

O/0339/26

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3968878
BY GROUP CARDS LIMITED IN RESPECT OF THE TRADE MARK**

Greeti

IN CLASSES 16, 38 AND 42

**AND IN THE MATTER OF OPPOSITIONS THERETO UNDER NO. 445701 BY
HORIZON BIDCO B.V.**

AND

**IN THE MATTER OF REGISTRATION NOS. IR1599031, 913926019, 905514583
AND 801197832**

**IN THE NAME OF HORIZON BIDCO B.V.
ALL IN RESPECT OF THE SAME TRADE MARK**

GREETZ

**VARIOUSLY IN CLASSES 9, 14, 16, 18, 20, 21, 24, 25, 28, 31, 33, 38, 39, 40 AND
42**

AND

**IN THE MATTER OF APPLICATIONS FOR INVALIDATION OR REVOCATION
THERETO**

**UNDER NOS. 507247, 507248, 507249 AND 507250
BY GROUP CARDS LIMITED**

Background and pleadings

1. Group Cards Limited (“Party B”) applied to register the following trade mark in the UK:

Application no. 3968878

Mark: Greeti

Filing date: 18 October 2023

Publication date: 3 November 2023

Class 16: *Greeting cards; Greetings cards; Cards; Pop-up greetings cards; Invitation cards; Gift cards; Holiday cards; Birthday cards; Christmas cards; Printed cards; Occasion cards; Blank cards; Picture cards; Announcement cards; Anniversary cards; Printed greeting cards with electronic information stored therein; Printed booklets; Printed matter.*

Class 38: *Greeting cards online (Transmission of -); Transmission of greeting cards online; Transmission of videos, movies, pictures, images, text, photos, games, user-generated content, audio content, and information via the Internet; Electronic transmission of images, photographs, graphic images and illustrations over a global computer network; Photo uploading services.*

Class 42: *Design and development of electronic greeting cards; Hosting a website for the electronic storage of digital photographs and videos; Hosting of digital content online; Hosting online web facilities for others for sharing online content; Interactive hosting services which allow the users to publish and share their own content and images online; Electronic storage of digital images; Electronic storage of images; Hosting of digital content on the Internet; Providing temporary use of online non-downloadable software.*

2. Horizon Bidco BV (“Party A”) opposes the trade mark on the basis of Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of its earlier International Trade Marks (“IR”) 1599031 and 1677151. Party A relies upon goods

and services in classes 9, 16, 35 and 42. The relevant details of these two earlier marks are:

Trade Mark no. IR1599031

Mark: GREETZ

International Registration Date: 30 November 2020

Date of UK designation: 11 November 2021

Class 9: *Mouse pads; magnets; decorative magnets; self-adhesive labels [magnetic]; digital photo frames; cases for telephones; cases adapted for mobile phones; cell phone covers; covers for smartphones; computer e-commerce software; computer software applications, downloadable; computer software for the collection, editing, organisation, modification, transmission, storage and sharing of data, information and images; computer software to enable uploading, downloading, accessing, posting, displaying, tagging, blogging, streaming, linking, sharing or otherwise providing electronic media or information via computer and communication network; downloadable computer software for modifying photographs and enabling the transmission thereof.*

Class 16: *Printed matter; stationery; paper; greeting cards; notebooks, calendars; wrapping paper; invitation cards; photographs; photograph stands; photograph mounts; photo-engravings; postcards; paperweights; desk pads; posters; scrapbooks; photograph albums; almanacs; engravings; lithographic works of art; stickers [stationery]; pads [stationery]; seals [stamps]; writing or drawing books; cards; musical greeting cards; cardboard containers; pencils; pencil holders; paper coasters; mats for beer glasses; writing instruments; pictures; books; bookmarkers; mounting photographs (apparatus for -); table decorations of paper; drawing materials, modeling materials and materials for artists; table place setting mats of card; place mats of paper; occasion cards; art prints; gift cards; gift cartons*

Class 35: *Retailing via the Internet of printed matter and greetings cards; retailing via the Internet of photograph albums or any other goods on which*

photographs can be printed or reproduced, namely key rings, mouse pads, decorative magnets, magnets, cases for mobile telephones, covers for mobile telephones, covers for smartphones, place mats of paper, clothing, mugs, cushions, covers, photo canvasses; retailing via the Internet of posters, writing or drawing books, calendars, note books, cards, musical greeting cards, cardboard, catalogues; retailing via the Internet of photograph albums or any other goods on which photographs can be printed or reproduced, textiles and substitutes for textiles, namely clothing, sheets, tablecloths, curtains, footwear, headgear, t-shirts, tank tops, jackets, shorts, underwear, caps, hats, scarves, headscarves, aprons, bibs not of paper; retailing via the internet of jewelry, costume jewelry, jewelry made of glass, jewelry made of crystal, keyrings and key chains, pendants, watches, watch straps, watch dials, bracelets, necklaces, rings; retailing via the Internet of postcards, paperweights, leaflets, magazines (periodicals), writing pads, pens, stands for pens and pencils, table mats, adhesives, almanacs, engravings, lithographic works of art, stickers (stationery), pads (stationery), pencils, printed pencil holders, lithographs, books, handbooks, bookmarks; retailing via the Internet of table decorations of paper, sticker albums, coasters, place mats, business cards, greetings cards, announcement cards, gift cards, bibs, wallpaper; retailing via the Internet of trunks (luggage) and suitcases, umbrellas and parasols, bags, bags of canvas, handbags, toiletry bags, make-up bags, cushions, mugs and cups, glasses, bottles of glass, earthenware, ceramic, coasters; retailing via the Internet of clothing, footwear, headgear, t-shirts, tank tops, jackets, shorts, underwear, caps, hats, scarves, headscarves, aprons, bibs not of paper, ornamental badges, novelty buttons for wear, games, playthings, snow globes, puzzles, soft toys, teddy bears; retailing via the Internet of food and drink and alcoholic beverages, flowers, bouquets of flowers, mats, artificial flowers, balls, play balloons, boxes; online retail services connected with the sale of third-party pre-paid cards for purchase of hotel accommodation, restaurant meals, beauty treatments or sporting events; hotel accommodations, dinner arrangements, beauty treatments, sport events; compilation of information into computer databases; electronic commerce services, namely, providing information about products via

telecommunication networks for advertising and sales purposes; collection of data, information, messages, graphics and images.

Class 42: *Hosting a web site that gives users the ability to upload photographs; computer services, namely hosting of an interactive website featuring technology that enables users to manage their photograph accounts; providing non-downloadable online computer software for modifying the appearance and enabling the transmission of photographs; hosting a website featuring technology enabling users to upload and download electronic files and share them; hosting on-line web facilities for others for managing and sharing online content; computer services, namely the creation of virtual communities for registered users to participate in discussions and engage in social, business and community networking; providing temporary use of non-downloadable software applications for social networking, creating a virtual community; computer services for the provision of customized web pages featuring user-defined or specified information, personal profiles, audio, video, photographic images, text, graphics and data; providing non-downloadable online computer software for making online photo albums; software as a service including the design and development of printed matter and other goods*

Trade Mark no. IR1677151

Mark: 

International Registration Date: 9 February 2022

Date of UK designation: 10 December 2022

Class 9: *Mouse pads; magnets; decorative magnets; self-adhesive labels [magnetic]; digital photo frames; cases for telephones; cases adapted for mobile phones; cell phone covers; covers for smartphones; computer e-commerce software; computer software applications, downloadable; computer software for the collection, editing, organisation, modification, transmission, storage and sharing of data, information and images; computer software to enable uploading, downloading, accessing, posting, displaying, tagging,*

blogging, streaming, linking, sharing or otherwise providing electronic media or information via computer and communication network; downloadable computer software for modifying photographs and enabling the transmission thereof.

Class 16: *Printed matter; stationery; paper; greeting cards; notebooks, calendars; wrapping paper; invitation cards; photographs; photograph stands; photograph mounts; photo-engravings; postcards; paperweights; desk pads; posters; scrapbooks; photograph albums; almanacs; engravings; lithographic works of art; stickers [stationery]; pads [stationery]; seals [stamps]; writing or drawing books; cards; musical greeting cards; cardboard containers; pencils; pencil holders; paper coasters; mats for beer glasses; writing instruments; pictures; books; bookmarkers; mounting photographs (apparatus for -); table decorations of paper; paper party decorations; art materials in the nature of paint boxes and brushes; table place setting mats of card; place mats of paper; occasion cards; art prints; gift cards; gift cartons.*

Class 35: *Online retail services connected with the sale of printed matter and greetings cards; online retail services connected with the sale of photograph albums or any other goods on which photographs can be printed or reproduced, namely key rings, mouse pads, decorative magnets, magnets, cases for mobile telephones, covers for mobile telephones, covers for smartphones, place mats of paper, clothing, mugs, cushions, cushion covers, bed linen, photo canvasses; online retail services connected with the sale of posters, writing or drawing books, calendars, note books, cards, musical greeting cards, cardboard, catalogues; online retail services connected with the sale of photograph albums or any other goods on which photographs can be printed or reproduced, textiles and substitutes for textiles, namely clothing, sheets, tablecloths, curtains, footwear, headgear, t-shirts, tank tops, jackets, shorts, underwear, caps, hats, scarves, headscarves, aprons, bibs not of paper; online retail services connected with the sale of jewelry, costume jewelry, jewelry made of glass, jewelry made of crystal, keyrings and key chains, pendants, watches, watch straps, watch dials, bracelets, necklaces, rings; online retail services connected with the sale of postcards,*

paperweights, leaflets, magazines (periodicals), writing pads, pens, stands for pens and pencils, table mats, adhesives, almanacs, engravings, lithographic works of art, stickers (stationery), pads (stationery), pencils, printed pencil holders, lithographs, books, handbooks, bookmarks; online retail services connected with the sale of table decorations of paper, sticker albums, coasters, place mats, business cards, greetings cards, announcement cards, gift cards, bibs, wallpaper; online retail services connected with the sale of trunks (luggage) and suitcases, umbrellas and parasols, bags, bags of canvas, handbags, toiletry bags, make-up bags, cushions, mugs and cups, glasses, bottles of glass, earthenware, vases, bowls, plates, pottery, coasters; online retail services connected with the sale of clothing, footwear, headgear, t-shirts, tank tops, jackets, shorts, underwear, caps, hats, scarves, headscarves, aprons, bibs not of paper, ornamental badges, novelty buttons for wear, games, playthings, snow globes, puzzles, soft toys, teddy bears; online retail services connected with the sale of food and drink and alcoholic beverages, flowers, bouquets of flowers, mats, artificial flowers, balls, play balloons, boxes; retail services provided via the internet relating to the sale of third-party pre-paid cards for the purchase of hotel accommodation, restaurant meals, beauty treatments or sport events; compilation of information into computer databases; electronic commerce services, namely, providing information about products via telecommunication networks for advertising and sales purposes; collection of data, information and collection of data in graphics and image file formats.

Class 42: *Hosting a web site that gives users the ability to upload photographs; computer services, namely hosting of an interactive website featuring technology that enables users to manage their photograph accounts; hosting non-downloadable online computer software for modifying the appearance and enabling the transmission of photographs; file sharing services, namely, hosting a website featuring technology enabling users to upload and download electronic files; hosting on-line web facilities for others for managing and sharing online content; computer services, namely the creation of virtual communities for registered users to participate in discussions and engage in social, business and community networking;*

providing temporary use of non-downloadable software applications for social networking, creating a virtual community; computer services in the nature of hosting and programming customized web pages featuring user-defined or specified information, personal profiles, audio, video, photographic images, text, graphics and data; providing non-downloadable online computer software for making online photo albums; software as a service including the design and development of printed matter and other goods.

3. Party A submits that its marks consist or contain a word that begin with the same five letters with the only difference being the final letter. It argues that, as a result, the respective marks are visually, aurally and conceptually highly similar. It also asserts that Party B's Class 16 goods and Class 42 services are identical or highly similar to Party A's goods and services in those classes. It submits that Party B's Class 38 services are similar to Party A's goods and services in classes 9, 16, 35 and 42. It concludes that the contested mark offends under section 5(2)(b) of the Act because there exists a likelihood of confusion between the parties' respective marks.

4. Party B filed a counterstatement denying the claims made. It points to the five letters common to both parties' marks forming the word "greet" that is totally descriptive and that the ending of the respective marks is totally different. It argues that Party A's marks consist or contain the word GREETZ being no more than a misspelling of the ordinary dictionary word "greet" and will be perceived as such. It also submits that GREETZ consists of one syllable whereas GREETI consists of two and that the latter will be perceived as a made-up word. It asserts that the goods and services are also dissimilar. It concludes that there is no likelihood of confusion.

5. Party B subsequently commenced invalidation proceedings against IR1599031, being one of the earlier marks relied upon by Party A in its opposition to Party B's mark. The single ground is that Party A acted in bad faith by filing its mark because its intention was merely to maintain a monopoly over a number of different classes of goods and services for which it has no intention of ever using under its GREETZ mark. It claims that this is "evergreening". It also points to Party B owning other GREETZ registrations in the same classes which have been filed over a period of 16 years.

6. Party A denies the claim.

7. Party B also subsequently filed three applications for revocation in respect of three further trade mark registrations (nos. 913926019, 905514583 and 801197832) in the name of Party A on the grounds of non-use based upon section 46(1)(a) and/or (b) of the Act.

8. Party A filed counterstatements denying that its marks had not been used. It claimed it had used its marks in respect of some of the goods and services listed in its registrations. The goods and services in respect of what, it claims, its marks have been used in respect of, are underlined in the list of goods and services for these three registrations shown below.

9. The relevant details of these three marks are:

Application no. 913926019

Mark: GREETZ

Filing date: 10 April 2015

Registration date: 8 October 2015

Class 31: Natural flowers and live plants, Agricultural and horticultural products and Seeds; Flower bulbs; Flower arrangements; Plants, dried, for decoration; Christmas trees; Plants for indoors.

Class 35: Advertising and promotion; Distribution of advertising material; Business management and Office functions for affiliated entrepreneurs; Business organisation and management consultancy; Office functions; Business mediation regarding the purchase and sale, including online; All the aforesaid services relating to natural flowers, plants, seeds and flower bulbs, flower arrangements, trees, Christmas trees and plants for indoors.

Class 39: Supply (delivery), transport and storage of flowers and plants.

Application no. 905514583

Mark: GREETZ

Filing date: 1 December 2006

Registration date: 24 January 2008

Class 9: Magnetic, optical and electronic data carriers containing databases, including databases that are accessible via communication methods such as the Internet.

Class 38: Providing the on-line possibility, via digital channels including the Internet, to create and send personalised printed matter.

Application no. 801197832

Mark: GREETZ

Filing date: 27 November 2013

Registration date: 12 February 2015

Class 16: Paper, cardboard and goods made from these products not included in other classes, printed matter, stationery, postcards, wrapping paper, packaging materials, not included in other classes; invitations (printed) (greeting) cards, calendars, envelopes, albums, letters, diaries, stickers, canvas for painting, photos.

Class 21: Utensils and containers for household or kitchen, combs and sponges, brushes (except paint brushes), glass, porcelain and earthenware not included in other classes; cups, coffee and tea mugs, glasses.

Class 24: Textiles, quilts, towels, tablecloths, napkins, handkerchiefs of textile, canvas for tapestry or embroidery.

Class 25: Clothing, footwear, headgear.

Class 28: Christmas decorations, decorations for Christmas trees, toys and games, puzzles, dolls.

Class 30: Coffee, tea, cocoa, coffee, rice, tapioca, sago, flour and preparations made from cereals, bread, pastry and confectionery, ices, sugar, honey, treacle, baking powder, sauces, spices, ice cream, cereal-based snacks, snacks made of rice, sweets, chocolates, snacks made with cocoa.

10. Revocations are sought under Section 46(1)(a) in respect of the 5-year period following the date of completion of the registration procedure and under Section 46(1)(b). The relevant dates in respect to the three challenged marks are shown below:

Trade Mark	Section 46(1)(a) period	Section 46(1)(a) Revocation Date	Section 46(1)(b) period	Section 46(1)(b) Revocation Date
913926019	09/10/2015 – 08/10/2020	09/10/2020	19/04/2019 – 18/04/2024	19/04/2024
905514583	25/01/2008 – 24/01/2013	25/01/2013	19/04/2019 – 18/04/2024	19/04/2024
801197832	13/02/2015 – 12/02/2020	13/02/2020	19/04/2019 – 18/04/2024	19/04/2024

11. All five cases were subsequently consolidated.

12. Both sides filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary. Party A also provided preliminary written submissions that I keep in mind.

13. A Hearing took place on 13 January 2026 where Party B was represented by Ms Bella Dennis, instructed by Trade Mark Wizards Limited. Party A was represented by Mr Daniel Selmi of Counsel, instructed by Ionic Legal.

14. 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.

Evidence

15. Party A's evidence consists of witness statements from the following:

- a. Andrew Peter Mackinnon, Group Chief Financial Officer at Moonpig Group plc and a director of all its affiliate companies, including Party A and Greetz B.V., together with Exhibits APM1 – APM9
- b. Kristof Fahy, Chief Marketing Officer of the Cards Division of Moonpig Group plc, together with Exhibits KF1 – KF13
- c. Ludovica Johanna Hubertina Smeets, Lead Counsel (Commercial & IP) of Cards Holdco Limited, part of the Moonpig Group plc, which includes advising on matters relating to its wholly owned affiliate companies including Party A, together with Exhibit LJHS1
- d. A second statement from Ms Smeets
- e. Rebecca Emma Stephanie Hubbard, a paralegal with Ionic Legal, together with Exhibits RESH1 – RESH3

16. Party B's evidence consists of the witness statement of Alexander Kolomiytsev, director and shareholder of Party B, accompanied by Exhibits AK1 – AK3. This evidence is focused on providing a rebuttal to Party A's opposition based upon section 5(2)(b). In addition, in support of the bad faith claim of "evergreening", Mr Kolomiytsev also states that he is aware of one other opposition filed by Party A.

17. Party A's evidence in reply consists of the third witness statement of Ms Smeets together with Exhibits LJHS1 – LJHS7.

DECISION

CA507247: Party B's Bads Faith Claim

18. At the hearing, Ms Dennis informed me that Party B was no longer pursuing the application for invalidation based upon bad faith. I need say no more here but, at Mr Selmi's request, I return to this when considering the issue of costs.

CA507248/49/50: Party B's Applications for revocation based upon non-use

19. I will begin by considering the merits of these three revocations.

20. 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;

[...]

(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”.

21. All three marks are comparable marks.¹ The provisions of paragraph 8 of part 1 of both schedule 2A and schedule 2B of the Act are relevant. They relate to “non-use as defence in infringement proceedings and revocation of registration” of a comparable trade mark (EU) / comparable trade mark (IR). They read as follows:

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

¹ Trade mark Nos. 913926019 and 905514583 are comparable trade marks (EU) and trade mark No. 801197832 is a comparable trade mark (IR).

(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] / [(IR)]; 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] / [(IR)]; and

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

22. 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.”

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

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

24. In *Walton International Ltd & Anor v Verweij Fashion BV*, [2018] EWHC 1608 (Ch), Arnold J (as he then was), after setting out the eight applicable principles when assessing genuine use (which are the same as the eight principles he subsequently

set out in *easyGroup Ltd*), added the further three principles when assessing genuine use in the EU:

“118. *The law with respect to genuine use in the Union.* Whereas a national mark needs only to have been used in the Member State in question, in the case of a EU trade mark there must be genuine use of the mark “in the Union”. In this regard, the Court of Justice has laid down additional principles to those summarised above which I would summarise as follows:

(9) The territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to genuine use in the Union: *Leno* at [44], [57].

(10) While it is reasonable to expect that a EU trade mark should be used in a larger area than a national trade mark, it is not necessary that the mark should be used in an extensive geographical area for the use to be deemed genuine, since this depends on the characteristics of the goods or services and the market for them: *Leno* at [50], [54]–[55].

(11) It cannot be ruled out that, in certain circumstances, the market for the goods or services in question is in fact restricted to the territory of a single Member State, and in such a case use of the EU trade mark in that territory might satisfy the conditions for genuine use of a EU trade mark: *Leno* at [50].”

25. In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander Q.C. as the Appointed Person stated that:

“22. The burden lies on the registered proprietor to prove use..... However, 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 (which in many cases will be the Hearing Officer in the first instance) 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.”

and further at paragraph 28:

“28. I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as “tuition services”, is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to “tuition services” even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted.”

26. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13, Mr Geoffrey Hobbs Q.C. as the Appointed Person stated that:

“21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is

required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not 'show' (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

27. At the hearing, I was reminded by both sides that, because of the impact of section 46(3), the most relevant period in all three revocation proceedings is the five year period 19 April 2019 to 18 April 2024 and that use in the EU is relevant for the portion of that period up to the completion date of the exit of the UK from the EU, namely, 31 December 2020. Only use in the UK is relevant after that date.

28. Party B's relevant evidence can be summarised as follows:

- The Greetz business was bought by Party A in 2018 when it was one of the leading online card and gifting businesses in the Netherlands;²

² Mr MacKinnon's witness statement (hereafter "APM WS") at [13]

- The Greetz business was founded in 2004 and operates through its website www.greetz.nl and an app³ and its cards are printed and despatched from the Netherlands.⁴ Greetz branded goods are also available through Party A’s Moonpig.com website;⁵
- In 2020 (when use across the EU is relevant to my considerations), the turnover in respect of cards and gifts sold under the GREETZ brand was £46.6 million and with a Euro 5.4 million marketing spend.⁶
- Estimated UK sales figures relating to cards only (being the only goods available in the UK) were:⁷

Period (Year ending)	Estimated UK Sales (Euros)
April 2020	57,988
April 2021	98,026
April 2022	81,127
April 2023	63,512
April 2024	61,154

- Greetz branded cards are available in the UK via its website www.greetz.nl (with the cards being despatched from the Netherlands), an app (introduced in 2011⁸) and through the website www.moonpig.com (with the cards despatched from the UK or Guernsey).⁹ Cards and gifts can be ordered in

³ APM WS at [23]

⁴ APM WS at [33]

⁵ Ibid.

⁶ APM WS at [27] and [30]

⁷ APM WS at [31] and Exhibit APM7

⁸ Kristof Fahy’s witness statement (hereafter “KF WS”) at [8]

⁹ APM WS at [33]

the UK but only cards can be delivered to the UK and gifts can only be delivered into the Netherlands and Belgium;¹⁰

- Card and gift products offered on the Greetz website are mainly aimed at customers in the Netherlands and Belgium “and those located overseas such as the UK”;¹¹
- The number of downloads of the app during the relevant period are:¹²

Year	Android	Apple	Total
2019 (all countries)	52,063	59,099	111,162
2020 (all countries)	14,862	83,465	98,327
2021 (UK only)	267	319	586
2022 (UK only)	212	295	507
2023 (UK only)	3,628	648	4,276
2024 (up to end of April) (UK only)	764	280	1044

- The table below illustrates the numbers of senders of cards and gifts based in the UK and the number of UK recipients of cards from the Greetz website¹³ as shown below:

¹⁰ KF WS at [11]

¹¹ KF WS at [12]

¹² KF WS at [9]

¹³ At APM WS at [34]


Period	UK Senders			UK Recipients		
	Orders	Volume of Goods	Sales (£)	Orders	Volumes of Goods	Sales (£)
01/09.2022 – 31/12/2022	5809	8480	49,480.27	16,909	185,438	67,237.91
01/01/2023 – 31/12/2023	14,970	20,007	128,408.92	14,696	15,913	62,067.09

- The table below illustrates the numbers of cards made on the Greetz website and shipped to the UK and on the Moonpig website in the UK¹⁴:

Calendar Year	Greetz website		Moonpig website	
	Orders	Volume of Goods	Orders	Volumes of Goods
2019	10,926	12,985		
2020	22,069	26,127		
2021	24,610	27,883		
2022	16,909	18,438	17,907	23,085
2023	14,696	15,913	21,380	27,820

- A screenshot of a page from www.moonpig.com is provided where “greetz” appears in the search field. 42 results are retrieved “for ‘greetz’ in the “Cards” category. Twenty four cards are displayed. The only reference to

¹⁴ At APM WS at [35]

“Greetz” is on the final page under the heading of “Our Brands” where the mark greetz appears;¹⁵

- UK sales are, in part because of the significant number of Dutch people living in the UK, estimated to be 92,000.¹⁶
- Print outs and photographs of products “currently available” (obtained on 17 October 2024) on the Greetz website are provided together with archived pages from 2019 and 2020.¹⁷ This website is in Dutch and prices are shown in Euros. The “greetz” mark is shown at the top of a good number of these pages¹⁸ and numerous other pages where cards are promoted but it is unclear if the cards are branded as GREETZ. Certainly, in the absence of translations, it is not clear to me what extent, if any, the greeting cards or any of the gift items are branded GREETZ. The packaging bears the mark shown in the next bullet point but it is not clear whether the gift items themselves are third party branded. However, this evidence demonstrates that the website is operating from the domain name www.greetz.nl and in respect of retail services relating to greeting cards and gift items (and identified by the logo mark shown in the following bullet point);
- Undated photographs of gift boxes for balloons, wine and flowers are shown with the same logo mark appearing on the boxes, as shown below:¹⁹



- Copies of order confirmation emails are provided,²⁰ claimed to be from between 2019 – 2023, showing orders made in and delivered to the UK.

¹⁵ Exhibit KF1

¹⁶ APM WS at [36] and Exhibit APM9

¹⁷ At Exhibit KF2


¹⁸ For example on pages 15, 16 and 20

¹⁹ Exhibit KF3

²⁰ Exhibit KF4

However, no indication of date is visible on the exhibits. These examples are all in Dutch and prices shown in euros. The following mark appears on some of these:



- Email reminders are sent to Greetz B.V. customers regarding upcoming special occasions such as birthdays and anniversaries. Over 4.5 million were sent to customers in the EU (including the UK in 2020 but there are no separate figures). Figures are provided for the subsequent years but it is not possible to know what proportion relate to the UK although Mr Fahy does state that it is possible to deduce that some were going to the UK because the customers' email addresses end in ".uk".²¹ An example email reminder is provided.²² The email is undated but does have the greetz mark appearing at the top of the email;
- Screenshots are provided of social media accounts such as Facebook and Instagram, under the GREETZ name and are in Dutch but Mr Fahy submits that they are "readily and easily machine translated into English ...".²³ Most followers of these social media accounts reside in the Netherlands and Belgium, but "some" reside in the UK. For example 0.1% of Facebook followers were resident in the UK between 16 September and 13 October 2024 (after the relevant period) and 0.4% of TikTok followers were based in the UK. Mr Fahy states that he has been unable to obtain figures for the relevant period but that his expectation is that these country breakdowns would have been similar during the relevant period;²⁴
- Evidence is provided of awards won, reviews given and promotional partnerships in respect of Greetz products. They are all in Dutch and it is difficult to draw conclusions from them.²⁵ However, I note that UK

²¹ KF WS at [19]


²² Exhibit KF5

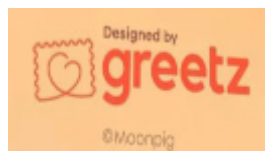
²³ KF WS at [21] and Exhibit KF6

²⁴ KF WS at [22]

²⁵ KF WS at [23] – [30] and Exhibits KF8 – KF13

consumers may have been exposed to some of these whilst travelling. Some of these relate to 2020 or earlier and are of potential relevance to the question of use in the EU between 19 April 2019 and 31 December 2020. Dutch language reports of awards won in September 2020 (best web store in the Netherlands in respect of toys and gifts), March 2021 (most popular website in the Netherlands in the shopping/gifts category) and December 2021 (most popular website in the Netherlands in the shopping category);

- Ms Smeets, a Dutch citizen but resident in the UK, provides evidence demonstrating that she successfully purchased a personally customised postcard at www.greetz.nl from her “English email address” on 11 October 2024. The screenshots show the website is in Dutch and the cost is shown in euros. The card was delivered three days later and the greetz mark appears on the bottom right of the envelope;²⁶
- Evidence of a test purchase of a personalised greeting card from the UK, on 8 October 2024 (a little under 6 months after the end of the relevant period), on the moonpig.com website is also provided.²⁷ A search for “Greetz” on the website finds 42 cards. The site is in English and cards are priced in pounds. Images of, what appears to be, the reverse of the card has the following placed in the centre of the card;²⁸



- Evidence of the products “currently available” is provided by Ms Smeets in her second witness statement dated 14 November 2024 by providing partial translations of the exhibits provided by Mr Fahy;

29. When considering what use has been made during the relevant period, I remind myself that I am considering use across the EU during the period 19 April 2019 to 31 December 2020 (“the first part of the relevant period”) and only in the UK for the period

²⁶ Ms Smeets first witness statement and Exhibit LS1


²⁷ Ms Hubbard’s witness statement

²⁸ On page 5 and page 7 of Exhibit RESH1

1 January 2020 to 18 April 2024 (“the second part of the relevant period”). Ms Dennis criticised the evidence as only illustrating activity in one territory, namely, the Netherlands. Mr Selmi submitted that this is not so and use in Belgium and other territories is also demonstrated. I will consider use in the EU during the first part of the relevant period.

30. The evidence illustrates that the Greetz business was bought by Party A in 2018 when it was one of the leading online card and gifting businesses in the Netherlands. At the time, it operated under the website www.greetz.nl and an app. It is admitted by Party A that the website was aimed mainly at customers in the Netherlands and Belgium. Downloads of its app stood at a little over 111k in 2019 (not all of these would have been within the relevant period that commenced on 19 April 2019) and over 98k in 2020. It is reasonable to assume that the large majority of these downloads took place in the Netherlands and Belgium. Narrative evidence is that, by 2020, the EU turnover in respect of cards and gifts sold under the GREETZ mark was £46.6 million. However, the corroboratory evidence from this time only shows use in respect of the following logo mark:



31. The only exception to this is the order confirmation emails where the greetz mark appears. Whilst the narrative evidence states that these relate to a period between 2019 and 2023, the exhibits themselves are undated, and it is not possible to identify any as being issued in 2019 or 2020.

32. Therefore, the only use shown in the corroboratory evidence for the first part of the relevant period is the logo mark shown above.

33. Is this an acceptable variant use of Party A’s GREETZ mark? In *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under s. 46(2). He said:

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

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

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

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

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

distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still.”

34. In the current case, I must consider if the colour, border, heart shape logo and the placing of the letters “gre” above “etz” change the distinctive character of Party A’s registered mark. I consider the case law to be clear that the addition of the border and the heart logo would not be considered to change the distinctive character. Further, in this case, I do not consider that the colour difference changes the distinctive character. The registered mark is in black and white and this provides protection for use of the mark in other colours including red. However, I consider that the placement of “gre” above “etz” changes the distinctive character of the registered mark because it breaks up an easily identifiable word (albeit mis-spelt with a “z” rather than an “s”) into two three letter elements that do not immediately present as the word “greetz”. Consequently, I conclude that the use shown during the first part of the relevant period does not amount to use of an acceptable variant of the registered mark and cannot assist in demonstrating use in that period.

35. I note that Party A engaged in promotional partnerships and won numerous awards with one being awarded during the first part of the relevant period. The article (in Dutch) refers to “Greetz”. Whilst this suggests that the word GREETZ identifies Party A’s business, it is not in itself, evidence of use by Party A and in the absence of corroboratory evidence of Party A’s use, this evidence is not persuasive.

36. Next, I move on to consider proof of use during the second part of the relevant period, when only use in the UK can be acceptable.

37. GREETZ goods and services are provided through the website www.greetz.nl and www.moonpig.com. The former is in Dutch and only cards can be delivered to the UK that are printed and despatched from the Netherlands. Further, its prices are shown in euros.

38. I must consider if these goods or services have been advertised on a website that is targeting consumers in the UK. In *Lifestyle Equities CV and another (Respondents) v Amazon UK Services Ltd and others* [2024] UKSC 8, at [24] to [31], the Supreme

Court considered the correct approach to the relevant principles concerning the accessibility of intellectual property on websites and whether this counts as use of the IP in the UK. The cases it reviewed included the decisions of the Court of Appeal in *Merck KGaA v Merck Sharp & Dohme Corpn* [2017] EWCA Civ 1834; [2018] ETMR 10 and *Argos Ltd v Argos Systems Inc* [2018] EWCA Civ 2211; [2019] Bus LR 1728. Ms Dennis also referred to *Nissin Foods Holdings Co. Limited v MOMOIP LLC* [2025] EWHC 561 (Ch). The applicable principles can be summarised as follows:

- (a) The mere fact that a website is accessible from the UK is not a sufficient basis for concluding that an advertisement displayed on that website is targeted at consumers in the UK.
- (b) The question to be answered is whether the average consumer would consider the website to be directed at him or her. This calls for a multifactorial assessment of all of the circumstances.
- (c) It is necessary to look at the acts which are asserted to be use of the trade mark and to focus on whether those acts are targeted at the UK. The scope of the enquiry and the factors which are relevant will vary from case to case. To that extent, the role of the average consumer may differ from case to case.
- (d) The issue of targeting must be considered objectively from the perspective of average consumers in the UK.
- (e) The average consumer is reasonably well informed and reasonably observant but does not call for the application of a statistical test; nor does this person represent a statistical average.
- (f) It is enough that a significant proportion of the relevant consumers (that is to say, those who are reasonably well informed and circumspect) would consider the website to be directed and targeted at them.
- (g) Clear expressions of an intention to solicit custom in the UK (e.g., a clear indication that the trader is willing to dispatch its products to the UK) are a relevant consideration. But a finding that an advertisement is directed at consumers in the UK does not depend upon there being any such clear evidence.
- (h) Subjective intention is a relevant factor but it is not necessary to establish that the foreign trader had the subjective intention of targeting consumers in the UK. If, however, such a subjective intention is established, it will be easier to find

that, viewed objectively from the perspective of the average consumer, consumers in the UK were targeted.

39. In *Warner Music UK Ltd v TuneIn Inc.* [2019] EWHC 2923 (Ch), at paragraph 17, Birss J provided the following non-exhaustive list of factors which may be taken into account, whose weight will vary from case to case:

“(i) The appearance of the web pages themselves, which can include explicit statements of an intention to provide goods or services to the public in the UK and the highlighting of the UK in lists or maps.

(ii) Other aspects of the web pages such as language(s), currency(ies), telephone numbers, and the use of national top level domain names.

(iii) The nature and size of the service provider's business, the characteristics of the goods or services offered and provided, and the number of visits made by the public from the UK.”

40. Mr Selmi submitted that it is the area that a trader is prepared to ship products that is relevant when assessing whether the UK consumer has been targeted by a website. He claimed that it is possible to buy and have delivered in the UK, GEETZ products with both Moonpig and GREETZ marks used at the bottom of website pages. I keep in mind the comments of Danial Alexander QC (as he then was), sitting as a Deputy High Court Judge in *Abanka dd v Abanca Corporacion SA*²⁹ when he stated at [103]:

“Put colloquially, a proprietor should be treated as having used a mark in the UK if it has itself ‘pushed’ its business and mark into the UK, not if it has been ‘pulled’ into the UK by (for example) its customers abroad, even though they may be based in the UK. That is the upshot of the case law on ‘direction’ or ‘targeting’ of a website to the UK cited above (see the summary of CJEU case law in the Stichting BDO case [2013] FSR 35). Quite what constitutes enough push of goods, services or advertising for them to the UK is not always easy to determine, especially in cases where a proprietor may be, in effect, a ‘pulled-

²⁹ [2017] EWHC 2428 Bus LR 612

pusher' in that, without having taken any active steps to develop the market in the UK, it none the less takes business from consumers based in the UK."

41. Therefore, I am required to address the question of whether the www.greetz.nl website targets (or "pushes", to use Mr Alexander QC's terminology) its business and mark into the UK but I keep in mind that Lord Justice Arnold observed:³⁰

"51. ... The first [question] concerns the word "targeting". While this is a convenient label, it does not appear in the legislation. The issue is whether there is "use" of the sign in the relevant jurisdiction. In making that assessment, it is important not to be distracted by the label of "targeting"."

42. Party A provides evidence of sales generated from the UK and asserts that these sales are, in part, because of the significant number of Dutch people in the UK, estimated to be 92,000. It also points out that whilst only cards can be delivered to the UK, cards and gifts can be ordered in the UK for delivery to the Netherlands or Belgium. I note this, but I remain unconvinced that the www.greetz.nl website targets UK consumers or that it constitutes use in the UK. At the hearing Mr Selmi submitted that in light of the number of UK orders received on the www.greetz.nl website (nearly 90k over a five year period that nearly corresponds to the relevant five year period) and the evidence of the test purchase from the UK using this website,³¹ it is clear that there is targeting of the UK. I disagree. The fact that the website is in Dutch makes it highly likely that all (or nearly all) of the purchases made from the UK, would have been by Dutch speakers. Further, it is equally likely that these purchases were made by Dutch citizens who had knowledge of the website before arriving in the UK. The fact that the website is in Dutch and prices are in euros illustrates that it is not targeted at UK consumers. I dismiss the comment of Mr Fahy that the site is easily translated using online translator tools such as Google Translate. Merely because translation options are easily accessible online does not address the criticism that Party A are not targeting the UK with this website or using its mark in the UK.

³⁰ in *Lifestyles Equity* [2022] EWCA Civ 552

³¹ Ms Smeets first witness statement and Exhibit LJHS1

43. An extract from Moonpig Group plc's Listing Prospectus dated February 2021³² states the following about the Greetz business: "Greetz was founded in 2004 as the Netherlands' first online greeting card service. Since then, it has evolved into the leading online choice for our Dutch customers' card and gifting needs." This is further support that the goods and services provided through the greetz.nl website are not targeted at the UK. Taking all of the aforesaid into account, I conclude that sales through the greetz.nl website do not constitute proof of use in the UK.

44. An app is also referenced in the evidence as being introduced in 2011 and download figures are provided for the UK and total a little over 4300 between 2021 and the end of the relevant period. However, there is nothing in the evidence to suggest that the app is in English as opposed to Dutch or that the prices are expressed in pounds rather than euros. In light of this, and the fact that Greetz's main business is in the Netherlands and Belgium, I am unable to conclude that the app targets UK consumers.


45. Ms Dennis submitted that the evidence only demonstrated use in the Netherlands and that use outside the Netherlands is minimal and insignificant. It was asserted that use in only one member state of the EU was insufficient to support a finding of genuine use. This final point is not correct³³ but in light of my findings above, it is not determinative.

46. Party A also states that GREETZ cards are sold through its website www.moonpig.com. Only cards can be delivered to the UK, but it is stated that both cards and gifts can be delivered to the Netherlands and Belgium. Just under 18k orders were placed from the UK on this website in 2022 (GREETZ cards were available on this website from November 2022³⁴) and over 21k in 2023. Whilst screenshots from the www.moonpig.com website indicate 42 cards are found when searching for "greetz", the only further occurrence of "Greetz" in these screenshots is under the heading of "Our Brands" where the mark greetz appears together with other brands. Screenshots obtained on 17 October 2024 are provided showing use of

³² Provided at Exhibit APM2

³³ See *Walton International* referred to earlier and *C-149/11 Leno Merken BV v Hagelkruis Beheer BV* at [52] – [54]

³⁴ APM WS at [37]

the GREETZ mark on the Dutch website, but there are no further extracts from the Moonpig website, nor is there any evidence showing UK consumers being targeted with material that bears the GREETZ mark (or an acceptable variant thereof). The email occasion reminder bears the greetz mark but is provided in Dutch and, therefore, suggests that it was not intended to target the UK consumer.

47. Evidence that 0.1% of followers of Party A's GREETZ Facebook account are based in the UK and 0.4% of those who have reviewed posts on its TikTok account, lend support that only a very small (and Dutch speaking) part of UK consumers have been exposed to the name GREETZ and these consumers may have been aware of it as they may once have resided in the Netherlands. I cannot assume that such consumers took an interest in Party A's social media as a result of encountering the GREETZ mark on the Moonpig website.

48. Party A also relies upon a claim that since 2019, its partnership with Flying Blue, the loyalty programme of AirFrance, KLM and Transavia has been in place and where airmiles can be exchanged for GREETZ gifts and cards. It relies upon a claim that KLM has regular flights between several locations in both the UK and the Netherlands and "so these points can be used by nationals of other countries such as the UK ...".³⁵ This claim implicitly suggests that the partnership is not aimed at UK customers. Merely because a UK traveller could redeem points for Greetz branded cards (it is stated by Party B that gifts cannot be sent to the UK), is not evidence that such marketing activity is targeting UK consumers. Rather, it suggests that UK travellers may incidentally encounter this marketing activity from a partnership aimed at Dutch, French and nationals from the country where Transavia is based.

49. Other promotional partnerships with retailers and e-tailers in the Netherlands are relied upon.³⁶ As these are activities in the Netherlands, they are clearly not targeted at UK consumers. Other partnerships³⁷ are with brands that would be familiar to UK consumers (e.g. McDonalds, Domino's, Vodaphone etc), however the evidence³⁸

³⁵ KF WS at [26] and Exhibit KF10

³⁶ KF WS at [27]


³⁷ Identified in KF WS at [28]

³⁸ Provided at Exhibit KF11

consists of screenshots relating to different partnerships but these are in Dutch and clearly not targeting the UK.

50. GREETZ products have been advertised on various TV and radio channels, and a truncated list of specific advertisements is provided.³⁹ The TV channels include National Geographic, Paramount, Comedy Central, Animal Planet and Discovery channels. These are channels with English names and are no doubt available in the UK, but in the absence of information regarding the regionalisation of advertising on these channels (i.e. can the advertiser choose which region(s) its advertisement is aired?), I cannot assume that Party A's advertisements have been targeted at the UK consumer, nor that they were broadcast on the UK versions of these channels.

51. Whilst the GREETZ brand appears to have received numerous awards, none of these appear to be from the UK and its success in obtaining these awards does nothing to support a claim of proof of use in the UK.

52. Party A provides evidence of a test purchase made on 8 October 2024 (i.e. 6 months after the end of the relevant period) from the UK of a card from the www.moonpig.com website. Screenshots illustrate that 42 GREETZ cards are available, that the card is identified as being "designed by"  **greetz** on the centre of the back of the card (and the price is shown in pounds). This is the only corroboratory evidence that shows a GREETZ product being targeted at the UK consumer. It is also disclosed that there was nearly 18k UK orders for GREETZ cards on this website in 2022 and over 21k in 2023.

53. Ms Dennis submitted that use on the back of packaging has been held not to constitute genuine use.⁴⁰ The *PANGAIA* case relied upon did indeed uphold the hearing officer's view that the mark that appeared on the reverse of a box and a bottle would not be considered trade mark use. I note that this finding was fact dependent and that those facts differ to the facts before me in the current case. The Appointed Person observed that use of the *PANGAIA* mark was such that it could be seen as the

³⁹ KF WS at [30] and Exhibit KF13

⁴⁰ Citing the Appointed Person's decision in *PANGAIA*, BL O/0014/24

name of a building and part of an address. In the current case, the mark appears as follows:



54. Such use is clearly trade mark use and can, therefore, be differentiated from the facts of the *PANGAIA* case. Further, greeting cards, by their nature, have a design on the front chosen by the purchaser and, consequently, I see nothing unusual for such goods to have the trade mark placed somewhere else. The rear of the card would be an obvious place for it and for the average consumer to look when trying to identify origin. For these reasons, I reject Ms Dennis' submission.

55. Nevertheless, there is little in the evidence to support the claim of genuine use in the UK during the second part of the relevant period. Whilst there is narrative evidence of 18k UK orders in 2022 and 21k orders in 2023 made through the Moonpig website, the only evidence of use of an acceptable variant of the mark is from a test purchase carried out 6 months after the relevant period ended. In light of the evidence of Party A's use, during the relevant period, of the mark shown at the end of this paragraph (which I have found does not qualify as an acceptable variant use), I cannot infer from the test purchase evidence that all, or indeed any, of the UK orders made on the Moonpig website during the relevant period were sold under the mark or an acceptable variant of it.



56. When considering the narrative evidence of Party A, I keep in mind that in *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13, Mr Geoffrey Hobbs Q.C. as the Appointed Person stated that:

“21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not ‘show’ (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use.”

57. It is for Party A to provide cogent evidence of use in accordance with section 100 of the Act and such evidence, if it exists, should have been readily available. Therefore, contrary to Me Selmi’s submission at the hearing, the contested mark is not prominent

on the Moonpig website. The landing page⁴¹ does not refer to GREETZ anywhere, a search for “greetz” on that page came back with “Showing 42 results for “greetz” in Cards...”, but does not appear anywhere else on that page, the card selection page makes no reference to GREETZ and, as referred to earlier, an image of the reverse of a card shows the figurative GREETZ card appearing in the centre. No further references to GREETZ is visible. Taking all of this into account, I am unable to conclude that the mark GREETZ (or an acceptable variant) has been used on the moonpig.com website to the extent sufficient to support a claim of genuine use during the relevant period.

58. In conclusion, I find that Party A has failed to demonstrate that there has been use in the UK during the relevant period in respect of its three marks, subject to these revocation actions. Consequently, Party A’s registrations are revoked at the dates indicated below:

Registration	Date of Revocation
913926019	09/10/2020
905514583	25/01/2013
801197832	13/02/2020

O-445701: Party A’s Opposition Based Upon Section 5(2)(b)

59. Section 5(2)(b) of the Act is as follows:

“5(2) A trade mark shall not be registered if because-

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is

⁴¹ Exhibit RESH1

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

60. Section 5A of the Act is as follows:

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

61. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25:

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

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

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

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

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

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

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

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

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

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

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

Comparison of goods and services

62. In the judgment of the Court of Justice of the European Union in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

63. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited* (“*Treat*”) [1996] R.P.C. 281 for assessing similarity between goods and

services also include an assessment of the channels of trade of the respective goods or services.

64. At the hearing Ms Dennis submitted that the marketing strategies of the respective parties is different and that this resulted in the respective goods and services being distinguished from each other. It is appropriate to take into account objective marketing conditions when assessing the likelihood of confusion (see, for example, *European Union Intellectual Property Office v Equivalenza Manufactory SL* (Case C-328/18 P) EU:C:2020:156 at [70]). However, in *Devinlec Développement Innovation Leclerc SA v OHIM*, (Case C-171/06P), EU:C:2007:171, the Court of Justice of the European Union stated that:

“59. As regards the fact that the particular circumstances in which the goods in question were marketed were not taken into account, the Court of First Instance was fully entitled to hold that, since these may vary in time and depending on the wishes of the proprietors of the opposing marks, it is inappropriate to take those circumstances into account in the prospective analysis of the likelihood of confusion between those marks.”

65. When I put this to Ms Dennis, she stated that Party B no longer argues that goods are dissimilar. Mr Selmi submitted that it can be assumed that the respective goods and services are identical or highly similar. Clearly, a number of the respective goods are identical such as *printed matter* and *greeting cards* in Class 16 whilst others are highly similar or identical such as Party B’s *design and development of electronic greeting cards* and Party A’s *software as a service including the design and development of printed matter and other goods*. I, therefore, intend to proceed on the basis that at least some of the respective goods and services are identical.

Average consumer and purchasing process

66. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

67. In *Iconix Luxembourg Holdings SARL v Dream Paris Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

(a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;

(b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;

(c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;

(d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

68. Ms Dennis submitted that the relevant consumer is ordinary members of the public who will pay a medium to high level of care and attention during the purchasing process. Mr Selmi submitted that the level of care and attention is lower and only a medium degree of care and attention will be involved.

69. The purchasing act will be primarily visual in nature with the respective goods and services being chosen or accessed either on a website or shop shelves. I do not ignore aural considerations, although they are less likely to be a factor in the purchasing process of many of the relevant goods and services. The cost of the goods is likely to be low, for example, greeting cards are likely to be inexpensive. The average consumer is likely to be attracted by ease of use in respect of the services available through a website and, more generally, motivated by locating suitable goods such as an appropriate occasion greeting card. It is likely that purchases of this kind will be reasonably frequent. Taking account of this, I agree with Mr Selmi and find that the level of attention paid during the purchase for the relevant goods and services is likely to be medium.

Similarity of marks

70. *Sabel BV v. Puma AG* explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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

71. It is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

72. Party A's second earlier mark cannot improve its case because the figurative element places a greater distance between the similarity of the respective marks. Consequently, I will proceed to consider Party A's case based on upon its word only earlier mark.

73. The marks to be compared are:

Party B's mark	Party A's earlier mark
Greeti	GREETZ

74. In response to Ms Dennis' submissions regarding visual similarity (that I discuss later), Mr Selmi submitted that there is no case law that states that the final letter can be the dominant and distinctive part of the mark. I accept this, but the facts of any particular case vary and the significance of the final letter of a word must be assessed in this context. In my view, the difference in the final letter of the words of both parties' marks is relevant to my considerations (and discussed later) but, neither letter is, in itself, an independent distinctive element.

75. The dominant and distinctive component of the earlier mark GREETZ is obviously the word GREETZ as it is the only element present. It does not readily divide and presents as a single word.

76. Party B's mark consists of the single word "Greeti" and being the only element, is self-evidently the dominant distinctive element.

77. Visually, Party B's mark and Party A's mark both present as a single word mark where these words share the same first five letters "greet". They differ in that the last (and sixth) letter of each mark differs. Ms Dennis submitted that because the first five letters of each mark form the dictionary word "greet", that they are non-distinctive and that this difference makes the marks dissimilar. It is not appropriate to take account of distinctiveness when assessing similarity of marks⁴² and I reject this submission but consider the impact of the word "greet" in both marks later. Clearly the first five letters of each mark, being the same, create a level of similarity. Mr Selmi submitted that the differences between the marks are small and at the end of the marks and that "GREET

⁴² See for example T-5/08 to T-7/08 *Nestle v OHIM*, para 65 and T-243/08 *Ravensburger AG v OHIM*

cannot be airbrushed out". I agree. Taking all these points into account, I conclude that the marks share a reasonably high level of similarity.

78. In respect of aural similarity, Ms Dennis submitted that the respective marks have a different number of syllables and the final letter has a different sound. Both of these submissions are correct. Party A's mark consists of a single syllable whilst Party B's mark consists of the two syllables GREET_EE. The final letter "Z" present in Party A's mark is articulated as a soft "ZZZ" sound whereas the last letter of Party B's mark creates the second syllable being a hard "EE". I also keep in mind that the respective marks share the same "GREET" sound at the start of the marks. GREETZ is so highly aurally similar to the word "greet" that it is likely to be indistinguishable for the majority of the UK consumer. Taking all of this into account, I conclude that the respective marks share a medium level of similarity.

79. Conceptually, it is common ground that both marks consist of words based upon the dictionary word GREET. This word will be readily understood by the UK average consumer. Therefore, I agree with Mr Selmi who submitted that both marks are built upon the same meaning. In respect of many of the parties' goods and services the word will have an allusion of descriptive character, however, I keep in mind that this does not exclude a finding of conceptual similarity, but also that similarity must be considered in the light of its weak distinctive character.⁴³ Ms Dennis submitted that whilst not in formal dictionaries, the word GREETZ is understood as plural of "greet". I agree that based upon the high level of aural similarity to the word "greet" it is likely to be perceived as having the same meaning. Additionally, the use of a "Z" instead of an "S" strikes me as not being an unusual substitute for the letter "s" and, as a result, will further increase the likelihood of the mark being perceived as a variation of the word "greet". Ms Dennis also submitted that "Greeti" will not be perceived as a misspelling, but rather an invented word. I agree with this but it is likely that the average consumer will still perceive the common root (being the readily understood dictionary word "greet") as being the same in both marks. Party A's mark will be perceived as a misspelling of the word "greet" and Party B's mark will be perceived as an invented word based upon the word "greet". To the extent that the meaning of "greet" (the

⁴³ Bionecs GmbH v OHIM / Fidia farmaceutici SpA – T-262/14

concept present in Party B's mark) and "greet" (the concept present in Party A's mark) differ, the conceptual identities of the two marks will not be identical, but they are clearly highly similar.

Distinctive character of earlier marks

80. The assessment as to whether there is a likelihood of confusion includes considering whether the distinctive character of the earlier marks has been enhanced (i.e. more distinctiveness has been acquired) through the use made of them. If a mark has an inherently high, or an enhanced, level of distinctiveness, the likelihood of confusion is increased.⁴⁴

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

"22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of

⁴⁴ *Sabel BV v Puma AG*, Case C-251/95.

commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

82. I will firstly consider the inherent distinctive character of the earlier mark. The dominant element GREETZ is the phonetic equivalent of the ordinary English word “greet” and I have found it is likely to be perceived as being an alternative spelling of the dictionary word. It alludes to many of the goods and services (such as *greeting cards*). Taking account of these points, I conclude the earlier mark has no more than a low degree of inherent distinctive character in respect of goods and services relating to the greeting card industry. I accept Mr Selmi’s submission that GREET(S) is plainly not descriptive in respect to other goods and services where the level of distinctive character would be reasonably high.

83. I found earlier that, in respect of other GREETZ marks belonging to Party A, including its 801197832 GREETZ mark, that there is not sufficient evidence of genuine use in the UK. The test for genuine use sets a lower hurdle of proof than that required to demonstrate enhanced distinctive character. Consequently, I find that Party A’s mark does not benefit from an enhanced distinctive character in the UK.

Likelihood of confusion

84. Grounds based upon section 5(2)(b) of the Act require a global assessment of the likelihood of confusion, taking into account all relevant factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa.

85. I have found that at least some of the goods and services at issue are identical or closely similar, encompassing greeting cards and design and development of electronic greeting cards. The average consumer is a member of the general public, who will select the goods with a medium level of attention. These respective goods are relatively low cost and may be frequent purchased.

86. Turning to the marks themselves, Party A's "GREETZ" mark consists of six letters and ends with the letter "Z" that, because of its aural similarity to the letter "S" is likely to be perceived as a misspelling of the readily understood word "greet". On the other hand, "greeti" is an invented word albeit also consisting of six letters, the first five of which are the same as in Party A's mark. It ends in the vowel "i" to create an invented word. Whilst sharing the sequence "greet" at the beginning, the differing endings of the two marks results in a slightly different visual appearance. Aurally, the marks differ in pronunciation, with "GREETZ" likely to be pronounced as a single syllable, whereas "greeti" consists of two syllables. Conceptually, both marks refer, in broad terms, to the notion of greeting; however, this concept is directly relevant to many of the goods and services and, therefore, has weak distinctive character in respect to such goods and services. Even though the marks only differ by one letter, that difference has a clear and material effect. The fact that Party B's mark presents as a two-syllable invented word creates differences which outweigh the similarities between the two marks (and, in turn, feed into a different overall impression), at least in respect of goods and services connected with the greeting card industry.

87. Therefore, taking these similarities and differences together, I conclude that the differences in the endings of the respective marks, are sufficient to ensure that they create distinct overall impressions. Even allowing for the identity or high degree of similarity of the goods and services, I do not consider that the average consumer would be likely to believe that the goods and services offered under the marks "GREETZ" and "greeti" originate from the same or economically linked undertakings. I place limited weight on the shared use of the word "greet". In the context of greeting cards and related goods and services, this word is inherently weak, as it directly alludes to the purpose and function of the goods. Consumers of such goods and services are likely to readily perceive the ordinary word "greet" or Party A's misspelling of "greet" being meaningful in respect of the greeting card industry and related goods and services.

88. The average consumer is likely to rely on the differences in the ending of the respective marks, and overall impression, to distinguish between trade origins. As a result, the shared word "greet" does not dominate the distinctive character of the marks

and does not materially increase the likelihood of confusion in respect of goods and services in the greeting card industry.

89. I consider cards for all occasions would be described as “greeting cards” and, therefore, the above findings apply to all of Party B’s Class 16 goods with the exception *printed booklets*. It is not clear to me how the word “greet” or “greet” would have a descriptive message in respect of *printed booklets*. Such goods are included in Party A’s broad term *printed matter* and, therefore, identical. Here, the role of the concept “greet”/“greet” is a distinctive one and elevates the similarity between the marks to a level where a likelihood of confusion becomes likely.

90. In summary, the opposition fails against all of Party B’s Class 16 goods except *printed booklets*.

91. In respect of Party B’s Class 38 services, I consider that all of these can be used as part of a digital transmission service providing customers with a means to send greetings in the form of cards or other content (such as uploaded personal photographs). In respect of these services the word “greet” upon which both parties’ marks is based has a non-distinctive and descriptive meaning. This places a greater importance on the ending of the marks, which is different. Therefore, I find that the opposition fails in respect of all these services.

92. In respect of Part B’s Class 42 list of services, once again, these are all terms that describe or include services that form part of an offering of digital greeting cards or the digital design of digital or printed greeting cards where content for such cards is stored and accessed and includes the provision of access to non-downloadable software to enable such personalised design of the cards. I find that the opposition therefore fails in respect of all of these services.

93. In summary, Party A’s opposition to Party B’s application fails in respect of all the goods and services except *printed booklets* in Class 16. Therefore, Party B’s application will proceed to registration I respect of all the listed goods and services except *printed booklets*.

Conclusions

94. Party A has failed to demonstrate that its three marks, subject to Party B's applications for revocation have been genuinely used. They are revoked from the dates set out below:

Registration	Date of Revocation
913926019	09/10/2020
905514583	25/01/2013
801197832	13/02/2020

95. Party A's opposition to Party B's application no. 3968878 fails in respect of all goods and services except *printed booklets* in Class 16. It may proceed to registration for all listed goods and services except *printed booklets*.

96. At the hearing, Party B withdrew its application for invalidation of Party A's registration no. IR1599031.

COSTS

97. Party B has been wholly successful in its applications for revocation and substantially successful in its defence to Party A's opposition and is entitled to a contribution towards its costs. It withdrew its application for invalidation at the hearing. Mr Selmi submitted that I should take account that Party B dropped its invalidation based on section 3(6) at the last moment. I agree, but I also note that Party A did little more than put Party B to proof of its bad faith claim, something that it did not do. Consequently, I consider that £400 is a sufficient award in favour of Party A to take account of the invalidation action.

98. In the circumstances I award Party B a contribution towards the cost of its three applications for revocation and its defence of Party A's opposition. The sum is calculated as follows:

Official fees x 3:	£600
Preparing and filing TM26(I)s x 3 and considering the counterstatements and considering other side's TM7 and preparing counterstatements:	£700
Preparing and filing evidence:	£800
Hearing	£1200
Party A's award r.e. Party B's invalidation	(£400)
Total:	£2900

99. I, therefore, order Horizon Bidco BV to pay Group Cards Limited the sum of £2900. 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.

Dated this 22nd day of April 2026

Mark Bryant

For the Registrar