employ of Ms Crosbie, all of which were “comparatively modest”, and the court rejected Ms Crosbie's allegation that Ms Ley was actively “stealing her clients through the merged listing”. The judge also considered the £1,400,000 figure demanded by Ms Crosbie and found it to be incorrectly calculated and exponentially inflated.

In short, Ms Crosbie's case was dismissed in its entirety and declared without merit. Ms Ley succeeded in her counterclaim for libel and harassment and was awarded £75,000, an injunction against Ms Crosbie and that a summary of the judgment be published.

### **Comment**

This case underscores the significance of discerning legitimate claims from groundless allegations within the legal framework. While Ms Crosbie asserted what the court decided was a baseless passing-off claim, the court's ruling in favour of Ms Ley's counterclaim for harassment and defamation sends a clear message that legal proceedings are not a platform for venting unfounded frustrations or justifying a personal vendetta.