

Chapter 8: Passing off

March 2020 update

Cybersquatting

In *Media Agency Group Limited and Transport Media Limited v Space Media Agency Limited and Ors* [2019] EWCA Civ 712, Lord Justice Floyd overturned a first instance judgment affirming passing off via cybersquatting. Lord Floyd held that treating cybersquatting as a comprehensive basis for an allegation of passing off was based on a misinterpretation of *British Telecommunications plc v One In A Million Ltd* [1998] EWCA Civ 1272, [1999] 1 WLR 903. As he remarked,

‘[t]he issue in that case (*One In A Million*) was whether the cybersquatters, simply by registering well-known domain names, were using or threatening to use a trademark. I accept entirely the principle established by that case, but it does not dispense with the need to show, in the case of a passing off action, relevant reputation and goodwill in the name or mark relied on.’