IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2025-404-002302
[2025] NZHC 3227

UNDER	the Trade Marks Act 2002 and the Fair Trading Act 1986
BETWEEN	UBER GROUP LIMITED Plaintiff
AND	UBER TECHNOLOGIES INC First Defendant
	ONE NEW ZEALAND GROUP LIMITED Second Defendant
	UBER NEW ZEALAND TECHNOLOGIES LIMITED Third Defendant

Hearing:	23 October 2025
Counsel:	CL Elliott KC and LG Hudson for Plaintiff EC Gray, J Edwards and NL Walker for First and Third Defendants TD Mahood and EMN Ryan for Second Defendant
Judgment:	30 October 2025

JUDGMENT OF DOWNS J

This judgment was delivered by me on Thursday, 30 October 2025 at 12 pm pursuant to r 11.5 of the High Court Rules 2016.

Registrar/Deputy Registrar

Solicitors/Counsel:
Woodhouse IP Ltd, Auckland.
Russell McVeagh, Auckland.
Hudson Gavin Martin, Auckland.
CL Elliott KC, Auckland.
EC Gray, Auckland.

An interim injunction?

[1] This judgment decides an application for an interim injunction. Principle is well known.[1] There must be a serious issue to be tried. Then considered is what is called "the balance of convenience" and the overall justice of the case.

[2] Decisions in this context necessarily involve a measure of impression; there is no oral evidence or cross-examination of witnesses because the trial is, of course, yet to occur. Moreover, unlike a trial, an interim injunction hearing is typically short; that here took (a little) less than a day. A trial would take days, perhaps even weeks.

Background

[3] Uber Group Ltd[2] is a Northland-based company that provides broadband services, primarily to rural customers. Uber New Zealand Technologies Ltd is a New Zealand company forming part of the global rideshare and meal delivery business. Uber Technologies Inc is the American parent.[3] One New Zealand Group Ltd[4] is the (national) telecommunications company earlier called Vodafone New Zealand Ltd.

[4] Uber Group has registered trade marks that include the term "UBER"; its (class 38) telecommunications trade mark refers to Uber Group (and "Mind-blowingly fast Broadband"). Uber Technologies also has registered trade marks that include the term "UBER"; its (class 35) customer loyalty trade mark is UBER ONE. In 2015, Uber Group and Uber Technologies entered a co-existence agreement in recognition of commonality of name.

[5] In 2025, Uber Group filed a claim against Uber Technologies and One NZ. The claim concerns an ongoing promotional partnership[5] between Uber Technologies

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1 *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, [1975] 1 All ER 504 (HL) at 510-511 and *Harvest Bakeries Ltd v Klissers Farmhouse Bakers* [1985] 2 NZLR 129 (CA) at 142, summarised by the Court of Appeal in *NZ Tax Refunds Ltd v Brooks Homes Ltd* [2013] NZCA 90, (2013) 13 TCLR 531 at [12].

2 Uber Group.

3 I call each company, and on occasions both, Uber Technologies.

4 One NZ.

5 The partnership.

and One NZ, in which the companies promote their own services and those of each other, and more particularly, five representations of the partnership:

1. The **"LinkedIn Representations"**, being two posts on LinkedIn by One NZ and an employee of One NZ on or about 21 July 2025, which announce the partnership between One NZ and Uber.

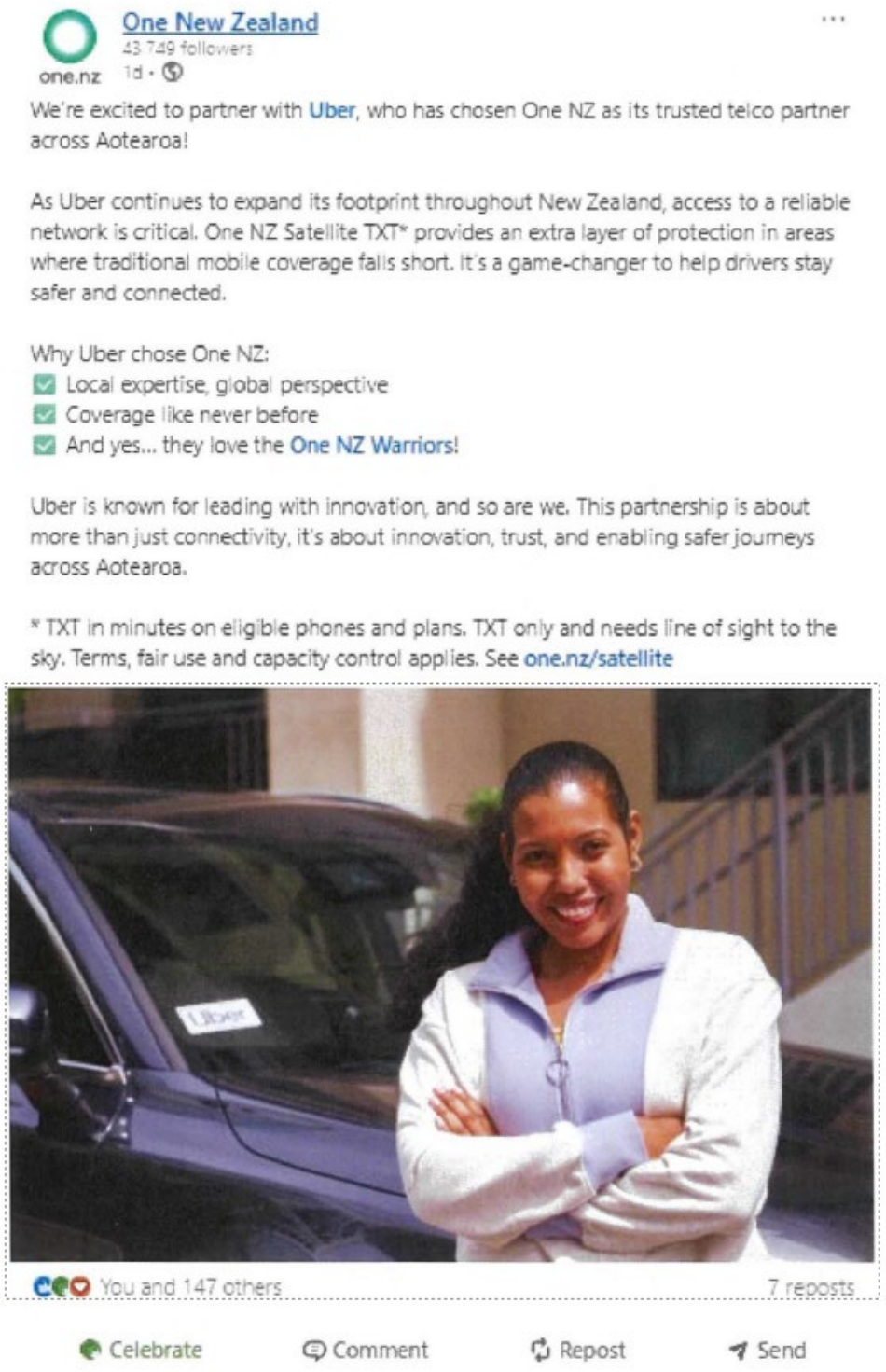
2. The **"Join Uber One Representations"**, being representations made by One NZ on its One NZ Rewards page to promote the benefits of joining Uber One and to offer One NZ customers a three-month trial.

3. The **"Warriors Bucket Hat Representations"**, being representations made by One NZ on its One NZ Rewards page, and on a joint Uber Technologies and One NZ website domain, promoting how One NZ customers can get a free Warriors bucket hat by joining Uber One.

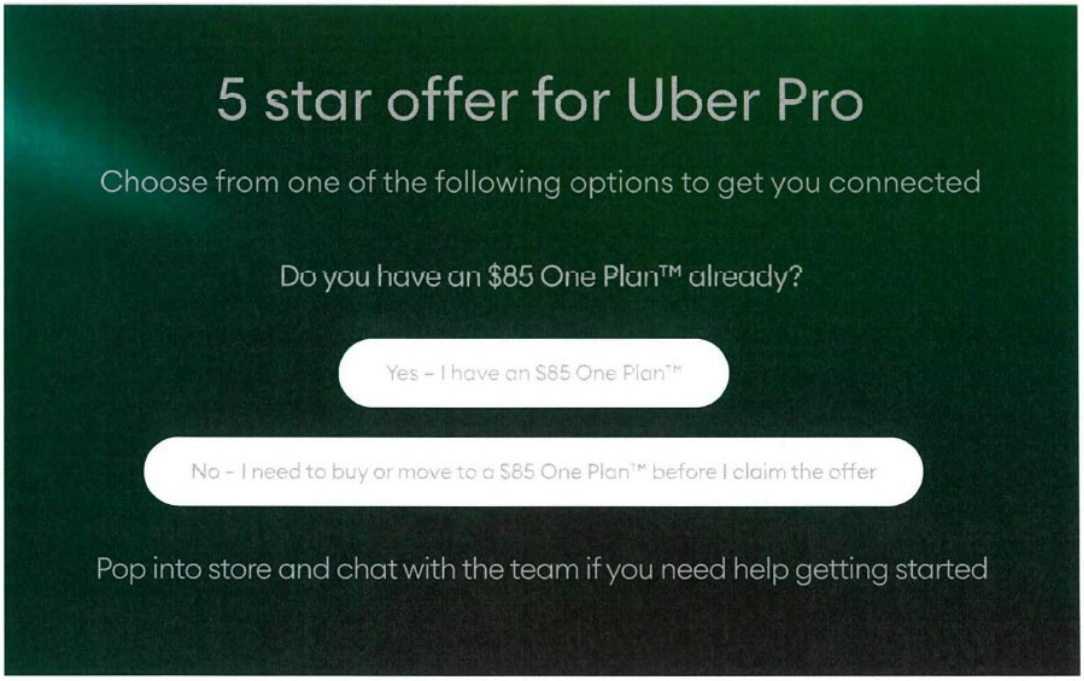
4. The **"Uber Pro Representation"**, being a representation made by Uber Technologies for the Uber Pro and Uber Eats Pro loyalty programs promoting driver partners' and delivery partners' eligibility for a "One NZ offer" for a discounted One NZ mobile plan and One NZ "Phone Dollars" to put towards a mobile purchase.

5. The **"Sign-up Representations"**, being the sign-up pages for Uber One which are available as a click through from the Join Uber One representations or the Warriors Bucket Hat Representations.

[6] Two examples follow. The first comprises the LinkedIn Representations:



[7] The second comprises the Join Uber One Representations:



[8] The representations began late July 2025. Uber Group wrote cease and desist letters, then filed its claim in August.

[9] The claim alleges the representations infringe Uber Group's trade marks; breach the Fair Trading Act 1986; and comprise the tort of passing off. Central to the causes of action is the evident connection between a telecommunications company, One NZ, and Uber Technologies; the alleged similarity of Uber Group's signs or trade marks to those used in the representations; the contention a consumer is liable to confuse the signs or trade marks in relation to telecommunications services and conclude Uber Technologies is offering telecommunications services, including broadband, or that Uber Group is partnering with One NZ; in turn allegedly diluting Uber Group's trade marks, and harming its sales, reputation, and goodwill. In short, the claim contends the partnership representations unlawfully promote or risk confusion between Uber Technologies' business and that of Uber Group, to the latter's detriment.

[10] Consequently, Uber Group applies for an interim injunction:

> … restraining the first defendant, Uber Technologies, Inc, the second defendant One New Zealand Group Limited (**One NZ**) and the third

> defendant Uber New Zealand Technologies Limited (the two "Uber" companies together referred to as Uber Technologies), from directly or indirectly using the Uber Technologies' Marks including the Uber word mark, the Uber logo, the Uber URL, the Uber One word mark or the Uber One logo or any confusingly similar marks, for telecommunications services and printed matter, or providing, making available, promoting and marketing the said goods and services, including by way of digital material and/or printed matter.

[11] Uber Technologies and One NZ deny the allegations and oppose the application.

Principle

[12] As observed at the outset, principle in this context is well known. A plaintiff must satisfy the Court there is a serious issue to be tried. Put another way, a plaintiff must demonstrate it has a claim that is neither frivolous nor vexatious. This threshold is relatively modest, as it must be. An interim injunction precedes the trial; hence scrutiny of the plaintiff's case is not the trial of that case.

[13] The learned authors of *McGechan on Procedure* say passing off cases "may be candidates" for the imposition of a higher threshold than a serious issue to be tried, citing two New Zealand cases.[6] But Gordon J adopted the conventional threshold in a passing off case also involving allegations of trade mark infringement and Fair Trading Act violations.[7] I do likewise, particularly as the defendants did not argue to the contrary.

[14] Next considered is what is called "the balance of convenience" and the overall justice of the case. The balance of convenience requires a consideration of the impact of the granting of, and the refusal to grant, the injunction. *McGechan* says determination of the balance of convenience "is a broad and flexible inquiry, unrestrained by any rigid or inflexible rules".[8] One orthodox consideration is whether damages would provide the plaintiff an adequate remedy. Unsurprisingly, the overall

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6 Jessica Gorman and others *McGechan on Procedure* (online looseleaf ed, Thomson Reuters) at [HR238.07(2)].

7 *Winc Australia Proprietary Ltd v NXP Holdings Ltd* [2019] NZHC 2682 at [17]–[18].

8 *McGechan on Procedure*, above n 6, at [HR7.53.06(1)].

justice of the case is a similarly broad inquiry, which may encompass the apparent strength of the parties' cases.[9]

Analysis

A serious issue to be tried?

[15] On behalf of Uber Technologies, Mr Gray argued Uber Group's claim does not meet the threshold of a serious issue to be tried. Mr Mahood made the same argument on behalf of One NZ. Both said the three causes of action are fundamentally flawed.

[16] In relation to trade mark infringement, Mr Gray and Mr Mahood said the representations' use of the terms UBER and UBER ONE is not "use" of a trade mark within s 89 of the Trade Marks Act 2002, and even if it were; Uber Group's trade marks are not similar to those used in the representations; that the allegedly competing trade marks do not concern similar services; and that the trade marks are unlikely to deceive or confuse.

[17] Mr Gray and Mr Mahood emphasised Uber Group's (class 38) telecommunications trade mark concerns the Uber Group logo, not UBER or Uber. Both said a reasonable consumer would not be deceived or confused by the representations into believing they concern anything other than what they appear to concern: promotion of Uber Technologies' rideshare and meal delivery services, including the related promotion of UBER ONE, and promotion of One NZ's telecommunications services.

[18] Mr Gray also emphasised Uber Technologies has its own registered trade marks. Consequently, he said Uber Technologies has "a complete defence" to alleged trade mark infringement under 93 of the Trade Marks Act, and Uber Group's application impinged Uber Technologies' exercise of its rights.

[19] In relation to the Fair Trading Act and passing off causes of action, Mr Gray and Mr Mahood said there is no risk of a reasonable consumer being confused,

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9 *McGechan on Procedure*, above n 6, at [HR7.53.06(1)]. See also *American Cyanamid Co v Ethicon Ltd*, above n 1, at 409B and 511(d)–(e).

deceived or misled given, among other things, the unremarkable nature of the representations; the ubiquity of Uber Technologies' services; and the public knowledge's of those services, which are synonymous with ride sharing and meal delivery. Both exhorted the expert opinion evidence of Dr Sandra Smith over that of Uber Group's expert, Dr Ekant Veer, who like Dr Smith, holds a PhD in marketing.

[20] It is unnecessary to cite Mr Elliott KC's arguments on behalf of Uber Group in this context as I am satisfied there is a serious issue to be tried between the parties; the claim is not frivolous or vexatious. I reach this conclusion because (a) of the relative modesty of this standard; and (b) the (many) issues identified by Mr Gray and Mr Mahood are ultimately matters for trial.

[21] To give an admittedly modest example, Uber Group's (class 38) telecommunications trade mark is sufficiently similar to the Uber Technologies logo that appears in one or more representations to ground an allegation of trade mark infringement. As One NZ appears in the same representation(s), there is arguable linkage to the provision of telecommunications services and potential risk of confusion as to provider:

[22] Whether the allegation can survive any or all of the points raised by Mr Gray and Mr Mahood is for trial. The same is true of the balance of representations and causes of action.

Balance of convenience

[23] This principle introduces the contention at the heart of the application. Uber Group contends the balance of convenience strongly favours it because of the harm that will continue to occur if an injunction is not granted now. Mr Elliott said

the representations are tangibly hurting Uber Group's business by causing an "alarming" drop in its sales:

> … there is cogent evidence of a significant decline in new connections/new business that Uber Group cannot explain …. It is difficult, if not impossible, to put a monetary figure on that lost business, let alone the related loss/harm. In the present case, there is a compelling need to strike an equitable balance and avoid the risk of injustice. We submit that refusing relief far outweighs any potential inconvenience to the defendants. The balance of convenience strongly favours the grant of the interim injunction. Mr Simon sets out the basis for his real concerns about commercial harm.

[24] I make four points in relation to this contention.

[25] First, the decline in Uber Group's sales began "from about April 2025 onwards".[10] This has significance for an admittedly obvious reason: it *precedes* the representations, which did not commence until late July 2025.

[26] Second, the decline constitutes a small percentage of Uber Group's sales. I refrain from quantification so as not to reveal commercially sensitive information, but the term "alarming" is not commensurate with the figure, even though I do not doubt the sincerity of Uber Group's animating concern.

[27] Third, Uber Group and others in the rural broadband market now face competition from Starlink, which offers broadband using a low-orbit satellite network.[11] One NZ acknowledges experiencing a loss of customers in consequence of Starlink's market-entry. Consequently, a genuinely competing interpretation exists for the (small) drop in Uber Group's sales. Hayden Simon, one of Uber Group's directors, believes Starlink is not responsible for the sales drop. The point, however, is that determination of causation must await trial in circumstances in which the existing evidence admits differing interpretations.

[28] Fourth, while there is very considerable evidence that Uber Group is often mistaken for Uber Technologies — for example, Uber Group has received many telephone calls from people wanting a taxi or to contact Uber Technologies[12] — there

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10 Reply affidavit of Hayden Simon dated 2 October 2025 at para 12.

11 Starlink entered the New Zealand market in or about 2021.

12 One instance arises by the evidence of Julia Tolmie, which Uber Group seeks to offer out-of-time. Absent opposition, I admit the evidence in the interests of justice.

is a paucity of evidence going the other way. Indeed, not a single example exists in the evidence of Uber Technologies being confused for Uber Group, whether in relation to the representations, or otherwise. Perhaps anticipating this reasoning, Mr Elliott noted Uber Technologies does not have a physical office in New Zealand, so any confusion that it is Uber Group would go unrecorded, unnoticed, or both. I acknowledge the point, but the contention still assumes that confusion is occurring.

[29] Relatedly, Mr Elliott said it was open to me to assume such confusion exists. I do not doubt an inference of confusion may be drawn in an appropriate case.[13] However, I do not regard this as an appropriate instance, for, on the state of the existing evidence, that confusion is *entirely* one way.[14]

[30] Mr Elliott also referred to:

(a) Web-based searches using, or affected by, artificial intelligence, which yield results confusing Uber Group, Uber Technologies, and Uber One.

(b) Radio advertising in connection with Uber One, which he said risked confusion in relation to Uber Group.

[31] One difficulty with (a) is that Uber Technologies and One NZ are not responsible for the artificial intelligence cited. Another with (b) is that the claim does not encompass radio advertising.

[32] In any event, if the representations have (improperly) caused Uber Group's sales to drop, damages could address this aspect.[15] The alleged impact on Uber Group's trade marks, reputation, and goodwill is, I accept, not readily quantifiable, and of a nature often consistent with interim relief. However, the points at [28]–[29] appreciably diminish the case for an interim injunction.

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13 In *Wineworths Group Ltd v Comite Interprofessionel Du Vin de Champagne* [1992] 2 NZLR 327 (CA), Gault J said at 342 that evidence of actual deception is "notoriously difficult to obtain." The passage underscores the one-way nature of the confusion here.

14 The evidence may, of course, be different at trial.

15 Calculation of quantum should be achievable given the likely existence of sales figures from earlier years.

[33] Conversely, granting the injunction would cause not insignificant harm to Uber Technologies and One NZ. First, the partnership would end, and abruptly. Second, several staff at One NZ would need to be redeployed — or made redundant. Third, Uber Technologies and One NZ would lose the sales and revenue the partnership would otherwise generate in consequence of an untested claim.

[34] It follows the balance of convenience does not favour interim relief despite Uber Group having given the requisite undertaking as to damages.

Overall justice of the case

[35] The partnership is not offering telecommunications services, and neither is Uber Technologies. The representations do not, then, promote Uber Technologies as an entrant to the telecommunications market. Moreover, Uber Technologies has registered trade marks of its own it is entitled to use. As observed, while there is very considerable evidence that Uber Group is often mistaken for Uber Technologies, there is a paucity of evidence going the other way. So, as with the balance of convenience, the overall justice of the case does not favour interim relief.

Result

[36] The application is, therefore, dismissed.

Costs

[37] I am inclined to award Uber Technologies and One NZ 2B scale costs. If the parties cannot agree costs, they should file memoranda not longer than five pages each, in this sequence:

(a) Uber Technologies and One NZ, on or before **11 December 2025**.

(b) Uber Group on or before **15 January 2026**.

Access to the judgment and suppression

[38] At least one media organisation has sought access to the judgment. The parties are to inform the Court by **2 pm, Friday 31 October 2025** whether (a) access is opposed; and (b) if redactions are sought to protect confidential information. Any redactions should be identified in an accompanying memorandum.

[39] I repeat the order I made at the hearing: any evidence or submission identified or intended to be confidential (to protect commercially sensitive information) is suppressed and may not be accessed absent further order of the Court.

……..

Downs J