

O/0311/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF TRADE MARK REGISTRATIONS

UK00904075495, UK00904961173, UK00904077624 and UK00904074481

IN THE NAME OF FLÄKTGROUP DEUTSCHLAND GMBH

AND

APPLICATIONS CA507544, CA507545, CA507546 AND CA507548,

RESPECTIVELY, BY AIRVANCE GROUP

TO REVOKE THE AFORESAID REGISTRATIONS

Background and Pleadings

1. Trade Marks UK00904075495, UK00904961173, UK00904077624 and UK00904074481 ('the Contested Marks') stand registered in the name of FläktGroup Deutschland GmbH, the Registered Proprietor ('the RP'). Details of the Contested Marks¹ are as follows:

A. UK00904075495 CAIR Filing date: 18 October 2004 Entry in register: 3 January 2006	B. UK00904961173 CAIRfricostar Filing date: 8 March 2006 Entry in register: 3 May 2007
C. UK00904077624 CAIRpicco Filing date: 18 October 2004 Entry in register: 17 January 2006	D. UK00904074481 CAIRplus Filing date: 18 October 2004 Entry in register: 4 January 2006

All are word marks,² registered for the following goods and services:

Class 11:
Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, air-conditioning, ventilating, heat recovery, air filtering and water supply and sanitary purposes; Air filters, parts and accessories of the aforesaid

¹ All four are comparable marks pursuant to Article 54 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Withdrawal Agreement'), based on the following respective EUTMs which were registered prior to the withdrawal of the UK from the European Union: 004075495, 004961173, 004077624 and 004074481.

² *LA Superquimica v EUIPO*, Case T-24/17, [39]:

'[...] a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see judgment of 28 June 2017, *Josel v EUIPO — Nationale- Nederlanden Nederland (NN)*, T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited).'

<p><i>apparatus and installations; Fuel economisers; Apparatus for the purification of gases; Scrubbers (parts of gas installations); Nuclear reactors; Ultraviolet ray lamps, not for medical purposes.</i></p>
<p>Class 37: <i>Building construction, including the installation of lighting, heating, steam generating, cooking, refrigerating, drying, air conditioning, ventilating, heat recovery, air filtering and water supply apparatus and of sanitary installations; repair of apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, air-conditioning, ventilating, heat recovery, air filtering, water supply and sanitary purposes, air filters and parts and accessories for the aforesaid apparatus and installations.</i></p>
<p>Class 40: <i>The custom manufacture of apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, air-conditioning, ventilating, heat recovery, air filtering and water supply and sanitary purposes.</i></p>
<p>Class 42: <i>Administration, control and granting of licence rights; construction and design planning and consultancy; engineering services; providing of expert opinion; technical consultancy and providing of expertise; design, development, planning, project management and construction (engineering services) of industrial and machine installations, lighting, heating, steam generating, cooking, refrigerating, drying, air conditioning, ventilating, heat recovery, air filtering and water supply apparatus and of sanitary installations, air filters; material testing; services of a research and development office; creation of new products; data programming for others; all the aforesaid services for others.</i></p>

- On 16 July 2024, Airvance Group, the Cancellation Applicant ('the CA'), applied to revoke the Contested Marks in accordance with sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 ('the Act'), with a revocation notification date of 12 July 2024. For each Contested Mark, revocation is sought for the specification in its entirety.

3. The CA alleges that the RP has not used any of the Contested Marks:

(i) within the period of five years following the respective dates of completion of the registration process;

and

(ii) within several other five-year periods.

4. It is convenient to set out the relevant periods, and the corresponding earliest revocation dates, in the following table:

Contested Mark:	First Relevant Period:	Second Relevant Period:	Third Relevant Period:	Fourth Relevant Period:
	(Section 46(1)(a))	(Section 46(1)(b))		
A. CAIR	4 January 2006 – 3 January 2011 Earliest possible revocation date: 4 January 2011	4 January 2011 – 3 January 2016 Earliest possible revocation date: 4 January 2016	4 January 2016 – 3 January 2021 Earliest possible revocation date: 4 January 2021	For all four Contested Marks: 16 July 2019 – 15 July 2024 Earliest possible revocation date: 16 July 2024
B. CAIRfricostar	4 May 2007 – 3 May 2012 Earliest possible revocation date: 4 May 2012	4 May 2012 – 3 May 2017 Earliest possible revocation date: 4 May 2017	4 May 2017 – 3 May 2022 Earliest possible revocation date: 4 May 2022	
C. CAIRpicco	18 January 2006 – 17 January 2011 Earliest possible revocation date: 18 January 2011	18 January 2011 - 17 January 2016 Earliest possible revocation date: 18 January 2016	18 January 2016 – 17 January 2021 Earliest possible revocation date: 18 January 2021	
D.	5 January 2006 –	5 January 2011 –	5 January 2016 –	

CAIRplus	4 January 2011	4 January 2016	4 January 2021	
	Earliest possible revocation date: 5 January 2011	Earliest possible revocation date: 5 January 2016	Earliest possible revocation date: 5 January 2021	

5. The RP filed defences and counterstatements for the four respective revocation actions, in which it denied the claims against it in their entirety.

6. The CA is represented by DLA Piper UK LLP. The RP is represented by Abion UK Limited. Both parties filed evidence. The RP filed evidence in chief, and the CA filed evidence and written submissions in reply. A hearing was neither requested nor considered necessary, and both parties filed written submissions in lieu thereof. I confirm that I have read all of the evidence and submissions, to which I will refer to the extent necessary.

EVIDENCE AND WRITTEN SUBMISSIONS

7. The RP's evidence comes from David Dorney, Chief Sales Officer of the RP. Mr Dorney's Witness Statement is dated 20 December 2024 and is accompanied by fourteen exhibits.

8. The CA's written submissions in reply to the RP's evidence are dated 10 March 2025. The CA's evidence in reply comes from Tabitha Norris, Associate at the CA's representative. Ms Norris' Witness Statement is dated 4 April 2025 and is accompanied by three exhibits: TN1 to TN3.

9. The following decision is written after careful consideration of all of the papers filed.

RELEVANCE OF EU LAW

10. 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.

The relevant legislation

11. 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 existed at an earlier date, that date.'

12. Given that the Contested Mark is a comparable mark, the following provisions of Schedule 2A, Part 1 of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 are relevant:

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

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

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

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

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

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

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

13. Section 100 of the Act provides 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.’

The relevant case law

14. 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 Court of Justice of the European Union (‘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 Bunderversammlung 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 Marken 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].'

15. 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 or services protected by the mark' is, therefore, not genuine use.

16. When considering the matter of genuine use of a comparable EU trade mark prior to and including IP Completion Day (31 December 2020), use in the EU remains relevant.³ In this regard, I bear in mind the guidance laid down by the CJEU in the case of *Leno Merken BV v Hagelkruis Beheer BV*.⁴

My approach

17. As noted above at [4], for each Contested Mark, there are four relevant periods within which non-use has been alleged. The most recent relevant periods (i.e. the Fourth Relevant Periods) for the respective Contested Marks overlap entirely. Should genuine use be proven in the most recent relevant periods, the revocation actions would, to the extent that use has been found, be defeated. The RP had notice of the impending revocation actions on 12 July 2024, some four days before the proceedings were instituted. I remind myself of the proviso that, should commencement/resumption of use of the Contested Marks be shown to occur within the three months preceding institution of the revocation actions, if the RP is on notice, such use will be disregarded unless preparations for the commencement/resumption began before the RP became aware of the impending actions. Consequently, should any use be shown up to and including 11 July 2024, such use may be taken into account when considering the Fourth Relevant Periods. Broadly speaking, the period of time to be considered is 4 January 2006 to 15 July 2024. I note that almost all of the RP's evidence is focused on the most recent relevant period (there is one catalogue extract, dated 2013 according to Mr Dorney's narrative⁵). This likely reflects the Registrar's usual starting point in revocation actions. If no use is shown for all/some of the goods/services in the most recent relevant period, then the Registrar proceeds to consider the other, earlier, relevant periods in order to determine the effective date of revocation.

³ Kerly's Law of Trade Marks and Trade Names, 17th Ed., [12-073].

⁴ Case C-149/11, at [36], [50] and [55].

⁵ Witness Statement of D. Dorney, [7]; Exhibit 5.

The relevant territories

18. EU use is relevant for the portion of the Fourth Relevant Periods from 16 July 2019 until 31 December 2020.
19. From 1 January 2021 until 15 July 2024, only UK use is relevant.

The RP's evidence of use

20. Mr Dorney has stated that the RP's head office is in Germany, but it has affiliated companies in, inter alia, the EU and UK, with the UK company based in Herefordshire.⁶ His narrative contains the following statement:⁷

'The subject registrations for CAIR, CAIRplus and CAIRfricostar have been used continuously in the United Kingdom and EU in relation to the goods and services for which they are registered during the period July 2019 to July 2024'.

Contested Mark C: CAIRpicco

21. The revocation action against 'CAIRpicco' can be dealt with swiftly. Whilst the aforementioned statement from Mr Dorney, noted at [20], makes explicit reference to Contested Marks A, B and D, Contested Mark C ('CAIRpicco') is not addressed at any point in the narrative evidence. Furthermore, 'CAIRpicco' does not appear in any of the documentary evidence exhibited. In the absence of any evidence of use, the revocation action against UK00904077624 must, therefore, succeed in full. The 'CAIRpicco' registration will, therefore, be revoked from the earliest possible revocation date, i.e. 18 January 2011. The remainder of this decision will, therefore, address the remaining Contested Marks: 'CAIR', 'CAIRfricostar' and 'CAIRplus'.

⁶ Witness Statement of D. Dorney, [1] – [2].

⁷ Witness Statement of D. Dorney, [3].

22. The RP's documentary evidence includes, inter alia: extracts from the website of the RP's UK-based affiliate company; photographs of a 'type plate' affixed to certain products; a notable number of invoices; turnover figures for the UK; and extracts from product literature. I note the following from the evidence:

a) Extracts from the RP's website

The extracts from the website of the RP's UK 'arm'⁸ are undated. The content is focused mainly on 'air handling units', which are often denoted by the abbreviation 'AHU' throughout the RP's evidence. The presence of the UK flag indicates that the website targets the UK. The web pathway 'FläktGroup > Products > Air treatment > Modular Air Handling Units > CAIRplus AIR HANDLING UNIT' indicates a section of the website dedicated to air treatment products. The 'CAIRplus' mark appears several times. The following product listing appears three times in the exhibit:



CAIRplus AIR HANDLING UNIT

Unlimited solutions through a large number of model sizes, installation types and configurations.

- CAIRplus is the tailor-made premium range of modular air handling units for every customer requirement
- Environmentally friendly design means an energy recovery system with high efficiency is available for every configuration
- Clean surfaces and ease of cleaning guarantee hygienic standards to VD19022
- All units can be supplied with FläktGroup integrated controls iS/teq 4.0
- T2/TR2/L1/D1 Eurovent certified casing

— Fast facts

'CAIRplus' and 'CAIR' are also mentioned in the titles of documents, available to download or share, under the heading 'DOCUMENTATION':

⁸ Exhibit 1.

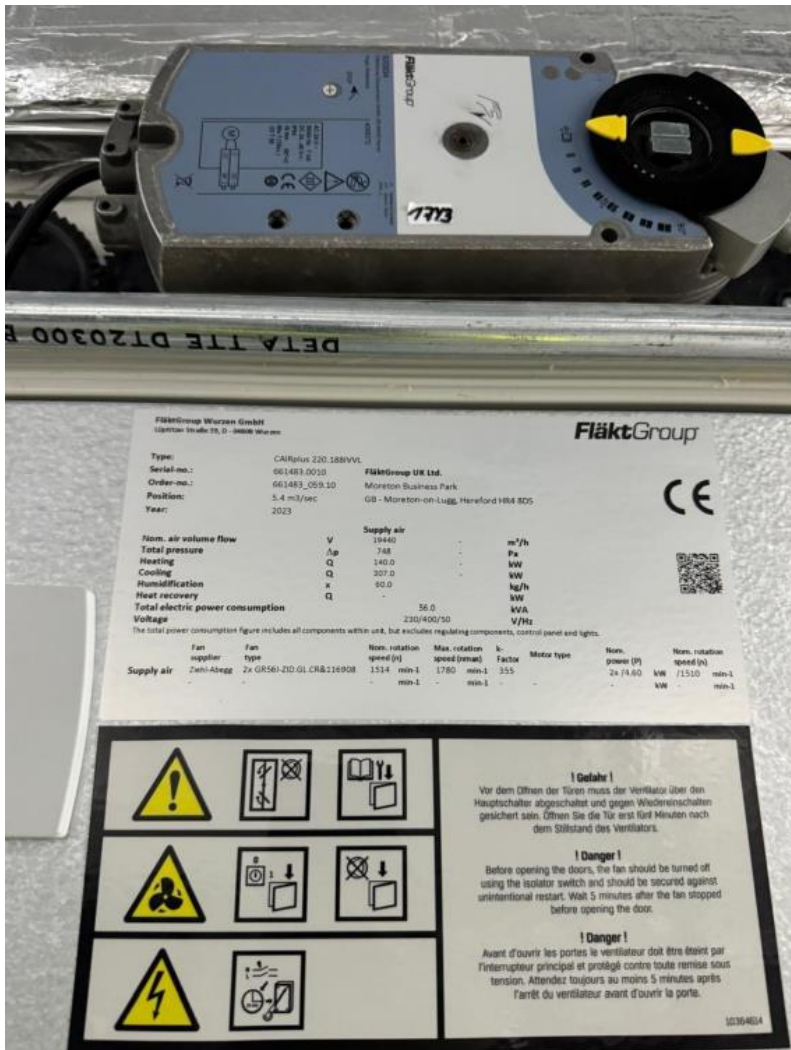
[Hygiene Certificate CAIRPlus Turkey](#)[CAIRplus Hygiene Certificate](#)[CAIR dehumidifiers Marketing brochure](#)[CAIRpool Controls Quick Guide](#)

Mr Dorney has introduced these webpages to highlight the RP's 'UK based projects', including: Harrow [L]eisure Centre; Royal Northern College of Music; and Sheffield Hallam University.⁹ Whilst it is clear from the content that the projects concerned the installation of air handling units, there are no mentions of Contested marks A, B or D. The particular products mentioned are: 'eQ Air Handling Units (AHU)'; and 'ReCooler HP Units. I am unable to determine whether these are product lines/sub-brands under any of the Contested Marks, or unrelated brands. Neither 'eQ' nor 'ReCooler' appears in any of the product descriptions in the invoices provided (the invoices will be addressed below at (c)), and there is nothing in the narrative evidence to link these models to any of the Contested Marks. I also note an instance of the mark 'CAIRpool', although it is not one of the Contested Marks - this is relevant to the matter of acceptable variant forms, which will be addressed later in this decision. Content within this document suggests that the RP provides certain services under the *FläktGroup* mark: [regarding the Harrow Leisure Centre project] 'On surveying the plant room [...] the leisure centre groups' M&E contractor, FläktGroup found that a plug fan retrofit would offer cost and energy savings for the site'. Furthermore, there is mention of a third-party contractor: 'The contractor for phase one of the [Sheffield Hallam University] project was Rotherham based Lyndhurst Cooling and Heating Services Ltd'. These observations on the provision of services are relevant when considering the invoices (addressed at [22(c)(ii)]).

(b) Photographs

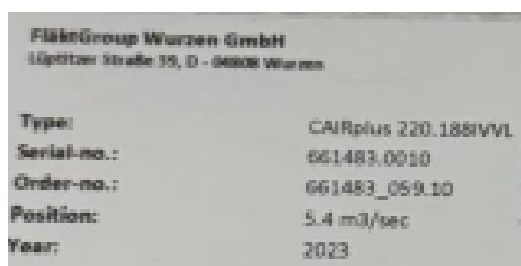
⁹ Witness Statement of D. Dorney, [2].

Mr Dorney has introduced the following photographs of the 'type plate' that he says 'has been attached in this format to all Air handling units that have been sold in the UK under the CAIRplus mark':¹⁰



¹⁰ Witness Statement of D. Dorney, [5]; Exhibit 2.

For clarity, I have cropped the image to show the 'CAIRplus' mark more clearly:



It is my understanding that a 'type plate' is affixed to machinery and provides information on, inter alia: the model; the name of the manufacturer; the technical specification; safety; compliance marks (e.g. CE, which is present in this example). It can be seen from the photograph that 'CAIRplus 220.188IVVL' is provided as the product 'Type'. In my view, this demonstrates the 'CAIRplus' mark being used to denote that the machine is a 'CAIRplus' product. The fact that the RP's **FläktGroup** mark is also present in a prominent position on the type plate does not prevent the 'CAIRplus' mark functioning as a trade mark (for example, to denote a line of products sold under the brand FläktGroup). Mr Dorney has linked this type plate to the invoice dated 22 December 2023, relating to project number 135825, for a delivery address in Peterborough in the UK.¹¹ Although the invoice itself does not mention 'CAIRplus', I note that the product code 220.188IVVL - which appears twice on the invoice - matches that shown on the type plate in the photograph. The presence of the abbreviation 'AHU' indicates that these two products are Air Handling Units. The unit price for the product is £79,925.57, excluding VAT. I am, therefore, able to infer that at least £159,851.14 of the total sum payable is in respect of Air Handling Units bearing the CAIRplus mark on its type plate. I now proceed to address the invoices provided by the RP in further detail.

(c) Invoices

(i) General observations

¹¹ Exhibit 2.

None of the invoices precedes the Fourth Relevant Period (although a few post-date it). 72 invoices have been provided in total;¹² of which 66 are dated within the Fourth Relevant Period. Of the 6 invoices post-dating the aforesaid period, one falls outside it by only 2 days. All invoices bear the **FläktGroup** mark prominently in the header, rather than any of the Contested Marks A, B or D. However, the 'CAIRplus' mark features in product descriptions enumerated on 62 of the invoices dated within the Fourth Relevant Period. Whilst the CA's criticism that not all of the items listed on the invoices mention CAIRplus has been noted, this is of no real concern given that many undertakings sell a range of brands of goods besides their own (or, indeed, have a number of different sub-brands under a house brand). Furthermore, as noted at [22(b)], Mr Dorney has correlated the 'CAIRplus' type plate with a particular invoice which makes no mention of CAIRplus on its face. The invoices featuring the CAIRplus mark punctuate the Fourth Relevant Period fairly evenly.

(ii) The 62 invoices featuring 'CAIRplus' in the product descriptions

- 57 of these invoices are in respect of goods delivered to UK addresses. 29 of these 57 invoices are clearly in respect of, inter alia, various CAIRplus models of air handling units (or filters for them). For many of these product descriptions, I am able to identify them as such by the abbreviation 'AHU'. The total number of air handling units sold by reference to the 29 invoices is 74.
- Geographically speaking, the orders are widely dispersed across England and Scotland.
- 3 of the invoices have had the delivery address redacted. However, the customers, i.e. parties to whom the invoices are addressed, have UK addresses (Belfast, Manchester and London).
- 2 of the invoices (both dated 13 July 2023) show a delivery address in Norway, although the customers have UK addresses.
- The sums payable (excluding VAT) range from 'notable' (four-figure sums, the lowest being £1413.00) to 'significant' (six-figure sums, the highest being

¹² Exhibits 2 and 14.

£163,800.00). The Air Handling Units are high-value goods, with prices ranging from a few thousand pounds to tens of thousands of pounds.

- Some invoices appear to itemise services alongside the goods supplied. The descriptions of services include:

Four instances of the description 'Flat-pack and re-build', each instance priced at £3,325 GBP (invoice of 27 February 2023);

'Site bolt-up of AHU modules' (invoice of 6 March 2023);

'[...] delivery including crane life; Installation materials; installation labour; Commissioning works [relating to a CAIRplus product, although I am unable to determine what the good is] (invoice of 30 April 2021);

'on-site assembly [of x2 CAIRplus Air Handling Units] (invoice of 23 May 2022);

Four instances of 'Flat-pack & rebuild - 50%', followed by 'remaining flat-pack & re-build to follow' [relating to CAIRplus Air Handling Units] (invoice of 27 February 2023);

'site bolt up of AHU modules [relating to CAIRplus Air Handling Unit]' (invoice of 6 March 2023);

'Commissioning to follow [relating to CAIRplus Air Handling Unit]' (invoice of 25 April 2024);

'Leakage test/fat test/fat [relating to CAIRplus Air Handling Unit]', priced at £21,063 (invoice of 28 June 2024).

I note Mr Dorney's narrative evidence that the RP has 'provided installation and repair services within the relevant time period for air conditioning and ventilation

systems under the “CAIRplus” trade mark in the EU and UK’.¹³ Whilst I have no reason to doubt that the RP has provided the aforesaid services, the fact that the RP has installed/repaired ‘CAIRplus’ goods does not necessarily entail those services being provided under the ‘CAIRplus’ marks. For the following reasons, I am unable to determine whether the aforesaid services have been provided under ‘CAIRplus’ or under the RP’s **FläktGroup** mark:

Sales/marketing material shows a van bearing the **FläktGroup** mark, which is also just about discernible on the service engineer’s work jacket/uniform:

The image is a marketing advertisement for 'CARE by FläktGroup'. At the top, it says 'We care for your air'. Below this, a paragraph states: 'With our Premium Service solutions and skilled specialists, FläktGroup is by your side to ensure reliable operation and the highest performance of all your ventilation systems. Through “CARE by FläktGroup” we provide a full range of product lifecycle services for your HVAC system.' To the left, a list of service features includes: 'Experienced and trained service engineers', 'Comprehensive service offerings', 'Efficient and fast logistics', and 'A worldwide service network'. In the center, a service engineer in a dark jacket and cap stands next to a white van with 'CARE by FläktGroup' branding. To the right, a central hexagonal diagram with 'CARE by FläktGroup' in the center is surrounded by six service categories: 'Modernization & Refurb', 'Commissioning', 'Extend Warrant', 'Maintenance Agreements', 'Spare Parts', and 'Repair'. At the bottom, it says: 'Our service portfolio covers everything from commissioning to modernization retrofit solutions.'

This image supports my earlier doubts expressed (at [22(a)]) as to whether the repair services (at least) are provided under the ‘CAIRplus’ mark because it indicates services provided under ‘CARE by FläktGroup’.

¹³ Witness Statement of D. Dorney, [6].

Several invoices include 'CAIRplus' goods alongside other goods not shown as being under the Contested Marks. Furthermore, as already noted at [22(a)], content within the RP's own webpages¹⁴ indicates that services are provided under **FläktGroup** as well as third party contractors.

To my mind, the provision of any services connected with the 'CAIRplus' goods (whether performed by the RP itself or sub-contracted to a third-party) would most likely be attributed to the **FläktGroup** mark, rather than the CAIRplus mark. This is particularly so where one invoice includes goods from several brands because it would be artificial to presume that where the RP commissions a 'CAIRplus' product, that service also derives from the CAIRplus brand, whereas when the RP installs/services another brand of product, it is delivering the service under that other brand.

(iii) Invoices post-dating the Fourth Relevant Period

Five invoices post-dating the Fourth Relevant Period, for a range of dates between 17 July and 31 October 2024, indicate that the RP has maintained a significant level of custom. The sums referable to CAIRplus Air Handling Units (and various parts thereto) amount to £389,991.00.

(d) Sales figures

Figures have been provided for 'the turnovers for the United Kingdom from 2019 to 2024 for goods bearing the trade mark "CAIRplus" and services provided in relation thereto'.¹⁵ The figures are broken down according to the net sums invoiced between 15 January 2019 and 11 September 2024. The cumulative total is £9,308,875.95, which relates to 144 invoices. 29 of the invoices post-date the Fourth Relevant Period, accounting for £802,648 of the total. The total revenue attributable to the Fourth Relevant Period is, therefore, £8,506,227.95. I consider the cumulative total for the Fourth Relevant Period to be a significant sum; and I find that the invoiced sums post-dating the Fourth Relevant Period demonstrate that sales have remained buoyant. I am satisfied that the particular examples of invoices provided can be reconciled with the invoiced amounts set out in the

¹⁴ Exhibit 1.

¹⁵ Witness Statement of D. Dorney, [8]; Exhibit 13.

turnover figures. For example, I am able to correlate the invoice dated 2 February 2023, for project no. 132238, with an invoiced amount referenced in the table turnover figures.

(e) Product literature¹⁶

- A large spreadsheet/table has been introduced as ‘full details of [the RP’s] CAIR product catalogues which were made available for public download in the years 2023 and 2024’.¹⁷ It is a very long list (almost 24 pages) of document titles and corresponding products, most of which make reference to one or other of the ‘CAIRplus’ or ‘CAIRfricostar’ marks. All of the documents are in English and intended for the UK market. The documents are categorised by purpose, e.g. ‘marketing’, ‘technical, installation/maintenance/commissioning’. Based on the document titles (e.g. ‘CAIRplus marketing brochure’, ‘CAIRplus operation manual’), I am satisfied that a notable number of them are catalogues/sales brochures and manuals relating to ‘CAIRplus’ or ‘CAIRfricostar’ ventilation/air handling products.
- By way of a general observation, whilst Mr Dorney has described the documents in exhibits 3 to 9 as ‘catalogues’, some appear to be operational manuals or guides containing technical information for users of the goods. None of the material includes information on pricing. That said, several of the documents are clearly showcasing the RP’s product offering; and the tone of the content is apt to stir commercial interest. It seems likely, therefore, that (aside from the manuals and guides) the materials are in the nature of sales brochures/product literature intended to attract business. Some of the documents bear dates on their faces, while others are dated by way of Mr Dorney’s narrative. No detail has been provided as to their ‘reach’/number of online ‘hits’. The material at Exhibit 3 has been described as ‘a selection of catalogues which have been made available for public download in the UK in the relevant period’.¹⁸ The extracts themselves are undated, save for a 2024 ‘Copyright Notice’ at the side of one of the pages. There are several listings for

¹⁶ Witness Statement of D. Dorney, [7]; Exhibits 3 – 9.

¹⁷ Witness Statement of D. Dorney, [7].

¹⁸ Witness Statement of D. Dorney, [7].

products, available in a wide range of sizes, under, variously: 'CAIRplus', 'CAIRpool' and 'CAIRfricostar' (amongst products under other marks). I note five examples here:

Modular air handling units

> PAGE 23



CAIRplus **1,000 – 85,000 m³/h** (0.3 – 24 m³/s)

- Available in **33 sizes**
- 4 arrangement types: single, double-deck, side-by-side, straight through with other configurations on request
- Wide range of energy efficient recovery systems
- ISYteq 4.0 integrated controls
- Eurovent and RLT certified performance and characteristics
- VDI 6022 selectable



Swimming pool dehumidification units

> PAGE 24



CAIRpool CUBI **450 – 1,200 m³/h** (0.1 – 0.3 m³/s)

- Available in **3 sizes**
- 3 installation possibilities (hanging, in front of, or behind a wall)
- Compressor circuit for dehumidification
- Optional warm water reheater, electrical heater or the usage of both
- Integrated digital controller with MODbus
- Ideal for private pools & many other dehumidification tasks
- Operation range from 5°C-36°C



> PAGE 24



CAIRfricostar MICRO **800 – 6,500 m³/h** (0.2 – 1.8 m³/s)

- Available in **5 sizes**
- Double plate heat recovery system
- Optional integrated pool water condenser
- Integrated electrical cabinet and controls
- 2 corrosion protection classes
- Ideal for small technical rooms (top connections)
- Smart fresh air management



> PAGE 26



CAIRfricostar **800 – 45,000 m³/h** (0.2 – 12.5 m³/s)

- Available in **16 sizes**
- EC & plug fans
- Heat recovery – heat pipe or run around coil (RAC) heat recovery system
- Electrical cabinet and controls (not integrated)
- With & without compressor
- 3 corrosion protection classes
- Specifically designed for limited installation space





CAIRpool 800 – 36,000 m³/h (0.2 – 10 m³/s)



- Available in 12 sizes
- EC fan wall technology
- Double plate heat recovery system
- With & without heat pump technology, inverter & reversible heat pump
- 3 corrosion protection classes
- 3 pending patents for hygiene and performance
- Best-in-class energy efficiency for pool applications

- Subsequent pages contain tables ('Quick guides') which list the specifications available for each of the above products; detailing dimensions and internal airflow capacity. The range of options is wide. The marks 'CAIRplus', 'CAIRpool' and 'CAIRfricostar' are shown clearly on the respective tables. 'CAIRplus' is mentioned frequently in bodies of text throughout the document. I note the following example:

'The CAIRplus range is our most flexible Air Handling Units. Decades of experience and consistent development work ensure their efficiency and the possibility to customise them to fit all commercial, industrial and residential buildings with airflow up to 100,000 m³/h'.

I also note the following mention of 'CAIR', which is likely a collective reference to goods under any mark featuring 'CAIR' (whether solus or as a prefix):

'Lplus – Fast, reliable and easy-to-use selection tools for CAIR and COM4 Air Handling Units'.

I will now address the 'catalogue' materials attributed to particular years within the Relevant Periods (all but one document relates to the Fourth Relevant Period).

(i) 2013¹⁹

This material has been described by Mr Dorney as extracts from a 2013 catalogue.²⁰ However, it appears to be a 2013 'Operation Manual' for a 'heat exchanger' with the product name 'GEA CAIRplus®.' I note the following collective reference to 'CAIR' products (which I take to include any goods held out under marks featuring the word element 'CAIR'): 'The GEA CAIR units are

¹⁹ Witness Statement of D. Dorney, [7]; Exhibit 5.

²⁰ Witness Statement of D. Dorney, [7].

constructed using state-of-the-art technology and according to recognized safety regulations’.

(ii) 2019/2020²¹

There are pages featuring dehumidification units for swimming pools under the marks ‘CAIRfricostar’ and ‘CAIRpool’. There are collective references to products under these marks, e.g. ‘CAIR dehumidifiers’ and ‘CAIR-series dehumidifiers’. A ‘Technical Data’ document for ‘CAIRfricostar’ swimming pool dehumidifiers features six different models. A document titled ‘Leading the Way in Air Technology’ features a photograph of a CAIRplus air handling unit, as well as CAIRpool and CAIRfricostar swimming pool dehumidifiers. There is also a document dedicated to an air treatment product (or line of products) called CAIRplus SX.

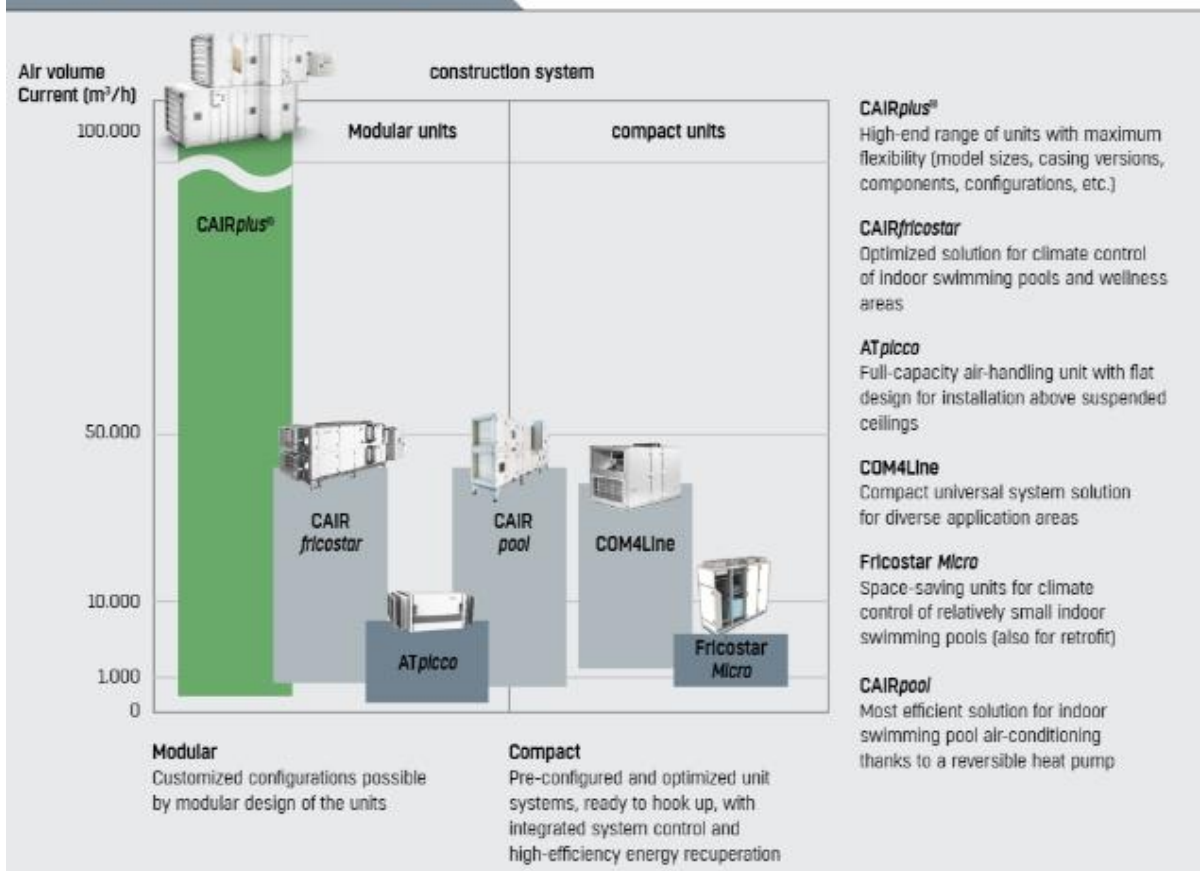
(iii) 2022²²

A document focused on the range of products called *CAIRplus SX*, contains the following graphic showing air handling units under the marks ‘CAIRplus’, ‘CAIRfricostar’ and ‘CAIRpool’:

²¹ Exhibit 6.

²² Exhibit 8.

Overview of FläktGroup Central Air Handling Units



A document titled 'Air Handling Unit Overview: A complete quick guide to FläktGroup's energy efficient and flexible AHUs'²³ includes five product listings for air handling units as follows: 'CAIRplus' (one model), 'CAIRfricostar' (two models) and 'CAIRpool' (two models), presented in the same format as the photographs noted from exhibit 3. Information on the technical specifications of these models is collated in a table on subsequent pages. There are further 'quick guides' for the following products (all being air handling units for swimming pools): CAIRplus; CAIRpool CUBI; CAIRfricostar MICRO; CAIRfricostar; and CAIRpool. The RP describes itself as 'the European market leader for smart and energy efficient indoor Air and Critical Air solutions to support every application area. We offer our customers innovative technologies, high quality and outstanding performance supported by more than a century of accumulated industry experience. The widest product range in the market, and strong market presence in 65 countries worldwide [...]'. It is

²³Another version of this document is included in Exhibit 9; which is almost identical, with the only differences are seen in two of the photographs featured.

clear to me that the products featured have been held out as products available to the UK market.

(iv) 2023²⁴

- Two further versions of the ‘Air Handling Unit Overview’ document at Exhibit 8, are included in Exhibit 9. The content and layout of the three versions is almost identical. Based on the differences in some of the photographs and graphics, I am satisfied that there are three iterations of this document. In my view, the fact that the RP appears to have edited these materials from time to time likely indicates some continuity of commercial efforts.
- A document titled CAIRplus WITH ISYteq: Operational and Maintenance Manual’ (dated 2023 in the footer) bears the ‘CAIRplus’ mark prominently on its cover and in the header of each page within.

(f) Social media posts from LinkedIn²⁵

The three LinkedIn posts provided appear to be dated circa 2023, October 2023 and May 2024, respectively, based on the numbers of months elapsed since their publication. All three posts are promoting air handling units under the ‘CAIRplus’ mark. Two of the posts are from the RP’s account, each showing 31,858 followers. One of the posts shows 55 ‘likes’. It is not possible to determine the territories of the followers/those who ‘liked’ the post, or when these followers were ‘acquired’.

The CA’s evidence

Market size

23. The CA has submitted that, based on the RP’s sales figures (noted at [22(d)]), the RP occupies approximately 2-3% of the UK market for air handling units.²⁶ In support of this argument, the CA relies on an online article, dated 27 January 2025, titled ‘The UK Air Handling Unit (AHU) Market is expected to reach USD 503.0

²⁴ Exhibit 9.

²⁵ Witness Statement of D. Dorney, [7]; Exhibits 10 – 12.

²⁶ CA’s written submissions in lieu of a hearing, [18].

million by 2030', from the website of nextmsc.com.²⁷ Ms Norris has identified a statement in the article according to which the UK air handling unit market size was valued at USD 413.6 million in 2023.²⁸ The CA has submitted that this equates to approximately £310 million, meaning that the RP's market share is about 2-3%. The CA has argued that a 2-3% share of the UK market is insufficient to create a meaningful share for the CAIRplus mark.²⁹ Whilst this argument is noted, my view is that in order to determine whether a market share is meaningful, it is necessary to consider information on, at least, the following: the number of AHU providers in the UK market and their respective shares of the market. The provision of an approximate 2-3% figure, without more, does not necessarily indicate an insignificant commercial presence. For example, if it were the case that the market was such that the majority of providers occupied similar positions, then it could be said that a 2-3% share represented a commercially significant share. Furthermore, the aforementioned financial forecast of a market value of USD 503 million in 2030, to my mind, augurs well for the RP given its fairly steady history of sales. However, I remind myself that, more importantly, there is no de minimis level of use that must be shown for the Contested Marks.

24. Before I proceed to make findings on genuine use of contested marks A, B and D, it is necessary to address the matter of variant forms.

Variant forms

25. It is the RP's case that any use demonstrated in respect of the marks 'CAIRplus' and 'CAIRfricostar' necessarily entails use of the mark 'CAIR'.³⁰ The RP has made no mention of 'CAIRpool'; however, I consider it appropriate to address this particular mark - I deal with this below at [32]. The RP has argued that the distinctive character of 'CAIRplus' lies in the element 'CAIR' and that the presence of the dictionary word 'plus' does not disturb the distinctive character of the mark 'CAIR'. In support of this submission, the RP refers to decision BLO/0524/25³¹ of

²⁷ Exhibit TN3.

²⁸ Witness Statement of T. Norris, [6].

²⁹ CA's written submissions in lieu of a hearing, [18].

³⁰ RP's written submissions in lieu of a hearing, [7].

³¹ *FOSSlight*, [25] – [27].

this tribunal in which the Hearing Officer found that use of the marks 'FossAssure', 'FossManager', 'FossCalibrator', 'FossConnect' and 'FossIntegrator' amounted to acceptable variant use of the registered mark 'FOSS'. In the aforesaid decision, it was found that the presence of the additional dictionary words 'Assure' etc alongside 'FOSS', despite their being conjoined, did not alter the distinctive character of 'FOSS'. The Hearing Officer based their finding on the cases of *COLLOSEUM*³² and *Lactalis*.³³

26. In *COLLOSEUM*, the General Court ('GC') found that the condition of genuine use could be satisfied in either of the following situations:³⁴

i. where a registered trade mark, which has become distinctive as a result of the use of another composite mark of which it forms a constituent part, is used only through that composite mark (i.e. the registered mark has never appeared solus);

and

ii. where a registered mark is used only in conjunction with another mark, and the combination of the two marks is itself registered as a trade mark.

27. The FOSS case aligns with the first of the scenarios identified in *COLLOSEUM*, noted above at [26].

28. In *Lactalis*, it was held that the addition of descriptive or suggestive words to a registered trade mark is unlikely to change the distinctive character of the mark.³⁵

29. I will address each of the proposed variant forms, 'CAIRplus' and 'CAIRfricostar', in turn. Further, given the examples of the mark 'CAIRpool' in the evidence, I

³² *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12.

³³ *Lactalis McLelland Limited v Arla Foods AMBA*, Case BL O/265/22.

³⁴ *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, [36].

³⁵ *Lactalis McLelland Limited v Arla Foods AMBA*, Case BL O/265/22, [16].

consider it appropriate to determine whether this also amounts to variant use of the mark 'CAIR'.

CAIRplus

30. I agree with the RP's submission that this mark is an acceptable variant form of the Contested Mark CAIR. The additional element 'plus' is an ordinary dictionary word which, in my view, will be seen as a non-distinctive 'add-on'; e.g. it suggests a model with additional features over the basic 'CAIR' product. I find this to be the case even though the elements CAIR and plus are conjoined. The average consumer will likely presume 'CAIRplus' as a sub-brand of the overarching brand 'CAIR'. The distinctive character of the mark is 'CAIR', and this continues to fulfil the origin function of the trade mark.

CAIRfricostar

31. I consider that this mark would likely be seen either as one invented word 'cairfricostar', or two invented words 'Cair' and 'fricostar'. In the former scenario, the distinctive character of the mark will reside in the whole (invented) word 'Cairfricostar', in which case the 'Cair' portion of the mark would lose its capacity to function as a badge of origin. As to the latter scenario, I bear in mind that it was held in *Lactalis* that 'where a trade mark comprises two (or more) distinctive elements, it is not sufficient to prove use of only one of those distinctive elements'.³⁶ As a matter of logic, the converse of this principle must also apply: i.e. whereas 'CAIR' (use of which is sought to be shown by 'CAIRfricostar') consists of one distinctive element, it is not sufficient to demonstrate use of the aforesaid mark by showing use of a mark comprising two distinctive elements. This changes the distinctive character of the mark. In the light of the foregoing, I do not find 'CAIRfricostar' to be an acceptable variant form of 'CAIR'.

CAIRpool

32. The 'pool' element of this mark will likely be seen as descriptive for the swimming pools for which the RP's air treatment goods are used. For reasons analogous to those set out at [30], I find this mark to be an acceptable variant form of 'CAIR'.

³⁶ *Lactalis McLelland Limited v Arla Foods AMBA*, Case BL O/265/22, [16].

Sufficient Use

33. 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/services at issue; in the EU between 16 July 2019 and 31 December 2020, and in the UK between 1 January 2021 and 15 July 2024.
34. In making my assessment, I am required to consider all relevant factors, including (i) the scale and frequency of the use shown; (ii) the nature of the use shown; (iii) the goods and services for which use has been shown; (iv) the nature of those goods and services, and the market(s) for them; and (v) the geographical extent of the use shown. I also bear in mind the comments of the GC in *New Yorker SHK Jeans GmbH KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-415/09:

‘53. In order to examine whether use of an earlier mark is genuine, an overall assessment must be carried out which takes account of all the relevant factors in the particular case. Genuine use of a trade mark, it is true, cannot be proved by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (*COLORIS*, paragraph 24). However, it cannot be ruled out that an accumulation of items of evidence may allow the necessary facts to be established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts (see, to that effect, judgment of the Court of Justice of 17 April 2008 in Case C-108/07, *Ferrero Deutschland v OHIM*, not published in the ECR, paragraph 36).’

Assessment of the evidence

35. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834, Kitchin LJ (as he then was) set out the approach to be followed when considering partial revocation of a trade mark or assessing which goods and services may be relied on under section 5(2). He said:

‘244. As I described in *Maier v Asos*, the approach to be adopted is relatively straightforward (although I readily acknowledge that it may on occasion be difficult to apply) and it is in my view consistent with the earlier decisions of the Court of Appeal to which I referred at paragraph [63]. On reflection, I think it can be expressed more clearly as follows.

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

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

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

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

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

appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered.’

36. This approach was endorsed by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36:

‘261. ... First, there can be no doubt that an application to register a mark in respect of a broad category of goods or services may be made *partly* in bad faith in so far as the broad description includes distinct sub-categories of goods or services in relation to which the applicant never had any intention to use the mark, whether conditionally or otherwise. In my view, that emerges clearly from the decision of the CJEU in this case. The approach to be adopted in such a case was explored and explained by the Court of Appeal in *Merck KGaA v Merck Sharp & Dohme Corp* [2017] EWCA Civ 1834; [2018] ETMR 10, at paras 241-2491 and, so far as I am aware, that approach has proved workable and appropriate and has stood the test of time, save that it must now be seen in light of the more recent guidance given by the CJEU in, for example: *Ferrari SpA v DU* (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021] Bus LR 106, at paras 36-53. There the CJEU explained, at para 40, that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently is their purpose and intended use.’

37. In *easyGroup Limited v Easy Live (Services) Limited & Ors* [2025] EWCA Civ 946, Arnold LJ gave further consideration to the approach to identifying independent subcategories:

‘82. As the Court of Justice made clear in *ACTC* and *Ferrari*, the essential criteria which must be applied in determining whether a category of goods or services can be divided into independent subcategories are purpose and intended use. It is not sufficient that different goods may be aimed at

different publics or sold in different shops or that different goods or services belong to different market segments. These criteria are easier to apply to goods than to services, in particular because it is easier to distinguish between the purpose and the intended use of goods than it is to distinguish between the purpose and the intended use of services. In the case of services, it seems to me that the logic of the Court of Justice's approach means that one should consider the intended mode of use of the services in question.'

General comment on evidence of use regarding Contested marks A, B and D: 'CAIR', 'CAIRfricostar' and 'CAIRplus' - the scope of the revocation actions

38. Before I proceed to summarise the RP's evidence, it is appropriate to set out the scope of the revocation action in the light of its submission that its evidence demonstrates use in the UK, during the most recent Relevant Period, for 'Air handling Units, accessories and related installation and repair services'.³⁷ Although there is no explicit concession as to non-use in respect of goods/services not mentioned in the aforesaid list, it is my view that the submission enables a number of contested terms can be taken out of scope at this point. Furthermore, I have found nothing in the evidence to demonstrate that any of the Contested Marks has been used for these terms. The goods/services that are clearly not encompassed by those enumerated in the RP's submission (and for which there is clearly no evidence) are as follows:

Class 11:

Apparatus for lighting, [...] steam generating, cooking, refrigerating, [...] heat recovery, [...] water supply and sanitary purposes; Air filters, parts and accessories of the aforesaid apparatus and installations; Fuel economisers; Apparatus for the purification of gases; Scrubbers (parts of gas installations); Nuclear reactors; Ultraviolet ray lamps, not for medical purposes.

Class 37:

³⁷ RP's written submissions in lieu of a hearing, [6].

[...] the installation of lighting, [...] steam generating, cooking, refrigerating, [...] heat recovery [...] and water supply apparatus and of sanitary installations; repair of apparatus for lighting, [...] steam generating, cooking, refrigerating, [...] heat recovery, [...] water supply and sanitary purposes, air filters and parts and accessories for the aforesaid apparatus and installations.

Class 40:

The custom manufacture of apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, air-conditioning, ventilating, heat recovery, air filtering and water supply and sanitary purposes.

Class 42:

Administration, control and granting of licence rights; construction and design planning and consultancy; design, development [...] of industrial and machine installations, lighting, heating, steam generating, cooking, refrigerating, drying, air conditioning, ventilating, heat recovery, air filtering and water supply apparatus and of sanitary installations, air filters; planning, project management and construction (engineering services) of [...], lighting, [...] steam generating cooking, refrigerating, [...] heat recovery [...] and water supply apparatus and of sanitary installations [...]; material testing; services of a research and development office; creation of new products; data programming for others; all the aforesaid services for others.

39. For ease of reference, I set out the goods/services against which I must assess the evidence here:

Class 11:

Apparatus for [...] heating, [...] drying, air-conditioning, ventilating, [...] [and] air filtering [...] purposes; Air filters, parts and accessories of the aforesaid apparatus and installations.

Class 37:

Building construction, including the installation of heating, [...] drying, air-conditioning, ventilating, [...] [and] air filtering [...] apparatus and [...] installations; repair of apparatus for [...] heating [...]drying, air-conditioning,

ventilating, [...] air filtering [...] purposes; air filters and parts and accessories for the aforesaid apparatus and installations.

Class 42:

engineering services; providing of expert opinion; technical consultancy and providing of expertise; [...] planning, project management and construction (engineering services) of industrial and machine installations, [...] heating, [...] drying, air conditioning, ventilating, [...] air filtering [...] apparatus and [...] installations, air filters; all the aforesaid services for others.

40. I will address each of the Contested Marks in turn, in this order: CAIRplus; CAIR; and CAIRfricostar.

Contested Mark D: CAIRplus

Class 11

41. As noted at [22(c)], 'CAIRplus' is mentioned in product descriptions on 57 invoices for goods delivered to UK addresses within the most recent Relevant Period. It is clear from 29 of these invoices that the goods sold under the CAIRplus mark are air handling units (AHUs). Furthermore, the fact that Mr Dorney's narrative evidence correlates the type-plate affixed to 'CAIRplus' AHUs to an invoice that does *not* reference CAIRplus in the description of goods supplied, in my view, indicates that there may be more than 29 invoices relating to CAIRplus AHUs.

42. As noted at [22(c)], I have found the cumulative total revenue attributable to sales under CAIRplus for the most recent Relevant Period to be over £8.5 million. Whilst the figures have not been broken down by products sold, I am satisfied that the evidence by way of invoices and product literature, with its clear emphasis on AHUs, indicates that a significant proportion of the revenue must relate to sales of AHUs. As noted at [22(c)(ii)], the invoices demonstrate that AHUs are high value goods sold for several thousands of pounds. I have also identified the sales of 'CAIRplus' air filters from some of the invoices. The materials by way of product literature relating to various AHUs, as noted at [22(e)], include both promotional/marketing materials (e.g. product brochures) and manuals containing

information on installation, commissioning and maintenance. These brochures/manuals cover each year within the most recent Relevant Period and the mark CAIRplus appears frequently and prominently. Whilst no pricing information can be seen on the brochures, the invoices provide concrete evidence of product sales. Although the manuals and technical guides do not directly demonstrate sales, it is my view that these are not without probative value, because they would unlikely have been produced/updated throughout the Fourth Relevant Period unless there was a commercial need for them. I do not find the CA's argument that the RP occupies an insignificant market share to be particularly compelling, for the reasons that I have provided (at [23]).

43. In the light of the foregoing, I find that the CAIRplus mark has been used for air handling units (AHUs) and filters thereto within the Fourth Relevant Period. I have found only once example of documentary evidence which precedes the Fourth Relevant Period, i.e. an operation manual for a heat-exchanger. I do not find this material sufficient to support a finding of genuine use within any of three earlier relevant periods. I have not been able to find use of the mark for any other goods.

44. I will now determine a fair specification against the following registered terms in Class 11: *Apparatus for [...] heating, [...] drying, air-conditioning, ventilating, [...] [and] air filtering [...] purposes; Air filters, parts and accessories of the aforesaid apparatus and installations.*

45. It is my understanding that air handling units are, in essence, large machines that provide ventilation (i.e supply fresh air and remove 'stale' air) which involves treating air in the following ways: filtering; heating/cooling; circulating; dehumidifying (i.e. drying the air). Whilst AHUs have heating and drying functions *with respect to the air that they treat*, I find that the average consumer would unlikely regard them as examples of heating or drying apparatus. To my mind, 'heating apparatus' would ordinarily relate to central heating systems and the like; and 'drying apparatus' would typically encompass industrial machines whose sole purpose is drying (e.g. a freeze dryer). Bearing in mind the essential functionality of air handling units, I find them to be more-or-less synonymous with *Apparatus for [...] air-conditioning, ventilating, [...] [and] air filtering [...] purposes.* I now consider

whether this term can be further refined into independent sub-categories. I note that the evidence by way of product literature, in my view, makes a distinction between AHU models specifically for use with swimming pools, and models intended for general application. However, I consider that whether an AHU is for a swimming pool area or some other area does not change the essential function of the goods. Whilst I acknowledge that an AHU for use in a swimming pool environment would need to withstand exposure to chemicals such as chlorine, for example, AHUs for more general use in 'dry' environments may also need to withstand exposure to chemicals. I, therefore, do not consider it appropriate to subdivide the term *Apparatus for [...] heating, [...] drying, air-conditioning, ventilating, [...] [and] air filtering [...] purposes*. Consequently, I consider a fair specification to include the following terms:

Apparatus for [...] air-conditioning, ventilating, [...] [and] air filtering [...] purposes; Air filters [...] of the aforesaid apparatus and installations.

Classes 37 and 42

46. For the reasons set out above at [22(c)(ii)], I have not found use of the mark CAIRplus in respect of any services.

Contested Mark A: CAIR

Class 11:

47. I have found the marks CAIRplus and CAIRpool to be acceptable variants of the mark CAIR. The sales figures and invoices provided, on the RP's own account, relate exclusively to sales under the 'CAIRplus' mark. Whilst the CAIRpool mark is shown numerous times in product literature and manuals relating to AHUs intended to use in relation to swimming pools, there are no concrete examples of sales. However, I bear in mind that use of a trade mark need not necessarily be quantitatively significant to substantiate genuine use. I find that the mark CAIRpool has appeared consistently in relation to air handling units for swimming pool areas (alternatively referred to as swimming pool dehumidifiers) in product literature for

the following years within the most recent Relevant Period: 2019, 2020, 2022 and 2024. Product listings and specifications for this type of AHU (i.e. for swimming pools) appear in the same format as the listings/specifications for the more 'general' AHUs promoted under the CAIRplus mark. Although there is no pricing information, it is my view that the tenor of the product literature, and the wide range of different models available, is consistent with the goods being held out as a commercial offering. I find that the evidence succeeds in demonstrating genuine use of the mark 'CAIRpool' for AHUs. Following my finding above at [45], I therefore consider a fair specification for the mark 'CAIR' to include the following terms:

Apparatus for [...] air-conditioning, ventilating, [...] [and] air filtering [...] purposes; Air filters [...] of the aforesaid apparatus and installations.

Classes 37 and 42

48. My comments provided at [46] in relation to the services also apply here.

Contested Mark B: CAIRfricostar

Class 11

49. I have found that CAIRfricostar is not an acceptable variant form of CAIR. It is, therefore, necessary to consider a fair specification for this mark in isolation. As already noted, the sales figures and 'invoice' evidence do not include sales under the CAIRfricostar mark. Although there are several instances of the CAIRfricostar mark in product literature, all in the context of air dehumidifiers for swimming pool areas, there are no concrete instances of sales. However, for reasons analogous to those at [45], I find that there has been genuine use of the mark CAIRfricostar for air handling units. However, there is no evidence of use of the mark in respect of filters for the aforesaid goods. I consider the following to be a fair specification for the mark CAIRfricostar:

Apparatus for [...] heating, [...] drying, air-conditioning, ventilating, [...] [and] air filtering [...] purposes.

Classes 37 and 42

50. My comments provided at [46] in relation to the services also apply here.

Outcome of revocation actions

51. **CA507546** – Contested Mark C: CAIRpicco, UK00904077624, is revoked in its entirety from the earliest possible revocation date, 18 January 2011.

52. **CA507548** – Contested Mark D: CAIRplus, UK00904074481:

(1) may remain registered for the following:

Class 11:

Apparatus for [...] air-conditioning, ventilating, [...] [and] air filtering [...] purposes; Air filters [...] of the aforesaid apparatus and installations.

(2) is to be revoked from the earliest possible revocation date, 5 January 2011, for the following:

Class 11:

Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying [...] heat recovery [...] and water supply and sanitary purposes; Air filters, parts and accessories of the aforesaid apparatus and installations; Fuel economisers; Apparatus for the purification of gases; Scrubbers (parts of gas installations); Nuclear reactors; Ultraviolet ray lamps, not for medical purposes.

Class 37:

Building construction, including the installation of lighting, heating, steam generating, cooking, refrigerating, drying, air conditioning, ventilating, heat recovery, air filtering and water supply apparatus and of sanitary installations; repair of apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, air-conditioning, ventilating, heat recovery, air filtering,

water supply and sanitary purposes, air filters and parts and accessories for the aforesaid apparatus and installations.

Class 40:

The custom manufacture of apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, air-conditioning, ventilating, heat recovery, air filtering and water supply and sanitary purposes.

Class 42:

Administration, control and granting of licence rights; construction and design planning and consultancy; engineering services; providing of expert opinion; technical consultancy and providing of expertise; design, development, planning, project management and construction (engineering services) of industrial and machine installations, lighting, heating, steam generating, cooking, refrigerating, drying, air conditioning, ventilating, heat recovery, air filtering and water supply apparatus and of sanitary installations, air filters; material testing; services of a research and development office; creation of new products; data programming for others; all the aforesaid services for others.

53. **CA507544** – Contested Mark A: CAIR, UK00904075495:

(1) may remain registered for the following:

Class 11:

Apparatus for [...] air-conditioning, ventilating, [...] [and] air filtering [...] purposes; Air filters [...] of the aforesaid apparatus and installations.

(2) is to be revoked from the earliest possible revocation date, 4 January 2011, for the following

Class 11:

Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying [...] heat recovery [...] and water supply and sanitary purposes; Air

filters, parts and accessories of the aforesaid apparatus and installations; Fuel economisers; Apparatus for the purification of gases; Scrubbers (parts of gas installations); Nuclear reactors; Ultraviolet ray lamps, not for medical purposes.

Class 37:

Building construction, including the installation of lighting, heating, steam generating, cooking, refrigerating, drying, air conditioning, ventilating, heat recovery, air filtering and water supply apparatus and of sanitary installations; repair of apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, air-conditioning, ventilating, heat recovery, air filtering, water supply and sanitary purposes, air filters and parts and accessories for the aforesaid apparatus and installations.

Class 40:

The custom manufacture of apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, air-conditioning, ventilating, heat recovery, air filtering and water supply and sanitary purposes.

Class 42:

Administration, control and granting of licence rights; construction and design planning and consultancy; engineering services; providing of expert opinion; technical consultancy and providing of expertise; design, development, planning, project management and construction (engineering services) of industrial and machine installations, lighting, heating, steam generating, cooking, refrigerating, drying, air conditioning, ventilating, heat recovery, air filtering and water supply apparatus and of sanitary installations, air filters; material testing; services of a research and development office; creation of new products; data programming for others; all the aforesaid services for others.

54. **CA507545** - Contested Mark B: CAIRfricostar, UK00904961173

(1) but for the fact that this mark expired on 8 March 2026, would have remained registered for the following:

Class 11:
Apparatus for [...] air-conditioning, ventilating, [...] [and] air filtering [...] purposes.

(2) is to be revoked from the earliest possible revocation date, 4 May 2012, for the following:

Class 11:
Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying [...] heat recovery [...] and water supply and sanitary purposes; Air filters, parts and accessories of the aforesaid apparatus and installations; Fuel economisers; Apparatus for the purification of gases; Scrubbers (parts of gas installations); Nuclear reactors; Ultraviolet ray lamps, not for medical purposes.

Class 37:
Building construction, including the installation of lighting, heating, steam generating, cooking, refrigerating, drying, air conditioning, ventilating, heat recovery, air filtering and water supply apparatus and of sanitary installations; repair of apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, air-conditioning, ventilating, heat recovery, air filtering, water supply and sanitary purposes, air filters and parts and accessories for the aforesaid apparatus and installations.

Class 40:
The custom manufacture of apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, air-conditioning, ventilating, heat recovery, air filtering and water supply and sanitary purposes.

Class 42:
Administration, control and granting of licence rights; construction and design planning and consultancy; engineering services; providing of expert opinion; technical consultancy and providing of expertise; design, development, planning, project management and construction (engineering services) of industrial and machine installations, lighting, heating, steam generating,

cooking, refrigerating, drying, air conditioning, ventilating, heat recovery, air filtering and water supply apparatus and of sanitary installations, air filters; material testing; services of a research and development office; creation of new products; data programming for others; all the aforesaid services for others.

COSTS

55. The CA has enjoyed the greater level of success overall and is entitled, therefore, to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023, calculated as follows:

Official filing fee for Form TM26(N) ³⁸ (x4@ £200)	£800
Preparation of Form TM26(N) x4	£250*
Preparation of written submissions in lieu of a hearing	£500
Preparation of evidence	£50**
Total	£1,600

56. *I have declined to award a sum in respect of the preparation of each of the Forms TM26(N) given that the CA elected not to include accompanying statements (which it was perfectly entitled to do).

57. **I have awarded a sum below the minimum threshold in respect of the preparation of evidence given that the material filed was scant and of little probative value.

58. I, therefore, order FläktGroup Deutschland GmbH to pay the sum of £1,600 to Airvance Group. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

³⁸ Application to revoke a registration or a protected international trade mark (UK) for reasons of non-use.

Dated this 13th day of April 2026

N. R. Morris

**For the Registrar,
the Comptroller-General**