

O/0364/26

TRADE MARKS ACT 1994

IN THE MATTER OF

**TRADE MARK REGISTRATION NO. UK00904833638
IN THE NAME OF ARCTIC (HK) LIMITED
FOR THE TRADE MARK:**

ACCELERO

IN CLASS 9

AND

**APPLICATION NO. CA000507311 FOR REVOCATION
FOR NON-USE BY BRADLEY MORSE**

Background and pleadings

1. Trade mark number UK00904833638¹ as shown on the front page of this decision (“the contested mark”) stands registered in the name of ARCTIC (HK) Limited (“the proprietor”). The contested mark has a filing date of 13 January 2006 and was registered on 18 December 2006 for the following goods:

Class 9: Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.

2. On 1 May 2024, Bradley Morse (“the applicant”) filed an application to revoke the contested mark on grounds of non-use in accordance with sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 (“the Act”).²

3. Under section 46(1)(a) of the Act, the cancellation applicant claims non-use of all goods in the five-year period following the date on which the mark was registered i.e., 19 December 2006 to 18 December 2011, with an effective date of revocation of **19 December 2011**. Under section 46(1)(b) of the Act, the cancellation applicant claims non-use of all goods from 19 December 2011 to 18 December 2016, with an effective date of revocation of **19 December 2016**. The cancellation

¹ The contested mark is a comparable mark based upon an earlier EU trade mark (“EUTM”) of the proprietor. Following the end of the transition period of the UK’s withdrawal from the EU, all EUTMs registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A ‘comparable trade mark (EU)’ retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

² 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.

applicant also claims non-use of all goods from 4 November 2016 to 3 November 2021, with an effective date of revocation of **4 November 2021**.

4. The proprietor filed a counterstatement denying all claims made by the applicant.

5. The cancellation applicant is represented by London IP Ltd, and the registered proprietor is represented by Davidson Chalmers Stewart LLP.

6. Only the proprietor filed evidence during the evidence rounds. Neither party requested a hearing however, both parties filed submissions in lieu of a hearing. This decision is taken following careful consideration of the papers on file.

Evidence

7. The proprietor's evidence consists of the witness statement of Magnus Huber dated 13 January 2025. Mr Huber is the Director of the proprietor. His statement is accompanied by two exhibits, being exhibits MH1 and MH2.

8. The purpose of the proprietor's evidence is to demonstrate that the contested mark has been put to genuine use during the relevant periods for which revocation is sought.

9. I have given due consideration to all of the relevant documents filed and will refer to the evidence to the extent that it is necessary in my decision.

DECISION

10. Section 46 of the Act states that:

“(1) The registration of a trade mark may be revoked on any of the following grounds—

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c)...

(d)...

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (“the variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) [...]

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

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

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

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

11. Section 100 of the Act 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.”

12. As the contested mark is a comparable mark, pursuant to paragraph 8 of Part 1, Schedule 2A of the Act, the proprietor may rely upon use of the mark in the EU (including the UK) for any parts of the relevant periods which fall prior to IP Completion Day, being 31 December 2020.

13. As noted previously, under section 46(1)(a), the relevant period for assessing whether there has been genuine use is 19 December 2006 to 18 December 2011 (“the first relevant period”), while the relevant periods under section 46(1)(b) are 19 December 2011 to 18 December 2016; and 4 November 2016 to 3 November 2021 (“the second relevant periods”). A finding of genuine use during the second relevant periods will be sufficient to avoid revocation of the mark under section 46(1)(b), and, by virtue of section 46(3), section 46(1)(a). Provided that such use is deemed to be

genuine use, this will be the case even if the evidence in relation to the first relevant period is deemed insufficient.

Relevant case law

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

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at

[36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

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

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

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide;

and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

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

15. As regards the territorial scope of the use of an EUTM, in *Walton International*,³ 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*),⁴ 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:

³ *Walton International Ltd & Anor v Verweij Fashion BV*, [2018] EWHC 1608 (Ch), (which is also a decision by Arnold LJ, or Arnold J as he then was, that predates his decision in *easyGroup Ltd*).

⁴ *Ibid.*, paragraphs 114 and 115.

(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].”

Form of the mark

16. Before I move on to assess if the proprietor has shown genuine use, I must first consider if I find the use of the mark as shown in the evidence to be use of the mark as registered.

17. The contested mark is for the word mark “ACCELERO”. However, the evidence shows the mark used with additional wording such as “Accelero Xtreme III”, “Arctic Accelero Hybrid III-140” and “Accelero L2 Plus”.

18. I acknowledge that where a registered mark is used as part of another mark or with additional matter, this may still constitute acceptable use of the mark as registered, where this element continues to act independently as an indicator of origin.⁵ With this in mind, I do not find that the additional wording shown above alters the distinctive character of the mark as registered. I say this because the word “Accelero” is still the prominent verbal element, and the additional wording is likely to be regarded as denoting different variations of products sold under the “Accelero”

⁵ *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12

mark. Accordingly, the evidence shows that "ACCELERO" is still used as registered and continues to indicate origin, so the proprietor can rely on these examples.

Sufficient use

19. Mr Huber states that the contested mark was first used in the UK in 2006. He provides a list of 27 products that have been launched from the years 2006 to 2015 bearing the *Accelero* mark. Mr Huber states that all of these products belong to the category of “graphics card coolers”:

Product name	Year of product launch
Accelero X1	2006
Accelero X2	2006
Accelero Twin Turbo	2008
Accelero Twin Turbo Pro	2009
Accelero L2 Pro	2009
Accelero Xtreme GTX Pro	2009
Accelero Xtreme 5970	2010
Accelero L2 Plus	2011
Accelero Mono PLUS	2011
Accelero S1 PLUS	2011
Accelero Twin Turbo 6990	2011
Accelero Twin Turbo II	2011
Accelero Xtreme 5870	2011
Accelero Xtreme PLUS II	2011
Accelero Hybrid	2012
Accelero Hybrid 7970	2012
Accelero Twin Turbo 690	2012
Accelero Xtreme 7970	2012
Accelero Xtreme III	2012
Accelero Hybrid II-120	2014
Accelero Hybrid II-140	2014
Accelero S3	2014
Accelero Twin Turbo III	2014
Accelero Xtreme IV	2014
Accelero Xtreme IV 280X	2014
Accelero Hybrid III-120	2015
Accelero Hybrid III-140	2015

20. Mr Huber provides annual sales of the goods bearing the mark. These are as follows:

Year	Worldwide		UK	
	Qty	GBP ⁶	Qty	GBP
2013	9040	187202,26	4	312,45

⁶ Mr Huber explains that sales were made in various locations in Euros, US Dollars and HK Dollars so the GBP figures provided are calculated for information based on the exchange rate at the date of the witness statement being 13 January 2025.

2014	21093	496831,51	333	11116,44
2015	20893	526292,48	217	10672,99
2016	13349	387410,94	278	11887,18
2017	13584	366422,35	177	6889,64
2018	41970	1021305,27	71	2345,61
2019	38713	849546,43	217	5560,26
2020	23624	761465,47	312	10615,04
2021	14226	598751,33	76	2705,82

21. As Mr Huber has explained previously, the products sold are graphics card coolers. This is also further confirmed in the proprietor's submissions in lieu. I therefore take the above figures as being sales for graphics card coolers only.

22. Although figures for worldwide sales have been shared, no additional details regarding these figures have been provided. As a result, I am unable to determine what portion of these sales occurred within the EU prior to IP Completion Day.

23. Mr Huber states that sales were also made between 2006-2013 however, he has been unable to obtain figures due to data storage periods.

24. The sales figures are supported by a selection of invoices provided in exhibit MH1. These show sales to customers in the UK during 2020 and 2021. The names of the items on the invoices bearing the *Accelero* mark correspond with the list of graphics card coolers mentioned above at [19].

25. Exhibit MH2 includes a selection of online articles about various *Accelero* graphics card coolers. These include:

- i. An article from an online publication called "Quiet PC" about the "Accelero Twin Turbo Pro". While the article is undated, I note from the product list provided by the proprietor that this model of graphics card cooler was launched in 2009. This also corresponds to the customer reviews below the article that are dated 2009. An image and description of the graphics card cooler is shown below:

Superior Cooling Solution for High Performance Graphics Cards

Arctic Cooling have added a multi-compatible, high performance VGA cooler to their already reputable product line. And with up to a 26°C temperature reduction and 0.6 Sone noise level, the Accelero Twin Turbo is an ideal VGA cooler for enthusiasts to boost their overclocking potential.



- ii. A second article from “Quiet PC” about the “Accelero XTREME GTX Pro”. I note that this product was launched in 2009 and the customer reviews below the article are dated between 2010 and 2011. An image and description is now shown below:

Ultimate Cooling Weapon for Enthusiast-Grade Graphic Cards

As an upgraded version of acclaimed Accelero XTREME GTX 280, the Accelero XTREME GTX Pro is a multi-compatible cooler for nVIDIA GTX series. This 3-fan cooling solution is also equipped with 5 heatpipes and an optimised heatsink to provide exceptional temperature reduction performance. Together with ARCTIC COOLING patented acoustic design, the Accelero XTREME GTX Pro is an ideal cooler for enthusiasts to boost overclock potential.



- iii. An article from “kitguru.net” dated 13 January 2017 about the “Accelero Hybrid III” which describes the product as an “AIO cooler for your graphics card”.
- iv. A second article from “kitguru.net” dated 14 October 2014 about the “Accelero Extreme IV GPU Cooler”.
- v. An article from “e Technix” about the “Accelero Hybrid III 140 AIO GPU Liquid Cooler”. Whilst the article is undated, it is noted that the product list provided by the proprietor states that this particular product was launched in 2015.

26. That concludes my summary of the proprietor's evidence to the extent that I consider it necessary.

Assessment of genuine use

27. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each piece of evidence shows use by itself.⁷ Genuine use depends upon a variety of factors, including the nature of the goods and the characteristics of the market, the consistency of sales over time and whether the use is warranted to create or maintain a share in that market.

28. In considering the evidence as a whole, I am satisfied that it demonstrates genuine use of the contested mark. In making this finding, I appreciate that the level of sales in the UK are fairly modest however, the evidence shows that goods bearing the mark were sold in the UK consistently, with recorded sales and turnover in each year between 2013 and 2021. The quantities sold and the level of turnover, while fluctuating, demonstrate ongoing commercial activity rather than token use. That being said, I do not consider that the proprietor has demonstrated use for all goods for which its mark is registered, and I will now consider a fair specification.

Fair specification

29. I must now consider whether, or the extent to which, the evidence shows use of the contested mark in relation to the registered goods. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*,⁸ Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there

⁷ *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, General Court of the European Union, Case T 415/09

⁸ BL O/345/10

has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

30. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal set out the proper approach to partial revocation, as follows:

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

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

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

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

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not

used, be subject to revocation. [...] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered.”

31. I remind myself that the proprietor’s specification is as follows:

Class 9: Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.

32. I note that the proprietor submits that the evidence demonstrates use of the contested mark in relation to “graphics card coolers” and that the registered term “electrical [...] apparatus” is sufficiently broad to encompass such goods.⁹ The cancellation applicant, however, submits that none of the terms in the specification are capable of covering “graphics card coolers” and that, as a result, the contested mark should be revoked in its entirety.¹⁰

33. Having considered the parties’ submissions and the above case law, I find that the contested mark cannot be maintained for the full breadth of the specification as registered. The evidence of use relates solely to “graphics card coolers”, which are electronic devices designed for use within computer hardware systems to regulate the temperature of a graphics card and ensure effective operation.

⁹ Paragraph 3 of the proprietor’s submissions in lieu.

¹⁰ Paragraphs 19 and 20 of the cancellation applicant’s submissions in lieu.

34. I do not accept the cancellation applicant's submission that "graphics card coolers" fall wholly outside the scope of the registration. Instead, I find that such goods fall within the scope of the registered term "electric apparatus", however, that term is sufficiently broad to encompass a number of distinct and independent categories of goods. In circumstances where use has only been established in respect of a narrow subset of the registered goods, it would not be appropriate to allow the proprietor to retain protection for the wider category. In my view, a fair specification is therefore achieved by limiting the registration to "*Electric apparatus, namely graphics card coolers*" only, which accurately reflects the genuine use established during the relevant periods and ensures that the registration is neither unduly broad nor artificially restricted.

CONCLUSION

35. The application for revocation on the grounds of non-use succeeds in part under section 46(1)(a) and 46(1)(b). As the revocation date under 46(1)(a) is earlier, revocation will be effective for the following goods from 19 December 2011:

Class 9: Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.

36. The proprietor's mark will remain registered in respect of "Electric apparatus, namely graphics card coolers" in class 9.

37. The outcome of this revocation action affects only the rights conferred in the UK.

COSTS

38. Both parties have achieved a degree of success, the cancellation applicant significantly more-so than the proprietor. The cancellation applicant is therefore entitled to a contribution towards its costs. Awards of costs in proceedings commenced on or after 1 February 2023 are governed by Annex A of Tribunal Practice Notice ('TPN') 1 of 2023. Using the TPN as a guide, I award costs to the cancellation applicant on the following basis including a 10% reduction on costs to account for the proprietor's partial success:

Official fee:	£200
Preparing a statement and considering the other side's statement:	£250
Filing submissions in lieu:	£350
Total including 10% reduction:	£720

39. I hereby order ARCTIC (HK) Limited to pay Bradley Morse £720. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 29th day of April 2026

Catrin Williams
For the Registrar