O/0587/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NUMBER UK00003330869

IN THE NAME OF BARGAIN BUSTING LIMITED

IN RESPECT OF THE FOLLOWING TRADE MARK

Blue Crystal

IN CLASS 34

AND

AN APPLICATION FOR REVOCATION THEREOF

UNDER NUMBER CA000507253

BY BUSINESS SOLUTIONS INTL LIMITED

Background and pleadings

1. Trade mark number UK00003330869 stands registered in the UK for the mark shown on the front page of this decision ("***the Contested Mark***"), in the name of Bargain Busting Limited ("***the Proprietor***").[1] The Contested Mark was filed on 10 August 2018, and it was registered on 1 February 2019 for the following goods:

   Class 34 Electric cigarettes [electronic cigarettes]; Electronic cigarette atomizers; Electronic cigarette boxes; Eletronic cigarettes; Electronic cigarettes for use as an alternative to traditional cigarettes.

2. On 19 April 2024, BUSINESS SOLUTIONS INTL LIMITED, ("***the Applicant***") filed the revocation action number CA000507253 against the Contested Mark in its entirety, for non-use under section 46(1)(a) of the Trade Marks Act 1994 ("***the Act***"). The Applicant claims that the Proprietor has not used the Contested Mark in the United Kingdom within the five-year period following the date of completion of the registration process, i.e. 2 February 2019 – 1 February 2024 ("***the relevant period***"). The earliest possible revocation date is 2 February 2024.
3. In its statement of grounds, the Applicant submitted that the Contested Mark should be revoked for all the goods in accordance with section 46(1)(a).
4. The Proprietor filed a defence and counterstatement[2] denying the claims made in relation to all its goods.
5. On 20 January 2026, the Proprietor requested to amend the Form TM26(N) to expressively plead proper reasons for non-use. A Case Management Conference was held on this point ("CMC") and by official letter dated 6 February 2026 the Registrar allowed the amendments and re-opened the evidence rounds before reaching the decision stage.
6. The Applicant is self-represented. The Proprietor is represented by Brandsmiths SL Limited.

[1] On 22 August 2024, a Form TM16 was filed requesting the transfer of ownership of the contested mark from Tashmeen Kaur to Bargain Busting Limited (i.e., the Proprietor) with effect from 26 June 2024. Confirmation of the recordal of the assignment was issued on 4 September 2024.
[2] Dated 2 July 2024.

Relevance of EU law

7. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Evidence and submissions

8. The Proprietor's evidence consists of the witness statement of Tarlochan Singh Bindra with exhibits TB01 – TB06, the witness statement of Brett Heaps (both dated 11 November 2024) and the witness statement of Stephen Lowry, dated 6 March 2026, with exhibit SL01A. Mr Singh Bindra has been one of the Proprietor's directors since 18 November 2023, Mr Heaps is the director of Eco Vape Limited (one of the Proprietor's commercial collaborators) and Mr Lowry is a Chartered UK Trade Mark Attorney at Brandsmiths SL Limited since July 2024. The Proprietor also filed written submissions dated 6 March 2026.

9. The Applicant filed evidence in chief in the form of a witness statement of Gavin Hyde-Blake, dated 13 January 2025, accompanied by exhibit GB1. Mr Hyde-Blake is the Applicant's Director.

10. All the witnesses are duly authorised to file evidence on behalf of their respective parties.

11. A hearing took place before me, by videoconference, on 9 June 2026. The Proprietor was represented by Stephen Lowry of Brandsmiths SL Limited. The Applicant was represented by Victoria Jones of 3PB Barristers. Prior to the hearing, both parties filed skeleton arguments.

12. The submissions (both filed in writing and made at the hearing) will not be summarised here but will be referred to as and where appropriate during this decision. I provide a summary of the evidence below. This decision is taken following a careful consideration of the papers and of the submissions presented at the hearing.

Preliminary matter

13. In its submissions and at the hearing the Applicant challenged the Proprietor's evidence. Mr Lowry submitted that this challenge should have been filed during the evidence rounds to allow the Proprietor to file adequate evidence in reply. Ms Jones, at the hearing, clarified that in her skeleton arguments she was not challenging the veracity of the Proprietor's evidence, but whether such evidence was sufficient to show genuine use of the Contested Mark or to constitute a basis for proper reasons for non-use.

14. As already clarified at the hearing, I agree with Ms Jones that the evidence and submissions put forward by the Applicant are not intended to challenge the veracity of the Proprietor's evidence and that Ms Jones' criticism of the Proprietor's evidence was open to her to make after the evidence rounds were concluded. The way the Applicant provided evidence and/or submissions did not disadvantage the Proprietor's position.

15. I appreciate Mr Lowry's argument that the Proprietor was not given the opportunity to file additional evidence to reply to some of Ms Jones' criticisms which were put forward later in the proceedings in her skeleton arguments. However, first, as already stated, I agree with Ms Jones that her skeleton arguments do not challenge the veracity of the Proprietor's evidence, but its sufficiency to show genuine use (or proper reasons for non-use). Second, it is the Proprietor's responsibility to file all the evidence necessary to put forward its best case at the first opportunity.[3] I do not find that the Proprietor was disadvantaged by the Applicant's decision to wait until the conclusion of the evidence rounds to file submissions challenging the adequacy of the Proprietor's evidence.

Decision

Statutory provisions

16. The relevant provisions of section 46 of the Act are as follows:

[3] Mr Alexander's comments in *Guccio Gucci SPA v Gerry Weber International AG*, Case BL O/424/14 at [56].

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

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

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

(c) […]

(d) […]

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

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

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

(4) […]

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

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

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

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

17. Section 100 of the Act is also relevant, which reads:

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

Relevant case law

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

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

19. 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].

20. What I take from the relevant case law is also 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 mark.[4]

Form of the mark

21. Before I move on to assess if the Proprietor has shown genuine use, I must first consider if I find the use of the mark as shown in the evidence to be use of the mark as registered. In the evidence the word-only registered mark "Blue Crystal" is mostly reproduced in standard word form. These are clearly acceptable uses. The evidence also contains instances where the Contested Mark is used in all-capitals format. As the Contested Mark is registered as a word mark, it may be used in any form irrespective of its capitalisation.[5] Thus, the use of "BLUE CRYSTAL" is clearly acceptable use of the mark.

22. Mr Bindra states that use of the "Blue Crystal" mark has been made within the relevant period via "several forms" of the Contested Mark including "Crystal Clear", "Crystal Bar" and "Blue Crystal".[6] At the hearing, Mr Lowry submitted that "Crystal" is the main distinctive element in the mark whereas "blue", "clear" and "bar" are descriptive terms and, therefore, any use of a "crystal" mark in combination with such descriptive terms, is use of the Contested Mark. With regard to the alleged descriptiveness of "blue", Mr Lowry contends that this word is used to describe e-cigarettes that are blueberry flavoured. Mr Lowry referred me to exhibit TB01 where it is stated that "*blue vapes often indicate a pre-filled blueberry flavour, making them a popular choice for fruit flavour lovers. […]*"[7] and to exhibit TB02 featuring two extracts from a third-party retailer for e-cigarette refill liquid where the products are called "Blue Slush" and "Mr Blue for blueberry-flavoured nicotine salts".[8] With regard to "bar", it is argued that this term is descriptive of the products themselves. Mr Lowry referred me to exhibit TB01 showing two e-cigarettes featuring the name

[4] *Awareness Limited v Plymouth City Council,* Case BL O/236/13; *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd,* Case BL O/404/13.
[5] *La Superquimica v EUIPO*, Case T-24/17, [39].
[6] Mr Bindra's witness statement at [13].
[7] Exhibit TB01, page 5.
[8] Exhibit TB02, pages 10 and 21.

"CRYSTAL BAR" (Figure 1). Mr Lowry contended that the mark for these goods is "crystal" whereas "bar" is merely indicative of the products as shown in Figure 1 where "CRYSTAL" occupies a predominant position whereas "bar" is smaller. Mr Lowry also referred me to another extract from a third-party e-cigarette retailer for "Elf Bar 600 disposable vape".[9]

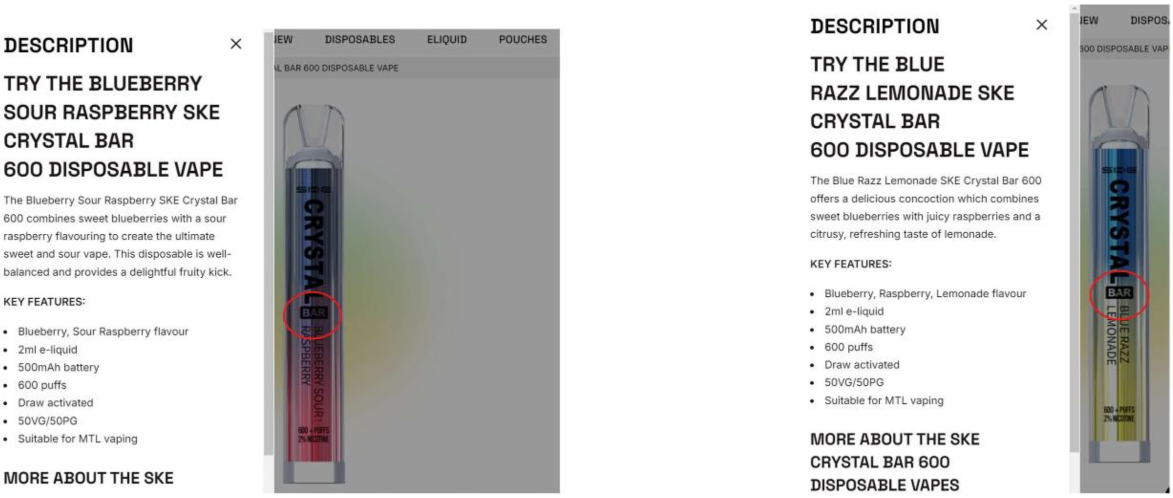

Figure 1 – exhibit TB01, page 6

23. Mr Lowry did not elaborate further on the alleged descriptiveness of "clear" and no evidence was provided on this point.

24. Ms Jones, at the hearing, contended that the evidence provided is insufficient to demonstrate that "blue", "bar" and "clear" are descriptive terms. It is argued that the Contested Mark's distinctiveness lies in the mark as a whole and that the words "Blue Crystal" in the mark form a unit. I agree with Ms Jones that the evidence provided is insufficient for me to find that, in the market of e-cigarettes, the words "blue", "bar" and "clear" are used in a descriptive manner. The definition of blue vapes provided in exhibit TB01 is an undated extract from "indejuice.com" and it is unclear whether it refers to the UK market. Also, it is only one extract. Turning to exhibit TB02, even if I were to accept that the evidence shows that some undertakings use "blue" to communicate that their e-cigarettes contain a blueberry-flavoured liquid, two extracts are insufficient to adequately show that this practice is common in the relevant market. Regarding the uses of "bar", from the evidence provided, I find that "bar" is used in a trade mark manner as part of products' names

[9] Exhibit TB01, pages 6 and 7.

(i.e., “CRYSTAL BAR” and “ELF BAR”). The mere fact that the term “bar” is used by more than one undertaking to market e-cigarettes does not make it necessarily descriptive of this type of goods. I agree with Ms Jones that such evidence is insufficient to show that “bar” is commonly used (and understood by the relevant consumer) in a descriptive manner.

25. Turning to the word “clear”, I was not referred to evidence showing its alleged descriptiveness and Mr Lowry did not elaborate further on this point. I note that the evidence shows instances where e-liquids are offered for sale under the name “CRYSTAL CLEAR” (see, for example, Figure 2). However, I find this to be trade mark use and I do not see how “clear” would be perceived as conveying a descriptive meaning.

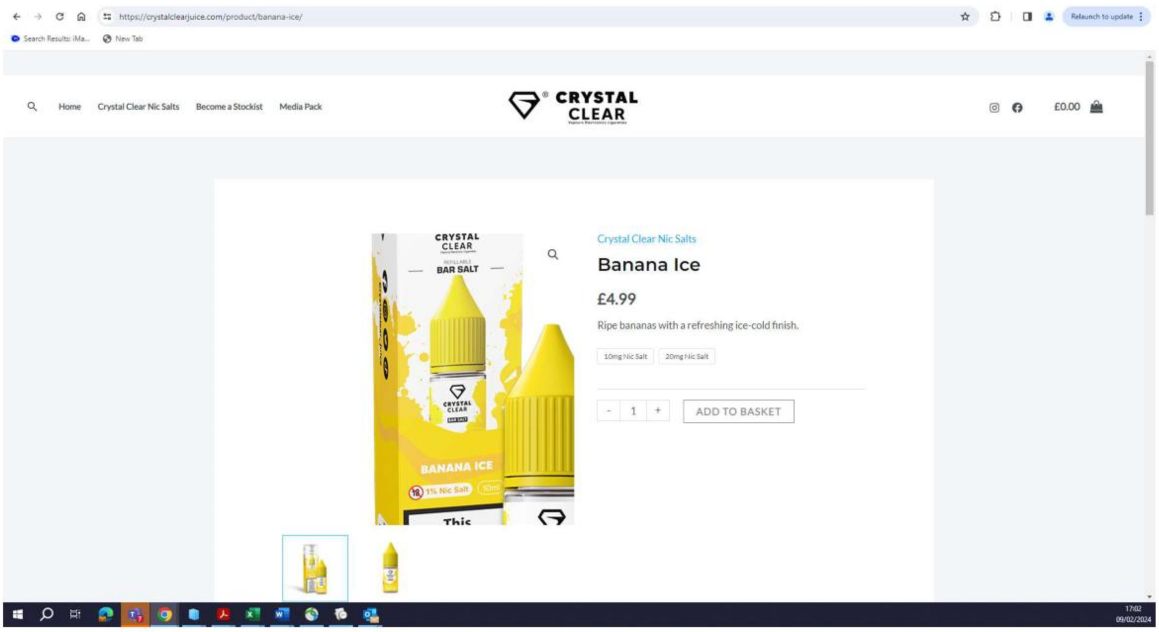

Figure 2 – exhibit TB02, page 12

26. From the above it follows that I do not find that “Crystal Clear” and “Crystal Bar” are acceptable variants of the Contested Mark. I agree with Ms Jones that the Contested Mark’s distinctiveness lies in the mark as a whole; however, I do not find that the words “Blue” and “Crystal” necessarily form a unit. Nonetheless, I find that each word equally contributes to the mark’s overall impression. Although “Crystal Clear” and “Crystal Bar” both contain the same word “Crystal” as the Contested

Mark, they feature a different word in place of “Blue”. I find this to alter the marks’ distinctive character in that “Blue” in the Contested Mark does not merely constitute a descriptive element.

27. For the sake of completeness, I note that part of the evidence features the all-capitalised “BLUE CRYSTAL” in light blue and with a stylised font (Figure 3).

Figure 3 – exhibit TB02, page 28

28. As the Contested Mark is registered as a word mark, it may be used in any form, in any colour or font type (irrespective of its capitalisation).[10] I find the word element “BLUE CRYSTAL” to be the main distinctive element in the mark and I find the difference in colour and font between the mark as registered and its use to have a minimal impact on its distinctiveness. This is because the relevant consumer will recognise the colourful/stylised variant for what it is, namely a colour/stylised

[10] Case T-24/17, *La Superquimica v EUIPO* [39].

variation of the “BLUE CRYSTAL” mark. Thus, I consider this to be an acceptable variant use.

Assessment of the sufficiency of use

29. 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 UK during the relevant 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/services for which use has been shown;
- the nature of those goods/services and the market(s) for them; and
- the geographical extent of the use shown.

30. I start by dealing with the issue regarding the various proprietors of the Contested Mark during the relevant period. Mr Bindra, in his witness statement, indicates that different undertakings owned the Contested Mark throughout the relevant period:

- 10 August 2018 - 14 February 2023 (Lumo Liquids Limited).
- 14 February 2023 - 22 December 2023 (Liverpool Electronic Cigarette Co Ltd.)
- 22 December 2023 - 26 June 2024 (Tashmeen Kaur)
- 26 June 2024 onward (the Proprietor).

31. Ms Jones contends that this timeline shows that Bargain Busting Limited at no point during the relevant period was the Contested Mark’s proprietor and, therefore, any use made of the Contested Mark is irrelevant as it is not use made by the Proprietor or with its consent.[11]

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[11] Ms Jones’ skeleton arguments at [24].

32. In his skeleton arguments and at the hearing, Mr Lowry contended that uses made by Ms Kaur can be considered uses by the Proprietor in that the Proprietor and Ms Kaur are associated to one another.[12] Mr Lowry submitted that evidence of such commercial association can be derived from Mr Bindra's witness statement where he states that "*[…] Tashmeen Kaur and the Proprietor are associated to each other […]*".[13] Mr Lowry also pointed me to Mr Heaps' witness statement where it is indicated that:

> "*4. Eco Vape Limited liaised with Tashmeen Kaur in late 2023 and early 2024 specifically regarding the manufacture and production of a new vape / electronic cigarette and associated nicotine salts for a new brand that the Proprietor was in the process of creating following a trade mark they had just acquired, namely, "Blue Crystal".*
>
> *5. We were given the approval by Tashmeen Kaur to proceed with the manufacture and production of the "Blue Crystal" vapes / e-cigarettes and associated goods.*"

33. The evidence also contains an email exchange between Tasmheen Kaur and Danielle Heaps of Eco Vape asking to confirm an invoice for the Contested Mark. The email's subject states "Invoice EV33966 from Eco vape Limited for BARGAIN BUSTING LTD". Therefore, in January 2024 Ms Kaur was operating for (or in connection with) Bargain Busting Ltd. before she assigned the mark later in June that year. I therefore find it reasonable to believe that Ms Kaur was associated to the Proprietor (i.e., Bargain Busting Limited) at least for part of the relevant period and evidence of use made by Ms Kaur can be considered as uses by the Proprietor. I will proceed accordingly.

34. Turning to the evidence, I remind myself that the relevant period for showing genuine use is between 2 February 2019 and 1 February 2024. Mr Bindra's evidence[14] features screenshots dated 8/9 February 2024 showing different types of bar salts (i.e., e-liquids) being offered for sale but these are under the "CRYSTAL CLEAR" mark on the "crystalclearjuice.com" website as well as by other third-party

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[12] Mr Lowry's skeleton arguments at [3].
[13] Mr Bindra's witness statement at [11].
[14] Exhibit TB02.

retailers (i.e., VapeUK, Vape and Go, UK Vape World, Totally Vapour, Juicy Vapes, e-Vapes UK). At paragraphs [25] and [26] I found that "CRYSTAL CLEAR" is not a variant use of the Contested Mark. I therefore discount this evidence.

35. The evidence also shows three screenshots from the Eco Vape website, dated 8/9 February 2024, offering for sale "BLUE CRYSTAL" bar salts (i.e., e-liquids). This evidence shows prices in pounds sterling, and it features the words "COMING SOON". Ms Jones pointed out that this evidence is dated outside of the relevant period.[15] Although I appreciate Ms Jones' argument, the evidence is dated only one week after the end of the relevant period, and I intend to take it into account for my assessment.

36. Exhibit TB05 shows an invoice (number EV33966), dated 9 January 2024, from Eco Vape to Bargain Busting Ltd (i.e., the Proprietor) for the manufacture of 24,675 products along with design services for a total value of £20,836.02. Looking at the evidence, I note that the goods are identified by the Contested Mark, next to them there are amounts indicated in millilitres (ML) and many of the goods indicate a flavour (e.g., Lemon Lime, Blueberry Sour Raspberry, Pineapple Peach Mango). It is therefore clear that the evidence concerns a manufacture order for e-liquids.

37. Turning to the design costs, Mr Lowry referred me to exhibit TB01 where examples of e-cigarettes are reproduced (Figure 4 and Figure 5).

[15] Applicant's skeleton arguments at [33].

Figure 4 – exhibit TB01, page 6

Figure 5 – exhibit TB01, page 7

38. Mr Lowry submitted that looking at the design of these products, especially the top part, the same outline of such devices can be seen in exhibit TB06 which shows screenshots of a WhatsApp conversation between Eco Vape and Ms Kaur, as indicated by Mr Bindra,[16] concerning the design of some “BLUE CRYSTAL” labels (Figure 6). In other words, Mr Lowry contended that the design services in the invoice and the evidence at Figure 6 relate not only to the design of the packaging, but also to the design of the e-cigarettes themselves (i.e., the hardware).

[16] Mr Bindra’s witness statement at [17].

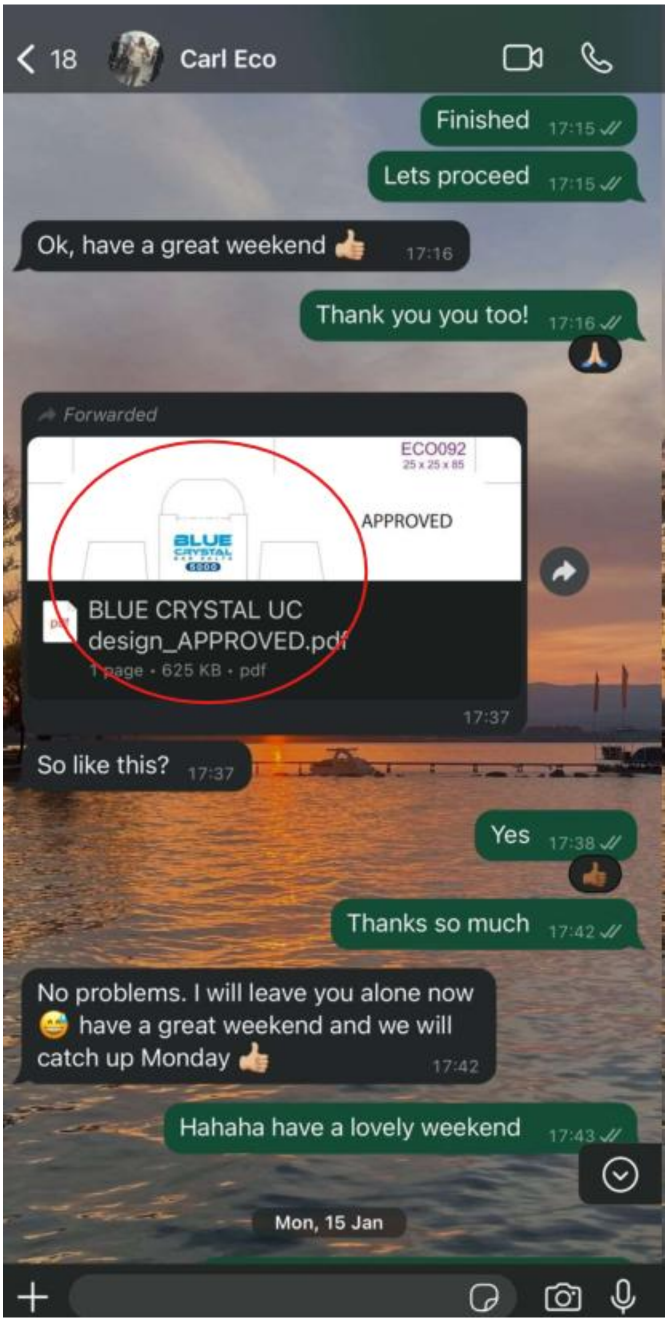

Figure 6 – exhibit TB06, page 46

39. Looking at the evidence, I note that this contains an email from the designer of the Blue Crystal labels (Tim Brearley) to Eco Vape with subject "Blue Crystal label proofs" showing the following (Figure 7):

Figure 7 – exhibit TB06, page 51

40. This clearly shows the packaging of BLUE CRYSTAL bar salts (e-liquids). From the evidence it is clear that the preview visible in the WhatsApp conversation refers to such e-liquid packaging. I reach this conclusion especially because both the preview in the WhatsApp conversation and the image at Figure 7 show the code "ECO092". Thus, I refuse Mr Lowry's argument that the cost for the design service in the EV33966 invoice and the WhatsApp conversation refer to e-cigarettes (hardware), but I find they refer to the packaging of e-liquid bottles. Accordingly, the evidence provided at exhibit TB05 and exhibit TB06 refers to e-liquids.

41. Looking at the evidence as a whole, I note that no evidence has been provided regarding any use of BLUE CRYSTAL by the previous owners of the mark (i.e., Lumo Liquids Limited and Liverpool Electronic Cigarette Co Ltd.) and no further clarification has been provided on this point.

42. Mr Lowry contended that the Proprietor made all the possible efforts to create a market for its e-cigarette products whilst awaiting approval by the MHRA to market the goods. According to my assessment of the evidence, this essentially shows that:

- on 22 December 2023 Ms Kaur acquired the Contested Mark;
- on 11 January 2024 Ms Kaur confirmed one invoice dated 9 January 2024 from Eco Vape and gave consent to start production of thousands of e-liquid products for a value of around £20,000;
- between 16 and 23 January 2024 Ms Kaur corresponded by email concerning the design of the BLUE CRYSTAL packaging for e-liquid bottles;
- on 8/9 February 2024 one type of BLUE CRYSTAL e-liquid flavour is advertised on the Eco Vape website as "coming soon" products.

43. Mr Lowry reminded me that use of the mark does not need to be quantitatively significant and that even minimal use may qualify as genuine use. However, I remind myself that use must be more than merely token (*Ansul* at [36]) and that internal use by the Proprietor does not suffice (*Ansul* at [37]). Bearing this in mind, I find that only the three extracts from the Eco Vape website show marketing efforts made by the Proprietor in relation to the Contested Mark. All the other uses shown in the evidence (i.e., manufacturing order and related investment as well as preparation for the design of packaging) are internal uses and do not suffice. Therefore, overall, I find the evidence provided is insufficient to show genuine use of the Contested Mark made within the relevant period.

44. In the event I were mistaken and the evidence was sufficient to show that the Proprietor made efforts to create a market for the Contested Mark, such use exclusively concerns e-liquids.

45. Mr Lowry submitted that the broad term "e-cigarettes" in the Proprietor's specification also encompasses pre-filled electronic cigarettes or disposable vapes that all come with e-liquid inside. In this regard, I agree with Ms Jones' submission that "e-cigarettes" in the Proprietor's specification should not be given an excessively wide interpretation to the extent to include e-liquids. I find that e-liquids are not a sub-category of e-cigarettes, but rather these are two different categories of goods.

46. At the hearing Mr Lowry also submitted that in the vaping industry manufacturers of juices, nicotine salts and e-liquids also create their accompanying devices for those products. As no evidence had been filed in this regard, Mr Lowry asked me to take judicial notice that this would be the common commercial practice. I remind myself of the limits to which judicial notice can be used as Ms Anna Carboni, sitting as the Appointed Person, indicated in *Chorkee Ltd v Cherokee Inc.,* Case BL O/048/08: *"[…]. Judicial notice may be taken of facts that are too notorious to be the subject of serious dispute. But care has to be taken not to assume that one's own personal experience, knowledge and assumptions are more widespread than they are.*". The manufacturing of vape liquids and e-cigarettes (hardware) is likely to require different manufacturing processes and technology. Thus, I find it reasonable to believe that different manufacturers will produce respectively e-cigarettes and e-liquids. Therefore, absent any evidence on this point, I cannot take judicial notice that the UK relevant consumers will associate any e-cigarette manufacturer with the producer of the corresponding e-liquids.

47. As e-liquids do not form part of the Proprietor's registered goods, I find that the Proprietor did not provide any evidence showing genuine use of the Contested Mark in relation to the Proprietor's registered goods. I will now turn to assess whether there are any proper reasons for non-use.

<u>Alleged proper reasons for non-use</u>

48. In the judgment of *Armin Häupl v Lidl Stiftung & Co. KG,* Case C-246/05, the Court of Justice of the European Union held that:

> "52. In particular, as correctly stated by the Advocate General in [79] of his Opinion, it does not suffice that "bureaucratic obstacles", such as those pleaded

in the main proceedings, are beyond the control the trade mark proprietor, since those obstacles must, moreover, have a direct relationship with the mark, so much so that its use depends on the successful completion of the administrative action concerned.

53. It must be pointed out, however, that the obstacle concerned need not necessarily make the use of the trade mark impossible in order to be regarded as having a sufficiently direct relationship with the trade mark, since that may also be the case where it makes its use unreasonable. If an obstacle is such as to jeopardise seriously the appropriate use of the mark, its proprietor cannot reasonably be required to use it nonetheless. Thus, for example, the proprietor of a trade mark cannot reasonably be required to sell its goods in the sales outlets of its competitors. In such cases, it does not appear reasonable to require the proprietor of a trade mark to change its corporate strategy in order to make the use of that mark nonetheless possible.

54. It follows that only obstacles having a sufficiently direct relationship with a trade mark making its use impossible or unreasonable, and which arise independently of the will of the proprietor of that mark, may be described as "proper reasons for non-use" of that mark. It must be assessed on a case-by-case basis whether a change in the strategy of the undertaking to circumvent the obstacle under consideration would make the use of that mark unreasonable. It is the task of the national court or tribunal, before which the dispute in the main proceedings is brought and which alone is in a position to establish the relevant facts, to apply that assessment in the context of the present action.

55. Having regard to the foregoing considerations, the answer to the second Proper question referred for a preliminary ruling must be that Art.12(1) of the Directive must be interpreted as meaning that obstacles having a direct relationship with a trade mark which make its use impossible or unreasonable and which are independent of the will of the proprietor of that mark constitute "proper reasons for non-use" of the mark. It is for the national court or tribunal to assess the facts in the main proceedings in the light of that guidance. "

49. In *Naazeen Investments Ltd v OHIM,* Case T-250/13, the General Court held that difficulties in manufacturing a product were not outside the proprietor's control and therefore did not constitute a proper reason for non-use. The court stated that:

> "66. According to the case-law, 'proper reasons' refers to circumstances unconnected with the trade mark proprietor rather than to circumstances associated with his commercial difficulties (see, to that effect, judgment of 9 July 2003 in *Laboratorios RTB* v *OHIM — Giorgio Beverly Hills (GIORGIO AIRE)*, T-156/01, ECR, EU:T:2003:198, paragraph 41). The problems associated with the manufacture of the products of an undertaking form part of the commercial difficulties encountered by that undertaking.
>
> 67. In the present case, the marketing of the goods in question was stopped because those goods were defective. Given that it was for Gondwana to supervise and control the manufacture of the goods in question even though they were being manufactured by a third party, the interruption to the marketing of those goods cannot be regarded as independent of the will of Gondwana.
>
> 68. Furthermore, the applicant is wrong in claiming that it had no choice but to stop using the mark at issue or to put consumers' health in danger. As OHIM has observed, further products could have been manufactured and placed on the market within a reasonable period. Therefore, the applicant cannot claim that the change in strategy of the proprietor of the mark at issue made use of that mark unreasonable. The additional economic investments necessary for the manufacture of further products form, as OHIM states, part of the risks that an undertaking must face.
>
> 69. Accordingly, the applicant cannot claim that the Board of Appeal was wrong to take the view that the difficulty encountered by Gondwana concerning the manufacture of the goods in question did not constitute a proper reason for non-use of the mark at issue (paragraph 36 of the contested decision)."

50. The judgment of the General Court was upheld on further appeal to the CJEU: see Case C-252/15 P.

51. Mr Lowry argued that the Proprietor required MHRA approval to manufacture its goods and that marketing such goods prior to receiving MHRA approval would have been unlawful and, thus, there were proper reasons for non-use.[17] To this end Mr Lowry provided an extract from the MHRA's database featuring a table of products along with their respective publish date.[18]

52. Looking at this evidence, I note that the "Product Type" column describes the goods as "refill container/cartridge containing e-liquid". I also note that under the "Brand Name(s)" column, next to "BLUE CRYSTAL", the evidence indicates "10ML" which, most likely, refers to the goods' quantity (10 millimetres). Therefore, the evidence clearly indicates that the MHRA's authorisation refers to e-liquids.

53. At the hearing Mr Lowry contended that what needs authorisation by the MHRA is the liquid contained in the e-cigarettes rather than the hardware itself. In other words, Mr Lowry contended that the MHRA only tests the e-liquid inside the e-cigarettes for medical reasons, whereas no tests of electronic devices are carried out. As contended by Ms Jones, there is no evidence before me to show that this is the process (or practice) by MHRA. Looking at the evidence provided, the extract from the MHRA page indicates that "*the MHRA is the competent authority for the UKs notification scheme for nicotine containing Vaping products (E-cigarettes and refill containers)*".[19] As the evidence refers to e-cigarettes **and** refill containers, it appears to me that these goods are treated separately. Looking at Mr Lowry's evidence, the table only refers to "refill containers/cartridges containing e-liquid"; no mention is made of e-cigarettes. Furthermore, under the column "Brand sub type name(s)" in the table, there is exclusive reference to bar/nicotine salts rather than e-cigarettes or e-cigarettes containing e-liquid.

54. Absent further evidence, what I can derive from the evidence provided is that Eco Vape received authorisation exclusively for e-liquid goods. There is no evidence concerning e-cigarettes (i.e., the Proprietor's goods). Therefore, also in this case, the evidence does not relate to the Proprietor's goods and it is insufficient to show any proper reasons for non-use.

[17] Proprietor's skeleton arguments at [22] and [23].
[18] Exhibit SL01A.
[19] Exhibit TB03, page 33.

Outcome

55. The application for revocation on the grounds of non-use therefore succeeds in full. As a result, the trade mark is, subject to any successful appeal, hereby revoked for all the goods in class 34. The effective date of revocation is 2 February 2024.

Costs

56. The Applicant was successful and is, therefore, entitled to a contribution towards its costs.

57. Ms Jones, at the hearing, submitted that the higher end of the costs should be awarded. This is because the Proprietor requested to amend the counterstatement at a later stage of the proceedings which led to a CMC being held, with the subsequent re-opening of the evidence rounds and further evidence being filed by the Proprietor that required consideration by the Applicant. High-end costs are also requested in view of the various adjournments of the main hearing which led the Applicant to incur higher costs.

58. I allowed the amendment of the Proprietor's counterstatement because it appeared from the evidence that such defence was being pleaded although this was not clear from the initial counterstatement filed by the Proprietor. I agree with Ms Jones that the Applicant incurred delays and additional costs that could have been avoided if the Proprietor had adequately pleaded its case from the beginning of the proceedings. For this reason, I will award the Applicant higher costs within the scale. However, I do not see how the rescheduling of the main hearing may have negatively affected the Applicant and I will not consider it as a reason to award higher costs.

59. Therefore, I find that the Applicant is entitled to an award of costs in part above the lowest threshold.

60. Based upon the scale published in Tribunal Practice Notice 1/2023, I award the following as a contribution towards the Applicant's costs:

Preparing a statement and considering the other side's statement.	£300

Preparing evidence and considering and commenting on the other side's evidence.	£1,500
Preparing for and attending the hearing (including the CMC)	£1,250
Total	**£3,050**

61. I therefore order Bargain Busting Limited to pay BUSINESS SOLUTIONS INTL LIMITED the sum of **£3,050**. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

Dated this 7th day of July 2026

Andrea Rossi

For the Registrar