O/0392/26

TRADE MARKS ACT 1994

IN THE MATTER OF THE UK DESIGNATION OF INTERNATIONAL REGISTRATION NO. 1811842
IN THE NAME OF SYENSQO

FOR THE TRADE MARK

IN CLASSES 1, 17, 37, 40 AND 42

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 453160
BY DERIVADOS DEL FLUOR, S.A.

BACKGROUND AND PLEADINGS

1. On 28 August 2024, International Registration ("IR") No. 1811842 was registered for the figurative mark shown on the cover page of this decision, based on European Trade Mark No. 018339622. With effect from the same date, SYENSQO[1] ("the holder") designated the United Kingdom for protection of the mark. The designation was accepted and published for opposition purposes on 20 December 2024, in respect of goods and services in classes 1, 17, 37, 40 and 42, as listed in Annex A of this decision.

2. The designation is partially opposed by DERIVADOS DEL FLUOR, S.A. ("the opponent"). The opposition was filed on 20 March 2025 and is based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opposition is directed against all of the goods in class 1 only of the designation. The opponent relies upon the following comparable mark:

UK trade mark registration number 903469293
Filing date: 29 October 2003
Registration date: 4 March 2005
Registered in Classes 1, 2 and 3
Relying on all goods in class 1 only, as listed under paragraph 19 of this decision.

[1] I note that in a letter from the Tribunal dated 18 August 2025, it confirmed the change of name of the holder from SYENSQO S.A. to SYENSQO. It was confirmed in an email sent on 29 August 2025 that the new holder was the same legal entity as the previous holder, that it has had sight of all forms in this matter, and that it stands by the statements made in the name of SYSENQO S.A. Further, it confirmed that it is aware of, and accepts the liability for costs in the proceedings.

3. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered European Trade Mark ("EUTM") or International Registration designating the EU. As a result, the opponent's mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.[2]

4. The opponent submits that the marks coincide in their distinctive and dominant component "DDF", resulting in visual and phonetic similarity between the marks, and that the parties' goods are broadly identical, such that there exists a likelihood of confusion on the part of the public.

5. The holder filed a counterstatement denying the claims that there is visual and phonetic similarity between the marks, although it admits that some, but not all, of the competing goods are identical. The holder denies that there is a likelihood of confusion, and requests that the designation be allowed to proceed, and an award of costs be made in its favour.

6. Only the opponent filed evidence; neither party filed written submissions during the evidence rounds. Neither party requested a hearing; both parties filed written submissions in lieu of a hearing, which will be referred to in the decision to the extent necessary. This decision is taken following careful consideration of the papers on file.

7. In these proceedings, the opponent is represented by HGF Limited and the holder is represented by Appleyard Lees IP LLP.

EVIDENCE

8. The opponent filed evidence by way of a witness statement dated 18 July 2025 in the name of Ginés Galdón, alongside eight exhibits labelled Exhibit GG1 to Exhibit

[2] See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

GG8 accordingly. Ginés Galdón is the General Manager of the opponent, a position he has held since 2004.

9. The main purpose of the evidence is to demonstrate that the earlier mark has been put to genuine use in the EU and the UK in relation to the goods relied upon during the relevant period.

10. I have read and considered all of the evidence and I will refer to the relevant parts at the appropriate points in the decision.

DECISION

11. 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.

12. By virtue of its earlier filing date, the trade mark upon which the opponent relies qualifies as an earlier trade mark under section 6(1) of the Act. As the opponent's trade mark had completed the registration process more than five years before the date of designation of the contested International Registration ("IR") , it is, in principle, subject to the provisions on use under section 6A of the Act. I note that on filing its Form TM8 Notice of Defence and Counterstatement, the holder has required the opponent to provide proof of use of the mark for all the goods on which it relies. Consequently, I will begin by assessing whether the earlier mark has been put to genuine use.

Proof of Use

13. The relevant statutory provisions under Section 6A of the Act are as follows:

(1) This section applies where

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has 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, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) 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

(b) 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.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

14. As the earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant.

15. Section 100 of the Act states that:

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

16. The relevant period during which genuine use must be shown is the five years ending with the date of designation of the contested IR. This was 28 August 2024, meaning the relevant period is 29 August 2019 to 28 August 2024.

17. As it is a comparable mark, the territory in which use of the opponent's mark must be shown is the EU (including the United Kingdom)[3] prior to IP completion day, being 31 December 2020, and the United Kingdom only thereafter.

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

[3] *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, paragraphs 36, 50 and 55.

“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 Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

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

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

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36];

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

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

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

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

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

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

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

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

…

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

Evidence of use

19. Under the Section 5(2)(b) grounds, the opponent has claimed that use has been made of all of the goods on which it relies under class 1 only. I must consider whether, or the extent to which, the evidence shows genuine use of the earlier mark in relation to those goods, being:

Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

20. I note the following from the witness statement ("WS") and accompanying exhibits:

a) The opponent has been using the trade mark as registered in relation to the goods on which it relies since at least 1990.[4]

[4] See point 3 of the WS.

b) Exhibit GG1 is described in the WS as “an extract from the company website illustrating the extent of the application of DDF products”. The mark itself is shown at the top of the first page of the exhibit in the following format:

c) Exhibit GG2 shows the mark applied to the packaging of goods described as Aluminium Fluoride as sold in the UK. I note that the exhibit is undated:

d) Exhibit GG3 comprises emails exchanges in relation to sales negotiations which Mr Galdón states demonstrates use of the mark in the sales process. I note that the mark is shown at the bottom of the emails sent by the opponent in the same format as illustrated above under point 20 b) and that the emails are dated within the relevant period. The exhibit also includes order confirmations and delivery notes sent to UK customers, as well as two invoices. These invoices, as well as the confirmations and delivery notes, do not show the mark as registered, but are headed with the following logo:

e) Exhibit GG4 is described in the WS as an example of a safety data sheet which Mr Galdón states clearly displays the mark. The only occurrence of the mark is in the format shown above under 20 b), which appears at the top of the first page of this exhibit (numbered as 1 of 11).

f) Exhibit GG5 comprises two invoices. The first invoice is dated 28 January 2020 and is marked as being shipped to the UK to 'party 21579'. The second invoice is dated 3 January 2020 and is marked as being shipped to the UK to 'party 2121'. Both invoices are headed with the same logo illustrated above under 20 d).

g) Exhibit GG6 is described in the WS as sample invoices dated between 28 August 2019 to 31 December 2020 (i.e. prior to IP completion day) demonstrating sales of the relevant goods into the EU. I note that each of the eleven invoices bear the same logo as illustrated above under 20 d). Each invoice is written in what I recognise to be Spanish, English translations for which have not been provided.

h) Exhibit GG7 is described in the witness statement as a copy of the certification by Lloyd's Register of the UK operations of DDF's business under the DDF logo. While I note that the actual certificate is dated 16 June 2020 with an expiry date of 15 June 2023, the certification relates directly to the company name and does not refer to the mark itself in any form:

2

Lloyd's Register

Current issue date: 16 June 2020
Expiry date: 15 June 2023
Certificate identity number: 10273556

Original approval(s):
ISO 45001 – 16 June 2020

Certificate of Approval

This is to certify that the Management System of:

Derivados del Fluor, S.A.U.

San Vicente 8, Edificio Albia I, 5º Planta, 48001 Bilbao, Vizcaya, Spain

has been approved by Lloyd's Register to the following standards:

ISO 45001:2018

Approval number(s): ISO 45001 – 0038879

This certificate is valid only in association with the certificate schedule bearing the same number on which the locations applicable to this approval are listed.

The scope of this approval is applicable to:
Design, manufacture and distribution of fluorinated compounds and anhydrite. Distribution of complementary chemicals fluorinated compounds.

i) Exhibit GG8 is a factsheet explaining the certification by Lloyd's Register, however, it appears to be a generic document produced by Lloyd's Register which makes no mention of DDF in any form and is therefore of little relevance to the matter before me.

j) Mr Galdón states at point 10 of the WS that the exposure of the DDF logo in the UK market can be evidenced by Google analytics data demonstrating the number of unique visitors from the UK to the DDF website during the relevant period, and he has provided a link to DDF website https://www.ddfluor.com/. As already demonstrated under paragraph 20 b) of this decision, exhibit GG1 shows the DDF logo as a header on the website. The WS provides a breakdown of the visitor numbers for the years 2021 to 2024 although these figures are not supported by showing how the logo is used on the website in relation to the actual goods relied upon. Overall, I do not consider that the figures provide any relevant probative value.

k) Annual sales figures (in euros) relating to UK sales of the "DDF" branded goods relied upon are provided at point 7 of the WS, as reproduced below:

Year	Amount Thousands of €
2019	5866.43 K€
2020	5283.87 K€
2021	4820.43 K€
2022	5817.68 K€
2023	7031.60 K€
2024	5850.38 K€

Form of the mark

21. Section 6A(4)(a) of the Act states that:

> "… use of a trade mark includes use in a form ("the variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered…"

22. The mark on which the opponent relies is registered thus:

23. As outlined earlier under paragraph 20, the mark is shown within the evidence in the following forms:

Example 1

Example 2

24. As outlined in *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12,[5] the use of a mark generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.

[5] At [31 – 35].

25. The mark as registered is contained within the sign shown in example 1.[6] As indicated in *Colloseum*, "a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term 'genuine use' within the meaning of Article 15(1)." The difference in colour notwithstanding, to my mind, use of the mark in conjunction with the additional device and word elements as shown above makes no material difference to the distinctiveness of the mark as registered. I consider that the "DDF" element within the composite mark plays an independent, distinctive role which continues to indicate origin and may be relied upon by the opponent.

26. As outlined in *Lactalis McLelland Limited v Arla Foods AMBA,* Case O/265/22,[7] the use of the mark in a different form may also constitute use of the mark as registered.

27. I consider that the distinctive character of the mark as registered lies in the letters "DDF" as presented, and not in the plain letters "DDF". Because of the high stylisation of the letters which make up the registered mark, I consider that it may not be immediately obvious that the mark contains the letters "DDF" and that it may take the consumer a second glance to recognise the letters as such. In example 2, to my mind, the distinctive character of the mark lies primarily in the letters "DDF", with the device and additional words "Minersa Group" playing a secondary role. Generally, a three letter combination is not appreciably distinctive, neither is it particularly weak in cases where there is no proven connection between those letters and the goods for which the mark is registered. I take into consideration the presentation of the mark as registered, the stylisation of which I consider plays an integral and significant role in the overall impression of the mark, which cannot be ignored. In my view the stylisation of those letters is not a banal inclusion and makes a significant contribution to the inherent distinctiveness of the registered mark. As such, I consider that the difference in the presentation of the letters "DDF" as contained in example 2 does

[6] The difference in colour notwithstanding.
[7] At [13 – 17]. See also *Hyphen GmbH v EUIPO*, Case T-146/15, at [28-32].

alter the distinctive character of the registered mark. Consequently, I find that use of the mark as portrayed in example 2 may not be relied upon by the opponent.

Assessment on genuine use

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

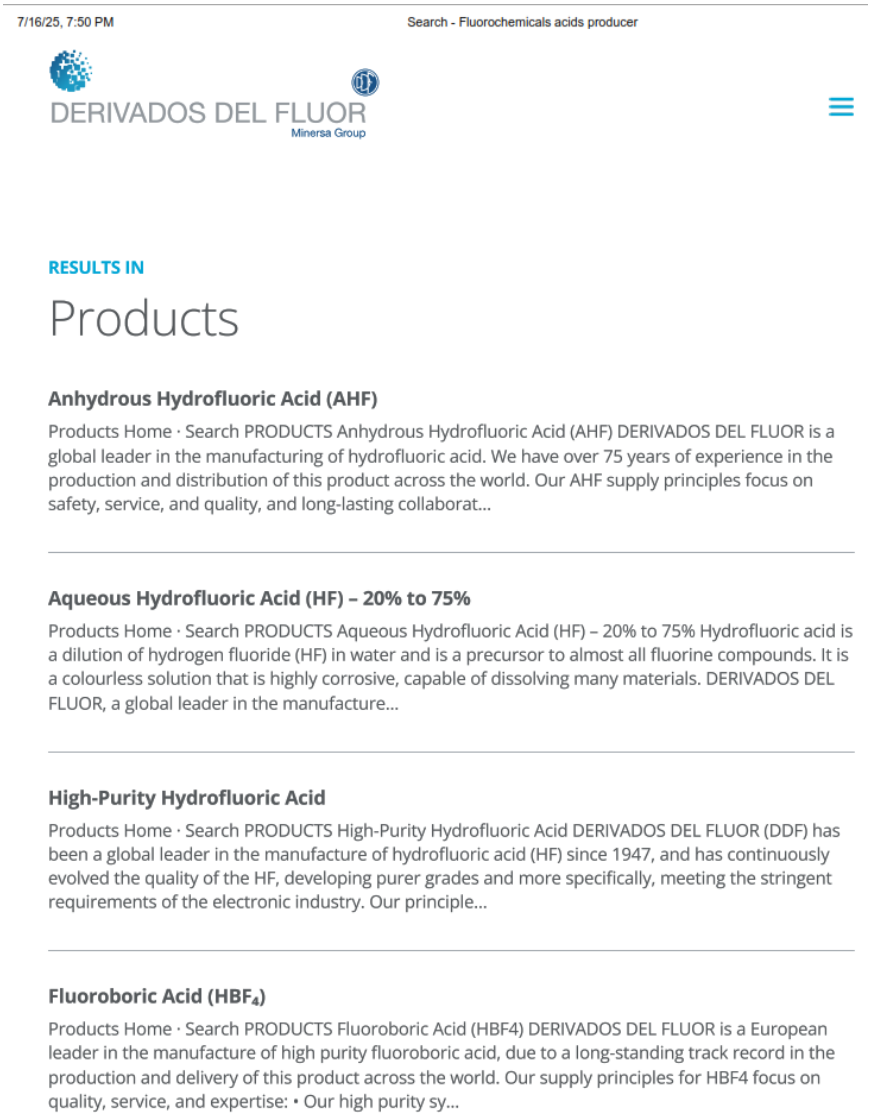
- the scale and frequency of the use shown;
- the nature of the use shown;
- the goods for which use has been shown;
- the nature of those goods and the market(s) for them; and
- the geographical extent of the use shown.

29. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself. It is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof: see *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T- 415/09, paragraph 53. I acknowledge that, as per the principles outlined under paragraph 18 of this decision, use of the mark must be more than token, although that use need not always be quantitatively significant for it to be deemed genuine.[8] I also bear in mind that it is not the task of this tribunal to assess economic success or large-scale commercial use, and that there is no *de minimis* rule - even minimal use may qualify as genuine use if it is use warranted, in the economic sector concerned, to maintain or create market shares for the relevant goods.[9]

[8] *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].
[9] *Naazneen Investments Ltd v OHIM*, Case T-250/13 at [49].

30. The evidence claims to show use of the mark as registered on the packaging of the goods as sold in the UK, as illustrated in Exhibit GG2. However, the exhibit consists of a photograph of a single product, and does not show the goods actually being offered for sale. Further, not only is the exhibit undated, but it fails to show where or how consumers would encounter such goods, at what cost, or how many sales of the illustrated goods have actually been made. As such, it provides little probative value.

31. Exhibit GG1, being an extract from the company website, contains an acceptable variant of the mark at the head of the first page, as per example 1 shown under paragraph 23 of this decision:



The only date on the exhibit is 16 July 2025, which I take to be the date on which the evidence was compiled, and is therefore after the end of the relevant period. Even allowing that the information was the same during the relevant period as on the day that the exhibit was compiled, I consider it to be inconclusive as far as demonstrating evidence of genuine use of the mark is concerned. The exhibit is formed of webpages which list various products, which to my understanding are the generic names of various chemical products and would therefore be encompassed by the opponent's broad term "*Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry"*. However, the webpages provided under the exhibit do not actually show the goods being offered for sale and do not demonstrate how the consumer would be exposed to the mark on such goods in the marketplace. Under each product type it merely states that "DERIVADOS DEL FLUOR" are a global leader in the manufacture of the individually-listed goods, coupled with vague references to DDF which seem to refer to the company name, rather than to goods branded under the mark as registered or under an acceptable variant thereof. Although I acknowledge that in some cases, the company name and the trade mark under which the goods are provided may be one and the same, this is not always the case. I further note that the exhibit does not make reference to the cost of the goods or from where, how, or in what form, they may be purchased. The web domain at the bottom of each page of the exhibit is shown as www.ddfluor.com. As such, it does not specifically target either the UK or the EU markets, although I note the figures provided at point 10 of the WS which are said to demonstrate the number of unique visitors from the UK to the DDF website during the relevant period. To my mind, the number of visits to the website does not equate to the resulting number of sales of the goods realised in the UK: the exhibit does not demonstrate whether or not the goods were available to order directly from the website itself, and if not, how or where consumers were able to procure the registered goods in either the EU or the UK, during the pertinent relevant period.

32. In relation to the emails which are included in exhibit GG3, they do not evidence any actual sales of the goods relied upon under the earlier mark itself. Although I note the references to, inter alia, Potassium Bifluoride, Ammonium Polyfluoride and Anhydrous Hydrofluoric Acid, which I assume to be chemical substances, they are not shown as being marketed directly under the mark as registered, with the included

order confirmations, delivery notes and invoices bearing the variant mark deemed unacceptable under paragraph 27 of this decision. Exhibit GG4 comprises safety data sheets for POTASSIUM FLUOROBORATE, and the mark shown at the top of the first page is an acceptable variant. However, although point 6 of the WS refers to marketing and informational materials, and the data sheets are dated within the relevant period and are written in English, it does not provide how or where the data sheets could be accessed, or by whom, and as such I consider the exhibit to be inconclusive. Meanwhile the invoices contained within exhibits GG5 and GG6 do not include an acceptable variant of the registered mark.

33. The annual sales figures as shown in the table under paragraph 20 k) of this decision are said to relate to UK sales of "DDF" branded goods during the relevant period. While the figures seem more than token, I have nothing to compare the figures against as I have not been provided with the size of the corresponding chemicals market in the UK or the market share enjoyed by the opponent under the mark for the goods relied upon. Further, while the opponent only relies on its goods in class 1, the mark is also registered for goods in classes 2 and 3 of the Nice Classification system. However, a breakdown of the figures corresponding to each type of goods relied upon has not been provided and it is unclear from point 7 of the WS if the figures provided are purely in relation to the pertinent goods in class 1 or if they actually include sales of the goods registered in all three classes. As such, the evidence is lacking in substance.[10] As already mentioned, neither have I been provided with any indication as to how or where potential customers were able to acquire the pertinent goods under the mark in either the EU or the UK during the relevant period; nor do I have any information as to how much has been invested in promoting the mark in the relevant territories.

34. For the avoidance of doubt, even had I found that the sign as used on the header of the various invoices to be an acceptable variant of the registered mark, (shown as example 2 under paragraph 23 of this decision), the invoices provide little information on the actual value of the sales of the pertinent goods, with much of the fundamental information being either in Spanish, or it has been redacted.

[10] See the decision of Phillip Johnson, sitting as the Appointed Person in BL O/0984/25, at [26].

35. Having considered the evidence as a whole, I find that it falls well short of what is required to demonstrate genuine use of the mark in relation to the goods for which use is claimed. In *Awareness Limited v Plymouth City Council,* Case BL O/236/13, Mr Daniel Alexander Q.C. (as he was then) 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". (**My emphasis**).

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

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

37. I note that in his recent appeal decision, Thomas Mitcheson KC, sitting as Appointed Person, highlighted the importance for parties to gather focussed and relevant material and explain it in evidence in non-use/proof of use proceedings, adding that "the tribunal cannot be expected to draw inferences or to fill in the gaps resulting from deficiencies in the material put forward by a party."[11]

38. I have considered the evidence as a whole and I bear in mind the principles outlined under paragraph 18 of this decision, which recognise that even proven commercial use may not be sufficient for a finding of genuine use.[12] There are many gaps in the evidence. The sales figures provided are unverified and do not provide a breakdown to show the scale and value of sales for the actual goods relied upon. There is nothing to show the related advertising spend, nor any indication as to the market share for the various types of goods sold under the "DDF" brand in the EU/UK markets during the relevant period. Overall, I consider the evidence to be insufficient to support that there has been genuine use of the mark for any of the goods relied upon, or to allow me to find that the opponent has demonstrated real commercial exploitation of the mark in relation to any of the goods for which use is claimed. The consequence of this is that the mark may not be relied upon in opposition of the UK designation of the IR, and so the opposition under section 5(2)(b) fails.

CONCLUSION

39. The opposition under section 5(2)(b) fails. Subject to any successful appeal, the IR may be granted protection in the UK in respect of all goods

COSTS

40. The holder has been successful, and is therefore entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023. Applying the guidance in that TPN, I consider the following to be fair:

[11] BL O/0852/25, at [43].
[12] At [106(8)].

Considering the notice of opposition and filing a counterstatement:	£400
Considering the opponent's evidence, and filing written submissions in lieu of a hearing:	£600
Total:	**£1,000**

41. I therefore order DERIVADOS DEL FLUOR, S.A. to pay SYENSQO the sum of £1,000. 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 7th day of May 2026

Suzanne Hitchings
For the Registrar,
the Comptroller-General

Annex A

Holder's goods and services

Class 1

Chemicals for use in manufacture; chemicals for use in industry; adhesives for use in industry; adhesives for use in bonding materials [industrial]; unprocessed synthetic resins; unprocessed synthetic resins for use in the manufacture of molding compounds; adhesive for use in bonding composites [industrial]; chemical surface preparations for use in bonding [industrial]; chemical surface preparations for composites.

Class 17

Semi-processed plastics, resins, polymers or synthetic fibres (other than for textile use), or substitutes for these; adhesive tapes, strips, bands and films; packing materials; stopping materials; insulating materials.

Class 37

Advisory services related to the installation, maintenance and repair of industrial installations for automated part manufacturing.

Class 40

Processing of plastics; joining of components using adhesives; treatment and processing of plastics; treatment of chemicals; molding of plastics.

Class 42

Engineering services; technical project studies; analysis of materials; material testing services; engineering services and consultancy in the field of automation of workplace, industrial processes and manufacturing.