

O/0407/26

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK00003545458

IN THE NAME OF £99 CARPET FACTORY LTD

FOR THE FOLLOWING TRADE MARK

£99 carpet factory ltd

IN CLASS 27

AND

IN THE MATTER OF AN APPLICATION FOR A

DECLARATION OF INVALIDITY THERETO

UNDER NO. CA000507989

BY £99 CARPET SUPERSTORE LTD

BACKGROUND AND PLEADINGS

1. Trade mark No. UK00003545458 shown on the cover page of this decision stands registered in the name of £99 carpet factory ltd (“***the Proprietor***”). It was applied for on 19 October 2020 before the UK IPO and was registered on 12 March 2021 for “*carpeting*” in class 27 (“***the Contested Mark***”).
2. On 29 October 2024, £99 CARPET SUPERSTORE LTD (“***the Applicant***”) applied to have the contested mark declared invalid in its totality under section 47 of the Trade Marks Act 1994 (“***the Act***”). The application is based upon section 3(1)(b) of the Act.
3. In its statement of grounds, the Applicant contends that the Contested Mark is incapable of performing its trade mark function as it merely serves to indicate the type of establishment from which the “carpeting” goods are manufactured and the price of these goods. It is also submitted that the inclusion of the term “Ltd” is insufficient to imbue the mark with the minimum level of distinctiveness to make it function as a trade mark.
4. The Proprietor filed a counterstatement denying the claims made by the Applicant and contending that the Contested Mark was inherently distinctive at the time of registration and that it has acquired distinctiveness through extensive use.¹
5. The Applicant is represented by Sonder & Clay. The Proprietor is represented by McDaniels Law.

Relevance of EU law

6. 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.

¹ Proprietor’s counterstatement dated 20 December 2024 at [6].

EVIDENCE AND SUBMISSIONS

7. The Applicant filed evidence in the form of the witness statement of Samairah Ilyas and exhibits 1 – 3. Samairah Ilyas is the Director of £99 Carpet Superstore Ltd (the Applicant) and he has held this position since 28 August 2024. The Proprietor filed evidence in the form of the witness statement of John Stuart France and exhibits JF01 –JF12. Mr France is the Director and Founder of £99 Carpet Factory Ltd. (the Proprietor) and he has held this role since 16 October 2020. The Proprietor also provided evidence in the form of the witness statement of Jonathan Leng, the Regional Sales Manager of Mercado. All the witnesses are duly authorised to provide evidence. The Proprietor also filed written submissions.
8. Neither party requested a hearing, but they both filed written submissions in lieu of a hearing.
9. The evidence and submissions will not be summarised here but will be referred to as and where appropriate during this decision. This decision is taken following a careful perusal of the papers.
10. As a preliminary matter, I note the Proprietor's argument that the present proceedings were brought vexatiously, on the basis that the Applicant was already aware of the Proprietor and its trade mark prior to the filing of the invalidation action. While I have considered the Proprietor's submissions and evidence in this regard, I find them to be irrelevant to my assessment. The issue before me is confined to a determination under section 3(1)(b) of the Act, and the Applicant is entitled to pursue such a claim. I will therefore not consider this issue any further.

DECISION

11. Section 47 of the Act states:

“(1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).

Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use

which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.

[...]

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

[...]

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.

Provided that this shall not affect transactions past and closed.”

12. Section 3(1) of the Act provides as follows:

“3(1) The following shall not be registered –

[...]

(b) trade marks which are devoid of any distinctive character,

[...]

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.”

13. Section 1(1) of the Act states:

“1(1) In this Act “trade mark” means any sign which is capable—

(a) [...]

(b) of distinguishing goods or services of one undertaking from those of other undertakings.

A trade mark may, in particular, consist of words (including personal names), designs, letters, numerals, colours, sounds or the shape of goods or their packaging.”

Average Consumer

14. The above grounds must be assessed from the perspective of the average consumer, who is deemed to be reasonably observant and circumspect.² The Proprietor submits that the average consumer comprises members of the general public, including homeowners, landlords and contractors. It is argued that, when purchasing the goods in question, these consumers will consider factors such as suitability and price and will therefore display a medium level of attention, rising to a high level of attention where the goods are of greater cost.³ The Applicant did not file specific submissions on this point.

15. Although professionals retailing carpets or offering carpet fitting services (or carpet fitting as part of wider home renovations) may purchase the goods at hand, I agree with the Proprietor that the relevant public is ultimately the end users purchasing the carpets/carpeting, namely, private individuals purchasing the goods at hand to install them themselves or to have them installed by a professional. Although the goods are not purchased often, the Proprietor markets them as being low-cost (“£99”); hence, the price for these goods will not be very high. Consumers will pay a medium degree of attention when purchasing them.

Relevant Date

16. The relevant date under section 3(1)(b) is the filing date of the Contested Mark which in this case is **19 October 2020**.⁴ However, for any acquired distinctive character claim in accordance with section 47(1), the relevant date of the assessment is the date of the application for invalidation, namely **29 October 2024**. I shall bear these dates in mind whilst considering the claims.

² *Matratzen Concord AG v Hukla Germany SA*, Case C-421/04.

³ Proprietor’s submissions in lieu dated 31 October 2025 at [13].

⁴ *Imagination Technologies v OHIM*, Case C-542/07.

Section 3(1)(b)

17. Section 3(1)(b) prevents registration of marks which are devoid of distinctive character. The principles to be applied under article 7(1)(b) of the CTM Regulation (which is now article 7(1)(b) of the EUTM Regulation, and is identical to article 3(1)(b) of the Trade Marks Directive and s. 3(1)(b) of the Act) were conveniently summarised by the CJEU in *OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG*⁵ as follows:

“29 [...] the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089, paragraph 32).

30. Under that provision, marks which are devoid of any distinctive character are not to be registered.

31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (*Henkel v OHIM*, paragraph 34; Case C-304/06 P *Eurohypo v OHIM* [2008] ECR I-3297, paragraph 66; and Case C-398/08 P *Audi v OHIM* [2010] ECR I-0000, paragraph 33).

32. It is settled case-law that that distinctive character must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public (*Storck v OHIM*, paragraph 25; *Henkel v OHIM*, paragraph 35; and *Eurohypo v OHIM*, paragraph 67). Furthermore, the Court has held, as OHIM points out in its appeal, that that method of assessment is also applicable to an analysis of the distinctive character of signs consisting solely of a colour per se, three-dimensional marks and slogans (see, to that effect, respectively, Case C

⁵ (C-265/09 P).

447/02 P *KWS Saat v OHIM* [2004] ECR I-10107, paragraph 78; *Storck v OHIM*, paragraph 26; and *Audi v OHIM*, paragraphs 35 and 36).

33. However, while the criteria for the assessment of distinctive character are the same for different categories of marks, it may be that, for the purposes of applying those criteria, the relevant public's perception is not necessarily the same in relation to each of those categories and it could therefore prove more difficult to establish distinctiveness in relation to marks of certain categories as compared with marks of other categories (see Joined Cases C-473/01 P and C-474/01 P *Proctor & Gamble v OHIM* [2004] ECR I-5173, paragraph 36; Case C-64/02 P *OHIM v Erpo Möbelwerk* [2004] ECR I-10031, paragraph 34; *Henkel v OHIM*, paragraphs 36 and 38; and *Audi v OHIM*, paragraph 37)."

The parties' arguments

18. The Proprietor submits that the Registrar was correct in finding the Contested Mark as inherently distinctive and in accepting it for registration. To this regard, the Proprietor refers me to section 72 of the Act and it contends that the Contested Mark should be considered valid.⁶

19. The Proprietor contends that the Contested Mark was inherently distinctive at the time of registration⁷ and submits that the individual elements comprising the mark are inherently distinctive and when combined form an even more distinctive phrase that goes beyond the meaning of the individual words.⁸ More specifically, it is submitted that the Proprietor's goods are all priced differently and that the "£99" element does not describe the goods' prices. Conversely, it is contended that this monetary reference functions as a "catchy slogan" reinforcing brand origin similarity to registered trade marks such as "Poundland" or "Pound Deals".⁹

20. It is then submitted that "carpet" is not descriptive of the registered goods because this term identifies the finished product and it is distinct from "carpeting" which is the material related to making the carpet.¹⁰

⁶ Proprietors' counterstatement at [10].

⁷ Proprietor's counterstatement at [7].

⁸ Idem at [18].

⁹ Idem at [13] and [14].

¹⁰ Idem at [15].

21. Turning to the word “factory”, the Proprietor clarifies that it does not manufacture carpeting (i.e., it acquires the materials from third parties), but it is a consumer-facing retail outlet offering the goods directly to consumers with also the option to fit them.¹¹
22. Lastly, the Proprietor contends that “Ltd” is used to indicate that an entity is a limited company and such term is clearly distinct and separate from the descriptive elements with the carpeting industry.¹²
23. The Applicant submits that the Contested Mark is entirely descriptive of the goods “carpeting” and conveys the message to the consumer that carpets are available from a factory or factory outlet at a cost of £99.¹³ The Applicant refers me to a previous refusal by the Registrar of the Applicant’s mark “£99 Carpet Superstore Ltd” finding that the mark was devoid of distinctive character for goods including “carpeting”.¹⁴ Ms Ilyas’s evidence contains the decision from the Registrar concerning such refusal where it is stated that:

“[...] the mark will not be perceived as a designation of brand origin but merely serves to indicate the type of establishment from which the goods are available and the price of these goods. It does not indicate which carpet superstore, so the mark is not considered capable of performing the essential function of a trade mark which is to guarantee the commercial origin of the goods.

Again, I note the inclusion of the term Ltd within the mark, however this is not sufficient to imbue the mark with the minimum required level of distinctiveness to enable it to function as a badge of commercial origin.”¹⁵

24. The Applicant contends that the same logic should apply to the Contested Mark.

¹¹ Idem at [10] and 16].

¹² Idem at [17].

¹³ Applicant’s submissions in lieu dated 31 October 2025 at [10].

¹⁴ Trade mark application number UK00004096280.

¹⁵ Ms Ilyas’ exhibit 1, pages 2 and 3.

Assessment of the Contested Mark's inherent distinctiveness

25. Regarding the Proprietor's argument for which registered trade marks must be considered as valid, section 72 of the Act states that:

“In all legal proceedings relating to a registered trade mark (including proceedings for rectification of the register) the registration of a person as proprietor of a trade mark shall be prima facie evidence of the validity of the original registration and of any subsequent assignment or other transmission of it.”

26. I acknowledge that the Act provides that a registered trade mark is presumed to be valid. In the present case, however, the validity of the registration is itself the central issue for determination. Accordingly, while I take into account that the Contested Mark was accepted at the examination stage, the task before me is to assess whether it in fact possesses the necessary distinctive character to function as a trade mark. Its validity cannot simply be assumed, as this lies at the heart of the assessment, and further consideration is therefore required.

27. Turning to whether the Contested Mark is inherently distinctive, I note the Applicant referred me to the refusal of the mark “£99 Carpet Superstore Ltd”. I bear in mind that I am not bound by previous decisions from the Registrar. However, although the marks differ in their respective words “superstore” and “factory”, they overlap in “£99 carpet [...] ltd”. Thus, this decision is relevant, to some extent, for my assessment and I have borne it mind.

28. I also appreciate the Proprietor's argument that “carpet” is a broader term whereas the meaning of “carpeting” is more focused on the material. However, I find the UK average consumer would ordinarily use “carpeting” to also refer to “carpet” and, thus, understanding both words as essentially having the same meaning (i.e., “carpet”).

29. Regarding the word “factory”, this term identifies a large building where machines are used to manufacture large quantities of goods.¹⁶ Consumers will understand “factory” as having this meaning. The Applicant directs me to decision number BL

¹⁶ Collins dictionary available at <https://www.collinsdictionary.com/dictionary/english/factory>.

O/0862/25 from the Company Names Tribunal where, considering the meaning of the Contested Mark, it stated that “[...] factory denotes a place of manufacture for carpets at £99, or a factory outlet which sells carpets at £99. The contested name simply denotes a place of manufacture for carpets at £99”.¹⁷ As stated above, although I am not bound by previous decisions, I agree that the relevant consumers will understand the Contested Mark as meaning “a place of manufacture for carpets at £99”.

30. I acknowledge the Proprietor’s argument that each word comprising the mark does not describe the Proprietor’s market reality insofar as it is not a manufacturer of carpets exclusively priced at £99. However, I remind myself of the fact that even though a given term (or phrase) might not be clearly descriptive with regard to the goods concerned, as to the point that an objection under section 3(1)(c) could not apply, that term or phrase would still be objectionable under section 3(1)(b) on the ground that it will be perceived by the relevant public as only providing information on the nature of the goods concerned and not as indicating their origin.¹⁸

31. Furthermore, a mark that is free from objection under section 3(1)(c) may still be devoid of any distinctive character (hence, being objectionable under section 3(1)(b) of the Act) if it conveys a message that could apply to any undertaking and, therefore, not capable of individualising the goods of one undertaking from other undertakings. Accordingly, section 3(1)(b) and (c) grounds are independent and have differing general interests. It is possible, thus, for a mark not to fall foul of section 3(1)(c), but still be objectionable under Section 3(1)(b).¹⁹

32. In line with the above, although I find that the mark’s literal meaning may not exactly correspond to the Proprietor’s market reality since it does not manufacture carpets exclusively priced at £99, the mark nonetheless merely informs the relevant consumers that the Proprietor is an undertaking offering low-cost carpets or carpeting. In any case, if I am mistaken in my assessment, and the term “factory” is considered to create some tension in the mark so to make it more distinctive than a mere informational phrase, I nonetheless find that that the Contested Mark

¹⁷ Applicant’s submissions in lieu at [15].

¹⁸ Case T-470/09, *Medi*, at [22].

¹⁹ *SAT.1 SatellitenFernsehen GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (“OHIM”)*, Case C-329/02 P at [25].

merely conveys a generic promotional message and it is unable to distinguishing one particular undertaking from another.

33. The Applicant also points out that, in refusing the Applicant's mark "£99 Carpet Superstore Ltd", the Registrar found that:

"the inclusion of the term Ltd within the mark, [...] is not sufficient to imbue the mark with the minimum required level of distinctiveness to enable it to function as a badge of commercial origin."²⁰

34. The Applicant also directs me to abovementioned decision BL O/0862/25 where the Company Names Tribunal found that "Ltd" is used to indicate corporate status, and the Tribunal disregarded this element as not constituting an element of differentiation between the company names "£99 Carpet Factory Ltd" and "£99 Carpet Superstore Ltd" as they both contain it. It was stated that:

"the parties' names are £99 Carpet Factory Ltd and £99 Carpet Superstore Ltd. Ltd merely indicates corporate status and so this element does not have a bearing upon the comparison of the names."²¹

35. For the purposes of my assessment, I also bear in mind that the Manual of Trade Marks Practice states the following (my emphasis):

"The term 'company' or 'limited' paired with a word (or words) which describes the goods and/or services intended for protection is unlikely to meet the requirements for registration on the basis that the resulting combination would still be descriptive and/or devoid of any distinctive character. For example, the sign 'Soap Company' would not be acceptable as it merely describes a company that produces soap. Similarly, the sign 'The Organic Food Company' would also be unacceptable as there are likely to be a large number of organic food producers which would refer to themselves as being the definitive organic food company.

²⁰ Ms Ilyas' exhibit 1, page 3.

²¹ Applicant's written submissions in lieu at [15].

The addition of 'company limited' or 'Plc' may provide some capacity to indicate trade origin, rather than just as a generic reference to a particular type of business activity. For example the mark 'The Puppet Company' would be considered to be descriptive whereas 'The Puppet Company Limited' would indicate trade origin and considered to be acceptable.

The addition of a company name to words describing characteristics of the goods or services, rather than the generic name of the goods themselves, will usually be sufficient to bestow distinctive character e.g. the mark 'Soft and Gentle' would not be acceptable for soap whereas 'Soft and Gentle Limited' would be seen as fanciful and therefore acceptable.”

36. The relevant consumer will understand “Ltd” as meaning “limited” and indicating a type of commercial undertaking. From the above it follows that abbreviations of the legal form of a company such as “Ltd.” will not add to the distinctiveness of a sign. Having found that the string of words “£99 carpet factory” is non-distinctive for the registered goods, I agree with the Applicant that the addition of “Ltd” to the mark does not make it sufficiently distinctive to function as a badge of commercial origin.

37. Subject to the Proprietor’s claim for acquired distinctive character, the invalidation action based upon section 3(1)(b) succeeds.

Acquired distinctiveness

38. I have found the contested mark to be *prima facie* objectionable under section 3(1)(b). The Proprietor has filed evidence to show the Contested Mark has acquired distinctiveness through use.

39. As already stated at paragraph [16] I begin by reminding myself that the relevant date is 29 October 2024 and that the Proprietor must have acquired distinctive character prior to that date.²²

²² *Oberbank AG & Banco Santander SA v Deutscher Sparkassen-und Giroverband eV* Joined cases C-217/13 and C-218/13 at [61].

40. The CJEU provided guidance in *Windsurfing Chiemsee* as to the correct approach with regard to the assessment of the acquisition of distinctive character through use.²³ The guidance is as follows:

“51. In assessing the distinctive character of a mark in respect of which registration has been applied for, the following may also be taken into account: 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 class of persons who, because of the mark, identify goods as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations.

52. If, on the basis of those factors, the competent authority finds that the relevant class of persons, or at least a significant proportion thereof, identify goods as originating from a particular undertaking because of the trade mark, it must hold that the requirement for registering the mark laid down in Article 3(3) of the Directive is satisfied. However, the circumstances in which that requirement may be regarded as satisfied cannot be shown to exist solely by reference to general, abstract data such as predetermined percentages.”

The Proprietor’s evidence

41. Mr France reports that he first launched the £99 Carpet Factory Ltd business on 15 June 2020, he registered the company “£99 Carpet Factory Ltd” on 16 October 2020 and successfully registered the trade mark “£99 Carpet Factory Ltd” (i.e., the Contested Mark) on 19 October 2020.²⁴ Mr France states that in the company’s first year of activity (November 2020 – October 2021), achieved a turnover of £163,792. It is reported that the company’s turnover has increased since in the following years: £308,396 (November 2021 – October 2022), £401,425 (November 2022 – October 2023) and approximately £820,000 (November 2023 – October 2024).²⁵ In support of these numbers, Mr France provides extracts from the

²³ Joined cases C-108 & C-109/97.

²⁴ Mr France’s witness statement date 11 June 2025 at [6].

²⁵ Mr France’s witness statement at [9].

financial accounts for the period October 2022 – October 2023 and VAT Return Submission Confirmations for the year ending 31 October 2024.²⁶ Mr France also reports that the company has a projected turnover of £1.2 million.²⁷ Although no further clarification is provided, I believe Mr France refers to the company's turnover for 2025.

42. The evidence also features seven invoices dated between 27 November 2024 and 6 December 2024 with values ranging from a low of £33 to a high of £524. All the invoices show the words “£99 CARPET FACTORY LTD” placed predominantly at the top centre of the invoices. The delivery addresses have been redacted.²⁸

43. Mr France also reports on the Proprietor's marketing activities and spend. He indicates that on 8 July 2024 the Proprietor undertook a 3-month advertisement campaign, featuring the words “£99 CARPET FACTORY”, on the Tyne Tunnel Digital Billboard (see Figure 1). Mr France reports that 78,300 individuals pass through the Tyne Tunnel every day, with this marketing initiative resulting in a substantial market exposure for the Contested Mark.²⁹ The evidence also features three invoices for the relating spend for this advert for August, September and October 2024 amounting to £999 each for a total of £2,997 for the three-month campaign.³⁰

²⁶ Exhibit JSF03.

²⁷ Mr France's witness statement at [10].

²⁸ Exhibit JF04.

²⁹ *Idem*, at [12].

³⁰ Exhibit JF05, pages 1 - 3.



Figure 1 – exhibit JF05, page 5

44. Mr France indicates that the Proprietor runs Google Ads campaigns to enhance its online visibility.³¹ Exhibit JF09 features three invoices relating to Google Ads expense for the months June – August 2024 valued, respectively, £15.28, £51.43 and £32.57.

45. Mr France states that the Proprietor also uses the Contested Mark on signage and merchandise for advertising purposes. Exhibit JF10 features a series of sample images of the words “£99 CARPET FACTORY” used on merchandise items and related invoices showing their price. These are:

- feather flags and other types of signage (invoice dated 1 June 2024 of £704.96 for 8 feather flags).
- merchandise clothing (invoice dated 7 May 2024 of a total of £1,406.06 for 54 items of clothing).

³¹ Idem at [16].

- business cards and flyers/leaflets (invoice dated 10 July 2024 valued £160.46 for 2,000 flyers/leaflets and 1,500 business cards).
- keyrings (250 items) and mugs (50 items) for a total of £540.49 (invoice dated 24 November 2024).

46. Mr France also referred me to the Proprietor's social media platforms and the advertisements carried out online. The evidence shows that the Proprietor's Facebook account has received 19,000 likes and counts 20,000 followers.³² Extracts from the Proprietor's Facebook account, dated between May 2023 and August 2024, show the use of the words "£99 CARPET FACTORY" mostly to advertise the Proprietor's carpets (some posts refer to other goods such as water-resistant laminate, artificial grass and other types of flooring) along with some positive comments from customers.³³

47. The evidence also features the Proprietor's Instagram account home page showing 152 followers³⁴ and one Instagram post, dated 22 August 2024, showing a picture of laminates available in stock. The post received one like.³⁵

48. Mr France also states that the Proprietor has operated a website under the domain name "99carpet.co.uk" since 14 December 2022. Exhibit JF07 shows an extract of the website's homepage showing the words "£99 CARPET FACTORY" placed at the top of the page. Exhibit JF08 features a series of positive online customer reviews including google reviews and Facebook posts. Part of the evidence is undated (i.e., exhibit JF08, page 1). Although the google reviews are not clearly dated (they indicate that were submitted between 6 and 8 months before), Mr France indicates that the evidence was taken on 21 February 2025.³⁶ Therefore, the evidence is presumably dated between June 2024 and August 2024. The Facebook reviews are dated April/July 2024.

49. Mr France also states that the Proprietor operates three branded company vans. Exhibit JF11 features a picture of these vans displaying the words "£99 CARPET FACTORY"). The evidence is undated.

³² Exhibit JF06, page 1.

³³ Exhibit JF06, pages 4 – 14.

³⁴ Exhibit JF06, page 3.

³⁵ Exhibit JF06, page 15.

³⁶ Mr France's witness statement at [15].

50. Lastly, the evidence also contains a witness statement from Mr Leng who reports that his company has collaborated with the Proprietor for 29 years. Mr Leng reports that in October 2020 the Proprietor opened a second premise and started operating under the name “£99 Carpet Factory Ltd” (previous it was named “Jarrow Carpet Warehouse”). Mr Leng also confirms that the Proprietor enjoys significant reputation and recognition in the carpet/carpeting industry.³⁷ No further evidence was provided in support of Mr Leng’s narrative evidence.

Assessment of the evidence

51. Mr France and Mr Leng report that the Proprietor has operated for four years under the name “£99 Carpet Factory Ltd”. The Proprietor’s activity is therefore not particularly long-standing.

52. Mr France provided revenue figures for this period, showing a year-on-year increase from approximately £160,000 to £820,000, with projected revenues of around £1.2 million for 2025. However, no information was provided regarding the Proprietor’s market share, and I do not consider these revenues to be particularly substantial in the relevant market, which is likely to be in the tens of millions.

53. Turning to the geographical distribution of the Proprietor’s goods, the evidence includes a small number of invoices dated between November and December 2024; however, the delivery addresses are redacted. In his witness statement, Mr France states that the Proprietor operates in the North of England.³⁸ In this regard, I note that the Proprietor has advertised its goods on a billboard near the Tyne Tunnel (located in Northeast England). In addition, the Proprietor’s social media platforms indicate that the Proprietor is based in South Shields³⁹ and delivers to Tyne and Wear, Newcastle, Gateshead, North Tyneside, Ashington, Durham, Sunderland, Middlesbrough, Hartlepool, Stockton, Darlington and Bishop Auckland.⁴⁰ While I accept that the Proprietor markets its goods in parts of Northern England, I nevertheless find that its commercial and marketing activity is geographically limited.

³⁷ Mr Leng’s witness statement dated 16 June 2025 at [5].

³⁸ Mr France’s witness statement at [19].

³⁹ Exhibit JF06, page 3.

⁴⁰ Exhibit JF06, page 1.

54. Mr France also reports on the Proprietor's marketing activity, both physical and digital, indicating a total spend of almost £6,000 and referring to consumer engagement and positive reviews on social media platforms. Nevertheless, the level of marketing expenditure is modest, the Proprietor's following on social media is not particularly high, and the social media evidence relates only to the final eight months of the relevant period (April – November 2024).
55. The social media evidence demonstrates a degree of consumer engagement with the Proprietor's business. However, it does not clearly establish that a significant proportion of the relevant consumers perceive the goods as originating from the undertaking "£99 carpet factory ltd", or that the relevant public refers to these words in a trade mark sense.
56. Turning to the physical advertising, the Proprietor did not show to what extent the merchandise clothing or the business cards/leaflets have been distributed and whether they reached the relevant public for marketing purposes. In any case, the numbers of items shown in the evidence are very low to show a relevant marketing activity.
57. Taking account of the Proprietor's evidence, overall, it is wholly insufficient to demonstrate that the mark has acquired a distinctive character prior to 29 October 2024. Therefore, the acquired distinctiveness proviso to section 3(1) does not apply.

OUTCOME

58. The application for invalidation against the Proprietor's mark has succeeded in full. As a result, the Proprietor's mark is, subject to any successful appeal, hereby declared invalid and deemed as if it had never been registered for any of the goods covered by its specification.

COSTS

59. As the successful party, the Applicant is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice (TPN) 1/2023. The sum is calculated as follows:

Official fee	£200
Preparing a counterstatement and considering the other side's statement	£250
Preparing evidence and considering and commenting on the other side's evidence	£600
Preparing submissions in lieu of a hearing	£350
Total:	£1,400

60. I therefore order £99 carpet factory ltd to pay £99 CARPET SUPERSTORE LTD the sum of **£1,400**. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 11th day of May 2026

Andrea Rossi
For the Registrar