

# Should 'Black Lives Matter', 'I Can't Breathe' be allowed as trade marks?

By [Udi Pillay](#)

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Manchester-based businessman Georgios Demetriou of Licence to Thrill Ltd (the Applicant) recently applied to register the phrase 'Black Lives Matter' under trade mark application no. 3497647 and 'I Can't Breathe' under trade mark application no. 3497640 at the United Kingdom Intellectual Property Office (UKIPO). These phrases are associated with the current worldwide protests following the death of George Floyd in the USA.



Photo by cottonbro from [Pexels](#)

The mark 'Black Lives Matter' was filed for in black and white relation to various clothing goods. The mark 'I Can't Breathe' was filed for in black and white for a wider range of goods and classes, including fundraising for charity, charity wristbands and articles of clothing. Same was filed with the disclaimer "This trademark is to be used for charitable work and not for personal gain on the back on recent unfortunate events." These trade mark applications were filed on 6 June 2020.

The Applicant indicated that his intention is to secure the trade marks, and to launch a non-profit organisation to help disadvantaged children. If the trade marks proceed to grant, he wishes to seek a royalty fee from other entities that wish to use the phrases in the United Kingdom.

The World Trade Mark Review reported that a number of trade mark applications have recently been filed in the European Union, United Kingdom and United States for the term 'George Floyd' and phrase 'I Can't Breathe'.



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These UK trade mark applications have been criticised by the IP fraternity, for various reasons including that the filings are exploiting a current politically charged situation in the USA.

With regard to the 'Black Lives Matter' and 'I Can't Breathe' marks it is argued that the applications are one that have arguably been made in bad faith and is contrary to public morality. Even if allowed to proceed to registration, which is highly doubtful, some argue that the enforcement and commercialisation of same would be extremely insensitive and likely to cause considerable public alarm and offence.

Others have argued that the applications cannot act as trade marks and on this basis cannot serve as a badge of origin or be monopolised by any one entity.



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Others believe that upon examination of the trade mark, the UKIPO will view the mark 'Black Lives Matter' as a "non-distinctive term which describes a social movement which should be free for all to use". It is doubtful whether anyone can monopolise the use of such a term as a registered trade mark.

In this regard, the common understanding is that a trade mark is defined as distinguishing one entity's business from another. Same must serve as a badge of origin. It is suggested that the phrase 'Black Lives Matter' does not fall into the above definition. In this regard, it is believed that that phrase does not serve as a badge of origin to any particular entity, but is a social and campaigning movement and not viewed by others as a brand.

A recent search of the South African registry has not revealed any application for the registration of the phrases 'Black Lives Matter' and/or 'I Can't Breathe'.



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In South Africa, Section 9(1) says that in order to be registrable, a trade mark must be capable of distinguishing the goods or services of one person from the goods or services of another person, either generally or subject to limitations.

Section 10(2)(a) prohibits the registration of a mark that is not capable of distinguishing.

In addition, Section 10(12) of the Trade Marks Act prohibits the registration of a mark of which the use would be *contra bonos mores* (contrary to public policy or morals) or likely give offense to any class of persons.

While the IP fraternity awaits to hear the progress of Demetriou's trade mark applications, our Registrars and fellow colleagues are likely to follow the same or similar views shared above.

### ABOUT THE AUTHOR

Udi Pillay is a Senior Associate and Attorney at Adams and Adams. Her areas of Specialisation are Trade Mark Litigation and Copyright Litigation.

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