

O/0767/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER 4053262

BY ROBYN HOGARTY

TO REGISTER THE FOLLOWING TRADE MARK:

Skinsthetics Liverpool

IN CLASSES 3 & 44

AND

THE OPPOSITION THERETO UNDER NUMBER 449525

BY SYKA ASHFAQ

Background and pleadings

1. On 18 May 2024, Robyn Hogarty (“the applicant”) applied to register the trade mark “Skinsthetics Liverpool” (“the contested mark”) in the UK. It was published in the Trade Marks Journal on 9 August 2024. Registration is sought for the following goods and services:

Class 3: Beauty care preparations; Skincare cosmetics; Skin care cosmetics; Anti-aging serum for cosmetic use; Facial peel preparations for cosmetic use.

Class 44: Beauty spa services; Hygienic and beauty care; Skin care salons; Skin care salon services; Cosmetic treatment services for the body, face and hair; Injectable filler treatments for cosmetic purposes; Cosmetic laser treatment of skin; Cosmetic treatment for the body; Cosmetic facial and body treatment services; Cosmetic body care services.

2. On 9 September 2024, Syka Ashfaq (“the opponent”) opposed the trade mark on the basis of sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 (“the Act”). For the purposes of both grounds of the opposition, the opponent relies upon her earlier UK trade mark:

Skinsthetics

UK registration number: UK00003377566

Filing date: 22 February 2019

Registration date: 17 May 2019

For the following goods and services:

Class 3: Beauty care cosmetics; Beauty creams.

Class 41: Beauty school services; Teaching of beauty skills.

Class 44: Laser hair removal services; Aesthetician services; Beauty salon services; Beauty salons; Beauty spa services; Beauty therapy services; Beauty therapy treatments; Salon services (Beauty -); Salons (Beauty -); Services of a hair and beauty salon.

3. Under section 5(2)(b), the opponent claims that there is a likelihood of confusion on the basis that the marks are similar, and the goods and services are either identical or highly similar, leading to a likelihood of confusion, including a likelihood of association, and that the contested mark should be refused registration.

4. Under section 5(3), the opponent claims to enjoy a reputation for the registered goods and services due to the use made of her mark. She claims that use of the contested mark would, without due cause, take unfair advantage of, or be detrimental to, the distinctive character and/or repute of the earlier mark.

5. The applicant filed a counterstatement in which they denied the claims against them. The applicant also requested that the opponent provide proof of use for the mark relied upon.

6. By virtue of its earlier filing date, the opponent's mark constitutes an earlier mark in accordance with section 6 of the Act. It had been registered for more than five years at the filing date of the contested mark and is, therefore, subject to the proof of use requirements in section 6A of the Act. The opponent provided a statement that she had used the earlier mark for all of the registered goods and services, and, as above, the applicant requested that she file proof of the same.

7. The applicant is represented by Jamie Haddadi. The opponent is not professionally represented. Both parties filed evidence with the opponent also filing evidence in reply. Neither party requested a hearing and neither filed submissions in lieu. This decision is therefore taken after careful consideration of the papers.

EVIDENCE

8. The opponent's evidence was filed in the form of a witness statement in her own name, dated 7 April 2025. The witness statement includes fifteen exhibits labelled EXHIBIT 1 to EXHIBIT 15. The purpose of the evidence is to address the applicant's request for the opponent to show proof of use for the opponent's earlier mark.

9. The applicant's evidence was filed in the form of a witness statement in their own name, dated 29 August 2025. The witness statement includes five exhibits, labelled

RH1 to RH5. The purpose of the evidence is to provide an overview of the applicant's history and to provide evidence of the use of its mark.

10. In reply, the opponent filed a second witness statement in her own name, dated 9 October 2025.

11. I do not intend to summarise the evidence filed in full at this stage. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

Preliminary issues

No evidence of actual confusion

12. In her witness statement, Ms Hogarty states:

“Syka Ashfaq cannot provide real tangible evidence of consumers being confused with respective businesses...”

13. I must clarify that the absence of actual confusion will not have any bearing on whether there exists a likelihood of confusion between the applicant's mark and the opponent's mark. Whilst evidence of actual confusion may be persuasive where it exists, the absence of confusion in the marketplace is rarely significant.¹ This is because the absence of confusion may be attributable to the earlier mark having only been used to a limited extent, in relation to only some of the goods or services for which it is registered, or in such a way that there has been no possibility of the one being mistaken for the other.² The provisions of the Act are not merely a reflection of what may be happening in the market. Even where there is no confusion in practice, it remains possible for there to be a finding of a likelihood of confusion.³

¹ *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283.

² *Roger Maier and Another v ASOS* [2015] EWCA Civ 220.

³ *Compass Publishing BV v Compass Logistics Ltd* ([2004] RPC 41).

Use of the word 'skin' in the industry

14. I note at this stage that the applicant's exhibit RH4 is intended to show the frequent use of the term "skin" in business names in the industry. The applicant's exhibit RH5 further shows company names including the term "skinthetics". Although this evidence does not necessarily show registered trade marks, the case law in relation to evidence pertaining to the state of the register is nonetheless relevant. In *Zero Industry Srl v OHIM*, Case T-400/06, the General Court stated that:

"73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '... there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T 135/04 GfK v OHIM – BUS(Online Bus) [2005] ECR II 4865, paragraph 68, and Case T 29/04 Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH) [2005] ECR II 5309, paragraph 71). "

15. The presence of other similar marks on the register, or in the industry, therefore, has no bearing on the present decision as the fact that a number of business names contain similar words is not enough to conclude that the distinctive character of that element has been weakened without evidence of such marks being used in the marketplace. I do not intend to make further reference to this exhibit within this decision.

RELEVANCE OF EU LAW

16. 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.

Decision

Proof of use

17. As previously set out, as the earlier mark had been registered for more than five years on the filing date of the contested mark, Section 6A of the Act applies. It states:

“(1) This Section applies where—

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

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

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

(3) The use conditions are met if –

- (a) within the relevant period the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5)-(5A) [Repealed]

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

18. The relevant period for proof of use of the opponent’s mark is from 19 May 2019 to 18 May 2024.

19. 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 Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'[2008] ECR I-9223, Case C-495/07 Silberquelle GmbH v Maselli-Strickmode GmbH [2009] ECR I-2759, Case C-149/11 Leno Merken BV v Hagelkruis Beheer BV [EU:C:2012:816], Case C-609/11 Centrotherm Systemtechnik GmbH v

Centrotherm Clean Solutions GmbH & Co KG [EU:C:2013:592], Case C-141/13 P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) [EU:C:2014:2089], Case C-689/15 W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 Ferrari SpA v DU [EU:C:2020:854].

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

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

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

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient

use of the trade mark on the market concerned: see e.g. Case T-78/19 Lidl Stiftung & Co KG v European Union Intellectual Property Office [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. Lidl at [33]. In Awareness Ltd v Plymouth City Council [2013] RPC 24 Daniel Alexander QC sitting as the Appointed Person said:

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

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

20. Section 100 of the Act relates to the burden of proving use of a trade mark. It states:

“If in any civil proceedings under the 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.”

21. Proven use of a mark which fails to establish that “the commercial exploitation of the marks is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark” is, therefore, not genuine use.

Genuine use

22. In her witness statement, Ms Ashfaq states that she is the Director of Skinthetics Ltd, which was established in 2017. Although the mark is registered in Ms Ashfaq’s name, any proof of use by Skinthetics Ltd would be acceptable because clearly there is consent between her as an individual and the company.

23. Ms Ashfaq states that she has collaborated with many popular social media personalities with universal worldwide reach. Exhibit 1 includes a screenshot of a photograph of three women, with text overlaying the photograph. The text states that followers needing laser hair removal should follow “@skintheticss”. Ms Ashfaq states that this image includes Rmarni, an influencer/musician who has worldwide reach. I note that this screenshot was taken on 29 December 2017, therefore this evidence is from before the start of the relevant period.

24. Exhibit 2 shows the Companies House listing for SKINTHETICS LTD, showing that it was incorporated on 7 December 2017 and that it was still active as at the date of the statement.

25. Exhibit 3 includes a witness statement from a client who confused SKINTHETICS LTD and Skinsthetics Liverpool. The statement is dated 28 January 2025 and states that the customer came across Skinsthetics Liverpool via social media “in or around the month of May 2024” and assumed that Ms Ashfaq had opened a new branch in Liverpool. The customer states that they did not notice the additional letter S in the name of the company and that the treatments offered by the companies are the same. This statement is dated after the relevant period, however, Ms Ashfaq states that the confusion took place before the application had been made for the applicant’s trade mark, so it can be concluded that the event occurred within the relevant period.

26. Exhibit 4 includes an email chain between Ms Ashfaq and Ms Hogarty, in which Ms Ashfaq stated her intention to oppose the recently registered trade mark. These

emails were dated between 18 May 2024 and 21 May 2024, therefore some of them fall within the relevant period.

27. Exhibit 5 includes a screenshot of the applicant's Instagram page. The description of the page reads "Liverpool Skin & Aesthetics Clinic". This exhibit is not dated.

28. Exhibits 6 and 7 include screenshots from the Cambridge dictionary showing the definition of aesthetics.

29. Exhibit 8 shows a photograph of a bottle which has the word SKINTHETICS printed on it. The bottle states that the product is an aloe vera treatment gel. The photograph was taken on 7 March 2020, within the relevant period. Ms Ashfaq states that this photograph was provided to show that 'non-medicated cosmetics and toiletry preparations' are provided under the Skinthetics brand.

30. Exhibit 9 shows search results on Instagram. The search term is not shown, but the two results of the search are the opponent's and the applicant's Instagram pages. In her witness statement, Ms Ashfaq states that the search term was 'Skinthetics'.

31. Ms Ashfaq states that the applicant has changed its username on social media. Exhibit 10 includes a screenshot of the former usernames of 'sk1nsthetics_l1verpool' on Instagram.

32. Ms Ashfaq states that she has collaborated with well-established persons within the aesthetics industry, including Dr Yusra from Liverpool. Exhibit 11 includes a photograph of two women in front of a sign reading "#SKINTHETICS". This photograph is dated 31 May 2018, before the relevant period. Ms Ashfaq states that this demonstrates the crossover and potential for confusion, and also the use of the name Skinthetics within Liverpool.

33. Exhibits 12 to 15 include images of the building in which Skinthetics is located. The first image is of a building with a sign outside including the name Skinthetics. This screenshot states that the photograph was uploaded 5 years before the screenshot was taken. It cannot be determined whether this photograph was taken within the relevant period. The second image is a photograph taken on 30 May 2020 of a road with buildings along it. A text box is located towards the bottom of the photograph

reading 'Skinthetics Ltd' and an arrow points from this text box to one of the buildings. The third and fourth photographs show the same sign as in the first photograph, dated 26 September 2019 and 11 February 2025, respectively. In her witness statement, Ms Ashfaq does not explain the relevance of these exhibits.

34. Despite filing a further witness statement in reply, Ms Ashfaq pertains only to the applicant's evidence and witness statement, and does not seek to introduce further evidence as to genuine use.

35. The evidence is limited at best. Much of the evidence falls outside of the relevant period and the evidence from within the relevant period does not point to any actual sales. For example, Ms Ashfaq has provided no figures given for turnover, sales or marketing spend. There are also no invoices provided to show that any sales have been made. Aside from one photograph of an aloe vera treatment, there is no evidence relating to the products and services offered to consumers by Ms Ashfaq, such as catalogues or online booking systems.

36. An assessment of genuine use is a global assessment, which includes looking at the evidence as a whole.⁴ The evidence presented demonstrates that a social media account has been in use with the handle @skintheticss, that Skinthetics Ltd has been registered with Companies House since December 2017, that one consumer was confused between the two marks, that a 'treatment gel' product was produced with the word SKINTHETICS on it and, finally, that a sign with the word SKINTHETICS was located outside of a building. None of this evidence shows the level (if any) of sales associated with Ms Ashfaq's mark for its registered goods or services.

37. As noted above, genuine use means actual use of the trade mark by the proprietor. The use must relate to goods or services which are already marketed or which are about to be marketed. I have been shown no convincing evidence that goods or services were marketed commercially, or about to be marketed, under the earlier mark during the relevant period. Again, I have not been shown any invoices or sales figures to prove that any products or services have been sold under the mark.

⁴ *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T-415/09

38. As per *Awareness Limited* and section 100 of the Act (both reproduced above), the burden lies on the opponent to prove use. Taking all of the evidence into account, I find that the material provided is insufficient to demonstrate that Ms Ashfaq has genuinely used her mark on the registered goods and services within the relevant period. As a result, Ms Ashfaq is not permitted to rely on her mark as an earlier mark. Given that this was the only mark relied upon, the opposition must fall.

CONCLUSION

39. The opposition under sections 5(2)(b) and 5(3) fails in its entirety and, subject to any successful appeal, the applicant's mark is permitted to proceed to registration in respect of all of the goods and services applied for.

COSTS

40. The applicant has achieved success in these proceedings and is therefore entitled to a contribution towards their costs based on the published scale set out in the Tribunal Practice Notice 1/2023. While I did not assess the applicant's evidence in detail, this was due to the failure of the opponent to prove genuine use. Therefore, my silence on the applicant's evidence was not a criticism of the evidence filed. As such, I still consider it appropriate to award the applicant for their costs associated with this task. In the circumstances, I award the applicant the sum of **£1250** as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Considering the statements of ground, and preparing and filing the counterstatement:	£250
Considering the other side's evidence (including that in reply) and filing own evidence:	£1000
Total:	£1250

41. I therefore order Syka Ashfaq to pay Robyn Hogarty the sum of **£1250**. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 24th day of August 2026

K HAZLEBACH

For the Registrar