BL O/0604/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS.
UK00004203556 AND UK00004203557

BY MONOLITH (UK) SERVICE LIMITED
TO REGISTER THE TRADE MARKS:

KARAT

AND

KARÁT KARÁT

(SERIES OF 2)

IN CLASSES 29, 30 AND 31

AND

IN THE MATTER OF CONSOLIDATED FAST TRACK OPPOSITIONS THERETO
UNDER NOS. 600003834 AND 600003832
BY PURATOS NV

BACKGROUND AND PLEADINGS

1. These consolidated proceedings involve fast track[1] oppositions against two trade marks that Monolith (UK) Service Limited ("the applicant") seeks to register in the UK. The details for those trade marks are set out below:

i) KARAT
UK application no. 4203556
Filing date: 14 May 2025
Publication date: 11 July 2025
("the First Application")

ii) KARÁT KARÁT (Series of 2)
UK application no. 4203557
Filing date: 14 May 2025
Publication date: 11 July 2025
("the Second Application")

2. The above applications are in respect of identical goods in classes 29, 30 and 31, as set out in the Annex to this decision.

3. On 10 October 2025, the applications were partially opposed by Puratos NV ("the opponent"), based upon section 5(2)(b) of the Trade Marks Act ("the Act").[2] The oppositions are directed at all goods in classes 29 and 30 only.[3]

4. The opponent relies upon its earlier UK trade mark ("UKTM") no. 918024202, 'CARAT' ("the earlier mark"). The earlier mark, filed on 18 February 2019, has a priority

[1] Under the fast track opposition procedure - pursuant to The Trade Marks (Fast Track Opposition) (Amendment) Rules 2013.
[2] The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU. See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.
[3] See Annex 1 to this decision.

date of 22 November 1986,[4] and became registered on 16 July 2019. The opponent relies upon all goods for which the mark is registered, as set out in paragraph 35 of this decision.

5. The opponent's mark is a comparable mark. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the earlier mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

6. The opponent claims that the goods at issue are either identical or similar, and that the marks are phonetically identical, visually highly similar and conceptually highly similar, if not identical, resulting in a likelihood of confusion and association on the part of the consumer.

7. The applicant filed counterstatements denying the ground of opposition.

8. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that rule 20(4) shall continue to apply. Rule 20(4) states that:

> "(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit."

9. The net effect of the above is to require parties to seek leave in order to file evidence in fast-track oppositions. This would apply to evidence, which is filed later in the proceedings, and therefore would not include evidence of use which is required to be filed alongside the notice of opposition (Form TM7F). The opponent filed evidence within its Form TM7F's.

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[4] United Kingdom (GB) UK00001293432

10. Rule 62(5) (as amended) states that arguments in fast-track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the Registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate costs; otherwise, written arguments will be taken. A hearing was neither requested nor considered necessary.

11. The opponent is represented by De Clercq & Partners; the applicant is represented by Marks & Clerk LLP.

EVIDENCE AND SUBMISSIONS

12. As noted above, the opponent filed evidence of use within its Form TM7F's. This included financial turnover figures, details regarding marketing and promotional expenditure, and five exhibits, summarised as follows:

- Exhibit 1 – Pictures of product labels and packaging
- Exhibit 2 – Brochure extracts and other promotional materials
- Exhibit 3 – Extracts from the opponent's UK website and social media account
- Exhibit 4 – Third party website extracts and brochures
- Exhibit 5 – Invoices

13. Only the applicant chose to file written submissions in lieu of a hearing, dated 13 April 2026.

14. I have taken the evidence and submissions into account in reaching this decision and will refer to them below where necessary. This decision is taken following a careful perusal of the papers.

DECISION

15. The registration procedure for the earlier mark was completed more than five years prior to the filing date of the contested applications. Therefore, it is subject to proof of use pursuant to section 6A of the Act. Accordingly, I will begin by assessing whether

there has been genuine use of the earlier mark in relation to the registered goods relied upon.

Proof of use

16. The relevant statutory provisions under Section 6A of the Act are as follows:

> "(1) This section applies where:
>
> > (a) an application for registration of a trade mark has been published,
> >
> > (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
> >
> > (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.
>
> (1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.
>
> (2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.
>
> (3) The use conditions are met if –
>
> > (a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
> >
> > (b) the earlier trade mark has not been so used, but there are proper reasons for non- use.
>
> (4) For these purposes –

(a) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

17. The relevant period during which genuine use must be shown is the five years ending with the application date of the contested marks, being 14 May 2025. Therefore, the relevant period is 15 May 2020 to 14 May 2025. As the earlier mark is a comparable mark, use may be relied upon in the EU, including the UK[5] prior to the IP completion day, being 31 December 2020,[6] and the United Kingdom only thereafter.

18. Section 100 of the Act reads:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

19. Consequently, the onus is upon the opponent to prove that genuine use of the earlier mark was made within the EU/UK during the relevant period, and in respect of the relevant goods, as registered.

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[5] *Leno Merken BV v Hagelkruis Beheer BV,* Case C-149/11, paragraphs 36, 50 and 55.
[6] See paragraph 7 of Part 1, Schedule 2A of the Act.

20. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

> "105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].
>
> 106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:
>
> (1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].
>
> (2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].
>
> (3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others

which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed

to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant services. For example, use of the mark by a single client which imports the relevant services can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. Case T-78/19 *Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33]."

21. Whether the use shown is sufficient for this purpose will depend on whether there has been real commercial exploitation of the UKTM, in the course of trade, sufficient to create or maintain a market for the goods at issue during the relevant five-year period. In making the assessment, I am required to consider all relevant factors, including:

i) The scale and frequency of the use shown;
ii) The nature of the use shown;
iii) The goods for which use has been shown;
iv) The nature of those goods and the market(s) for them; and
v) The geographical extent of the use shown.

22. Before assessing the opponent's evidence of use, I remind myself of the comments of Mr Daniel Alexander QC, (as he then was) sitting as the Appointed Person, in *Awareness Limited v Plymouth City Council*, where he stated that:[7]

> "19. For the tribunal to determine in relation to what goods or services there has been genuine use of a mark during the relevant period, it should be provided with clear, precise, detailed and well-supported evidence as to the nature of that use during the period in question from a person properly qualified to know.
>
> …
>
> 22. The burden lies on the registered proprietor to prove use […]. However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public."

And further at paragraph 28:

> "28. […] I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as "tuition services", is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark

[7] Case BL O/230/13

has been used in relation to “tuition services” even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted.”

23. I also note Mr Alexander’s comments in *Guccio Gucci SPA v Gerry Weber International AG*.[8] Although the case concerned revocation proceedings, the principle is the same for proof of use in opposition actions. He stated:

> “The Registrar says that it is important that a party puts its best case up front – with the emphasis both on “best case” (properly backed up with credible exhibits, invoices, advertisements and so on) and “up front” (that is to say in the first round of evidence). Again, he is right. If a party does not do so, it runs a serious risk of having a potentially valuable trade mark right revoked, even where that mark may well have been widely used, simply as a result of a procedural error. […] The rule is not just “use it or lose it” but (the less catchy, if more reliable) “use it – and file the best evidence first time round – or lose it”.”

24. The comments of Mr Geoffrey Hobbs QC (as he then was) in *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, where he sat as the Appointed Person, are also relevant.[9] He stated that:

> “21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed

[8] Case BL O/424/14
[9] Case BL O/404/13

in *Matsushita Electric Industrial Co. v. Comptroller General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

> [24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not 'show' (per Section 100 of the Act) with regard to the actuality of use in relation to services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

25. Accordingly, whilst there is no requirement to produce any specific form of evidence, I must consider what the evidence, as a whole, shows me and whether on this basis I can reasonably be satisfied that there has been genuine use of the mark.

Form of the mark

26. Before I move on to assess whether the opponent has shown genuine use, I must first consider whether the use of the mark as shown in the evidence amounts to use of the mark as registered or acceptable variants.

27. The opponent's registration is for the word mark 'CARAT'. Where the opponent has used its earlier mark as registered, that will clearly be use on which the opponent can rely. However, I also note the following versions of the mark used in the opponent's evidence:

1. Puratos CARAT	2. CARAT NUXEL PISTACHIO
3. CARAT NUXEL HAZELNUT	4. Carat Nuxel Hazelnut
5. Carat Nuxel Hazelnut	6. Carat Coverfex Dark
7. Puratos CARAT NUXEL HAZELNUT	8. 
9. Carat Cover	10. Carat Amber
11. Carat Coverlux	12. Carat Coverdens
13. Carat Cover Classic	14. Carat Decorcrem
15. Carat Coverliq	16. Carat Supercrem

17. Carat Coverflex	18. Carat Kimocrem
19. Carat Filocrem	20. Carat Cakau

28. Section 6A(4)(a) of the Act states:

> "…use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor)…"

29. I acknowledge that where a registered mark is used as part of another mark or with additional matter, this may still constitute acceptable use of the mark as registered where this element continues to act independently as an indicator of origin.[10] Accordingly, I am of the view that use of the above mark, numbered '1', does constitute use of the earlier mark. Whilst it is noted that the slightly stylised word 'CARAT' appears below the opponent's house mark 'Puratos', I am of the view that the earlier mark 'CARAT' in the mark continues to indicate origin. Consequently, it is use upon which the opponent can rely.

30. With regards to the remaining marks numbered 2 to 20 in the above table, I remind myself that in *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under section 46(2). He said:

> "13. […] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

[10] *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (e.g. a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO,* EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word “MEDIA” would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still”.

31. I remind myself that Section 6A(4)(a) of the Act enables an opponent to rely on use of a mark “in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered”. Further, with regards to the above marks, numbered 2 to 20, I acknowledge that where a registered mark is used as part of another mark or with additional matter, this may still constitute acceptable use of the mark as registered, where this element continues to act independently as an indicator of origin.[11]

32. Additionally, as the earlier registered mark CARAT is a word mark, I am reminded that the registration of a word mark gives protection irrespective of capitalisation, colour and stylisation.[12]

33. However, with regards to the marks numbered 2 to 20, I am not persuaded that they constitute acceptable variants of the earlier mark as registered. Whilst the word CARAT appears in each of those signs, it is accompanied by additional verbal elements such as NUXEL, AMBER, COVERFLEX, DECOCREM and others. In my view, those additional elements would not be perceived merely as descriptive or incidental matter. Rather, they are likely to be perceived by the average consumer as distinctive product names or sub-brands in their own right. Consequently, I find that the marks create a different overall commercial impression from the mark as registered. In those circumstances, I do not consider that the use shown constitutes use of the word mark CARAT in a form which does not alter its distinctive character. Accordingly, I find that the marks numbered 2 to 20 cannot be relied upon as acceptable variants of the earlier registration.

34. However, in reaching the above conclusion, I recognise that there is an argument that CARAT functions as a range or house mark within the above marks. Accordingly, if I am wrong in my finding, I will now go on to consider the opponent's evidence on the basis most favourable to it, namely that use of all the marks shown above can be relied upon as acceptable variants of the earlier registration.

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[11] *Colloseum Holdings AG v Levi Strauss & Co.,* Case C-12/12
[12] *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17

Evidence of use

35. The opponent claims to have used its earlier mark, CARAT, during the relevant period (15 May 2020 to 14 May 2025), in relation to all its goods relied upon, namely:

Class 30	Cocoa; cocoa products; chocolate; chocolate based products; compound chocolate; chocolate topping; chocolate based fillings; cocoa based fillings; fillings based on cocoa and nuts; chocolate spreads containing nuts; ganache.

36. Whether the use shown of the earlier mark is sufficient to establish genuine use will depend on whether there has been real commercial exploitation of the same, in the course of trade, sufficient to create or maintain a market for the goods at issue, in the EU/UK, during the relevant five-year period.

37. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.[13] As indicated in the case law above, use does not need to be quantitatively significant to be genuine.

38. With regards to the opponent's proof of use evidence, the applicant submits the following: [14]

> "It is clear from the evidence provided, that The Earlier Mark is not used in the form registered. The mark "carat" is juxtaposed with distinctive elements such as "Nuxel". This branding of "Carat XXX" (XXX being a distinctive word) is consistent throughout the evidence; it is present in the brochure, on the website, in social media, and on the invoices. It is submitted that this does not show genuine use of the registered mark CARAT, nor does it evidence use of The Earlier Mark in a variant form since it always appears alongside an additional distinctive element which alters the overall impression and distinctive character of the mark.

[13] *New Yorker SHK Jeans GmbH & Co KG v OHIM*, Case T-415/09
[14] Written submissions in lieu, dated 13 April 2026.

It is further clear from the evidence, primarily the submitted invoices, that sales in the UK are limited to “Carat Cakau” and “Carat Nuxel” only.

It is clear that the documents filed are not sufficient to establish genuine use in relation to the goods covered by The Earlier Mark. The evidence does not, neither individually nor in combination, provide sufficiently clear indications concerning the place, time, extent and nature of use of The Earlier Mark in the UK during the relevant period for the relevant goods. The Opponent has not evidenced use of The Earlier Mark as registered to create and maintain a market share in the UK in relation to goods relied on.

As a result, the Applicant submits that the Opponent has failed to meet the requirements under Section 6A in respect of The Earlier Mark relied upon, and therefore, the opposition must be rejected in its entirety.”

39. With regard to the opponent’s proof of use evidence, I deduce the following:

- Exhibit 1 shows the earlier mark being used on product labels and packaging, namely:

- I am able to ascertain (from information provided in Exhibit 2) that 'Carat Nuxel Hazelnut' contains cocoa powder as well as nuts; and 'CARAT NUXEL Pistachio' is a fat based pistachio cream filling. However, as Exhibit 1 is undated it is not clear when the above packaging was used and whether this use fell within the relevant period. Further, whilst it is noted that page 3 of the exhibit states that the CARAT NUXEL Pistachio filling was manufactured in Belgium by the opponent, I am unable to ascertain from the exhibit where the packaging shown above, or the products contained therein, were made available.

- Exhibit 2 contains 21 pages of extracts taken from brochures and other promotional material. The majority of the pages relate to the use of the mark 'CARAT NUXEL Hazelnut' in relation to a chocolate and nut-based filling, comprising hazelnuts and cocoa powder, being used as a topping, filling or as an ingredient in various recipes. Further, I note that the mark CARAT AMBER is used in relation to a product which is described as follows:

CARAT AMBER is a new range of indulgent solutions for **laminated bakery, patisserie, and chocolate confectionery** applications. Made with top-quality raw materials and no artificial flavors and colors, Carat Amber delivers a **creamy caramel taste** and a **warm Amber color**, together with a **great versatility in use**.

The Carat Amber range includes **Coverlux**, **Decorcrem** and **Supercrem Amber**. Discover more about each of them.

- Pages 19 and 20 of exhibit 2 contains images featuring the earlier mark, however it is not clear from the evidence whether this use is in relation to any of the relevant goods at issue, as can be seen from the following:

- I am unable to establish with any certainty where and when in the EU/UK the brochure and promotional materials were made available and who they were made available to. Although, it is acknowledged that some of the pages do feature dates during 2022 and 2023, therefore, within the relevant period.

- Exhibit 3 contains 43 pages of extracts taken either directly from the opponent's website 'www.puratos.co.uk' or have been retrieved via the online archive database 'The Wayback Machine'. The 43 pages are all dated 8 October 2025, which is outside the relevant period, though it is assumed this was the date that the evidence was extracted from the respective websites. Additionally, the exhibit includes extracts taken from the opponent's social media account (Facebook). The contents of the exhibit are summarised as follows:

- Pages 1-2 feature the marks 'Carat Cover', 'Carat Nuxel', 'Carat Cakau', 'Carat Supercrem' and 'Carat Premium Light Coating' being used in connection with various chocolate-based coatings and fillings.

- The website extracts on pages 3-6 are from the online archive database 'The Wayback Machine'. Whilst the opponent's mark as registered features within some of the text, I am unable to ascertain with any certainty, which of the goods at issue the mark is being used in relation to, as the text merely refers to 'compound chocolate' as the following extract shows:

08/10/2025, 17:29 Compound Chocolate - Puratos

The Wayback Machine - https://web.archive.org/web/20250116163350/https://www.puratos.co.uk/en/chocolate/categories/compound-chocolate

(/web/20250116163350/https://www.puratos.co.uk/en)

HOME (/WEB/20250116163350/HTTPS://WWW.PURATOS.CO.UK/EN) CHOCOLATE (/WEB/20250116163350/HTTPS://WWW.PURATOS.CO.UK/EN/CHOCOLATE) COMPOUND CHOCOLATE

COMPOUND CHOCOLATE

Compound chocolate is made of cocoa powder and vegetable fats like palm kernel oil or coconut oil. It looks like chocolate, tastes like chocolate but it is much easier to use. Simply melt it and apply for any type of application. Puratos offers a high quality selection of compound coatings for a wide variety of applications. By selecting only the finest cocoa beans and freshest ingredients, the Carat range stands out for its superior quality, excellent taste experience and the right texture and viscosity.

COMPOUND CHOCOLATE TAILORED TO LOCAL TASTES

Carat compound chocolate products are manufactured in Puratos plants around the world. The range is adapted in every region to the local taste preferences and application requirements. Local production also ensures that customers can rely on the same quality standards and product consistency, regardless of where they buy their products. In addition, we always strive to develop innovative concepts that bring a new lease of life to the world of compound chocolate.

CUSTOM CREATIONS

Whether you are looking for solutions for moulding, dipping, panning, decorating, flavouring or bake-stable applications, Carat compound chocolates will offer top-notch performance every time. Pastry chefs, bakers and chocolatiers are delighted with how easy the products are to use. With our compound chocolate range, and our focus on ease-of-use and customization, our customers can spend their time on creating new and innovative products. Puratos also offers solutions tailored to your personal requirements for taste, performance and production.

- Pages 7 to 12, taken from the opponent's website discusses 'Chocolate v. Compound Coating'. The earlier mark is briefly mentioned on page 7 within the text, which discusses the opponent's use of 'compound chocolate'.

- Pages 9 to 12 relate to an article which appears to be taken from the opponent's website, which is titled, 'CHOCOLATE VS. COMPOUND COATING: THE DIFFERENCE AND ESSENTIAL INSIGHTS FOR PROFESSIONALS'. The article is dated 9 May 2025; however, the article itself does not feature the opponent's mark, but rather it appears briefly on page 11 within internet hyperlinks to be clicked on by those searching for 'flavorful chocolate fillings'.

- Pages 13 to 16 taken from the opponent's website predominantly relate to various chocolate compound coatings and fillings. The extracts feature the marks, 'Carat', 'Carat Cakau', 'Carat Coverlux', 'Carat Nuxel'. It is noted that the earlier mark as registered is shown on pages 17, 19, 21-26, being used in relation to premium light chocolate coatings as well as biscuit and pretzel goods where 'Carat premium light chocolate coatings' have been used. However, as previously mentioned, the extracts are dated 8 October 2025, which is outside the relevant period, though again, it is assumed that this was the date that the evidence was extracted from the opponent's website. Accordingly, I am unable to ascertain whether this information was available during the relevant period, and I have not been provided with any figures, data or search engine analytics, etc., to show how many users viewed/accessed the opponent's website during the relevant period, or the geographical location of those users.

- The extracts from the social media platform 'Facebook' shown in pages 27-33, feature posts mentioning the marks 'Carat Nuxel' and 'Carat Coverlux/Cakau' in connection with chocolate coatings and fillings. The posts are dated between September 2014 and December 2024. I note that some of the nine featured posts have received 'likes', suggesting that the posts have been viewed; however, the posts in question have only received between 2 to 7 'likes'. Furthermore, the source of those views and 'likes' has not been indicated, and the geographical location of those who viewed and liked the posts is unknown.

- The website extracts shown in pages 34-43 of the exhibit have been retrieved via the archive database 'The Wayback Machine'. These extracts include recipes for 'creative mince pies' and 'triple lemon cake'. However, they only briefly feature the opponent's mark within a set of ingredients, as the following examples show:

08/10/2025, 17:58 Creative Mince Pie

1. Add 20g of Limoncello mincemeat into each shell and top with 20g of lemon almond cream.
2. Bake at 180c for 25 minutes.
3. Coat the cooled cake in Carat Coverflex Yellow then add texture to the surfaceusing balling tool.
4. Finish by running a heat gun over the surface.

Batter

Using a planetary mixer and beater, combine the Satin, eggs, oil and water.

s://www.puratos.co.uk/en/recipes/triple-lemon-cake

10/2025, 17:54 Triple Lemon Cake with Satin Lemon Recipe | Puratos

Mix on slow speed for 2 minutes then scrape down.

Mix on medium speed for 3 minutes, add the Smoobees and mix on slow speed to combine.

Deposit into greased lemon shaped tins at 40g.

Time: 25 / Oven Type: Deck / Top Temperature: 180 °C Bottom Temperature: 180 °C / Damper: closed / 10% Water loss

Assembling

Invert the cooled cakes and enrobe in Carat Coverflex Lemon.

- The extracts only feature the date of 8 October 2025, which is outside the relevant period, and likely reflects the date that the evidence was extracted from the website. Therefore, again, I am unable to ascertain with any accuracy whether this information featured on the opponent's website during the relevant period.

- Exhibit 4 contains extracts taken from third party websites and brochures. The trade marks referred to in the third-party websites are 'U2 Carat Coating', 'Carat Nuxel', and 'Carat Supercrem'. The extracts are dated '8 October 2025' which is outside the relevant period, though again I assume that this is the date that the extracts were retrieved from the website. Further, the six page 'Walker Humphrey Wholesale Product Guide' contained in the exhibit only briefly features the mark 'Puratos Carat Cover Dark U2', in relation to dark cocoa coatings. As the following shows:

Chocolate Coatings

Light Chocolate

WH Code		Pack Size
CHO-MEC01	**Callebaut Light Chocorobe Easimelt** A versatile milk compound coating suitable for many applications, in an easymelt format	10kg
CHO-RLC02	**Scott's Bakers Light Drops** Chocolate Flavour Coating can be used for moulding, dipping, spinning and coating.	12.5kg
CHO-RLC01	**Scott's Bakers Light Drops NH** To meet end product specifications requirements, these range of coatings have been made using nonhydrogenated mb fat. Ideal for dipping, spinning and coating. They will give an excellent finish with good yield and snap properties.	12.5kg

Dark Chocolate Coatings

WH Code		Pack Size
CHO-DEC01	**Callebaut Dark Chocorobe Easimelt** Dark compound coating with fat reduced cocoa powder and natural vanilla.	10kg
CHO-DGC01	**Goldichoc Dark Drops** A Premium Coating that is perfect for moulding, dipping, spinning and coating. Generally have higher cocoa content and smaller particle sizes.	12.5kg
CHO-PDC01	**Puratos Carat Cover Dark U2** Coating based on vegetable fats for enrobing applications. Dark colour and intense cocoa taste.	10kg
CHO-RDC01	**Scott's Bakers Dark Drops NH** To meet end product specifications requirements, these range of coatings have been made using non-hydrogenated mb fat. Ideal for dipping, spinning and coating. They will give an excellent finish with good yield and snap properties.	12.5kg

Blended Chocolate

The brochure is undated. Further, it is impossible to establish from the evidence before me how many people accessed the third-party websites or viewed the 'Walker Humphrey Wholesale Product Guide'.

- Exhibit 5 contains a selection of 6 invoices, dated between February 2023 and June 2025. The invoices are addressed to various locations in the UK, namely Essex, Dorset, Andover, and Ebbwvale. A summary of the invoices is as follows:

    - One invoice dated 30 January 2025 (within the relevant period) shows the sale of 'Carat Cakau Milk Carton' amounting to £2,448;

    - Two invoices, dated 9 January 2024 and 5 August 2024 (within the relevant period) show the sale of 'Carat Nuxel Hazelnut RSG CT' amounting to £62.00, and Carat Cakau Milk Carton, amounting to £1,650;

    - Two invoices dated 24 February 2023 and 28 November 2023 (within the relevant period) show the sale of 'Carat Cakau Milk Carton', amounting to £2,575.50, and Carat Nuxel Hazelnut RSG CT amounting to £93.00;

    - One invoice dated 30 June 2025 (outside the relevant period) shows the sale of 'Carat Nuxel Hazelnut RSG CT' amounting to £33.00.

- However, it is not clear from the invoices which of the relevant goods, if any, are being sold as the products featuring the word 'Carat' within the descriptions are simply referred to as:

Carat Nuxel Hazelnut RSG CT Buc 5KgEP-RSPO
Segregated

Carat Cakau Milk Carton 10 Kg EP

- I have considered whether the above stated products referenced in the invoices can be cross-referenced to the images of products, packaging or promotional materials elsewhere in the evidence. However, on the evidence before me, I am unable to do so with any certainty. Consequently, whilst the invoices refer to ‘Carat Cakau Milk Carton’ and ‘Carat Nuxel Hazelnut RSG CT’ products, they do not enable me to identify with sufficient precision which of the opponent’s registered goods were sold.

- With regards to financial turnover and level of sales achieved under the mark ‘CARAT’, during the relevant period, the opponent submits the following:

2023:	**31** products amounting to £655,659
2024:	**44** products amounting to £537,515
2025(YTD):	**43** products amounting to £548,964

- It is noted from the above that 118 products amounting to £1,742,138 were sold between 2023 and 2025. The opponent has not provided turnover figures for the years 2020, 2021 or 2022 which also fall within the relevant period. Further, the opponent has not stated which of its class 30 goods the above turnover figures relate to, nor have I been provided with the unit costs of the goods at issue. Accordingly, I am unable to assess with any precision how the turnover should properly be understood in relation to the specific goods relied upon. For example, it is unclear whether they represent limited sales of relatively high-value goods, or more widespread sales of lower-value goods. Additionally, I have not been provided with the size of the EU/UK market for the chocolate-based products at issue during the relevant period, nor the percentage share of that market enjoyed by the opponent.

- With regards to the amount spent on the promotion of the mark ‘CARAT’, during the relevant period, the opponent submits the following:

2023:	£300
2024:	£500
2025:	£500

- However, there is no evidence before me demonstrating how and where the opponent chose to market/promote its mark and goods, or how or where consumers were able to acquire the goods at issue in the EU/UK, during the relevant period. Further, the opponent has not provided details of any advertising expenditure for the years 2020, 2021, or 2022.

Assessment of genuine use

40. With regard to the evidence of use submitted, I must now consider if it sufficiently demonstrates genuine use, whilst reminding myself that use does not have to be quantitatively significant to be genuine.

41. The burden is on the opponent to prove that it has used its mark within the relevant period. Therefore, it was the opponent's responsibility to provide proof that the mark was used in the EU/UK during the five-year relevant period. In my analysis above, I have highlighted numerous shortcomings in the evidence.

42. Allowing for favourable assumptions, it is apparent from the evidence that there has been some use, albeit limited, of the opponent's earlier mark in relation to compound chocolate and various chocolate and chocolate and nut fillings. However, whilst the opponent has filed five exhibits, the earlier mark is not always featured, and the majority of the exhibits are undated or are dated outside the relevant period.

43. Furthermore, whilst turnover figures have been provided, these only relate to part of the relevant period, namely 2023 to 2025, with no figures provided for 2020, 2021 or 2022. The figures are said to represent the sale of 118 products amounting to £1,742,138. However, as explained above, they are not broken down by reference to the particular goods relied upon, nor have unit costs been provided. I am therefore unable to assess with any precision whether, for example, the figures represent limited sales of relatively high-value goods, or more widespread sales of lower-value goods. Further, I have not been provided with evidence concerning the size of the relevant EU/UK market, or the opponent's share of that market. In those circumstances, whilst I accept that the turnover figures are indicative of some commercial activity, I am unable to place them in any meaningful market context or determine with any accuracy the scale, frequency or commercial significance of the use shown.

44. With regards to the six invoices submitted in support of the turnover figures, only five are dated within the relevant period. I have considered above whether the products referenced in the invoices can be cross-referenced to images of goods, packaging or promotional material elsewhere in the evidence. However, on the evidence before me, I am unable to do so with any certainty. Therefore, whilst the invoices refer to ‘Carat Cakau Milk Carton’ and ‘Carat Nuxel Hazelnut RSG CT’ products, they do not clearly identify which of the opponent’s registered goods were sold.

45. Furthermore, with regards to the advertising/promotion of the mark during the relevant period, the opponent claims an expenditure of £300 in 2023, £500 in 2024 and £500 in 2025. These figures appear modest, amounting to only £1,300 over the stated period. Moreover, no evidence has been provided regarding the nature of the promotional activities undertaken, where those activities took place, or the consumers at whom they were directed.

46. Overall, I find that the evidence is sparse. The earlier mark is not always featured and whilst it is acknowledged that some of the evidence extracted from the internet is within the relevant period, much of the evidence is either undated or bears only the date that the evidence was extracted from the internet, which falls outside the relevant period. Further, it is not possible to determine with any accuracy whether the invoices submitted relate to the sales of any of the relevant goods at issue. Moreover, the opponent has not provided any information regarding the nature, extent and reach of any promotional activities.

47. Accordingly, taking all the above into account and bearing in mind not only section 100 of the Act but also the comments of Mr Alexander QC (as he then was) and Mr Hobbs QC (as he then was) in *Plymouth Life* and *Dosenbach*, I find that the evidence of use is insufficiently solid to allow me to conclude that the opponent has demonstrated real commercial exploitation of the earlier mark in relation to the goods for which use is claimed in the EU/UK during the relevant period.

48. In reaching that conclusion, I have considered the evidence as a whole, including the product packaging, brochures and promotional material, website and social media

extracts, third-party materials, invoices, turnover figures and advertising expenditure. However, even when viewed cumulatively and on the basis most favourable to the opponent, I find that the evidence does not provide a sufficiently clear or specific picture of the extent and nature of use of the earlier mark in relation to the relevant goods. In particular, the evidence is limited by the fact that much of it is undated or dated outside the relevant period; the turnover figures are not broken down by reference to the goods relied upon; the invoices do not clearly identify the relevant goods; and there is little evidence as to the nature, extent or reach of any promotional activity. If the mark had been put to genuine use on the goods relied upon within the relevant period, then it should not have been a difficult matter for the opponent to show it. However, in my view, it has not done so. Put simply, the nature of the evidence and the issues discussed throughout my assessment do not, in my view, allow me to make the reasonable inferences necessary in order to find in favour of the opponent.

49. Accordingly, whilst I accept that the evidence is indicative of some commercial activity under the 'CARAT' trade mark in the EU/UK, it does not sufficiently demonstrate that such activity established or preserved a market for the relevant goods. I am reminded of the principles outlined above which recognise that even proven commercial use may not be sufficient for a finding of genuine use. Accordingly, I am of the view that the evidence is insufficient to allow me to find that the opponent has demonstrated real commercial exploitation of its mark in relation to any of the goods for which use is claimed within the relevant period.

CONCLUSION

50. The opponent has failed to establish genuine use of its earlier mark within the relevant period. Where the proof of use provisions apply, an opponent cannot rely on its earlier mark unless those provisions are satisfied. Consequently, as the opponent has not proved use of its mark, it cannot rely on its earlier mark for the purpose of these oppositions. Accordingly, the oppositions under section 5(2)(b) fail at the first hurdle and are dismissed accordingly. Subject to appeal, the applications will proceed to registration for the full list of goods applied for.

COSTS

51. The applicant has been successful and is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023. Applying the guidance in that TPN, I consider the following to be fair:

Considering the notices of opposition and filing counterstatements (x2):	£600
Filing written submissions in lieu of a hearing:	£300
Total:	**£900**

52. I therefore order Puratos NV to pay Monolith (UK) Service Limited the sum of £900. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 13th day of July 2026

Sam Congreve
For the Registrar

Annex

(The opposed goods are underlined)

Class 29 Snack foods based on nuts and seeds; prepared and processed nuts and seeds; nut and seed based food; nut and seed based snack bars; fruit and nut based snack bars; nut based food bars; prepared seeds; prepared sunflower seeds; milk, cheese, butter, yogurt and other milk products; edible oils and fat; sunflower oil; spiced, roasted, flavoured and candied nuts; nut based butters and spreads; seed based butters and spreads; nut, seed and vegetable based milks, cheeses and dairy substitute products; processed fruits, fungi, vegetables and pulses; prepared meals, convenience food and savoury snacks; edible nuts and seeds.

Class 30 Convenience food and savoury snacks; salts, seasonings, flavourings and condiments; coated nuts and seeds; chocolate coated nuts and seeds; sauces containing nuts and seeds; gingerbread nuts; confectionary snack bars; snack bars containing nuts and or seeds; sandwich spreads made from nuts or chocolate and nuts; snack bars; cereal and energy bars; chocolate drink preparations with nuts and or seeds; cereal, energy and nut bars; pastries, biscuits and cakes; pastries, biscuits and cakes containing nuts and or seeds; breakfast cereals; breakfast cereals containing or comprising nuts and or seeds; breads; chocolate; ice cream, sorbets and other edible ices; sugar, honey, treacle; yeast, baking-powder; salt, seasonings, spices, preserved herbs; vinegar, sauces and other condiments; ice (frozen water).

Class 31 Fresh fruit, nuts, vegetables and herbs; raw and unprocessed grains and seeds; sunflower seeds.