O/0087/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004001483
BY SINGH'S DYNASTY LTD TO REGISTER:

GHOST MARY

AS A TRADE MARK IN CLASS 34

AND

IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 446633 BY
SYNERGY PROJECT MANAGEMENT LLC

BACKGROUND AND PLEADINGS

1. On 12 January 2024, Singh's Dynasty Ltd ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK ("the applicant's mark"). The applicant's mark was published on 26 January 2024 and registration is sought for the goods set out in the **Annex** of this decision.

2. On 26 March 2024, the applicant's mark was opposed by Synergy Project Management LLC ("the opponent"). The opposition is based on sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ("the Act"). Under the section 5(2)(b) and 5(3) grounds of opposition, the opponent relies on the following trade marks:[1]

   Ghost
   UK registration no. 3863834
   Filing date 2 January 2023; registration date 26 May 2023
   Relying on all goods namely:

   Class 34: Electronic cigarettes; Electronic cigarette atomizers; Electric cigarettes [electronic cigarettes].[2]

   ("the opponent's first mark");

   GHOST
   UK registration no. 3159375
   Filing date 13 April 2016; registration date 5 August 2016
   Relying on all goods, namely:

[1] These grounds were initially reliant upon a number of additional marks that were ultimately surrendered (being 3976640, 3819517 and 3828530). The opponent no longer seeks to rely on those marks as per its email dated 23 December 2024. The opponent has referred to these marks in these proceedings as its MARY marks.
[2] It is noted that this mark is referred to as also being registered for class 10 goods. This is not the case and, even upon checking the history of the goods on the Trade Mark Register, there is no reference to any class 10 goods.

Class 34: Personal vaporisers and electronic cigarettes, and flavouring and solutions therefor.

(“the opponent’s second mark”); and

UK registration no. 3805174

Filing date 1 July 2022; registration date 30 December 2022

Relying on all goods, namely:

Class 34: Electronic cigarettes; Electric cigarettes [electronic cigarettes];Electronic cigarette atomizers; Liquids for electronic cigarettes; Liquid for electronic cigarettes; Liquid nicotine solutions for electronic cigarettes; Liquid solutions for use in electronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes; Electronic cigarette liquid [e-liquid] comprised of flavourings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid [e-liquid] comprised of flavorings in liquid form used to refill electronic cigarette cartridges; Liquid nicotine solutions for use in electronic cigarettes; Electronic cigarette liquid [e-liquid] comprised of vegetable glycerin; Electronic cigarette liquid [e-liquid] comprised of propylene glycol; Flavorings, other than essential oils, for use in electronic cigarettes; Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Flavourings, other than essential oils, for use in electronic cigarettes.

(“the opponent’s third mark”).

3. Under the section 5(2)(b) ground, the opponent claims that the marks are highly similar and the goods at issue are identical or highly similar. The opponent's position is that the registration of the applicant's mark would, therefore, lead to a likelihood of confusion (both direct and indirect), including a likelihood of association on the part of the public.

4. Turning to the section 5(3) ground, the opponent claims that its marks have developed a substantial reputation throughout the UK in relation to the goods relied upon. This, together with the similarity of the marks, is such that the relevant consumer would make a link between the parties' marks. As a result of said link, the opponent claims that registration of the applicant's mark would take unfair advantage of the opponent's marks' reputation and, further, that it would be detrimental to the distinctiveness and/or repute of the same.

5. Lastly, under the section 5(4)(a) ground, the opponent relies on signs identical to the marks relied upon under the above grounds, which I will refer to as the opponent's first, second and third signs, respectively. It is claimed that use of the signs has resulted in the opponent generating a substantial goodwill. It is claimed that the use of the signs began in July 2022 and relates to goods identical to those listed under the opponent's marks above. That being said, the first sign includes reference to goods in class 10, namely "vaporisers [medical devices]", "personal vaporisers [for medical purposes]" and "oral vaporisers [for medical purposes]."

6. As a result of the claimed goodwill, the opponent argues that use of the applicant's mark would amount to a misrepresentation that leads (or is likely to lead) customers into mistakenly believe that the applicant's goods are those of the opponent or that they are being provided by an undertaking that is economically connected to or licenced by the opponent. As such, the opponent submits that it is likely to suffer damage in the form of lost or diverted sales, as well as damage and/or dilution to its goodwill.

7. The applicant filed a counterstatement denying the claims against it in respect of the claimed similarity of the marks at issue and the section 5(3) and 5(4)(a) grounds. However, the applicant failed to make any comment on the comparison of the goods, a point I will address below.

8. The applicant is unrepresented in these proceedings whereas the opponent is represented by Forbes Solicitors LLP. Only the opponent filed evidence. No hearing was requested and only the opponent filed written submissions in lieu of the same. This decision is taken after careful consideration of the papers.

9. 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.

PRELIMINARY ISSUE

10. In its counterstatement, the applicant made reference to other marks on the UK Trade Marks Register which include the word 'GHOST' and stand registered in class 34 but were not opposed. It is claimed that this highlights a precedence for allowing marks with 'GHOST' in class 34. The applicant sets out that this supports its position that its mark should also be accepted. For the avoidance of doubt, the status of other similar marks in the same class as the marks at issue is not relevant to the present decision I must make. Further, whether the opponent chose not to oppose the marks referred to is a decision for the opponent to make in line with its own objectives. That decision is in no way a factor in support of the application succeeding. As a result, I will say no more about this aspect of the applicant's defence.

EVIDENCE

11. The opponent's evidence came in the form of the witness statement of Ms Natalia Gosciniak dated 23 September 2024. Ms Gosciniak is the Head of Marketing at the opponent, a position she has held since 2019. The statement makes reference to a second company, being Vape-Bars LTD, who Ms Gosciniak explains is the exclusive licensee of a number of the opponent's trade marks. Ms Gosciniak's statement is accompanied by 10 exhibits, being NG1 to NG10, and was adduced in order to prove the existence of a reputation and goodwill in the marks/signs relied upon.

12. I do not intend to summarise the opponent's evidence in full here (or its submissions, for that matter). However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

DECISION

Section 5(2)(b): legislation and case law

13. Section 5(2)(b) of the Act reads as follows:

> "(2) A trade mark shall not be registered if because-
>
> (a) […]
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood or association with the earlier trade mark."

14. Section 5A of the Act states as follows:

"Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only."

15. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

"(6)(1) In this Act an "earlier trade mark" means –

(a) a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(aa) a comparable trade mark (EU) or a trade mark registered pursuant to an application made under paragraph 25 of Schedule 2A which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired;

(ab) a comparable trade mark (IR) or a trade mark registered pursuant to an application made under paragraph 28, 29 or 33 of Schedule 2B which has a valid claim to seniority of an earlier registered trade mark or protected international trade mark (UK) even where the earlier trade mark has been surrendered or its registration has expired.

[…]

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered."

16. Given their earlier filing dates, all of the opponent's marks qualify as earlier trade marks under the above provisions. The opponent's first and third marks did not complete their registration processes more than five years prior to the filing date of the applicant's mark. As such, they are not subject to the proof of use conditions. While the opponent's second mark did complete its registration process more than five years prior to the filing date of the applicant's mark, the applicant did not seek to put the opponent to proof of use for the same. Therefore, the second mark is not subject to the proof of use provisions either. As a result, the opponent is entitled to rely on all of the goods for which its marks are registered.

17. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V*. Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonization in the Internal Market (Trade Marks and Designs) ("OHIM")*, Case C-3/03, *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods

18. The applicant's goods are set out in the Annex of this decision whereas the opponent's goods are set out at paragraph 2 above.

19. As I have set out above, the applicant's counterstatement made no reference to the comparison of the goods. Given that the applicant went into specific detail as to the visual, aural and conceptual differences in the marks and also mentions the sections 5(3) and 5(4)(a) grounds, I take the silence on the goods comparison as deliberate, therefore implying that the applicant did not dispute the opponent's claims on this point. Even if it was not deliberate, I consider that it acts as a tacit acceptance of the opponent's pleaded case.[3] Therefore, I will proceed on the basis that the failure to respond to the opponent's claims in respect of the goods acts as a concession that the applicant accepts the opponent's position. On this point, I note that the opponent's claim is that the goods at issue are either identical or, in the alternative, highly similar. It is on this basis that I will proceed.

[3] See paragraphs 26 and 27 of *SkyClub* (BL O/44/21) wherein Professor Phillip Johnson (sitting as the Appointed Person) set out that there is a positive duty on a defendant to admit or deny matters and that the purpose of pleadings is to define the issues and give the other party fair notice of the case which it is required to meet.

The average consumer and the nature of the purchasing act

20. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. (as he then was) described the average consumer in these terms:

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

21. The average consumer for the parties' goods is an adult member of the general public. In terms of where the goods will be purchased and how they will be viewed by consumers, this will differ depending on the goods selected. I say this because current regulations are such that tobacco products are not to be put on display in retail outlets. They will, instead, be placed out of view behind cabinets where the consumer will have to ask for the product that they want to purchase. As such, the purchasing process for these goods will be largely aural. However, once the purchase has been made, the consumer is likely to see the branding. These goods may also be purchased online, in which case the consumer will see some branding on an image. As for the non-tobacco goods, such as electronic cigarettes, liquids for electronic cigarettes[4] and smokers' articles like lighters and matches, these are

[4] I appreciate that electronic cigarettes and their liquids may be placed behind the same counters that tobacco products are. Where this occurs, the selection process for such goods will be in line with that discussed above.

likely to be self-selected from the shelves, and so the purchasing process will be largely visual. However, there may also be a role for the aural element of the mark, should the consumer seek advice from sales staff or word of mouth recommendations.

22. In my view, most of the goods (being the tobacco products or electronic cigarette liquids, for example) will be purchased relatively frequently, although some goods (such as the articles for use with smoking/vaping or those used for storing products, for example) are likely to be bought less often. When buying cigarettes, cigars, cigarillos, electronic cigarettes and liquids for electronic cigarettes, the average consumer will pay attention to the nicotine content and the flavour of the product, as well as the price. Whilst I appreciate that some cigars may be expensive, I am of the view that, on balance, the goods are likely to be of moderate cost. Goods such as rolling papers are low-cost items and there are fewer factors to consider when buying such goods, although the consumer will want to be assured that they are fit for purpose. For the most part, I consider that the consumer will pay a medium degree of attention but, for some goods (such as matches and rolling papers, for example), this may be lower (though not outright low).

Comparison of the marks

23. It is clear from *Sabel v Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components.

24. The Court of Justice of the European Union ("CJEU") stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

"… it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

25. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

26. The respective trade marks are shown below:

The opponent's marks	**The applicant's mark**
Ghost ("the opponent's first mark") GHOST ("the opponent's second mark") GHOST GHOST ("the opponent's third mark")	GHOST MARY

Overall impression

27. The opponent's first and second marks, despite their use of different cases, are identical and will, therefore, be considered together.[5] They are both word only marks consisting solely of one word, being 'GHOST' and it follows that their overall impressions lie solely in that word. As for the opponent's third mark, this is a figurative mark that consists of two representations of the word 'GHOST' in a standard black typeface and on a white background. One is presented vertically and to the left of the mark whereas the other is presented horizontally and to the right of the mark. There are no other elements that contribute to the opponent's third mark and the overall impression of the mark will, therefore, lie in the word 'GHOST', albeit consumers will notice the fact it is presented twice.

28. The applicant's mark is a figurative mark that consists of the words 'GHOST MARY' presented in an italic and slightly stylised typeface. The word is presented in black and on a white background. The overall impression of the mark is dominated equally by the combination of the words 'GHOST MARY', with the stylisation playing a lesser role.

Visual comparison

29. In comparing the applicant's mark with the opponent's first and second marks, I appreciate that they all share the word 'GHOST'. This is the sole element of the opponent's marks and the first word in the applicant's mark. The marks differ in the presence of the word 'MARY' in the applicant's mark. As for the stylisation used by the applicant, I see no reason why this would not be covered by the fair and notional use of word only marks. As such, it is not a point of visual distinction between these marks. In comparing these marks, I appreciate that consumers tend to focus on the beginnings of marks,[6] being where the point of similarity lies. That being said,

[5] As word only marks, they are protected for use in any standard typeface, regardless of case used.
[6] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

the word ‘MARY’ will not be overlooked. Overall, I consider that these marks are visually similar to a medium degree.

30. In respect of the comparison between the applicant’s mark and the opponent’s third mark, I note that much like the marks discussed above, they share the word ‘GHOST’ and differ in the word ‘MARY’. As both parties’ marks are figurative, they cannot be presented in the same typeface meaning that this acts as a point of visual difference between them, albeit a relatively slight one due to the fairly standard stylisations used. In addition, I find that consumers will notice the double use of the word ‘GHOST’ in the opponent’s mark which acts as a further point of difference. Despite the shared use of ‘GHOST’, which sits at the beginning of both marks, I find that these marks are visually similar to between a low and medium degree.

Aural comparison

31. The opponent’s first and second marks consist of one syllable which will be pronounced in the ordinary way. The applicant’s mark consists of three syllables that will also be pronounced in the ordinary way. The pronunciation of ‘GHOST’ across these marks is identical, with the two syllable word ‘MARY’ being a point of difference. I appreciate that the beginning of the applicant’s mark is identical to the entirety of the opponent’s marks. However, the opponent’s mark is a short mark and while there is no special test which applies to the comparison of ‘short’ marks,[7] I am of the view that in the present case, the shortness of the marks at issue (especially the opponent’s marks) means that the average consumer is more likely to notice the differences. As a result, I find that these marks are aurally similar to a medium degree.

[7] See paragraph 44 of *BOSCO*, BL O/301/20

32. In respect of the opponent's third mark, my view is that 'GHOST' will only be pronounced once. I say this because it is not a word only mark and the presentation of one 'GHOST' vertically and the other horizontally is such that it will not encourage consumers to pronounce it twice. As a result, I find that the finding made in the preceding paragraph of a medium degree of aural similarity applies here. However, if I am wrong on this point, then the second pronunciation of the word 'GHOST' is a further point of difference that would render the marks aurally similar to between a low and medium degree.

Conceptual comparison

33. Regardless of the double use of the word 'GHOST' in the opponent's third mark, I find that the concepts of the opponent's marks are the same, being that associated with the word 'GHOST'. This will be readily understood as the spirit of a dead person which is supposed to haunt the living as a pale or shadowy vision.[8] The applicant's mark consists of two words, being 'GHOST MARY'. The meaning of ghost will be understood as above. As for 'MARY', this will be readily understood as a female forename. When considering the mark as a whole, the combination of 'GHOST' and 'MARY' will be understood as reference the fact that the ghost is the spirit of a dead person named Mary.

34. In comparing the marks at issue, I find that the shared concept of the word 'GHOST' will be considerable. However, the fact that the applicant's mark refers to a ghost named Mary is a point of conceptual difference as it has no counterpart in the opponent's marks. Overall, I consider that the marks are conceptually similar to a medium degree.

[8] https://www.collinsdictionary.com/dictionary/english/ghost

Distinctive character of the opponent's marks

35. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

36. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of marks can be enhanced through use, and I note that the opponent has filed evidence of its use of the marks relied upon. I will, therefore,

consider whether this is sufficient to give rise to a finding that the distinctiveness of the opponent's marks has been enhanced through use. Before doing so, I will consider the inherent position.

37. Above, I treated the opponent's first and second marks identically. I shall do the same here. They are both word only marks that consist solely of the word 'GHOST'. While this word is not descriptive or allusive to the goods at issue, it is an ordinary dictionary word that has a well-known meaning. As such, I do not consider that use of such a word is particularly remarkable from a trade mark perspective. Therefore, I consider that the opponent's first and second marks enjoy a medium degree of inherent distinctive character. Turning to the opponent's third mark, this is a figurative mark that consists of the word 'GHOST' twice, one presented horizontally and the other presented vertically. Despite the repeated use of the same word, I see no reason why the same finding in respect of the first two marks cannot apply here. Therefore, I find that the opponent's third mark also enjoys a medium degree of distinctive character.

38. I turn now to consider the position with regards to an enhanced degree of distinctive character. The opponent's evidence sets out that its goods can be purchased via a number of different online outlets. Chief amongst these is the Vape Bars website, printouts of which, dated 7 December 2023, are provided in evidence.[9] In addition, the opponent's goods can be found on websites such as, but not limited to, vape.co.uk, vapeclub.co.uk and vapeandgo.co.uk. The latter is referred to as the UK's number one online vape shop. Various examples of these websites are provided in evidence, and I note that these are dated 8 December 2023.[10] While I do not intend to discuss any of the screenshots provided in detail, I do note that they show the opponent's GHOST goods, being a range of disposable vapes, for sale in British pounds.

[9] NG1
[10] NG2

39. Another form of retail through which the opponent sells its goods are physical retailers such as Morrisons, WHSmith, ASDA, Tesco, EURO GARAGES and Valli Forecourts.[11] Photographs have been provided that show the opponent's goods displayed in retail stores as well as advertising displays in said stores.[12] While noted, the photographs are undated and it is not clear what retail outlets are actually shown.

40. The opponent has provided evidence of its turnover. While the evidence was filed prior to the opponent removing the 'MARY' marks from the opposition, the evidence is helpfully broken down so as to demonstrate sales under both the 'GHOST' and 'MARY' marks. Given the removal of the 'MARY' marks, I will discuss the turnover in respect of the 'GHOST' marks only.

41. The figures provided cover sales in 2023. Under the 'GHOST 800' brand, the opponent sold 656,588 products, totaling a turnover of £1,503,585.50. In addition, the opponent sold 341,402 products under the 'Ghost Salts' branding which equated to a turnover of £268,238.47. I note that spreadsheet confirming these figures is provided in evidence.[13] In addition to the figures provided, the opponent's evidence includes a copy of an invoice to one of its UK-based stockists which shows a transaction dated 28 July 2023 covering the total sale of £367,446 worth of 'GHOST' products.[14] It is not confirmed whether this invoice is to be taken in addition to the turnover discussed above or whether it forms part of it. As such, it is not clear to me what the total turnover should be. Therefore, the opponent's turnover for 2023 under its 'GHOST' brand stood at £1,771,823.97 if the invoice is to be taken as part of the turnover discussed or, if it was meant to be in addition, it stood at £2,139,269.97.

[11] It is noted that an official stockist list is provided at NG4 that shows these retailers listed.
[12] NG5
[13] NG6
[14] NG3

42. The opponent confirms that it invests significant financial sums into advertising and marketing its brands in the UK. It claims that this is demonstrated by its attendance at various exhibition shows from 2021 to 2024. It is stated that the attendance at these shows is a unique opportunity to showcase the opponent's products (under both the GHOST and MARY brands) and to connect with partners and customers. The opponent's evidence sets out that it spent a total of 2,284,267.22 AED in 2023 on show expenses.[15] This is noted but the breakdown[16] showing how this was spent only shows one attendance at a UK show, being The Vaper Expo in Birmingham which took place in October 2023. The spreadsheet confirms that the costs associated with this event stood at 32,445 AED.[17] There are figures provided for 2024, but the UK event took place after the relevant date for these proceedings so is of no assistance here.

43. In considering the advertising spend discussed above, I note that unlike the turnover figures, this has not been broken down to cover the 'MARY' and 'GHOST' brands, so it is not possible to determine how much of it is actually relevant here. Even if I were to take the entirety of the UK spend for the Birmingham event into account, this covers just approximately £6,813, which reflects a very low spend.

44. In addition to the above, the opponent has provided evidence of its UK marketing spend in relation to activities such as social media campaigns. The total figure for 2023 and 2024 is provided as £369,934.06. However, the spreadsheet breaking down these figures covers payments up until 31 July 2024, being after the relevant date. It is also noted that some of the expenses from October 2023 cover the attendance at the event I have discussed at paragraph 42 above. No breakdown is given as to the level of this marketing spend as at the relevant date. However, by my calculation, the spend prior to the relevant date stood at approximately £86,000. On this point, I consider it necessary to set out that the spreadsheet

[15] It is noted that the opponent has given a rough conversion rate to British pounds which, by my calculation, means that this amount is the equivalent of £479,696.12
[16] NG7
[17] Being £6,813.45 based on the rough exchange rate provided.

provided is not particularly clear and is in small print. Further, I note that one payment refers to 'Chinese Visa App' and another makes sole reference to the 'MARY' brand of goods. Such entries cannot be said to relate to advertising of the 'GHOST' brand so did not form part of my calculation (neither did the costs associated with the October 2023 event, for that matter). It is my view that it was for the opponent to provide its own breakdown so any discrepancy stemming from my own calculation could have been avoided if they had provided a more succinct breakdown.

45. A range of social media accounts have been provided but they either cover accounts for specific countries (though not the UK) or Worldwide accounts.[18] Further, none of the screenshots provided are dated so could, therefore, stem from after the relevant date. Such evidence is not, therefore, of any assistance here.

46. Lastly, the opponent has provided a range of screenshots showing reviews of its products that can be found on various UK retailers' websites. The 'GHOST' reviews are not dated but do refer to the fact that they were posted 'X months ago'. Assuming that the screenshots were accessed around the time that the statement was produced in September 2024, I can determine that seven of the reviews were from prior to the relevant date. In addition to this, I note that there is an article dated 25 July 2022 which reviews the 'GHOST 800' vape product. While noted, this is from the website ecigclick.co.uk and I have nothing to suggest the readership figures for the same.

47. Taking all of the evidence into account, I appreciate that there was turnover of around £2 million for 2023 alone.[19] However, I am of the view that in the context of the relevant market as a whole, this represents a low turnover.[20] In addition, the turnover provided covers just one year meaning that the use before me does not

[18] NG9
[19] This is the case regardless of the issue I have discussed at paragraph 33 above.
[20] I appreciate that I have no evidence to say otherwise but, in my view, the electronic cigarette/vape market in the UK is sizeable, likely with a turnover in the billions of pounds.

cover a sufficiently prolonged period of time.[21] I am also of the view that the advertising evidence leaves a lot to be desired in that it covers mostly international spend and, even where it can be said to relate to the UK, it is relatively low and not broken down in a way that allows me to determine how much was spent on the 'GHOST' brand. Further, the review evidence is limited and offers very little assistance in demonstrating the awareness of the brand amongst the UK public. As a result, I find that the evidence falls far short of being able to point to the fact that the opponent's marks enjoy an enhanced degree of distinctive character. Therefore, the inherent position applies.

Likelihood of confusion

48. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the opponent's marks, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

[21] I accept that use over a short period of time may be sufficient so long as it is intensive. However, that is plainly not the case here.

49. I have found the goods at issue to be identical or, in the alternative, similar to a high degree. The average consumer base is formed of adult members of the general public who will select some goods aurally (though the visual aspect remains important) but others will be selected primarily visually (though not discounting the aural component). In terms of the level of attention paid, I have found that this will mostly be at a medium degree but, for some goods, it will be at a lower degree. I have found the applicant's mark to be visually, aurally and conceptually similar to a medium degree with the opponent's first and second marks and visually similar to between a low and medium degree, aurally similar to a medium degree or to a low and medium degree if the second 'GHOST' is pronounced twice and conceptually similar to a medium degree with the opponent's third mark. The opponent's marks all enjoy a medium degree of inherent distinctive character.

50. Taking all of the above factors into account, I appreciate that the marks share the word 'GHOST'. However, I see no reason why consumers would overlook the presence of the word 'MARY' in the applicant's mark, regardless of its position at the end of the mark. As such, I do not consider that consumers would misremember or inaccurately recall which mark was which, even on goods that are identical or in circumstances where the consumer pays a lower degree of attention. Consequently, I do not consider that there exists a likelihood of direct confusion between the marks at issue.

51. I will now proceed to consider indirect confusion. In doing so, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the

other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

52. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances whereby indirect confusion occurs.

53. Further, I note the case of *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, wherein Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at paragraph 16 that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

54. In considering the issue of indirect confusion, I note that the opponent's pleadings (or submissions for that matter) offer no real reason as to why it would occur. All the opponent states is that either direct or indirect confusion would occur due to the similarities of the marks and the goods at issue. While I appreciate that the factors set out in *L.A. Sugar* (cited above) are not exhaustive, I will only consider those factors here. To go beyond those factors would involve me formulating the opponent's claim on its behalf. In short, I do not consider this appropriate and neither is it fair to the applicant for me to do so.

55. While the marks at issue all share use of the word 'GHOST', I do not consider that this common element is so strikingly distinctive that consumers would believe that only one undertaking would use it. I appreciate that the word 'GHOST' is not descriptive or allusive but, as explained above, it is an ordinary dictionary word which is not particularly remarkable from a trade mark perspective. In addition, I see no reason why the addition of the word 'MARY' would be viewed by consumers as a logical indicator of a brand extension. I say this because 'MARY' in no way indicates the type of goods that a sub-brand or brand extension would offer. As set out above, 'MARY' is a person's name and while I appreciate that, in some instances, the addition/removal of a name may indicate an alternative mark offered by one undertaking with or without reference to a person. However, I do not consider that this is the case here because the word 'MARY' sits at the end of the

applicant's mark and, as such, I see no reason why such a finding would apply. In addition, the applicant's mark will be viewed, as a whole, to be a reference to a ghost named Mary as opposed to something called 'GHOST' being offered by someone named 'MARY'. As I have found that none of the factors set out in *L.A. Sugar* are satisfied, it would be appropriate for me to conclude my assessment at this point. However, despite what I have said above regarding the opponent's failure to expand upon the claim of indirect confusion, I have given brief consideration as to whether the mark would be viewed as indicative of a collaboration between the applicant and the opponent. In my view, a collaboration of these marks would commonly be shown as 'GHOST AND MARY', 'GHOST & MARY' or 'GHOST x MARY'. None of those are the case here and, as such, I do not consider that the applicant's mark will be viewed as indicative of a collaboration of these brands.

56. For the avoidance of doubt, I have also given consideration as to whether the *Medion*[22] principle applies. Having considered the correct approach to *Medion* (which was set out by Arnold J. (as he then was) in the case of *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another* [2015] EWHC 1271 (Ch)), I do not consider that it applies. This is because the applicant's mark will be understood as a reference to a ghost named Mary, therefore forming a unitary meaning and, as such, I see no reason why consumers would believe that the applicant's mark was made up of two signs, one of which having distinctive significance which is independent of the significance of the whole.

57. As a result, even taking into account the visual, aural and conceptual similarity created by the word 'GHOST', I do not consider that consumers would believe that the marks originate from the same or economically linked undertakings. Consequently, I find that there exists no likelihood of indirect confusion between

[22] *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04

these marks, even on identical goods or in instances where consumers pay a lower degree of attention.

58. The opposition under section 5(2)(b) fails in its entirety and I will now proceed to consider the remaining grounds of opposition.

Section 5(3)

59. Section 5(3) of the Act states:

> "5(3) A trade mark which –
>
> is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a European Union trade mark or international trade mark (EC), in the European Union) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark."

60. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors,* Case 252/07, *Intel,* Case C-408/01, *Adidas-Salomon,* Case C-487/07, *L'Oreal v Bellure,* Case C-323/09, *Marks and Spencer v Interflora,* Case C383/12P, *Environmental Manufacturing LLP v OHIM.* The law appears to be as follows:

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Salomon*, paragraph 29 and Intel, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel*, paragraph 42

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; Intel, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel*, paragraph 79.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel*, paragraph 74.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oreal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the holder of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oreal v Bellure*).

61. In considering the present ground, I am of the view that the counterstatement of the applicant is open to interpretation as to whether it denies the existence of a reputation or not. I say this because the applicant's comments are:

"The opponent claims that their mark has a reputation and that our use of "Ghost Mary" would take unfair advantage of or be detrimental to their mark. We dispute this claim as our branding strategy is independent and does not seek to leverage or dilute the reputation of the "Ghost" mark."

62. While I have taken the applicant's silence as to the goods comparison as a tacit acceptance of the opponent's position, I do not consider that the same applies here. It is my reading of the comments above that the applicant disputes the

entirety of the opponent's claim. The fact that the further explanations (being those in relation to the independent nature of the applicant's strategy and the lack of intention to cause damage) do not expressly deny a reputation does not mean that the applicant concedes to the existence of the same.[23] As a result, I will proceed as though a reputation is denied.

63. In considering a reputation, I remind myself that the evidence of the opponent has been summarised above when considering the issue of an enhanced degree of distinctive character. I do not intend to reproduce that here but I remind myself that the opponent's evidence fell far short of proving that the opponent's marks enjoy any degree of enhanced distinctiveness. I appreciate that the test for reputation differs from that for enhanced distinctiveness. However, it is common in proceedings before the Tribunal that, when all factors are equal, the outcomes of these assessments mirror one another.[24] In the present case, the relevant date and relevant territory for the issue of a reputation are identical to those for an enhanced distinctive character. As a result, I find that the outcome of the assessment for reputation is the same as that reached above when considering enhanced distinctiveness. As such, I find that the opponent's evidence is insufficient for a finding that it enjoyed a reputation in any of its marks as at the relevant date. Without a reputation, there can be no link or any subsequent damage. Therefore, the opponent's section 5(3) ground fails at the first hurdle.

64. Even if my interpretation of the applicant's counterstatement was incorrect and the issue of a reputation was not in dispute, I do not consider that this assists the opponent. I say this because if any reputation exists in the opponent's marks, it would only be at a very low level. This is on the basis that, as discussed at paragraph 47 above, the level of use shown in the evidence is limited in that is

[23] I note that the opponent has not sought to argue in its written submissions that the applicant has conceded this point. As such, I consider it reasonable to suggest that the opponent also accepts that the applicant has duly denied this point.
[24] On this point, see paragraph 39 of *O2 Worldwide Limited v CX02.COM (UK) Limited*, BL O/393/19, wherein Professor Phillip Johnson, sitting as the Appointed Person, set out that while distinctiveness and reputation are different, the nature, factors, and evidence used to prove enhanced distinctiveness are the same.

covers a turnover of around £2 million over just one year of use (making up a very low level of use in the relevant market) with any marketing evidence being of very little assistance.

65. I appreciate that a link can be found even where there is no likelihood of confusion. However, this ordinarily requires a degree of reputation that is sufficiently strong enough to still result in consumers believing that the user of the later mark was linked to the user of the earlier, well-known mark. This does not apply in the present case as the reputation is only at a very low level and, in my view, it is insufficient to overcome the points I made when considering a likelihood of confusion above. Therefore, I do not consider that consumers would believe that there is a link between the marks at issue.

Section 5(4)(a)

66. Section 5(4)(a) of the Act states as follows:

> "5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -
>
> a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,
>
> aa)…
>
> b) …
>
> A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of "an earlier right" in relation to the trade mark".

67. Subsection (4A) of section 5 of the Act states:

> "(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application."

68. In considering the present ground, I find that the opponent's evidence (whilst not sufficient to give rise to enhanced distinctiveness or a reputation), is sufficient to give rise to a finding that there exists goodwill in the opponent's signs. While I accept that the goodwill is distinctive of the opponent, it is not particularly strong as it covers just one year of use. Further, it vests only in "electronic cigarettes".[25] Even though this may be the case, I remind myself that the case of *Comic Enterprises Ltd v Twentieth Century Fox Film Corporation* [2016] EWCA Civ 41, casts doubt on whether the difference between the legal tests for misrepresentation under the present ground and the assessment of a likelihood of confusion under section 5(2)(b) will (all other factors being equal) produce different outcomes.[26] This is because they are both normative tests intended to exclude the particularly careless or careful, rather than quantitative assessments. I consider that this is the case here and, therefore, given the same reasoning set out at paragraphs 50 to 57 above, I find that there exists no misrepresentation between the marks at issue.

69. Without a misrepresentation, there can be no damage meaning that this ground fails in its entirety.

[25] This is on the basis that the evidence of the opponent's GHOST products cover disposable vapes, being a type of electronic cigarette.
[26] Although this was an infringement case, the principles are equally applicable to section 5(2) of the Act: *Soulcycle Inc v Matalan Ltd* [2017] EWHC 496 (Ch).

CONCLUSION

70. The opposition fails in its entirety and the applicant's mark may, subject to any successful appeal against my decision, proceed to registration for all of the goods applied for.

COSTS

71. The applicant has succeeded in defending the opposition in its entirety. The applicant would, therefore, in the ordinary course of these proceedings, be entitled to a contribution towards its costs. However, the applicant is unrepresented meaning that, in order to claim its costs, it was required to file a completed costs pro-forma. It did not do so. On this point, I note that a blank costs pro-forma was provided to the opponent under the cover of a letter from the Tribunal dated 4 December 2024. This letter set out that:

> "If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded."

72. As no costs pro-forma was filed and the applicant incurred no official fees arising from this action, I make no order as to costs.

Dated this 2nd day of February 2026

A COOPER
For the Registrar

ANNEX

Class 34

Electronic cigarette cartomizers; Smokeless cigarette vaporizer pipes; Cigarette lighters; Electronic cigarette atomizers; Cigarettes; Menthol cigarettes; Cigarette ash receptacles; Cigarette tubes; Electric cigarettes [electronic cigarettes]; Cigarette tips; Tips (Cigarette -); Cigarette lighter holders; Portable cigarette ash pouches; Cigarette boxes; Cigarette papers; Tobacco tar for use in electronic cigarettes; Filters (Cigarette -); Cigarette filters; Smoking sets for electronic cigarettes; Cigarette packets; Cigarettes, cigars, cigarillos and other ready-for-use smoking articles; Cigarette cutters; Cigarette holders; Liquid nicotine solutions for use in electronic cigarettes; Liquid nicotine solutions for electronic cigarettes; Cigars for use as an alternative to tobacco cigarettes; Electronic cigarettes; Electronic cigarette boxes; Lighters for smokers [cigarette lighters] [not for automobiles]; Electronic cigarette cleaners; Cigarette paper; Hookah tobacco; Smokers (Lighters for -); Lighters for smokers; Electronic cigarette liquid [e-liquid] comprised of flavourings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid [e-liquid] comprised of flavorings in liquid form used to refill electronic cigarette cartridges; Smoking tobacco; Cigar lighters; Shisha tobacco; Oral vaporizers for smokers; Cartridges for electronic cigarettes; Mouthpieces for cigarettes; Gas containers for cigarette lighters; Tips of yellow amber for cigar and cigarette holders; Yellow amber (Tips of -) for cigar and cigarette holders; Menthol pipe tobacco; Liquids for electronic cigarettes; Ashtrays for smokers; Liquid for electronic cigarettes; Cigarette cases; Cases (Cigarette -); Pipes for smoking mentholated tobacco substitutes; Electronic cigarette cases; Firestones for lighters for smokers; Refill cartridges for electronic cigarettes; Electronic cigarette liquid [e-liquid] comprised of propylene glycol; Inhalers for use as an alternative to tobacco cigarettes; Mouthpieces for cigarette holders; Cigarette holders (Mouthpieces for -); Wicks adapted for cigarette lighters; Snus with tobacco; Electronic cigarette liquid [e-liquid] comprised of vegetable glycerin; Roll-your-own tobacco; Electronic smoking pipes; Electronic cigarettes for use as an alternative to traditional cigarettes; Cigarette lighters of precious metal; Holders for electronic cigarettes; Smokeless

tobacco; Cigar pouches; Replaceable cartridges for electronic cigarettes; Cigarette rolling papers; Tea for smoking as a tobacco substitute; Cigarettes containing tobacco substitutes; Chemical flavourings in liquid form used to refill electronic cigarette cartridges; Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Liquid solutions for use in electronic cigarettes; Liquefied gas cylinders for cigarette lighters; Devices for extinguishing heated cigarettes, cigars and heated tobacco sticks; Snus without tobacco; Filter tips for cigarettes; Electronic shisha pipes; Vaporizers for smoking purposes; Hemp for smoking; Smoking pipes; Smoking urns; Ready-made cigarette tubes with filters; Chewing tobacco; Mentholated tobacco; Electronic cigars; Pipe tobacco; Cases for electronic cigarettes; Cigarette rolling machines; Tobacco; Gas containers for cigar lighters; Cigar lighters (Gas containers for -); Cigarette lighter holders of precious metal; Books of cigarette papers; Cigarette papers (Books of -); Tobacco pouches; Pouches for tobacco; Pouches (Tobacco -); Devices for extinguishing heated cigarettes and cigars as well as heated tobacco sticks; Cigar tubes; Personal vaporisers and electronic cigarettes, and flavourings and solutions therefor; Cigarette lighters, not of precious metal; Electronic nicotine inhalation devices; Flavourings for tobacco; Tobacco free oral nicotine pouches [not for medical use]; Tipping paper for cigarettes; Automatic cigarette cases; Tobacco and tobacco substitutes; Hand-rolling tobacco; Cigar humidifiers; Snuff with tobacco; Humidified cigar boxes; Smoking pipe cleaners; Cigars; Flavored tobacco.