

O/0168/26

TRADE MARKS ACT 1994

**IN THE MATTER OF REGISTRATION NO. UK3197080
IN THE NAME OF KIGU OF LONDON LTD
FOR THE TRADE MARK:**

Kigu

IN CLASSES 3, 9, 14, 16 AND 18

AND

**AN APPLICATION FOR REVOCATION ON THE GROUNDS OF NON-USE
UNDER NO: 507900
BY THE GOD PROJECT LTD**

BACKGROUND AND PLEADINGS

1. The trade mark shown on the cover page of this decision (“the contested mark”) stands registered in the name of KIGU OF LONDON LTD (“the proprietor”). The contested mark was filed on 16 November 2016 and registered on 10 February 2017. It stands registered for the following goods:

Class 3 Cosmetics.

Class 9 Sunglasses.

Class 14 Jewellery; Jewellery in the form of beads; Key chains as jewellery [trinkets or fobs]; Jewellery made of semi-precious materials; Jewellery made from gold; Jewellery made of precious stones; Locketts [jewellery, jewelry (Am.)]; Necklaces [jewellery, jewelry (Am.)]; Pearls [jewellery]; Jewellery, clocks and watches; Rings [jewellery]; Sterling silver jewellery; Jewellery made of plated precious metals; Jewellery boxes and watch boxes; Pendants [jewellery]; Jewellery boxes; Jewellery; Personal jewellery; Cufflinks; Boxes for cufflinks; Jewellery boxes of precious metals; Chains [jewellery, jewelry (Am.)].

Class 16 Pens; Pens of precious metal; Boxes for pens; Pens for marking.

Class 18 Leather bags and wallets.

2. On 11 October 2024, THE GOD PROJECT LTD (“the cancellation applicant”) applied to revoke the contested mark in respect of all goods for which it is registered, based upon section 46(1)(b) of the Trade Marks Act 1994 (“the Act”).¹ The cancellation applicant claims non-use of the contested mark in the following five-year period: 10 October 2019 to 9 October 2024, with an effective date of revocation of 10 October 2024.

¹ 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.

3. The proprietor filed a counterstatement denying the grounds of revocation.
4. Only the proprietor filed evidence. Neither party requested a hearing, and only the cancellation applicant filed written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers on file.
5. Both the cancellation applicant and the proprietor are self-represented.

EVIDENCE AND SUBMISSIONS

6. The proprietor filed evidence in the form of the witness statement of Shiraz Ahmed dated 17 March 2025, which is accompanied by 9 exhibits (Exhibit A to Exhibit I). Mr Ahmed is the Director of the proprietor, a position he has held since 14 January 2014.
7. The cancellation applicant filed written submissions in lieu of a hearing on 29 August 2025.

DECISION

8. 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) [...]

(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”.

9. Section 100 of the Act states that:

“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”.

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

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung 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]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(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].

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. Case T-78/19 *Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33]. In *Awareness Ltd v Plymouth City Council* [2013] RPC 24 Mr Daniel Alexander KC sitting as the Appointed Person said:

19. For the tribunal to determine in relation to what goods or services

there has been genuine use of a mark during the relevant period, it should be provided with clear, precise, detailed and well-supported evidence as to the nature of that use during the period in question from a person properly qualified to know.

...

22. ... it is not strictly necessary to exhibit any particular kind of documentation but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal ... comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said the public.”

11. Proven use of a mark which fails to establish that “the commercial exploitation of the mark is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods protected by the mark” is not, therefore, genuine use.

Evidence of use - *Form of the mark*

12. Before I move on to assess whether the proprietor has shown genuine use of its mark during the relevant period, I must first consider if I find the use of the mark as shown in the evidence to be use of the mark as registered.

13. Section 46(2) of the Act states that:

“... 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 is registered...”

14. The mark is registered for the word ‘Kigu’. There are examples of the mark in use as registered. Clearly, this will be use upon which the proprietor can rely. However, I note that sometimes the mark appears in the evidence in a different typeface, namely ‘KIGU’, but in this regard, I remind myself that the registration of a word mark gives protection irrespective of the typeface or colour for that matter: see *Bentley Motors Limited v Bentley 1962 Limited*.²

15. Furthermore, I note that some of the evidence shows use of the word mark ‘Kigu’ as part of a domain name, namely ‘Kiguoflondon.com’. However, because the additional elements are descriptive/non-distinctive (‘London’ would merely be perceived as a geographical indication and ‘.com’ would merely be perceived as internet domain indication), I am of the view that the word ‘Kigu’ continues to indicate origin, as outlined in *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12. Therefore, this mark may be relied upon by the proprietor.

16. Additionally, I note that within some of the exhibits,³ the mark also appears in the following formats:



17. In *Lactalis McLelland Limited v Arla Foods AMBA*,⁴ Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under section 46(2). He said:

² BL O/158/17.

³ Exhibits B, D and G.

⁴ BL O/265/22

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

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

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

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

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD

MEDIA. It took the view that the omission of the word “MEDIA” would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still.”

18. In conjunction with the above case law, I remind myself that section 6A(4)(a) of the Act enables the proprietor to rely on use of a mark “in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered”. With regards to the above marks, I acknowledge that where a registered mark is used with additional matter, this may still constitute acceptable use of the mark as registered, where the registered element continues to act independently as an indicator of origin.

19. Further, as previously stated, as the registered mark is a word mark, I note that the registration of a word mark gives protection irrespective of capitalisation and stylisation.

20. Accordingly, I am of the view that use of the three marks shown above do constitute use of the earlier mark, as I find that the additional text and/or device elements make no material difference to the distinctiveness of the mark as registered, on the basis that this element, namely ‘Kigu’ in all of the above versions, continues to play an independent, dominant role and therefore continues to indicate origin. Consequently, I find that use of the above stated marks is use upon which the proprietor can rely.

21. Even if I am wrong in my finding, I am of the view that the additional text and/or device elements added to the registered word ‘Kigu’, does not sufficiently alter the distinctive character of the earlier mark, and therefore use of the marks shown above, constitute as acceptable variant use of the earlier mark upon which the proprietor can rely.

Genuine use – *Analysis of the evidence*

22. In its notice of defence, the proprietor claims that use has been made in respect of all the goods for which the mark is registered.⁵ I must therefore consider whether, or the extent to which, the evidence shows genuine use of the mark in relation to those goods.

23. I deduce the following from the witness statement and exhibits of Mr Ahmed:

- The proprietor began selling jewellery products under the ‘Kigu’ trade mark at issue, as well as its other UK and International trade marks⁶ in 2018, selling over 100,000 products since this date;
- The proprietor’s products are predominantly sold via various online platforms such as Etsy, Amazon and Ebay;
- The proprietor’s company merged with another company, namely ‘Mya’s Gifts Limited’ which sells ‘Kigu’ branded products online. Additionally, with the agreement of the proprietor, its products are also sold by ‘W.A.P Watson Limited’, ‘Exquisite Jewellery Limited’, ‘Gifts International Limited’ and ‘Ajaz Ahmed’.
- The proprietor displays its trade mark on its jewellery goods and packaging as the following shows:⁷

⁵ As set out in paragraph 1 of this decision.

⁶ See Exhibits A1-A2.

⁷ See Exhibits C, B and D.

Fashion > Women > Jewellery > Necklaces

Brand: Kigu
Kigu Miriam Personalised Name Necklace Adjustable Chain - 18ct Gold Plated - Incl Gift Packaging
 Search this page
 £24.99
 FREE Returns
About this item

- This beautiful necklace comes with a gift box & bag.
- Product Specification - Pendant Thickness: 2-3mm approx
- Length - 16" - 19" Adjustable
- Weight: 5g approx
- Height: 5 - 14mm Width: 20 - 50mm

Additional information

Country of origin: United Kingdom

[Report an issue with this product](#)

£24.99
 FREE Returns
FREE delivery Thursday, 20 March. [Details](#)
 Delivering to Birmingham B17 - [Update location](#)
In stock
 Quantity: 1
[Add to Basket](#)
[Buy Now](#)

Dispatches from: Mya's gifts
 Sold by: Mya's gifts
 Returns: Returnable within 30 days of receipt
 Customer service: Mya's gifts
[See more](#)

Fashion > Women > Jewellery > Necklaces

Brand: Kigu
Kigu Claire Name Necklace Personalised 18ct Gold Plated, Custom Dainty Name Pendants, Jewellery for Ladies, Girlfriend, Mother, Sister, Friends Inc Bag & Box
 Search this page
 £24.99
 FREE Returns
Product details

Material: Gold
 Metal type: 18ct Gold Plated Base Metal
 Clasp type: Lobster
 Chain type: Cable
 Country of origin: United Kingdom

About this item

- This beautiful necklace comes with a gift box & bag.
- Product Specification - Pendant Thickness: 2-3mm approx
- Length - 16" - 19" Adjustable
- Weight: 5g approx
- Height: 5 - 14mm Width: 20 - 50mm

Additional information

Country of origin: United Kingdom

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£24.99
 FREE Returns
FREE delivery Thursday, 20 March on your first order to UK or Ireland. [Details](#)
 Or fastest delivery **Wednesday, 19 March.** Order within 7 hrs 25 mins. [Details](#)
 Delivering to Birmingham B17 - [Update location](#)
Only 1 left in stock.
[Add to Basket](#)
[Buy Now](#)

Dispatches from: Amazon
 Sold by: Mya's gifts
 Returns: Returnable within 30 days of receipt
 Gift options: Available at checkout
[See more](#)

- Furthermore, exhibits C, D and E show a selection of jewellery items, such as necklaces and bracelets, being offered for sale via the online retail platform 'Amazon'.⁸ The evidence contained in exhibits C and D are undated, however I note that that delivery information contained in the evidence states that '*free delivery can take place on Thursday 20 March*' or '*fastest delivery can take place on the 18 March*'. Whilst it is not clear what year these dates relate to, I note that the proprietor submitted its evidence on 17 March 2025, therefore I presume that the dates contained in the exhibits relate to dates in 2025. This notion is supported by dates present in exhibits D and E showing snapshots of sales inventories via the 'Amazon' online platform, where order dates for

⁸ Exhibits C, D and E.

various jewellery items range between 16 May 2024 to 14 March 2025. Notably, only one of the listed sales, i.e. the sale of two 'Kigu Mummy Personalised Name Necklaces', occurred during the relevant period, that is, on 16 May 2024. The remainder of the sales contained in the inventories fall outside the relevant period, as the following shows:

Exhibit D

The screenshot shows the 'Manage All Inventory' page in Amazon Seller Central. It displays a list of products with columns for Listing status, Product details, Performance, Inventory, and Est. VAT-inclusive Price + Del. Pricing details.

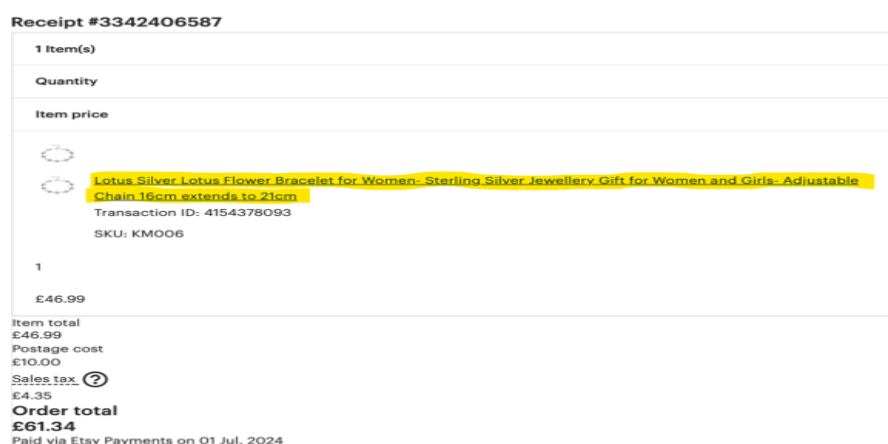
Listing status	Product details	Performance	Inventory	Est. VAT-inclusive Price + Del. Pricing details
Out of stock Replenish inventory 11 Jan 2025, 15:01	Kigu Mummy Necklace-18ct Gold Plated Necklace-Customised Jewellery For Mother - Personalised Mummy Necklace-Gifts For Mummy ASIN: B0BK3MWZ58 SKU: MUMMY-MILAN-Y-UK	Units sold: 7 Page views	Available (FBA): 0 Inbound: 0 Unfulfillable: 0 Reserved: 0	Price Minimum price Maximum price Sale price Featured offer Business price View reference prices
Out of stock Replenish inventory 25 Feb 2025, 12:38	Kigu Sandra Name Necklace Personalised Heart Shaped Gold Plated, Custom Dainty Name Pendants, Jewellery for Ladies, Girlfriend, Mother, Sister, Friends Inc Bag & Box ASIN: B07VX991JC SKU: SANDRA-Heart-Y-UK19	Units sold Page views	Available (FBA): 0 Inbound: 0 Unfulfillable: 0 Reserved: 0	Price Minimum price Maximum price Sale price Featured offer Business price View reference prices
Active 16 May 2024, 01:28	Kigu Mummy Personalised Name - 18ct Rose Gold Plated Necklace - Adjustable Chain 16" - 19" - Incl Gift Packaging ASIN: B07J1VQDP6	Units sold Page views	Available (FBA): 2 Inbound: 0 Unfulfillable: 0 Reserved: 0	Price Minimum price

Exhibit E

The screenshot shows the 'Manage Orders' page in Amazon Seller Central. It displays a list of orders with columns for Order date, Order details, Image, Product name, Order type, Order Status, and Action.

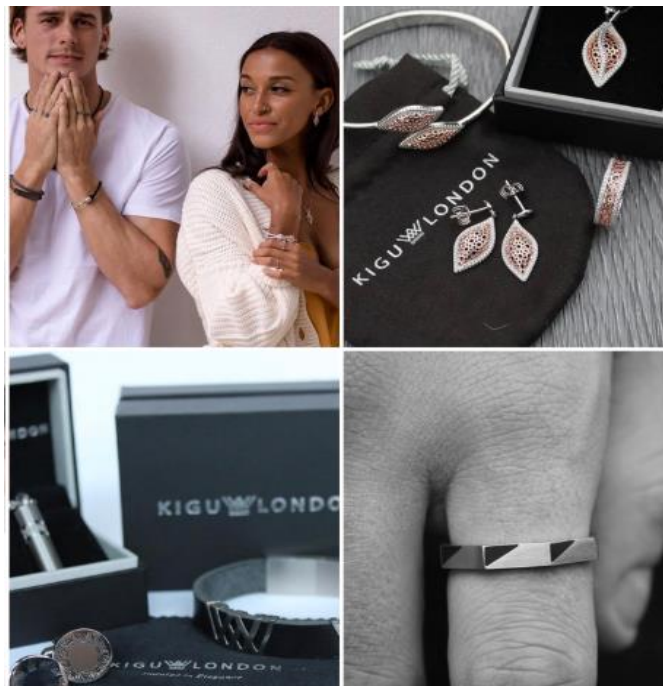
Order date	Order details	Image	Product name	Order type	Order Status	Action
3 days ago 14/05/2025 16:17 GMT	203-4021766-1960319 Buyer name: Anina Fulfillment method: Seller Sales channel: Amazon.co.uk Seller order ID: 205-5847309-9128366		Kigu Mummy Personalised Name Necklace Adjustable Chain - 18ct Gold Plated - Incl Gift Packaging ASIN: B07K88888X SKU: MIBIAN-UK-Y-UK Quantity: 1 Item subtotal: £24.99	Standard Ship by date: Mon, 17 Mar 2025 GMT Deliver by date: Wed, 19 Mar 2025 GMT	Unfulfilled	Buy shipping Confirm shipment Upload Invoice Print packing slip Cancel order More information + Refund Order
2 days ago 15/05/2025 09:01 GMT	205-5847309-9128366 Buyer name: michel Fulfillment method: Amazon Sales channel: Amazon.co.uk Seller order ID: 205-5847309-9128366		Kigu Name Necklace - Silver Tone - Custom Name Necklaces - Personalised Jewellery for Ladies - Customised Jewellery for Girls - Custom Pendant Key ASIN: B08ZM257P SKU: NY-ARLAN-5-UK Quantity: 1 Item subtotal: £25.99	Expedited	Payment Complete	More information + Upload Invoice Refund Order
3 days ago 14/05/2025 13:54 GMT	026-888815-4008354 Buyer name: chris Fulfillment method: Amazon Sales channel: Amazon.co.uk Seller order ID: 026-888815-4008354		Kigu Mummy Personalised Name - Silver Tone Necklace - Adjustable Chain 16" - 19" Packaging ASIN: B07Y8JN8M7 SKU: 4963301136950 Quantity: 1 Item subtotal: £24.99	Expedited	Payment Complete	More information + Upload Invoice Refund Order
3 days ago 14/05/2025 09:08 GMT	205-5831292-8777125 Buyer name: carolheeler Fulfillment method: Amazon Sales channel: Amazon.co.uk Seller order ID: 205-5831292-8777125		Kigu Helen Name Necklace Personalised Heart Shaped Gold Plated, Custom Dainty Name Pendants, Jewellery for Ladies, Girlfriend, Mother, Sister, Friends ASIN: B07VX991TX SKU: HELEN-Heart-Y-UK19 Quantity: 1 Item subtotal: £24.99	Expedited	Payment Complete	More information + Upload Invoice Refund Order
5 days ago 12/05/2025 20:18 GMT	206-5917619-3276536 Buyer name: Danyal Fulfillment method: Amazon		Kigu Isabella Name Necklace - 18ct Gold Plated - Customised Jewellery for Women, Name Pendant Isabella, Incl Gift Packaging ASIN: B0ZMNP5L5Y SKU: ISABELLACTG	Expedited	Payment Complete	More information + Upload Invoice Refund Order

- Exhibit F shows that the proprietor has a presence on the online retail platform 'Etsy', achieving 1,003 orders, amounting to a revenue of £17,300. I note that the third page of exhibit F is dated 17 March 2025, which I presume was the date in which the evidence was retrieved from the website. Therefore, it is unclear whether the 'Etsy' orders and revenue was achieved during the relevant period and which of the proprietor's goods the 'Etsy' revenue relates to. Whilst I note that the exhibit includes details relating to the sale of a bracelet for £61.34, on 1 July 2024, the proprietor's trade mark does not appear to be displayed on the bracelet, nor does it appear in the bracelet description, as can be seen from the following:



Moreover, it is noted from Mr Ahmed's witness statement that the sale of the proprietor's products via the Etsy platform are temporarily on hold while the proprietor restructures itself to manage its product line and marketing strategy.

- Exhibit G shows the proprietor's mark displayed on a bracelet and on jewellery packaging on its online social media platform 'Instagram', as can be seen from the following:



However, whilst I note that the proprietor's Instagram page has 2,826 followers, the exhibit is undated and therefore I am unable to ascertain with any certainty, whether this was the position during the relevant period.

- Exhibit H contains an invoice, dated 27 January 2018, relating to the purchase of various packaging items, namely paper bags and ribbons, by 'Ajaz Ahmed'. However, I am only able to determine that the first item on the invoice, relating to the purchase of 2000 paper bags for \$740.00 (US dollars), actually displays

the proprietor's trade mark. In any event, the paper bag and ribbon goods, contained in the invoice are not the relevant goods at issue. Moreover, the invoice date falls outside the relevant period. Therefore, this evidence does not assist the proprietor.

- An example of a manufacturing invoice, dated 27 January 2018, associated with the production of the proprietor's goods is shown in exhibit I. The invoice appears to relate to the purchase of various goods by 'Ajaz Ahmed', namely leather bracelets with clasps, silver bangles, and gold braided leather. The invoice total and unit costs are shown in US dollars. However, there is no mention of the proprietor's trade mark on the invoice or on the goods contained therein. Moreover, the date of the invoice falls outside the relevant period. Therefore, this evidence does not assist the proprietor.
- In his witness statement Mr Ahmed states that the annual turnover for Mya's Gifts Limited is:

2021-22	£78,544
2022-23	£79,440
2023-24	£62,450

Whilst I note from the witness statement that the proprietor's company was merged with 'Mya's Gifts Limited' which sells 'Kigu' branded products online, it is not clear from the above turnover figures how much of it relates to the sale of the proprietor's goods sold under its 'Kigu' trade mark. Furthermore, as the turnover figures have not been broken down, it is not clear which of the proprietor's goods, such as cosmetics, sunglasses, jewellery, pens, bags and wallets, the turnover figures relate to.

- Marketing costs relating to the goods at issue are approximately £30,000 per year. However, it is unclear from the evidence whether this figure relates to the marketing of some or all of the proprietor's goods at issue. Furthermore, I have no evidence before me to demonstrate how and where the goods have been marketed.

Genuine use – *Evaluation of the evidence*

24. Whether the use shown in the evidence is sufficient to constitute genuine use will depend on whether there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the UK, during the relevant five-year period. In making my assessment, I must consider all relevant factors, including:

- the scale and frequency of the use shown;
- the nature of the use shown;
- the goods for which use has been shown;
- the nature of those goods and the market(s) for them; and
- the geographical extent of the use shown.

25. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself. It is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof: see *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T- 415/09, paragraph 53. However, where there is no use of the mark in respect of the goods as registered, it follows there has been no genuine use of the mark: *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, paragraph 22.

26. Case law does not specify particular types of documentation that must be adduced in evidence. When considering the evidence, I am entitled “to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive”: (see *PLYMOUTH LIFE CENTRE*, BL O/236/13, paragraph 22). However, I remind myself that I must evaluate all the evidence submitted in an overall assessment, and that although pieces of evidence may be insufficient by themselves, they may contribute to proving use in combination.

27. Accordingly, the burden is on the proprietor to prove that it has used its mark within the relevant period on all the goods at issue. Therefore, it was the proprietor's responsibility to provide proof that the mark was used in the UK during the five-year relevant period. In my analysis above, I have highlighted numerous shortcomings in the evidence.

28. Allowing for favourable assumptions, it is clear from the evidence that the proprietor has used its trade mark on various jewellery products. However, whilst it is acknowledged from Mr Ahmed's witness statement that the proprietor began selling jewellery products under the 'Kigu' trade mark at issue (as well as its other UK and International trade marks) in 2018, I find that there are numerous deficiencies within the proprietor's evidence.

29. Turnover figures submitted regarding use of the proprietor's mark in relation to the sale of its goods between 2021 to 2024 demonstrate an overall turnover of £220,434. However, as previously stated, the turnover figures have not been broken down into the proprietor's individual goods at issue or their unit costs, nor is it clear whether the figures relate solely to the proprietor's goods or if they also include other goods sold by 'Mya's Gifts Limited'. Furthermore, only two invoices have been provided, which are both dated outside the relevant period, one of which does not appear to relate to the 'Kigu' goods at issue. Additionally, whilst I note that the Amazon sales inventories showing the sale of various jewellery products between 16 May 2024 and 14 March 2025, only one of the listed sales occurred during the relevant period. While I have not been provided with any details of the size of the relevant market in the UK, or the percentage share enjoyed by the proprietor, I would expect such a market to be appreciable. Accordingly, I find that the evidence indicating the amount of sales generated within the relevant period to be inconclusive.

30. In addition, whilst I note that the proprietor has spent approximately £30,000 per year on marketing during the relevant period, it is not clear from the evidence whether this figure relates to the marketing of some or all of the proprietor's goods at issue. Furthermore, I have no evidence before me to demonstrate how and where the goods have been marketed.

31. Moreover, I have no evidence before me to demonstrate that the proprietor's mark has been used during the relevant period in relation to any of its following goods:

Class 3 Cosmetics.

Class 9 Sunglasses.

Class 14 Jewellery in the form of beads; Key chains as jewellery [trinkets or fobs]; Jewellery made of precious stones; Locketts [jewellery, jewelry (Am.)]; Pearls [jewellery]; Clocks and watches; Jewellery boxes and watch boxes; Boxes for cufflinks; Jewellery boxes of precious metals.

Class 16 Pens; Pens of precious metal; Boxes for pens; Pens for marking.

Class 18 Leather bags and wallets.

As such, I consider the evidence insufficient to demonstrate genuine use of the mark in relation to these goods.

32. In addition, with regard to the proprietor's remaining goods at issue, namely:

Class 14 Jewellery; Jewellery made of semi-precious materials; Jewellery made from gold; Necklaces [jewellery, jewelry (Am.)]; Rings [jewellery]; Sterling silver jewellery; Jewellery made of plated precious metals; Pendants [jewellery]; Personal jewellery; Cufflinks; Chains [jewellery, jewelry (Am.)].

whilst the proprietor's evidence does show some use of its trade mark on, or in relation to these various jewellery products, I find this evidence to be very scant, and the majority of which is undated or is dated outside of the relevant period.

33. Accordingly, taking all the above into account, in conjunction with the cancellation applicant's submissions,⁹ and bearing in mind not only section 100 of the Act but also the respective comments of Mr Alexander KC and Mr Hobbs KC in *Plymouth Life and Dosenbach*, I find that the evidence of use is insufficiently solid to adequately allow me to find that the proprietor has demonstrated real commercial exploitation of the earlier mark in relation to the goods for which use is claimed in the UK, during the relevant period. Put simply, the nature of the evidence and the issues discussed throughout my assessment of the same, do not, in my view allow me to make the reasonable inferences necessary in order to find in favour of the proprietor.

34. I also note Mr Alexander's comments in *Guccio Gucci SPA v Gerry Weber International AG*, Case BL O/424/14, where he stated that:

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

35. Accordingly, whilst I consider that the proprietor has attempted to create a market for some of its jewellery goods under its 'Kigu' trade mark, the evidence fails to sufficiently demonstrate that such a market was established and then preserved. I keep in mind the principles outlined above which recognises that even proven commercial use may not be sufficient for a finding of genuine use. Accordingly, for the reasons set out above, overall I am of the view that the evidence is insufficient to allow me to find that the proprietor has demonstrated real commercial exploitation of its mark in relation to any of the goods for which use is claimed within the relevant period. The consequence of this is that as the proprietor has not shown genuine use of its mark

⁹ Submissions in lieu of a hearing, filed on 29 August 2025.

for the goods at issue, the registration of the mark will be revoked for all the goods for which it is registered.

CONCLUSION

36. The application for revocation on grounds of non-use under section 46(1)(b) succeeds in its entirety. As such, subject to any successful appeal, the proprietor's registration is revoked in full, with effect from 10 October 2024.

COSTS

37. The cancellation applicant has been successful in its application for revocation and is therefore entitled to a contribution towards its costs. The registrar usually awards costs on a scale published in Tribunal Practice Notice 1/2023. As a matter of practice, litigants in person are asked to complete a costs proforma. The purpose of this is to ensure that the costs awarded do not exceed the amount spent on the proceedings. There is no right to be awarded the amount claimed. This is subject to an assessment of the reasonableness of the claim and must also take account of the registrar's practice of awarding costs on a contributory, not compensatory, basis.

38. On 28 August 2025, the cancellation applicant submitted a pro-forma for an award of the following costs:

- 2 hours – time spent completing its notice of opposition;
- 3 hours - time spent completing its notice of cancellation;
- 2 hours – consulting trade mark lawyers regarding written submissions;
- 3 hours - time spent carrying out trade mark research and consulting trade mark lawyers regarding completion of the cancellation application (Form TM26N);
- Official fee of £200 related to the filing of the cancellation application (Form TM26N).

39. I bear in mind that the cancellation applicant did not file a notice of opposition (Form TM7). Instead, the cancellation applicant only filed a notice of cancellation (Form TM26N). Therefore, I am unable to award any contributory costs towards actions which were not undertaken. On this basis, I can only award costs for the notice of cancellation that was filed.

40. It is important to note that only costs which have been incurred during, and as part of, these proceedings are relevant, such as filing official forms and written submissions etc. Accordingly, I have set out below my assessment on the cancellation applicant's claim made. I will make the award of costs on the basis of £19.00 per hour, which is the minimum rate of compensation allowed under The Litigants in Person (Costs and Expenses) Act 1975 (as amended).

41. With regards to the cancellation applicant's cost claim in respect of time spent consulting trade mark lawyers regarding their written submissions, it is important to note that such costs are not recoverable. However, whilst the cancellation applicant has not specifically claimed for costs in relation to the preparation of their submissions in lieu of a hearing, I consider that their consultation with trade mark lawyers, whilst not specifically stated, amounts to research carried out in order to prepare their written submissions in lieu of a hearing. Therefore, I award the cancellation applicant 2 hours.

42. Consequently, taking all the above into account, I consider the following figures to be a fair and reasonable award of costs for the tasks undertaken by the cancellation applicant:

Official fee for filing a Form TM26(N)	£200
Preparing a notice of cancellation (3 hours x £19)	£57
Preparing written submissions in lieu of a hearing (2 hours x £19)	£38
Total	£295

43. I therefore order KIGU OF LONDON LTD to pay THE GOD PROJECT LTD the sum of £295. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 27th day of February 2026

**Sam Congreve
For the Registrar**