BL O/0048/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF UK REGISTRATION NOS. 903856689 AND 900168427

IN THE NAME OF OSOTSPA PUBLIC COMPANY LIMITED

IN RESPECT OF THE FOLLOWING TRADE MARKS

SHARK

IN CLASSES 32 AND 33

AND

APPLICATIONS FOR REVOCATION THEREOF

UNDER NUMBERS 507567 AND 507568

BY SEVENTY FIVE TRADING LTD

BACKGROUND AND PLEADINGS

1. Osotspa Public Company Limited is the registered proprietor ("the registered proprietor") of the following UK Trade Marks ("UKTM"):

UKTM no. 903856689[1]

SHARK

Filing date 4 June 2004; registration date 30 August 2005. It stands registered for the following goods

Class 32: Beers; mineral and aerated waters and other **non-alcoholic drinks**; **fruit drinks** and fruit juices; syrups and other preparations for making beverages.

Class 33: Alcoholic beverages (except beers); Alcoholic essences; alcoholic extracts; fruit extracts (alcoholic).

("the 689 Mark")

UKTM no. 900168427[2]

Filing date 1 April 1996; registration date 12 May 1998. It stands registered for the following goods

[1] On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all rights holders with an existing EU trade mark ("EUTM"). As a result of the proprietor having an EUTM protected as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable trade marks shown here are now recorded on the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and retain their original EUTM filing dates of 4 June 2004 and 1 April 1996 respectively

[2] Ibid

Class 32: **Non-alcoholic drinks**; syrups and other preparations for making beverages.

("the 427 Mark")

2. On 18 July 2024, Seventy Five Trading Ltd ("the cancellation applicant") applied to revoke the contested marks in accordance with section 46(1)(a) of the Trade Marks Act 1994 ("the Act"). Revocation is sought in respect of the specifications of each registration in their entirety in the five-year period following the date on which each mark was registered. Insofar as the 689 mark, this is 31 August 2005 to 30 August 2010 with an effective date of revocation of 31 August 2010. In respect of the 427 mark, no use is claimed from 13 May 1998 to 12 May 2003, with an effective date of revocation of 13 May 2003[3].

3. The cancellation applicant has made no additional statement in respect of why the marks should be revoked other than stating that the respective marks "ha[d] not been used".

4. The registered proprietor filed a defence and counterstatement defending the marks only in respect of those goods as emboldened namely *non-alcoholic drinks; fruit drinks in class 32*. I take from this that it accepts that no use has been made of the marks for those remaining goods. Consequently, the contested marks will be revoked in relation to the following terms which are undefended, without further consideration.

For the 689 mark

Class 32: Beers; mineral and aerated waters; fruit juices; syrups and other preparations for making beverages.

Class 33: Alcoholic beverages (except beers); Alcoholic essences; alcoholic extracts; fruit extracts (alcoholic).

For the 427 mark

Class 32: Syrups and other preparations for making beverages.

[3] The registered proprietor has stated within their counterstatement that the dates relied upon by the cancellation application within their TM26(N) are incorrect. I will consider this later in my decision.

5. In relation to the remaining goods, the registered proprietor states:

> "1.2 The cancellation action is based on Section 46(1)(a) of the UK Trade Marks Act 1994…The cancellation applicant has therefore stated at Q1 of Section A of the TM26(N) that the date of revocation should be 31.08.10. This is clearly not appropriate as it is 2024 and 14 years have passed since 31.08.10. The Applicant should have based the action on Section 46(1)(b) of the Act, namely that the trade mark has not been put to genuine use within the period of five years preceding the Relevant date, namely 18.07.19 to 17.07.24…
>
> Therefore, despite the Applicant effectively requesting evidence of use between 30.08.05 and 30.08.10, the Proprietor can provide evidence of use between 18.07.19 to 17.07.24 to maintain the Registration. The Proprietor is not precluded from doing this simply because the cancellation action is incorrectly based on Section 46(1)(a) of the Act".

6. The registered proprietor is represented by Baron Warren Redfern LLP and the cancellation applicant is unrepresented. Only the registered proprietor filed evidence in these proceedings, and this will be summarised to the extent that it is considered appropriate. No hearing was requested. This decision is taken following a careful consideration of the papers filed.

EVIDENCE

7. The registered proprietor filed evidence in chief in the form of a witness statement of Mr Pratharn Chaiprasit, dated 15 November 2024, which is accompanied by five exhibits (PC1 – PC5). Mr Chaiprasit is the Senior Vice Chairman of the Registered Proprietor's company and he provides evidence of use of the earlier marks as relied upon.

8. I have given due consideration to all of the documents filed by both parties but will only refer to the evidence as appropriate to the extent that is necessary in my decision.

DECISION

9. Section 46 of the Act is relevant to the revocation proceedings, which states:

> "46. - (1) The registration of a trade mark may be revoked on any of the following grounds-
>
> > (a) that within the period of five years following the date of completion of the registration procedure it has not 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, and there are no proper reasons for non-use;
> >
> > (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;
> >
> > (c) […]
> >
> > (d) […]
>
> (2) For the purpose of subsection (1) 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 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.
>
> (3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as in referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) […]

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from-

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existing at an earlier date, that date."

10. As the marks are comparable marks, paragraph 8 of part 1, schedule 2A is relevant. It reads:

"8. Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)

(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the "five-year period") has expired before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM ; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union".

11. Section 100 of the Act states:

"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."

12. 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.

13. 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 C40/01 *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 goods or services. For example, use of the mark by a single client which imports the relevant goods 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].

14. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13, Mr Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person stated that:

> "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 goods or 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."

15. What I take from this case law is that there is no requirement to produce any specific form of evidence, but that I must consider what the evidence as a whole shows me, and whether on this basis I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the contested marks.

EVIDENCE OF USE

Relevant Periods

16. The cancellation applicant has stated at section A of the TM26(N) that the effective date of revocation for the 689 mark should be 31 August 2010, based upon the Relevant Period of 31 August 2005 and 30 August 2010, and for the 427 mark, the date of revocation should be 13 May 2003, based upon the Relevant Period of 13 May 1998 and 12 May 2003. However, section 46(3) of the Act states:

> "(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:
>
> Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made."

17. The applicant has requested evidence of use for the above periods, however, the registered proprietor states that they can provide evidence of use between 18 July 2019 and 17 July 2024 in order to maintain the registration. This is because of the impact of section 46(3) of the Act (which is reproduced above) which states that the registration of a trade mark shall not be revoked if genuine use is resumed or commenced prior to a period of three months before the date of the application for revocation. Therefore, so long as the registered proprietor can show use after the relevant period claimed (even if not within the actual period set out by the applicant), but prior to 3 months before the date of the application for revocation, each mark will survive revocation based on the later use. Given the wording of section 46(3) and the possibility of resumption of use, I shall consider whether the evidence shows use in the period prior to the application for revocation.

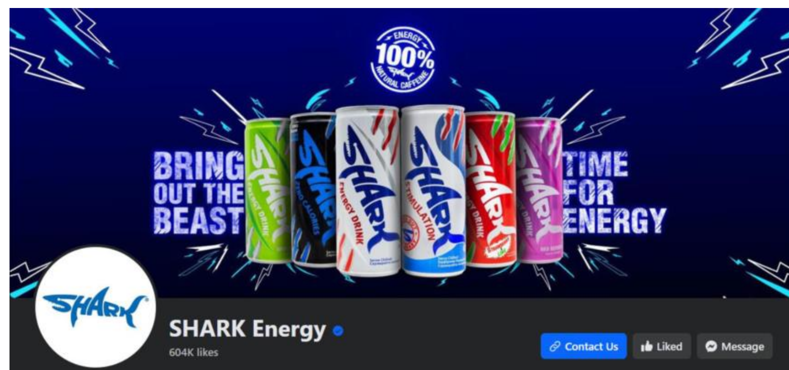
18. As the contested marks are comparable marks, the registered proprietor can rely upon use of the marks in the EU for any and all parts of the relevant periods which fall prior to IP Completion Day, namely, 31 December 2020[4]. Provided that such use is deemed to be genuine use, this will be the case even if the evidence in relation to the later period (post IP Completion Day) is deemed insufficient.

[4] paragraphs 7 and 8 of Part 1 Schedule 2A of the Act.

The Registered Proprietor's Evidence

19. I note the following from the witness evidence of Mr Chaiprasit:

a. Mr Chaiprasit states that the registered proprietor manufactures and exports carbonated energy drinks under the mark, SHARK. The mark beverage is produced in a variety of flavours which is supplied in a can, upon which the 427 Mark is depicted as follows[5]:



b. Mr Chaiprasit states that the registered proprietor has sold SHARK energy drinks in the EU for over 20 years[6]. The total sales numbers and

[5] Exhibit PC1
[6] Witness statement of Mr Chaiprasit, para 3

values for the period 1 August 2019 to 31 December 2020 are as follows:

Year	Number of Cans	Value in €
01.08.19 – 31.12.19	6,019,944	€1,279,593
01.01.20 – 31.12.20	7,885,320	€2,483,711

Mr Chaiprasit states that the sales outlined above "relate[d] to exports to importers in Austria, Bulgaria, Cyprus, Czech Republic, Ireland, Latvia, Malta, Slovenia and Spain, who either retail the goods directly to the public themselves in their own or in neighbouring territories, and/or distribute them wholesale to other retailers who then sell them directly to the public in their own or in neighbouring territories. Such retailers include supermarkets and other retail outlets which sell them as canned drinks, as well as bars, restaurants and other catering establishments which serve them as beverages to consume on site"[7].

c. Mr Chaiprasit has provided a selection of invoices dated between 22 July 2019 and 13 October 2020[8]. I note the following:

   i. Mr Chaiprasit states that the invoices provided represent a sample of sales in the years 2019-2020[9].

   ii. In total, these invoices amount to €1,336,412.16 of sales.

   iii. 23 invoices have been provided and all of the invoices display Osotspa in the header. I note that the products sold all relate to SHARK energy drinks of varying flavours and are sold to importers who either retail the goods themselves or distribute them to other retailers.

[7] Witness statement of Mr Chaiprasit, para 3
[8] Exhibit PC2
[9] Witness statement of Mr Chaiprasit, para 3

iv. The invoices confirm the goods are to be delivered to a number of addresses across Bulgaria, Cyprus, Ireland, Latvia, Malta and Slovenia, and that there is repeat custom.

v. The invoices relate to a range of flavours within the SHARK energy drinks range including Apple/Melon, Red Berries, Strawberry/Lime, Zero Calories, Stimulation and Energy Drink.

d. Mr Chaiprasit has provided photographs of the SHARK products displaying the earlier marks on the products themselves and on packaging on shelves in various "EU member state retail outlets in 2020"[10]. No further information has been provided in relation to this exhibit and it is therefore unclear whether these photographs relate to sales in different countries or whether they represent the beverages on sale in one member state. I note that the price on display in each photograph is in Euros. The photographs themselves are undated. An example of these photographs is as follows:

e. Mr Chaiprasit has provided photographic images illustrating marketing and promotion of the brand, depicting a can of the beverage bearing the

[10] Exhibit PC3

427 mark alongside the slogan “bring out the beast”. I note the following examples are included[11]:

i. A display in Paphos Mall, Cyprus dated 2018-2019

ii. Zoom kiosk, Nicosia, Cyprus dated 2017-2019

iii. In-store advertising dated 2017-2019.

iv. Bus, Cyprus, 2018-2019

v. Concert sponsorship, Cyprus, 2019

vi. Concert sponsorship, Makronssos beach, Cyprus, 2019

[11] Exhibit PC4

vii. Various activities, Cyprus, 2018-2019

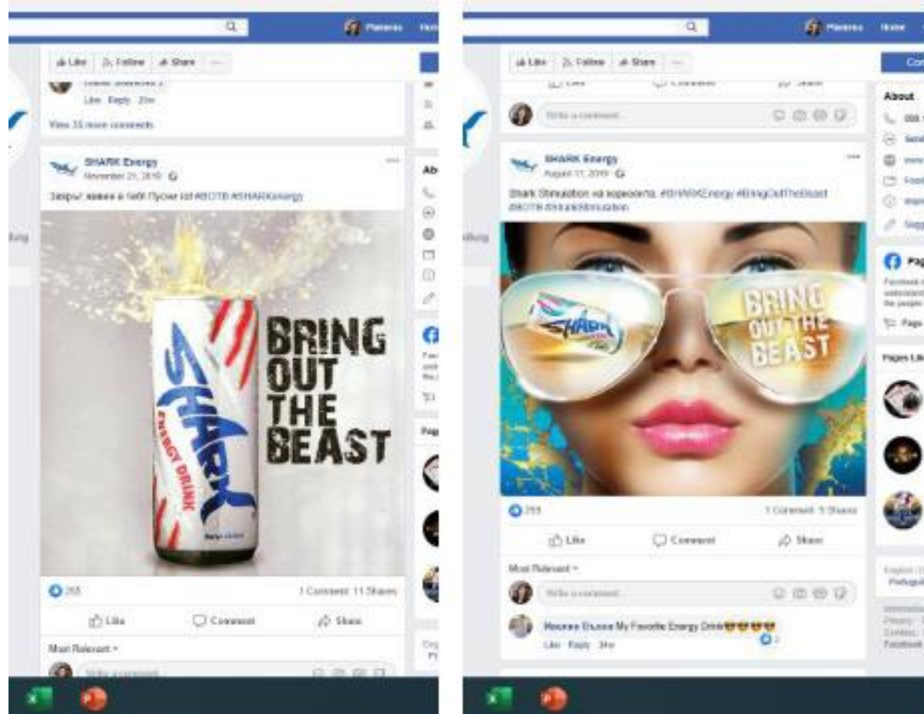
viii. Billboard, Cyprus, July 2018

ix. BOTB game shop, Cyprus, 2019

x. Inspot sponsorship, 2019

xi. Cyprus rally, 16-18 October 2020

xii. Various social media posts in Bulgaria 2018-2020



xiii. Hippielandiamusic festival, Bulgaria, 2018 (I note a reference to attendance of 1000 people)

xiv. Banners for e-commerce, these are undated.

xv. Shark Promotions report for activities across Sofia, Varna, Burgas and Blagoevgrad dated December 2019 – February 2020

xvi. Billboards, Latvia, 2020

xvii. Bus, Latvia, 2020

I note that there are no details as to the spend on marketing activities to promote the mark within the EU or the UK, or the registered proprietor's marketing strategy.

f. I note that the registered proprietor also operates a website at www.sharkenergy.com which it is said "was accessible to the whole of the EU between 2017 and 2020, the Company also operates European Instagram and Facebook profiles which were also active in the same period"[12]. Screenshots are provided in support of this[13], however, I note that these are undated. The registered proprietor appears to have 1,528 followers on Instagram and 604,000 likes on their Facebook page. There is only one screenshot of the registered proprietor's website (the rest relate to various social media profiles) and there is nothing to indicate

[12] Witness statement of Mr Chaiprasit, para 6
[13] Exhibit PC5

that the advertisements which appear on the site are aimed at consumers in the EU/UK[14]. Whilst I note that the registered proprietor submits that they have referenced use throughout the EU, I note that there is no evidence of anything specifically directed at UK consumers.

GENUINE USE

Assessment of Evidence

20. The evidence before me does have its limitations. There are no details in relation to the size of the relevant market or the share of that market held by goods bearing the registered proprietor's marks, and neither do I have information of the registered proprietor's spend on marketing activities. There is also no evidence of use within the UK after IP Completion Day, although I note that the mark has been used consistently within the EU up until this time, and if use is deemed to be genuine, use prior to IP Completion Day alone is sufficient to prove use overall. The cancellation applicant submits that the registered proprietor's marks should be revoked due to non-use.

21. The registered proprietor has provided 23 invoices relating to sales within the relevant period. These invoices amount to €1,336,412.16 in total. The registered proprietor has also provided their total sales figures between 1 August 2019 and 31 December 2020 which amount to €3,763,304 in total. The registered proprietor submits that the above figures relate to sales within Austria, Bulgaria, Cyprus, Czech Republic, Ireland, Latvia, Malta, Slovenia and Spain (all of which are within the EU), and that the invoices provided represent a sample of those available.

22. The registered proprietor has provided evidence of both marks on sale, and being used as part of their marketing strategy, by promoting the products in a number of ways including on buses, billboards and in shopping malls, as examples. I also take from the Shark Promotions report dated December 2019 – February 2020 that the registered proprietor has a promotional strategy to generate interest and awareness of the brand and prompt brand recall, which it employed during this period across various cities including Sofia, Varna, Burgas and Blagoevgrad.

---

[14] *Lifestyle Equities CV and another (Respondents) v Amazon UK Services Ltd and others* [2024] UKSC 8, at [24] to [31]

23. The registered proprietor's evidence indicates that it has traded in goods bearing the SHARK mark in both its figurative form and its word only mark for over 20 years and this is reflected in its significant sales figures between 1 August 2019 to 31 December 2020 shown in evidence. Both forms of the mark are set out throughout the evidence, and this is use upon which the registered proprietor can rely. Despite the fact that there is no evidence of use within the UK after IP completion day, I am of the view that the evidence of use prior to this time, when taken as a whole, is sufficient to show genuine use of the marks in the EU after the revocation period claimed by the applicant. This is sufficient to satisfy the requirements of section 46(3) of the Act in order to maintain the registrations.

FAIR SPECIFICATION

24. I must now consider whether, or the extent to which, the evidence shows use of the marks at issue in relation to the goods relied upon. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*,[15] Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person summed up the law as being:

> "In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned."

25. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal set out the proper approach to partial revocation, as follows:

> "245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

[15] BL O/345/10

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So, care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. […] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered."

26. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch) at [47], the late Carr J pointed out that it is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do; for

example, in *Pan World Brands v Tripp Ltd (Extreme Trade Mark)* [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally.

27. From the registered proprietor's evidence, it is clear that SHARK products are energy drinks which are available in different iterations/flavours, and this is reiterated throughout the evidence. Whilst I accept that energy drinks are non-alcoholic beverages, I consider this term to be too wide in respect of the goods which are being sold under the registered proprietor's marks.

28. The registered proprietor has provided no evidence of use of its marks in relation to *non-alcoholic beverages* or *fruit juices* at large. These are very wide categories and would include all non-alcoholic beverages and fruit juices. I note from the evidence that some of the registered proprietor's goods are available in various different fruit flavours, however, it is plain from the evidence that the goods that are being sold are energy drinks, and indeed this is confirmed within the registered proprietor's evidence. Consequently, I do not consider that the registered proprietor should be entitled to rely on the categories *non-alcoholic beverages* or *fruit juices* at large as identified within its counterstatement.

29. With that in mind, in order to reflect the use shown in evidence, I consider a fair specification for both the 689 mark and the 427 mark to be:

Class 32: Energy Drinks

CONCLUSION

30. This application was brought under section 46(1)(a) of the Act; however, I am satisfied that the registered proprietor has provided evidence sufficient to maintain the registrations for those aforementioned goods in accordance with the provisions of section 46(3) of the Act. The registered proprietor did not defend a significant proportion of the goods in its registrations, which are to be revoked from the earliest date from which revocation can take effect, which in each case is the day following the fifth anniversary of completion of the registration procedure of each mark

31. With effect from 31 August 2010, UKTM no. 903856689 is partially revoked for the following goods:

> Class 32: Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
>
> Class 33: Alcoholic beverages (except beers); Alcoholic essences; alcoholic extracts; fruit extracts (alcoholic).

UKTM no. 903856689 shall remain registered for the following terms:

> Class 32: Energy Drinks

32. With effect from 13 May 2003, UKTM no. 900168427 is partially revoked for the following goods:

> Class 32: Non-alcoholic drinks; syrups and other preparations for making beverages.

UKTM no. 900168427 shall remain registered for the following terms:

> Class 32: Energy Drinks

COSTS

33. Both parties have achieved a degree of success, and I therefore find that each party should bear its own costs.

Dated this 23rd day of January 2026

LA Bailey

For the Registrar