



Department of Health

Brand Management,
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Rob Dyke and Dr Marcus Baw
NHSBuntu
Letter sent by email to
robdyke@gmail.com and
marcusbaw@gmail.com

Our Ref: PL 375738 -DH-ARM/1

20 September 2017


Dear Mr Dyke


[NHS Trade Marks: Trade Mark infringement](#)

The Department of Health is a central government department with the responsibility of providing health services to the general public. As part of this responsibility the Department of Health strategically manages the National Health Service, which is universally referred to by the acronym the NHS.

[Notification of the Department of Health's Rights](#)

The Secretary of State for Health, through the Department of Health, is the registered proprietor of, amongst others, the following UK Trade Marks (together or separately referred to in this letter as the "NHS Marks") protecting the **name** and **logo** of the NHS:

Mark	Trade Mark Number	Classes	Registration Date
	2356641	05, 09, 10, 25, 38, 44 and 45	16 December 2005
NHS	2336307	05, 10, 16, 35, 41, 42 and 44	2 December 2005
NHS	2353908	25, 38 and 45	16 December 2005

	2139445	16, 35, 41 and 42	24 April 1998
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The NHS Marks have for many years (and certainly from a date prior to the acts complained of below) had a very substantial goodwill and reputation by virtue of:

1. the high quality of the services and products provided by the NHS;
2. the very substantial size of the operations run by the NHS which cover every geographical area within the UK; and
3. the fact that the NHS is run as a not for profit body, which is trusted by the UK population to deliver health care services on the basis of what is in the best interests of the patient.

It has come to our notice that you are using the NHS Marks on your website www.nhsbuntu.org and Twitter account @nhsbuntu. We have no record of having authorised you to use the NHS Marks on your website (www.nhsbuntu.org) and Twitter account (@nhsbuntu) or at all. Without our express authorisation we consider your actions in using the NHS Marks on your website (www.nhsbuntu.org) and Twitter account (@nhsbuntu) infringes our trade mark rights.

In addition, your website (www.nhsbuntu.org) and Twitter account (@nhsbuntu.org) contain numerous infringements of the Marks, including:

- use of the NHS letters in your website domain www.nhsbuntu.org
- use of the NHS letters in your organisation and/or product name
- use of the NHS letters in your Twitter account name/handle
- use of the NHS logo in your organisation and/or product logo

We shall refer to the unauthorised uses of the NHS Marks as “Infringing Uses”.

Section 10(2) of the Trade Marks Act 1994 states:

“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) of the Trade Marks Act 1994 states:

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

We believe that the Infringing Uses are likely to cause confusion, and are detrimental to the distinctive character and repute of the NHS Marks, and therefore infringes them. This provides us a cause of action under section 14(1) of the Trade Marks Act 1994.

Passing-Off

In addition your use of our NHS Mark also constitutes passing-off. That is the Infringing Uses by you are likely to lead to people to believe that the website (www.nhsbuntu.org) and Twitter account (@nhsbuntu), are approved by or otherwise connected in some way to the NHS. This would obviously be false and therefore a misrepresentation. This misrepresentation causes damage to the Department of Health. Such use erodes the distinctiveness of the NHS brand as being a unique signifier of goods and services that originate from the NHS. As trust in the NHS brand is pivotal to NHS service delivery then the potential for harm here is considerable.

Next steps

The Department of Health takes matters of infringement of the NHS Marks very seriously. You must either provide sufficient evidence that you are properly authorised to use the NHS Marks or immediately:

1. cease the Infringing Uses; and
2. remove the NHS Marks from the website (www.nhsbuntu.org), including the domain name, and Twitter account (@nhsbuntu); and
3. take any other act necessary to ensure that you do not infringe the Department of Health's intellectual property.

We are aware that you have been in communication with NHS Digital regarding a potential supply of services to NHS Digital. However, NHS Digital has confirmed that you are not authorised to use the NHS trade marks in the ways set out above.

We do not consider it necessary, at this stage, to initiate legal proceedings. We will, however, review this decision 14 days after the date of this letter. This review will be based on your compliance with the requirements set out above. If legal proceedings are initiated, and we are successful, it is our normal practice to seek our legal costs.

Please note we reserve the right to bring a range of other causes of action and initiate alternative dispute resolution processes.

Yours sincerely

pp Shelley Coles

DH Brand and Identity Team
020 7972 1501

On behalf of

Sally Kenny / Claire Rhodes (Job Share)

Head of Brand
KennyRhodes@dh.gsi.gov.uk

Date: 23 June 2017 17:44:27
From: dh.identity@dh.gsi.gov.uk
To: info@nhscampaign.co.uk
Bcc: sarah.armitage6@nhs.net; shelley.coles@prolog.co.uk
Subject: Vote NHS - Possible infringement of the NHS Trademarks - PL 375698-SC/DH5HC

Dear Sir/Madam

I am writing to you again as I have not received a response to my two emails dated 25th May 2017 and 02 June 2017, as below.

Please refer to our 3rd communication to you regarding this matter, this is attached to this email as a pdf file, titled xxxxxxxxxx.pdf'.

Kind regards
DH Brand and Identity Team
dh.identity@dh.gsi.gov.uk