



Government Legal Department

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Your ref:

Our ref:

17 January 2018

Dear Sirs

NHS and National Health Service Business Names

I act on behalf of the Secretary of State for Health and Social Care who is the owner of the registered trade marks consisting of the letters “NHS” and the NHS logo.

I am informed that officials in the Department of Health contacted you on the following dates regarding your use of these trademarks:

- 31 May 2017;
- 26 June 2017; and
- 30 September 2017.

These letters informed you that unauthorised use of these marks constitutes:

- an infringement of registered trade marks under the Trade Marks Act 1994; and
- passing-off, in that the public is likely to believe that there is a connection between your organisation, or approval of your organisation, by the Department of Health or NHS.

You were required to cease using the NHS letters in your website domain name, your organisation/product name, your twitter account and the NHS logo in your organisation name and product logos.

Following this correspondence you have changed the name of your product/service from “NHSbuntu” to “NHoS” and changed your website and twitter addresses to incorporate this identity.

The Department of Health and Social Care is, however, concerned that the name “NHoS” itself, and particularly the manner in which it is represented on your website and twitter account etc., continues to infringe the Secretary of State’s intellectual property rights.

In addition, the “NHSbuntu” name, which due to its inclusion of the NHS marks infringes those intellectual property rights, continues to appear on your website and other locations including on your YouTube channel.



The purpose of this letter is to confirm the legal position and attempt to resolve this matter without the need to issue legal proceedings.

The Department of Health and Social Care considers that it is vital that these trade marks are only used where authorised to protect the goodwill and reputation of the “NHS brand” which generates high levels of trust and confidence in the public, patients and medical practitioners amongst others. It is imperative that the integrity of these marks is maintained.

For the avoidance of doubt, you may refer to the NHS in a descriptive manner in explaining how your product operates. For example, your use of the phrase “*Built on Ubuntu 16.04 LTS to assure the NHS of security and stability*” is acceptable because, although it uses the NHS letters, it simply describes an attribute of your product/service and is not likely to cause confusion.

Trade mark infringement

As advised in earlier correspondence, the Secretary of State for Health and Social Care is the registered proprietor of a number of UK trade marks which protect the name and logo of the NHS and which can only be used commercially with permission. “Commercial” use can occur with something as simple as carrying an advertisement in a YouTube video or Facebook page.

Reproducing the NHS marks without amendment amounts to an infringement in itself, however, use of similar names or logos is also prohibited where confusion is likely or a name or logo takes unfair advantage of the original trade mark or it detrimental to it. In your case the term “NHoS”, particularly in the style it appears on your website and other places, is sufficiently similar to amount to an infringing act.

Essentially the term “NHoS” appears to be the NHS logo with the addition of the letter “o”. The font appears to be very similar (if not identical) to that used in the HNS logo, the letters themselves are white and italicised as per the NHS logo and the use of the colour blue as background strongly evokes the NHS logo. This is likely to cause confusion and implies a connection between you and/or your product and the NHS which does not exist. As indicated above, the NHS brand has a considerable reputation and the name/logo of “NHoS” takes unfair advantage of this and your misuse is detrimental to that brand. If everyone took a similar approach it would soon be difficult to distinguish genuine NHS services from services from unofficial services.

In addition, your continued use of the NHS letters and logo on your web-site constitutes an infringement of these registered trade marks under the following sections of the Trade Marks Act 1994:

Section 10(1):

“A person infringes a registered trade mark if he uses in the course of trade a sign which is identical with the trade mark in relation to goods or services which are identical with those for which it is registered.”

And

Section 10(2):

“A person infringes a registered trade mark if he uses in the course of trade a sign where because—

(a) the sign is identical with the trade mark and is used in relation to goods or services similar to those for which the trade mark is registered, or

(b) the sign is similar to the trade mark and is used in relation to goods or services identical with or similar to those for which the trade mark is registered,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the trade mark”

And:

Section 10(3):

“A person infringes a registered trade mark if he uses in the course of trade in relation to goods or services a sign which—

(a) is identical with or similar to the trade mark,

where the trade mark has a reputation in the United Kingdom and the use of the sign, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark.”

Passing-Off

Also as previously advised, the use of the NHS trade marks (and similar logos) on your website and elsewhere also amounts to passing-off. As indicated above, the NHS brand has substantial goodwill and reputation attached to it.

This use is likely to cause confusion and is likely to cause damage to that important goodwill and reputation.

Next Steps

We therefore ask you do the following, to ensure you avoid infringing the above laws now or in the future:

- ceasing to use the identity “NHoS” or using a similarly identity on your website and all other locations including, but not limited to, Twitter, YouTube etc.; and
- removing the NHS letters and logos from your and all other locations including, but not limited to, Twitter, YouTube etc.

and providing written confirmation of the same within 14 days of the date of this letter.

Should you fail to comply with these requirements my client reserves the right to issue proceedings without further notice to you. Should proceedings be necessary it is our normal practice to seek our legal costs and interest.

This is a complex area of law and I strongly recommend that you seek independent legal advice on this issue.

Yours faithfully

Stephen Winfield
For the Treasury Solicitor

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