O/0244/26

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. 1784202

IN THE NAME OF SHEIKA FATIMA BINT HAZZA BIN ZAYED AL NAHYAN

FOR THE TRADE MARK:

AND IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 448778

BY VENTURI

AND

IN THE MATTER OF REGISTRATION NO. 905251061

IN THE NAME OF VENTURI

IN RESPECT OF THE TRADE MARK

ECLECTIC

AND THE APPLICATION FOR REVOCATION THERETO UNDER NO. 508035

BY SHEIKA FATIMA BINT HAZZA BIN ZAYED AL NAHYAN

Background and pleadings

1. This decision involves proceedings wherein Venturi and Sheika Fatima bint Hazza bin Zayed Al Nahyan brought actions against one another. I will summarise the relevant proceedings below, beginning with Venturi's opposition application, on the basis that it was brought first.

The opposition

> Ms Al Nahyan is the holder of the International Registration (*"the '202 mark"*) shown on the cover page. The IR is registered with effect from 22 January 2024. With effect from the same date, Ms Al Nahyan designated the UK as a territory in which it seeks to protect the IR in respect of the following goods:
>
> *Class 12: Vehicles for locomotion by land, air, water or rail.*

2. On 26 July 2024, Venturi opposed the trade mark, based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). This is on the basis of its earlier UK trade mark:[1]

> **ECLECTIC**
>
> UK registration number: 905251061
> Filing date: 10 August 2006
> Registration date: 4 July 2007
> *"the '061 mark"*

3. The following goods are relied on in this opposition:

> *Class 12: Vehicles; apparatus for locomotion by land, air or water.*

4. By virtue of its earlier filing date, the above registration constitutes an earlier mark in accordance with section 6 of the Act. As Venturi's '061 mark had been registered for more than five years before the filing date of the contested mark, it is subject to the

[1] On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all right holders with an existing EUTM. As a result of the opponent's EUTM being registered as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable UK mark is now recorded on the UK trade mark register, has the same legal status as if it had been applied for and registered under UK law, and retains its original priority date.

use provisions set out in section 6A of the Act. In its Form TM7, Venturi gave a statement of use for all goods relied upon.

5. In its pleadings, Venturi pleads that the marks are visually, aurally and conceptually highly similar, leading to a likelihood of association and confusion between the marks.

6. Ms Al Nahyan filed a counterstatement in which she denies any similarity between the marks and goods, and requests that Venturi prove use of its mark.

Application for revocation

7. On 8 November 2024, Ms Al Nahyan filed an application seeking to revoke the trade mark relied on by Venturi in the related opposition proceedings. This was filed on the grounds of non-use under sections 46(1)(a) and 46(1)(b) of the Act.[2]

8. Under section 46(1)(a) of the Act, the applicant claims non-use in respect of all registered goods in the five-year period from 5 July 2007 to 4 July 2012, with an effective date of revocation of 5 July 2012.

9. Under section 46(1)(b) of the Act, the applicant claims non-use of the contested mark in respect of all registered goods for the following periods: 5 September 2013 to 4 September 2018, with an effective date of revocation of 5 September 2018; and 5 November 2019 to 4 November 2024, with an effective date of revocation of 5 November 2024.

10. Venturi filed a counterstatement defending its registration in respect of all of the registered goods.

11. In these proceedings, Venturi is represented by Forresters IP LLP and Ms Al Nahyan is represented by ImPrint.

[2] The provisions of the Act relied on 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.

Consolidated proceedings

12. On 15 January 2025, the Tribunal wrote to both parties, directing that these cases be consolidated in accordance with Rule 62(1)(g) of the Trade Mark Rules 2008. From that point on, the two cases proceeded as one consolidated set of proceedings.

EVIDENCE AND WRITTEN SUBMISSIONS

13. Venturi filed evidence by way of a witness statement dated 7 April 2025 in the name of Fabrice Brouwers, alongside nine exhibits, labelled FB1 to FB9. Mr Brouwers is the Head of Communication of Venturi, a position he has held for 7 years.

14. Ms Al Nahyan filed evidence by way of a witness statement dated 12 June 2025 in the name of George Mattey, alongside six exhibits, labelled GM01 to GM06. Mr Mattey is a Chartered Trade Mark Attorney at ImPrint (Law Limited), the representatives of Ms Al Nahyan.

15. Ms Al Nahyan filed submissions in reply to Venturi's evidence. Both parties filed written submissions in lieu of a hearing. No hearing was requested and so this decision is taken following a careful perusal of the papers.

16. I have read and considered all of the evidence and the written submissions and I will refer to the relevant parts to the extent I consider necessary at the appropriate points in the decision.

My approach

17. I note that Ms Al Nahyan's revocation actions are directed against the '061 mark, relied upon by Venturi under the opposition proceedings. If the application for revocation succeeds in full, the '061 mark will no longer be able to be relied upon for the opposition action.

18. In light of this, I consider it appropriate to assess the merits of Ms Al Nahyan's revocation action first. If it succeeds in full for either of the earlier two relevant periods, it will not be necessary for me to consider the opposition. Alternatively, if the action fails in its entirety or is only partially successful, I will proceed to consider the case brought by Venturi under the opposition.

DECISION

19. Section 46 of the Act states:

> "46. - (1) The registration of a trade mark may be revoked on any of the following grounds-
>
> (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
>
> (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;
>
> (c) […]
>
> (d) […]
>
> (2) For the purpose of subsection (1) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.
>
> (3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as in referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:
>
> Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the

commencement or resumption began before the proprietor became aware that the application might be made.

(4) […]

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

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

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

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

20. Section 100 is also relevant, which reads:

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

21. As the contested '061 mark is a comparable mark, pursuant to paragraph 8 of part 1, schedule 2A of the Act, the proprietor may rely upon use of the mark in the EU for any parts of the relevant periods which fall prior to IP Completion Day, being 31 December 2020. The only use after that date that is of relevance is use in the UK.

22. As noted previously, under section 46(1)(a), the relevant period for assessing whether there has been genuine use is 5 July 2007 to 4 July 2012 ("the first relevant period"), while the relevant periods under section 46(1)(b) are 5 September 2013 to 4 September 2018; and 5 November 2019 to 4 November 2024 ("the second relevant periods").

23. A finding of genuine use during later relevant period(s) will be sufficient to avoid revocation of the mark under section 46(1)(b), and, by virtue of section 46(3), section 46(1)(a). Provided that such use is deemed to be genuine use, this will be the case even if the evidence in relation to the earlier relevant period(s) is deemed insufficient.

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

> "105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C40/01 Ansul BV v Ajax Brandbeveiliging BV [2003] ECR I-2439, Case C-259/02 La Mer Technology Inc v Laboratories Goemar SA [2004] ECR I-1159, Case C-416/04 P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [2006] ECR I-4237, Case C-442/07 Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'[2008] ECR I-9223, Case C-495/07 Silberquelle GmbH v Maselli-Strickmode GmbH [2009] ECR I-2759, Case C-149/11 Leno Merken BV v Hagelkruis Beheer BV [EU:C:2012:816], Case C-609/11 Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG [EU:C:2013:592], Case C-141/13 P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [EU:C:2014:2089], Case C-689/15 W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 Ferrari SpA v DU [EU:C:2020:854].
>
> 106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:
>
> > (1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: Ansul at [35] and [37].
> >
> > (2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: Ansul at [36]; Sunrider at [70]; Verein at [13]; Centrotherm at [71]; Leno at [29]; Ferrari at [32].
> >
> > (3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: Ansul at [36];

Sunrider at [70]; Verein at [13]; Silberquelle at [17]; Centrotherm at [71]; Leno at [29]; Gözze at [37], [40]; Ferrari at [32].

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

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

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

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or

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

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

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the Act and *Ferrari* at [73]-[83]. The General Court ("GC") 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, Daniel Alexander QC 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."

25. Proven use of a mark which fails to establish that "the commercial exploitation of the marks 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 or services protected by the mark" is, therefore, not genuine use.

Form of the mark

26. Before I move on to assess whether the proprietor has shown genuine use, 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 or acceptable variant use.

27. 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…"

28. In *Dreamersclub Ltd v KTS Group Ltd*, BL O/0091/19, Mr Phillip Johnson, as the Appointed Person, found that the use of the mark shown below qualified as use of the registered word-only mark DREAMS. This was because the stylisation of the word did not alter the distinctive character of the word mark. Rather, it constituted an expression of the registered word mark in normal and fair use.

29. In the case before me, the'061 mark is a word-only mark comprising the word 'ECLECTIC'. The word form of the mark is used in the evidence, as is a figurative form with white lettering and a black background, as shown below.

30. As per *Dreamersclub*, cited above, word marks have a broad protection in that the font (referring to typeface, size and weight) they are presented in must not be taken into account. Overall, the stylised variant of the registered word-only mark is acceptable use of the mark.

31. I also note that, in its submissions in lieu, Ms Al Nahyan submits that, as the majority of Venturi's evidence relates to "Venturi Eclectic" as opposed to "Venturi's Eclectic", this use alters the distinctive character of the mark. In its submissions in lieu, Venturi submits that this phrasing is typical when referring to vehicles and it cites Toyota Yaris, Ferrari F40 and Hyundai KONA as examples of this. I accept Venturi's submissions that this is standard phrasing for vehicles and does not alter the distinctive character of the ECLECTIC mark. In any case, in *Collosseum Holdings AG v Levi Straus & Co.,* Case C-12/12, the CJEU found that the use of a mark encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark. Consequently, I find no issue with the evidence referring to the '061 mark on its own and in conjunction with another mark, Venturi.

Evidence of use

32. In its notice of defence, Venturi claims that use has been made in respect of all of the below goods:

Class 12: Vehicles; apparatus for locomotion by land, air or water.

33. In the witness statement of Fabrice Brouwers, he states that Eclectic is a concept vehicle that first appeared at the Paris Motor Show in 2006, and the subsequent Eclectic '2.0' was revealed at the same show in 2008.

34. Exhibits [FB]1 to [FB]5 include articles from third parties. I note that some of the articles shown in exhibits [FB]1 to [FB]3 were published outside of the relevant periods. The articles published during the relevant periods include information relating to the

Paris Motor Shows and details of the Eclectic vehicle, including specifications and pricing of the vehicle.

35. I note that evidence to prove genuine use must be use by the proprietor or with the proprietor's consent. The articles shown in exhibits [FB]1 to [FB]5 are third-party articles, therefore are not evidence of genuine use of the mark. They do, however, paint a picture of the proprietor's activities.

36. I note that, although all the articles are published in English, some of them are published on websites with '.fr' addresses after IP Completion Day, and others are clearly targeted towards non-UK consumers. However, as none of the articles are capable of showing genuine use regardless, I will not assess exactly which articles were published during the relevant periods and are targeted towards the relevant consumer.

37. In its submissions in lieu, Venturi directs the Tribunal to pages 10/44 and 11/44 of exhibit [FB]2, which show screenshots of an article about the ECLECTIC car from www.motorauthority.com. I note that this article was published before any of the relevant periods. The article states that the car will go into production in June 2007 and will cost 24,000 euros. It further states that 200 units will initially be made, and a cheaper version of the car will be produced in 2009 if the original version is popular. The same exhibit also includes an article from a UK newspaper, The Telegraph, dated 3 October 2008, published during the first relevant period, stating that the Venturi Eclectic would go on sale the next year, i.e. 2009, at 15,000 euros. Other articles published during the first relevant period discuss postponement of the vehicle release. None of the exhibits appear to make mention of any version of the Eclectic being released or sold; they only discuss an intention to sell. Given that the earlier articles state that the second version of the car would be released in 2009 if the initial release was successful, and the Telegraph article states that the second sale was planned for the following year (i.e. 2009), it is reasonable to infer that the first release must have taken place. However, given that the later articles give no indication that this second release did in fact take place, this calls into question the success of the first release, even if it did happen.

38. Exhibit [FB]6 includes data relating to visitors to both the Venturi ELECTIC webpage and to the wider Venturi webpage between 5 November 2019 and 4 November 2024. The data show that there were 11,114 visitors from the UK to the Venturi website in this period. The data also show that a larger number of visitors to the page originated in the EU. However, as the period covered only includes one year before IP Completion Day, it is unclear how many visitors from the EU visited before this date (as opposed to after IP Completion Day).

39. The data for the ECLECTIC page are not divided by country; they simply show that there were 3,526 visitors to the Eclectic page and 2,919 visitors to the Eclectic 2 page in the five year period. It is not clear how many of these visitors were UK or EU consumers. However, the number of UK visitors to the overall Venturi page equates to approximately 6% of global visitors. It would be reasonable to infer the same is true for visitors to the ECLECTIC page, resulting in less than 700 UK consumers accessing the ECLECTIC page in the five-year period between 5 November 2019 and 4 November 2024. It is safe to say these numbers are not significant.

40. Versions of the ECLECTIC page from each of the years of the relevant period are included in exhibit [FB]7. These pages show a figurative version of the ECLECTIC mark, a digital drawing of the vehicle and some information about the vehicle. None of the webpages include information relating to purchasing the vehicle or any other good or service.

41. Exhibit [FB]8 contains screenshots from Venturi's social media pages featuring the ELECTIC car, posted between 2020 and 2022. The posts are accompanied by data relating to the reach of the posts. Although I note that social media has a global reach, and therefore it is not possible to determine how many of the views relate to the relevant territory, the views of each post demonstrated appear reasonable.

42. A video was posted on YouTube by a third-party on 26 May 2021, with screenshots included in exhibit [FB]9. This video had 3.9k views as of 27 March 2025, although I note that this figure would include views both inside and outside the relevant territory.

<u>Genuine use of the mark</u>

43. For use to be genuine, it must have 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 relevant territory during the relevant five-year period. In making my assessment, I am required to consider all relevant factors, including:

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

44. 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.[3]

45. The evidence has been scant, and some of it does not relate to any of the relevant periods. I will begin with what the evidence does show. Venturi has shown that, after the registration of the '061 mark, various third-party articles were published detailing the Venturi ECLECTIC car. None of the articles state that the vehicles had been sold, they only mention the intention for the vehicles to be sold at a later date. As noted above, it is reasonable to conclude, based on the articles, that the first release of the Venturi ECLECTIC did take place. However, this release was scheduled for June 2007, which is before the start of the first relevant period.

46. The evidence relating to the first period indicates that a second release of an electric car under the ECLECTIC mark was initially scheduled for 2009. However, there is no evidence indicating that this release took place. I note that preparations for use can be, in certain circumstances, sufficient to show use. However, in this circumstance, the goods were clearly not about to be marketed as, if they were, there would be evidence of sales in the years following the release.

47. I also note that the evidence does not include sales figures, or advertising figures, for any products under the ECLECTIC mark, at any point in time.

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[3] *New York SHK Jeans GmbH & Co KG v OHIM*, T-415/09.

48. Articles published in the second and third relevant periods make mention of the Venturi Eclectic only as a concept car, include the specifications of the car, and state that it was launched at the Paris Motor Show in 2006. None of these articles indicate that the vehicle is for sale, has been for sale in the past, or will be for sale in the future.

49. It is my view that the totality of evidence provided does not succeed in demonstrating that the '061 mark has been put to genuine use in any of the relevant periods, for any of the goods in respect of which the mark is registered.

The opposition

50. The application for revocation has partially succeeded. Subject to any successful appeal, the '061 mark will be revoked for all of the goods in respect of which it is registered, with an effective revocation date of 5 July 2012. This date precedes the relevant date in the opposition proceedings (22 January 2024). Consequently, Venturi may not rely on its '061 registration as an earlier mark for the purpose of the opposition. The opposition therefore falls away and, subject to any successful appeal, Ms Al Nahyan's '202 mark may continue to be registered in the UK.

Conclusion

51. UKTM no. UK00905251061 is revoked with effect from 5 July 2012 in its entirety. UKTM no. WO0000001784202 may proceed to registration subject to any successful appeal.

COSTS

52. Both parties have achieved some success in these proceedings. Ms Al Nahyan is the more successful party in both of the consolidated cases and, as such, is entitled to a contribution towards her costs. In the circumstances I award her the sum of £1650 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a statement and considering the other side's statement for the revocation:	£250
Preparing a statement and considering the other side's statement for the opposition:	£250

Preparing evidence and considering and commenting on the other side's evidence:	£600
Filing submissions in lieu:	£350
Official fee for the Form TM26(N):	£200
Total:	**£1650**

53. I therefore order Venturi to pay Sheika Fatima bint Hazza bin Zayed Al Nahyan the sum of £1650. The above sum should be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 23rd day of March 2026

Katie Harbach

For the Registrar