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Trade mark dispute risks: AI in legal document drafting

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As AI becomes part of day to day life, the risks of its use within the justice system are becoming more apparent, resulting in the UK judiciary being issued refreshed guidance on the topic. However, the recent decision of the Appointed Person (AP) in a trade mark opposition appeal (concerning rival PROHEALTH marks), may be the first time this issue and its potential consequences has been highlighted in an IP dispute in the UK.

Within his decision dismissing the appeal, the AP called for *"a very clear warning"* to be included in any correspondence sent from the Registrar requesting submissions, skeletons or other documents from the parties. This should set out explicitly the risks of using AI for legal research and the drafting of such documents as well as the potential consequences of putting fabricated citations before the Registrar or Appointed Person.

The AP here stressed this warning should be sent to litigants in person (such as the appellant) but also all professional representatives. He observed that in previous UK court judgments, legal professionals had already been censured for incautious reliance on AI (e.g. Ayinde v Haringey [2025] EWHC 1383 (Admin))

In these trade mark opposition proceedings, the appellant had been open about using Chat GPT to draft his grounds of appeal and skeleton argument. Included in his grounds was a list of cases each with a citation and a *"quote"*. The AP noted that although the cases were real, three of the purported quotes were not found in the decisions cited. In addition, the appellant's skeleton argument included six cases with summaries but the refences for two of these were wrong and the summaries of three of them substantially misrepresented their content.

The AP was sympathetic to the allure of using AI to litigants in person in the appellant's circumstances. He appreciated that limited access to legal aid and other funding arrangements meant many could not afford representation and would know little about trade mark law themselves.

They may therefore think that anything AI created would be better than what they could produce themselves. However, *"an unrepresented person is still under a duty not to mislead the court"* and *"it does not matter whether fabrication was arrived at with or without the aid of generative artificial intelligence"*.

Unlike the UK courts, neither the Registrar nor the Appointed Person has the power to deal with contempt summarily. It is also unlikely law officers can bring contempt proceedings in the courts in relation to any improper actions before the Registrar (as it is an administrative tribunal). Wasted costs orders against a party's representative are also available in the courts but cannot be made in Registry proceedings.

However Appointed Persons and Hearing Officers can make costs orders above the standard modest scale of Registry proceedings, where a party has acted unreasonably. The AP's view was if a party puts fabricated material before the tribunal the starting point should be that *"off-scale"* costs will be awarded. In this case that did not happen, but only because the contents of the respondent's skeleton argument (which was drafted by its trade mark attorney) was also strongly criticised.

Conclusion

The AP's decision considers the position when the use of AI leads to misleading submissions being made in disputes generally. It summarises the sanctions that can be imposed in this situation not only against litigants in person, but also against professional representatives (which include a referral to their regulating body – such as the Bar Council, SRA or IPReg).

It also considers all the sanctions that can be imposed by the Registry but also by the courts. It is therefore worthwhile reading for anyone seeking the considerable assistance AI can provide when dealing with legal disputes. Tools such as ChatGPT:

> *"can produce apparently coherent and plausible responses to prompts, but those coherent and plausible responses may turn out to be entirely incorrect. The responses may make confident assertions that are simply untrue. They may cite sources that do not exist. They may purport to quote passages from a genuine source that do not appear in that source"* (Ayinde v Haringey).

This means there is a duty to always very carefully *"check the accuracy of such research by reference to authoritative sources".*

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