

**BL O/0426/26**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF UK REGISTRATION NO. 914865992**

**IN THE NAME OF SWEET SEEDS, S.L.**

**IN RESPECT OF THE FOLLOWING TRADE MARK**

**Crystal Candy**

**IN CLASSES 31 AND 34**

**AND**

**AN APPLICATION FOR REVOCATION THEREOF**

**UNDER NUMBER 508521**

**BY LIU FANYUN**

## BACKGROUND AND PLEADINGS

1. The UK trade mark (“UKTM”) shown on the front page of this decision (UKTM: 914865992<sup>1</sup>) (“the contested mark”) stands registered in the name of Sweet Seeds, S.L. (“the proprietor”). It was filed on 1 December 2015 and completed its registration process on 27 April 2017. The mark stands registered for the following goods<sup>2</sup>:

Class 31      Hemp Seeds

Class 34      Herbs for smoking

2. On 26 February 2025, LIU FANYUN (“the applicant”) applied to revoke the contested mark in accordance with sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 (“the Act”). Revocation is sought in respect of the specification in its entirety. The periods in respect of which non-use is claimed are 28 April 2017 to 27 April 2022, seeking an effective date of revocation of **28 April 2022** under section 46(1)(a) (“the first relevant period”), and 20 February 2020 to 19 February 2025, seeking an effective date of revocation of **20 February 2025** (“the second relevant period”) under section 46(1)(b).

3. The proprietor filed a defence and counterstatement in which it denies the claims against it in their entirety. The proprietor states that it has made genuine use of the contested mark, for the goods covered by the registration, within the relevant periods.

4. The proprietor is represented by Sonder & Clay and the applicant is represented by STOBBS. Only the proprietor filed evidence in these proceedings. No hearing was requested, however the proprietor filed written submissions in lieu of a hearing.

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<sup>1</sup> On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all rights holders with an existing EU trade mark (“EUTM”). As a result of the proprietor having an EUTM protected as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable trade mark shown here is now recorded on the UK trade mark register, and has the same legal status as if it had been applied for and registered under UK law, and retains its original EUTM filing date

<sup>2</sup> At the time of the application, the proprietor’s mark was registered for the goods listed above. The term *herbs for smoking* in class 34 was subsequently revoked in decision O/0414/26, however, as this decision is still within its appeal period, I will decide the matter in full.

## **EVIDENCE AND SUBMISSIONS**

5. The registered proprietor filed evidence in chief in the form of a witness statement of Manuel Fariña del Rio, dated 20 June 2025, accompanied by exhibits MF1 – MF14. Mr Fariña del Rio is the Joint Administrator of the proprietor.

6. The proprietor filed written submissions in lieu of a hearing dated 4 November 2025.

7. I have given due consideration to all of the documents filed by both parties but will only refer to the evidence/submissions as appropriate and to the extent that is necessary in my decision.

## **DECISION**

8. Section 46 of the Act states:

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

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

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

(c) [...]

(d) [...]

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of

whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as 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 existing at an earlier date, that date.”

9. As the mark is a comparable mark, paragraph 8 of part 1, schedule 2A is relevant. It reads:

“8. Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)

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

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

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

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

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

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

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

10. Section 100 is also relevant, which reads:

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

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.

## GENERAL PRINCIPLES

12. 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 C40/01 *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 or services, the principles may be summarised as follows:

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

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

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

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

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

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

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

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

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

13. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13, Mr Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person stated that:

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

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a

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

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

14. What I take from this case law is that there is no requirement to produce any specific form of evidence, but that I must consider what the evidence as a whole shows me, and whether on this basis I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the contested mark.

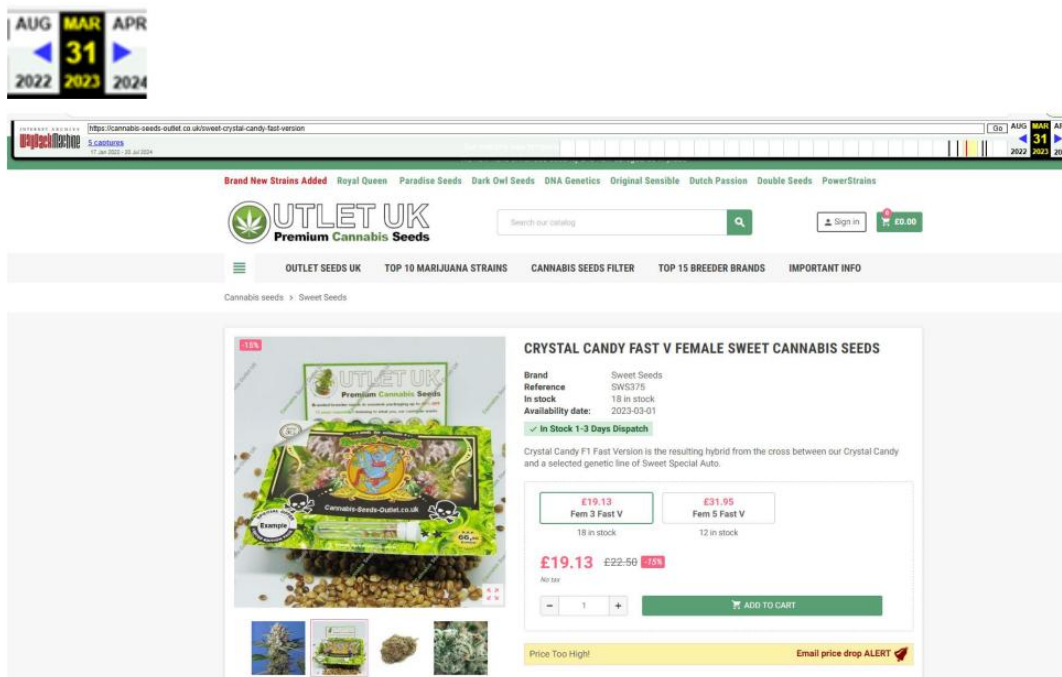
## **EVIDENCE OF USE**

### Evidence of the proprietor

15. I note the following from the witness evidence of Mr Fariña del Rio:

- a. Mr Fariña del Rio is the Joint Administrator of the proprietor, a role that he has held since October 2006.

- b. The proprietor sells products under the trade mark CRYSTAL CANDY in the UK via third party retailers<sup>3</sup>. The majority of the sales take place online. Examples of cannabis seeds on sale have been provided via 16 different online retail stores<sup>4</sup>. I note that these are undated.
- c. The proprietor has sold products under the mark via the third party retailers listed in paragraph 7 of Mr Fariña del Rio’s witness statement “for many years”. Examples have been provided for each of the retailers via the “Wayback Machine”, showing the cannabis seeds for sale at different dates throughout the relevant periods<sup>5</sup>. Examples of which are as follows:

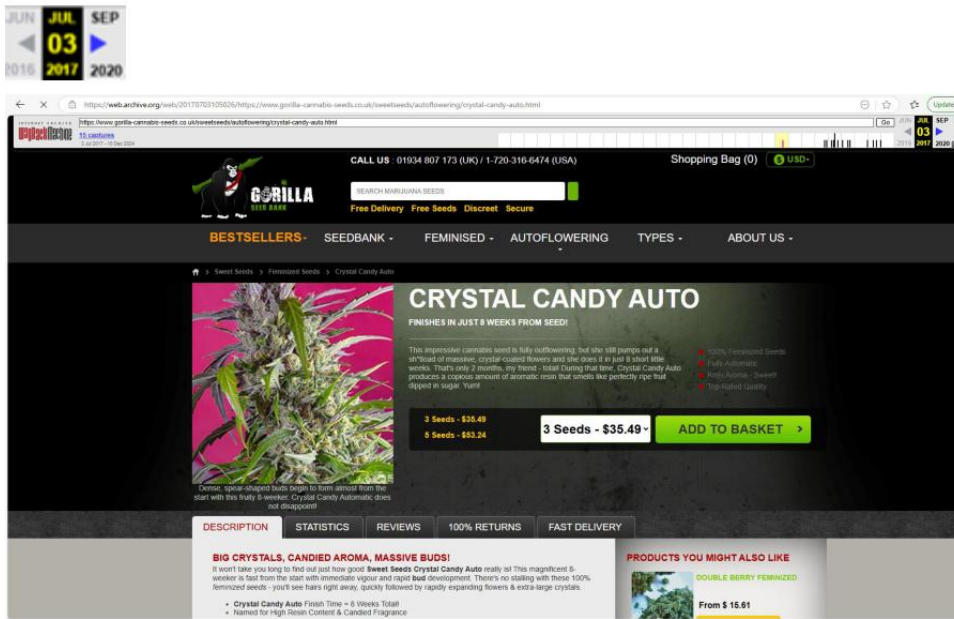


<sup>3</sup> A list of which is provided in Mr Fariña del Rio’s witness statement, para 7

<sup>4</sup> Exhibit MF1

<sup>5</sup> Exhibit MF2

f. <https://www.gorilla-cannabis-seeds.co.uk/sweetseeds/autoflowering/crystal-candy-auto.html> - dated 3rd July 2017, 20<sup>th</sup> September 2020, 15<sup>th</sup> June 2021, 20<sup>th</sup> January 2022, 10<sup>th</sup> December 2023, 28<sup>th</sup> May 2024,



d. Examples of the product packaging used in the UK throughout the relevant period have been provided<sup>6</sup>:

2020:-



e. Regarding sales of the proprietor's products, Mr Fariña del Rio states as follows:

<sup>6</sup> Exhibit MF3

“Exhibit MF4 a document showing sales of CRYSTAL CANDY products in the UK for the years 2017, 2018, 2019 and 2020, rising from 499 units at a figure of €5,122.45 in 2017 to 2,491 units at a figure of €18,714.89 in 2020. It is more difficult to provide accurate figures for the years 2021-2025 as since Brexit, my Company has not made direct sales into the UK, but has sold products via distributors who sell the products in to the UK. However, as can be seen from the screenshots in Exhibit MF1 and MF2, my Company has consistently sold products bearing the trade mark CRYSTAL CANDY in the UK for the years 2017 to 2025.”<sup>7</sup>

The exhibit shows that various types of seeds have been sold. I note that the headings in the tables are written in Spanish, a point which has been raised by the applicant, however, Mr Fariña del Rio states within his statement that these figures relate to UK sales.

- f. 10 sample invoices have been provided dated between 5 January 2017 and 30 January 2020. SWEET SEEDS is displayed in the header of these invoices. These invoices are all made out to addresses within the UK. The invoices amount to £21,215.03, however, only £1,299.78 of these sales relate to CRYSTAL CANDY products. Spreadsheets have also been provided which detail 555 transactions to UK distributors within the relevant periods. Both the invoices and spreadsheets show different types of seeds on sale under the mark. I note that there is repeat custom.
- g. The proprietor has sold products under the sign CRYSTAL CANDY in the UK via Basil Brush Ltd. Evidence has been provided regarding the distribution of promotional materials to UK retailers for the years 2021, 2022, 2023 and 2024<sup>8</sup>. The invoices provided appear to be for promotional boxes and items such as t-shirts, as well as items such as grinders and rolling papers, rather than the goods contained within the specification. It is unclear whether these promotional items were sent out for the purposes of promoting goods within the specification,

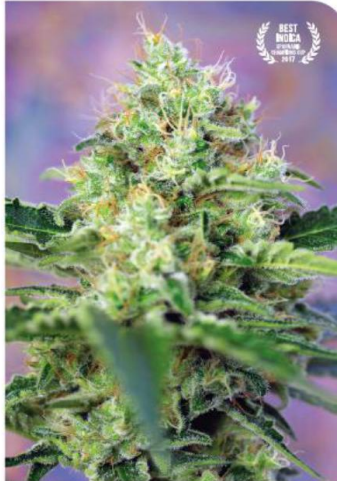
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<sup>7</sup> Witness statement of Mr Fariña del Rio, para 11



<sup>8</sup> Exhibit MF14.

however, I remind myself that ‘genuine use’ must be understood to denote actual use, consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of goods, and that this is not fulfilled where promotional items are handed out as a reward for the purchase of other goods and to encourage the sale of the latter<sup>9</sup>.

- h. Extracts from the proprietor’s product catalogues have been provided from 2017-2024<sup>10</sup>. Each catalogue shows the trade mark CRYSTAL CANDY and Mr Fariña del Rio states that there are additional images which show “the evolution of the range to include CRYSTAL CANDY FAST, CRYSTAL CANDY XL, CRYSTAL CANDY AUTO, CRYSTAL CANDY XL AUTO and CRYSTAL CANDY F1 FV. It should be noted that these catalogues note the high number of awards won by my Company for its products, including one in 2017 for CRYSTAL CANDY”<sup>11</sup>. The following examples are produced:



**Crystal Candy®**  
Secret Ingredients

Variety SW558  
Indica: 60% / Sativa: 40%  
Indoor Blooming: 9 weeks  
Outdoor Harvest: mid to late September

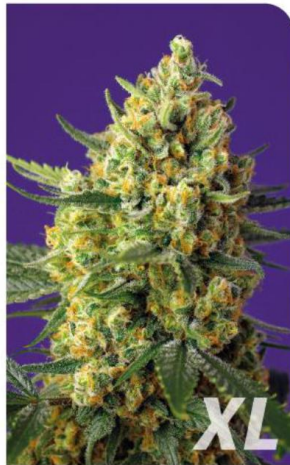
This strain was developed within a special program of the Sweet Seeds® R&D Department focused on the search for curious, exquisite and subtle sweet aromas that evoke aromatic sensations of candy shop. The aroma of this strain is sweet and fruity, with tones of chewing gum and fruit jellies, mixed with hints of acid strawberry and mature melon. This strain is a big producer of aromatic resin crystals that completely cover the flowers and their surrounding leaves with a very high density of long, large-headed trichomes. The plants look like indica-sativa polyhybrids, very vigorous and productive, with big buds and long side branches.

3+15 24,00 €   5+25 40,00 €   25€ 100,00 €

<sup>9</sup> *Silberquelle GmbH v Maselli-Strickmode GmbH*, Case C-495/07

<sup>10</sup> Exhibit MF6

<sup>11</sup> Witness statement of Mr Fariña del Rio, para 13



**Crystal Candy XL Auto®**  
Crystal Candy Auto® x Crystal Candy Auto®



Variety SWS87  
Indica: 60% / Sativa: 38,4% / Ruderalis: 1,6%  
Indoor/Outdoor Harvest: 8 weeks from germination  
Height: 90-140 cm

Extra-large 4<sup>th</sup> Generation autoflowering strain. This strain is the result of the cross between selected tall-stemmed specimens of our Crystal Candy Auto® (SWS61). The genetics have been developed as part of a special program within the Sweet Seeds® R&D Department designed to discover interesting, exquisite and subtly sweet aromas that evoke an olfactory sensation of candy shops. The buds have a very sweet, fruity scent with aromatic tones of bubble gum and jelly beans, complemented by shades of acidic strawberries and ripe melons. This strain produces large amounts of aromatic resin crystals and beautiful buds. The plants easily grow over 1 meter tall.

3+15 24,00 € 592s 40,00 € 25s 100,00 €



**Crystal Candy F1 Fast Version®**  
Crystal Candy® x Sweet Special Auto®



Variety SWS73  
Indica: 50% / Sativa: 40%  
Indoor Blooming: 6-7 weeks  
Outdoor Harvest: late August, early September

Fast flowering photoperiod-dependent version of one of the tastiest strains from the Sweet Seeds® catalog, Crystal Candy® (SWS58), awarded with the 1st Prize for the Best Indica at Spannabis Champions Cup 2017. Crystal Candy F1 Fast Version® (SWS73) is the resulting hybrid from the cross between our Crystal Candy® and a selected genetic line of Sweet Special Auto® (SWS35). This version features the curious and exquisite sweet aroma, reminiscent of strawberry chewing gum or candy shop, that turned the original Crystal Candy® into an extremely appreciated strain. This strain is a prominent high producer of big aromatic resin crystals that totally cover the flowers and their surrounding leaves with a high density of large big-headed trichomes. It is possible to obtain extractions of exquisite quality and incredibly pleasant aroma from the buds of this plant.

3+15 24,00 € 592s 40,00 € 25s 100,00 €

- i. Details of expenditure incurred by the proprietor in the production of catalogues for the years 2017-2024 are provided<sup>12</sup>. I note that there is no reference to the mark within this table, although the dates tally with the example catalogues shown in 19(h) (in which the mark is shown), and the details are provided are in Spanish, with the price in Euros (however, I am satisfied that it shows the dates, that they are actually catalogues, and how much they cost):

<sup>12</sup> Exhibit MF7

Fecha registro	Nº documento externo	Descripción	Importe coste (Real)	Cant. valorada	Nombre procedencia Mov.
01/02/2017	170040	Catalogo A4 Ingles 36p 2017	565.00 €	500	BYPRINT PERCOM, S.L
01/02/2017	170040	Catalogos A5 Inglés 24p 2017	11,880.00 €	120000	BYPRINT PERCOM, S.L
13/02/2018	A-115	Catalogo A4 Mostrador Ingles 56p 2018	2,508.00 €	570	BYPRINT PERCOM, S.L
02/03/2018	A-114	Catalogos A5 Inglés 32p 2018	6,345.00 €	45000	BYPRINT PERCOM, S.L
05/04/2018	A-114	Catalogos A5 Inglés 32p 2018	2,397.00 €	17000	BYPRINT PERCOM, S.L
10/05/2018	A-114	Catalogos A5 Inglés 32p 2018	719.10 €	5100	BYPRINT PERCOM, S.L
07/06/2018	A-114	Catalogos A5 Inglés 32p 2018	2,382.90 €	16900	BYPRINT PERCOM, S.L
13/06/2018	A-114	Catalogos A5 Inglés 32p 2018	3,666.00 €	26000	BYPRINT PERCOM, S.L
07/02/2019	A-112	Catalogo A5 [EN] 2019	145.00 €	1000	BYPRINT PERCOM, S.L
12/02/2019	A-112	Catalogo A4 Mostrador [EN] 2019	2,420.00 €	550	BYPRINT PERCOM, S.L
18/02/2019	A-112	Catalogo A4 Mostrador [EN] 2019	79.20 €	-18	BYPRINT PERCOM, S.L
25/02/2019	A-112	Catalogo A5 [EN] 2019	6,525.00 €	45000	BYPRINT PERCOM, S.L
21/03/2019	A-112	Catalogo A4 Mostrador [EN] 2019	74.80 €	17	BYPRINT PERCOM, S.L
21/03/2019	A-112	Catalogo A4 Mostrador [EN] 2019	4.40 €	1	BYPRINT PERCOM, S.L
01/04/2019	A-112	Catalogo A5 [EN] 2019	2,088.00 €	14400	BYPRINT PERCOM, S.L
03/04/2019	A-112	Catalogo A5 [EN] 2019	2,088.00 €	14400	BYPRINT PERCOM, S.L
08/05/2019	A-112	Catalogo A5 [EN] 2019	1,044.00 €	7200	BYPRINT PERCOM, S.L
10/05/2019	A-112	Catalogo A5 [EN] 2019	2,610.00 €	18000	BYPRINT PERCOM, S.L
17/03/2021	Pi-000786	Catalogo A5 [EN] 2021	2,097.60 €	12000	BYPRINT PERCOM, S.L
17/03/2021	Pi-000786	Catalogo A5 [EN] 2021	2,088.00 €	12000	BYPRINT PERCOM, S.L
22/03/2021	Pi-000786	Catalogo A5 [EN] 2021	2,280.00 €	12000	BYPRINT PERCOM, S.L
22/03/2021	Pi-000786	Catalogo A5 [EN] 2021	699.20 €	4000	BYPRINT PERCOM, S.L
22/03/2021	Pi-000786	Catalogo A4 Mostrador [EN] 2021	2,722.50 €	550	BYPRINT PERCOM, S.L
20/05/2021	Pi-000786	Catalogo A5 [EN] 2021	2,097.60 €	12000	BYPRINT PERCOM, S.L
21/05/2021	Pi-000786	Catalogo A5 [EN] 2021	3,146.40 €	18000	BYPRINT PERCOM, S.L
17/10/2022	PI-000851	Catalogo A5 [EN] 2022	2,842.80 €	12000	BYPRINT PERCOM, S.L
17/10/2022	PI-000851	Catalogo A5 [EN] 2022	2,842.80 €	12000	BYPRINT PERCOM, S.L
17/10/2022	PI-000851	Catalogo A5 [EN] 2022	4,264.20 €	18000	BYPRINT PERCOM, S.L
17/10/2022	PI-000851	Catalogo A4 Mostrador [EN] 2022	3,063.60 €	552	BYPRINT PERCOM, S.L
03/04/2023	FV-421	Catalogo A4 Distribucion [EN] 2023	247.50 €	275	BYPRINT PERCOM, S.L
16/05/2023	FV-514	Catalogo A4 Mostrador [EN] 2023	131.25 €	25	BYPRINT PERCOM, S.L
16/05/2023	FV-514	Catalogo A5 [EN] 2023	4,885.20 €	18000	BYPRINT PERCOM, S.L
16/05/2023	FV-514	Catalogo A5 [EN] 2023	2,035.50 €	7500	BYPRINT PERCOM, S.L
16/05/2023	FV-514	Catalogo A4 Mostrador [EN] 2023	2,493.75 €	475	BYPRINT PERCOM, S.L
16/05/2023	FV-514	Catalogo A5 [EN] 2023	2,442.60 €	9000	BYPRINT PERCOM, S.L
16/05/2023	FV-514	Catalogo A4 Mostrador [EN] 2023	131.25 €	25	BYPRINT PERCOM, S.L
03/11/2023	FV-1237	Catalogo A4 Distribucion [EN] 2023	144.00 €	50	BYPRINT PERCOM, S.L
06/03/2024	BY24-268	Catalogo A5 [EN] 2024	7,168.00 €	32000	BYPRINT PERCOM, S.L
06/03/2024	BY24-268	Catalogo A4 Mostrador [EN] 2024	2,625.00 €	500	BYPRINT PERCOM, S.L
			97,831.75 €	512572	

j. UK distribution figures for the catalogues for the years 2017-2020 have also been provided<sup>13</sup>. I take the following from these tables:

2017 – 371 catalogues

2018 – 336 catalogues

2019 – 314 catalogues

2020 - 129 catalogues

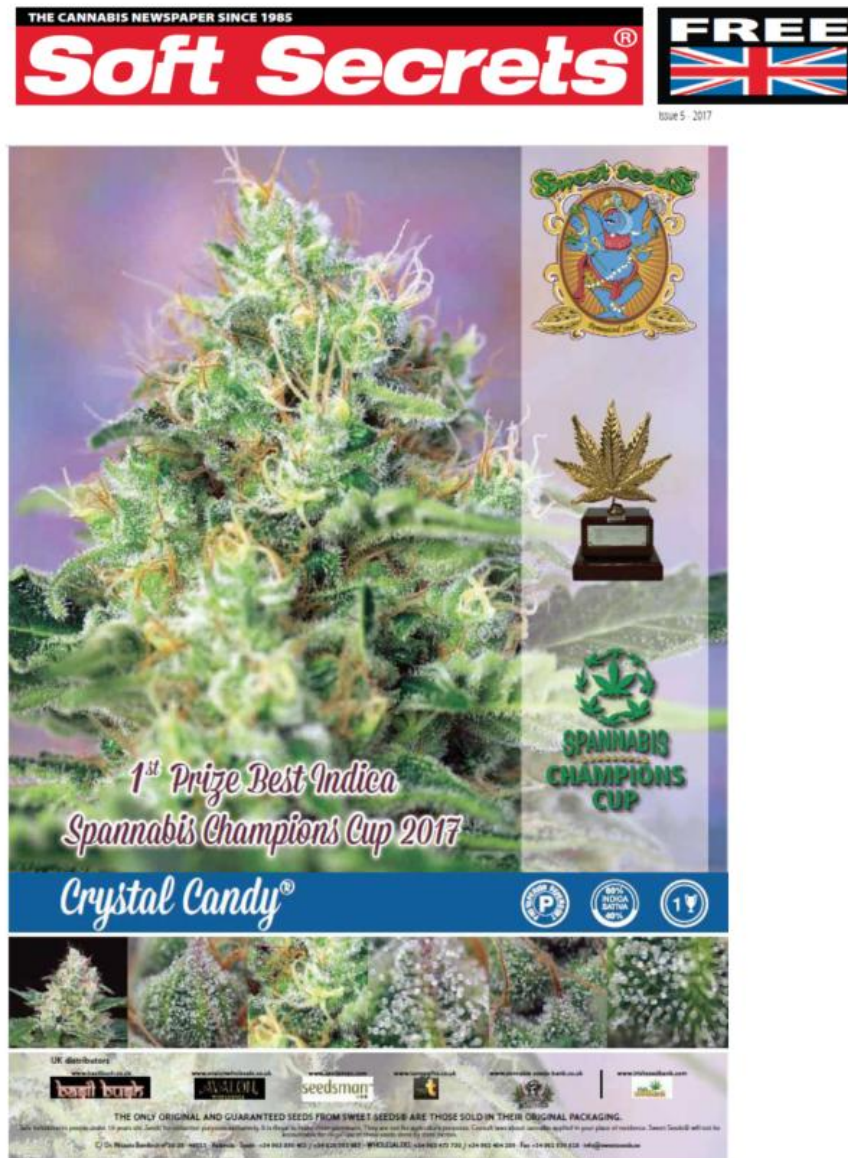
k. Mr Fariña del Rio has produced advertising and promotion figures of the mark, CRYSTAL CANDY in the UK and EU. He states that in total, since the year 2017, the proprietor has spent over €200,000 in advertising and promotion in the UK. The following has been provided:

<sup>13</sup> Exhibit MF8

Year	Figure €	Year	Figure €
2017	15,954.40	2021	28,140.21
2018	29,497.17	2022	40,618.74
2019	34,086.05	2023	41,976.90
2020	15,300.24	2024	23,285.06

- I. Advertisements have been taken out in the following publications:
- i. Cannascope publication. This is distributed within the UK, the EU, US and South Africa. Mr Fariña del Rio states that this publication had a circulation figure in the year 2020 of 193,000 printed copies of which 17,379 were in the UK. This publication also had a separate download figure in the year 2020 of 263,400, however given the nature of downloads and data privacy, it is not possible to state how many downloads are attributable to UK consumers. Mr Fariña del Rio goes on to state that “although figures for subsequent years may vary, in particular download figures, I confirm that print run figures generally remain stable at around these figures”. I note that the example adverts that I have before me all appear under the name ‘Sweet Seeds’, and the mark does not feature in the adverts.
  - ii. Soft Secrets publication. Soft Secrets has a geographical distribution that extends to the UK, the EU, US and South Africa. “This publication had a circulation figure in the year 2020 of 193,000 printed copies of which 17,379 were in the UK. This publication also had a separate download figure in the year 2020 of 263,400, however given the nature of downloads and data privacy, it is not possible to state how many downloads are

attributable to UK consumers<sup>14</sup>. An example of such an advert is as follows<sup>15</sup>:



iii. Weed World publication. Weed World has a geographical distribution that extends to the UK, the EU, the US, Canada and South Africa. This publication has a circulation figure of 40,000 units, of which 10,000 are attributable to the UK<sup>16</sup>.

<sup>14</sup> Witness statement of Mr Fariña del Rio, para 18

<sup>15</sup> Exhibit MF11

<sup>16</sup> Witness statement of Mr Fariña del Rio, para 20

## FORM OF THE MARK IN USE

16. Before I move on to assess the sufficiency of the evidence, I shall begin by addressing the way in which the contested mark has been displayed in relation to the relevant goods in evidence.

17. In *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, which concerned the use of one mark with, or as part of, another mark, the Court of Justice of the European Union (“CJEU”) found that:

“31. It is true that the ‘use’ through which a sign acquires a distinctive character under Article 7(3) of Regulation No 40/94 relates to the period before its registration as a trade mark, whereas ‘genuine use’, within the meaning of Article 15(1) of that regulation, relates to a five-year period following registration and, accordingly, ‘use’ within the meaning of Article 7(3) for the purpose of registration may not be relied on as such to establish ‘use’ within the meaning of Article 15(1) for the purpose of preserving the rights of the proprietor of the registered trade mark.

32. Nevertheless, as is apparent from paragraphs 27 to 30 of the judgment in *Nestlé*, the ‘use’ of a mark, in its literal sense, 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.

33. As the German and United Kingdom Governments pointed out at the hearing before the Court, the criterion of use, which continues to be fundamental, cannot be assessed in the light of different considerations according to whether the issue to be decided is whether use is capable of giving rise to rights relating to a mark or of ensuring that such rights are preserved. If it is possible to acquire trade mark protection for a sign through a specific use made of the sign, that same form of use must also be capable of ensuring that such protection is preserved.

34. Therefore, the requirements that apply to verification of the genuine use of a mark, within the meaning of Article 15(1) of Regulation No 40/94, are analogous to those concerning the acquisition by a sign of distinctive character through use

for the purpose of its registration, within the meaning of Article 7(3) of the regulation.

35 Nevertheless, as pointed out by the German Government, the United Kingdom Government and the European Commission, 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).” (emphasis added)

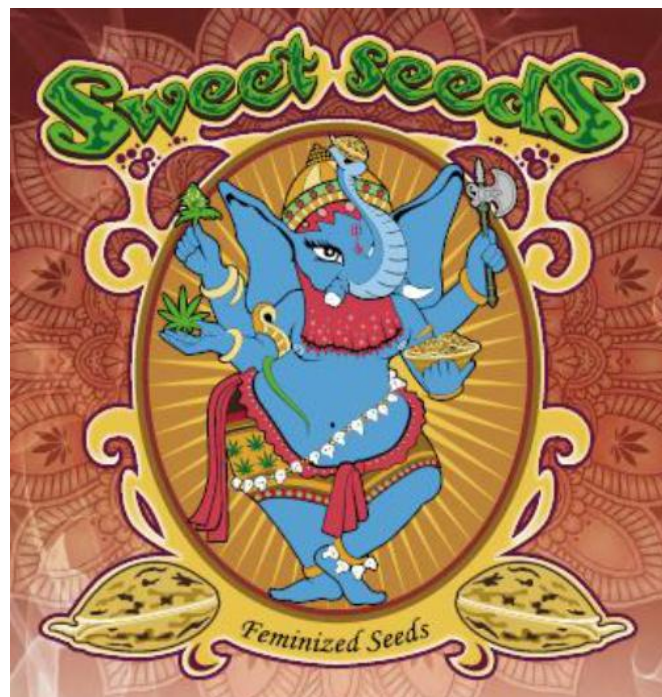
18. The contested mark is a word only mark presented in a mixture of upper and lower case. Given that normal and fair use of the registration will cover use in any standard typeface or font, where the mark is used in capitals or title case, this is use of the mark as registered and is use upon which the proprietor may rely. The mark is also shown as follows throughout the evidence:

CRYSTAL CANDY SWEET SEEDS	
CRYSTAL CANDY FAST	
CRYSTAL CANDY XL	
CRYSTAL CANDY AUTO	Crystal Candy Auto®
CRYSTAL CANDY XL AUTO	Crystal Candy XL Auto®
CRYSTAL CANDY F1 FV	Crystal Candy F1 Fast Version®

19. The above variations are both word only and figurative marks in which the word CRYSTAL CANDY are presented in upper case, and in a standard font in block colour. All of the above variations also include an additional word/s alongside CRYSTAL CANDY, which Mr Fariña del Rio states is indicative of other products within the CRYSTAL CANDY range. These changes clearly alter the mark as registered.

However, the additional elements do not combine with CRYSTAL CANDY; the evidenced marks present as use of the words CRYSTAL CANDY in conjunction with other marks, in which the words CRYSTAL CANDY continue to be the/an indicator of origin. The words, CRYSTAL CANDY, remain the dominant element of the above versions of the mark, and the above are therefore acceptable variations of the mark and is use upon which the proprietor can rely.

20. I note that within the evidence, the following figurative mark is also presented:



CRYSTAL CANDY does not feature in the above variation of the mark. In my view, as the above variant is a complex arrangement which does not feature the mark as registered, or in another acceptable form, this is not an acceptable variation of the mark, and use of the same is not use upon which the proprietor can rely.

21. I note that within the evidence, the following figurative mark is also presented:

2020:-



The above variation of the mark features a golden-orange patterned border. Inside the border is a framed illustration featuring a blue, multi-armed elephant-headed figure in a stylised form, posed in the centre. Around the central figure are decorative shapes and symmetrical ornamental elements in orange, yellow, and gold tones. At the top of the image are the words 'SWEET SEEDS' in a stylised green font, and below the central illustration are the words CRYSTAL CANDY. The mark also includes promotional/descriptive elements such as the price, website and details of the product.

22. There are multiple differences between the word-only mark and the above variant, which I find to be highly stylised. As per paragraph 35 of *Colosseum*, a mark used only as part of, or in conjunction with, another mark must continue to be perceived as indicative of the origin. In this instance, I find the graphic element and the words SWEET SEEDS to be the dominant element of the mark. As such, I do not consider that CRYSTAL CANDY remains indicative of the origin of the product at issue, as I consider that it would be perceived as the name of a flavour/scent, and therefore, the above variation of the mark is not use upon which the proprietor can rely.

## GENUINE USE

23. With regard to the evidence of use submitted, I must now consider if it sufficiently demonstrates genuine use, whilst reminding myself that use does not have to be quantitatively significant to be genuine. The burden is on the proprietor to prove that it has used its mark within the relevant periods. Therefore, it was the proprietor's responsibility to provide proof that the mark was used within the UK and/or the EU prior to IP Completion Day during the relevant periods.

24. Whether the evidence is sufficient for this purpose will depend on whether it demonstrates that 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 UK and/or the EU prior to IP Completion Day during the relevant five-year periods. In making this assessment, I am required to 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.

25. I have carefully considered the evidence provided by the proprietor and whether this meets the requirements for genuine use as per *easyGroup*, set out earlier in this decision. I am also mindful of the guidance from the *Dosenbach-Ochsner* case<sup>17</sup>.

26. The evidence before me does have its limitations. There are no details in relation to the size of the relevant market or the share of that market held by goods bearing the proprietor's mark.

27. The proprietor does not provide evidence of how long the mark has been in use; however, I note that Mr Fariña del Rio has held his role since 2006 and the mark was

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<sup>17</sup> Along with *Awareness Limited v Plymouth City Council*, Case BL O/236/13, emphasising the need to consider what the evidence fails to "show", and what might reasonably have been conclusively shown.

registered in 2017. I have evidence of use of the mark in 2017 and am therefore satisfied that the mark has been used since at least 2017.

28. It is clear from the invoices and details of sales provided, that the mark has been used consistently throughout the relevant periods. The proprietor states that the goods are sold via third party retailers, and therefore it is difficult to know the true extent of the geographical spread, however, I note that the proprietor sells their goods via a number of different UK online retailers, and the invoices show a range of address locations in this territory, and therefore, I am satisfied that use has been throughout the UK.

29. I do not have turnover figures before me. The invoices that I have had sight of, which I accept are a sample of those available, amount to £21,215.03. Only £1,299.78 of these sales relate to CRYSTAL CANDY products, which is low. However, I also have details of 555 transactions via different online retailers. The proprietor has further stated that 499 units of the product were sold in 2017, and 2,491 units were sold in 2020, at a total of €18,714.89. Therefore, I accept that the evidence I have before me of £1,299.78 worth of sales and 555 transactions is a sample of the revenue and transactions which have taken place and is not representative of all sales made. Whilst the sales figures are not high, I note that the value of the goods is relatively low, as is evidenced by the number of units sold versus the monetary sales totals.

30. I note that advertising expenditure has been in excess of €200,000. The proprietor has provided evidence of the mark being used as part of their marketing strategy via product catalogues that it has produced, which show the mark (or acceptable variants thereof) in its different catalogues, alongside adverts that it has placed in other publications. In respect of the different catalogues, I have evidence before me that €97,831.75 has been spent on the same within the relevant periods and around 1,000 catalogues were distributed within the UK. The proprietor has also provided evidence of adverts featuring the mark, which have appeared in various different publications, as per paragraph 19(L). I have UK circulation figures for the publications; however, I do not have any details of the volume of custom generated as a result of these adverts, or the extent that the relevant consumer had been exposed to the mark by viewing this material. These details have not been provided. I understand that the

goods marketed under the CRYSTAL CANDY mark have also won awards in Spain in 2017 and 2018, which is use upon which the proprietor can rely as this falls within the first relevant period and is prior to IP Completion Day.

31. The proprietor's evidence indicates that it has traded in goods bearing the CRYSTAL CANDY mark in both its figurative forms and its word only mark, and that goods were available to purchase from 2017. Despite the fact that I do not have the full turnover figures before me, and I do not have much in the way of marketing information in respect of how the catalogues are distributed, I am of the view that the evidence of use, when taken as a whole (and particularly considering continuity of use, length of use and geographical spread), is sufficient to show genuine use of the mark in the UK during the revocation periods claimed by the applicant.

### **FAIR SPECIFICATION**

32. I must now consider whether, or the extent to which, the evidence shows use of the marks at issue in relation to the goods relied upon. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*,<sup>18</sup> 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 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.”

33. 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.

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<sup>18</sup> BL O/345/10

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.”

34. I note the opponent’s specification is as follows:

Class 31      Hemp Seeds

Class 34 Herbs for smoking

35. From the evidence it is clear that the proprietor has provided *hemp seeds* as this is reiterated throughout the evidence. However, I note that within their specification the proprietor also has *herbs for smoking*. I do not have any evidence before me that *herbs for smoking* have been provided by the proprietor.

36. Having considered the specification and the use before me, I consider that the below is a fair specification of the goods upon which the proprietor has shown use:

Class 31 Hemp Seeds

### **CONCLUSION**

37. This application was brought under section 46(1)(a) and (b) of the Act. I am satisfied that the proprietor has provided evidence sufficient to maintain the registration for those aforementioned goods in accordance with the provisions of the Act. The proprietor did not prove use for some of the goods in its registration, which are to be revoked from the earliest date from which revocation can take effect, which is the day following the fifth anniversary of completion of the registration procedure of the mark.

38. With effect from **28 April 2022**, UKTM no. 914865992 is partially revoked for the following goods:

Class 34 Herbs for smoking

39. UKTM no. 914865992 shall remain registered for the following terms:

Class 31 Hemp Seeds

## **COSTS**

40. Both parties have achieved a roughly equal degree of success, and I therefore find that each party should bear its own costs.

**Dated this 18<sup>th</sup> day of May 2026**

**LA Bailey**

**For the Registrar,**

**The Comptroller-General**