

O/0918/26

**TRADE MARKS ACT 1994
IN THE MATTER OF UK REGISTRATION NUMBER UK00002506288
IN THE NAME OF WESTLAND HORTICULTURE LIMITED
IN RESPECT OF THE FOLLOWING TRADE MARK SERIES:**



**IN CLASSES 1, 6, 8, 12, 16, 17, 19, 20, 21, 22 AND 24
AND
AN APPLICATION FOR REVOCATION THEREOF
UNDER NUMBER CA000507582
BY SHELTERLOGIC CORP**

Background and pleadings

1. The series of three trade marks under number UK00002506288 stands registered in the UK for the marks shown on the front page of this decision (“***the Contested Marks***”), in the name of Westland Horticulture Limited (“***the Proprietor***”). The Contested Marks were filed on 13 January 2009, and they were registered on 05 June 2009 for the goods listed in Annex A to this decision.
2. On 23 July 2024, ShelterLogic Corp (“***the Applicant***”) filed revocation action number CA000507582 against the Contested Marks in their entirety, asserting non-use under section 46(1)(a) and section 46(1)(b) of the Trade Marks Act 1994 (“***the Act***”). The Applicant alleges that the Proprietor has not used the Contested Marks in the United Kingdom within the five-year periods set out below:

Section 46(1)(a): 6 June 2009 – 5 June 2014 (“***the first relevant period***”). The revocation date sought is 6 June 2014.

Section 46(1)(b):

Start dates	End dates	The effective revocation dates	
23 July 2009	22 July 2014	23 July 2014	<i>“the second relevant period”</i>
23 July 2014	22 July 2019	23 July 2019	<i>“the third relevant period”</i>
23 July 2019	22 July 2024	23 July 2024	<i>“the fourth relevant period”</i>

3. In its statement of grounds, the Applicant submitted that the Contested Marks were not put to genuine use and that they should be revoked for all the goods in accordance with sections 46(1)(a) and 46(1)(b) of the Act.

4. The Proprietor filed a defence and counterstatement denying all the claims made in relation to its goods.
5. The Applicant is represented by Stevens, Hewlett & Perkins. The Proprietor is represented by Murgitroyd & Company.

Relevance of EU law

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

Evidence and submissions

7. During the evidence rounds, the Proprietor filed evidence in chief in the form of the witness statement of Keith Nicholson, dated 21 July 2025, accompanied by exhibits KN1 – KN9 as well as evidence in reply in the form of the witness statement of Keith Nicholson, dated 27 January 2026, and exhibit KN10. Mr Nicholson is the Proprietor's Marketing Director and he has been an employee of the Proprietor for twenty years, twelve of which have been in his current position. The Applicant only filed evidence in reply in the form of a witness statement by Emma Kirkpatrick, dated 22 September 2025. Ms Kirkpatrick is a Chartered Trade Mark Attorney at Stevens, Hewlett & Perkins (the Applicant's representative). Neither party requested a hearing, but they both filed written submissions in lieu of a hearing.
8. The evidence and submissions will not be summarised here but will be referred to as and where appropriate during this decision. This decision is taken following a careful consideration of all the evidence and submissions filed.

Decision

Statutory provisions

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

“(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.”

10. 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

11. 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 Bunderversammlung 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 Marken 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].”

12. 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].

13. 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 be satisfied on the balance of probabilities that there has been genuine use of the mark.¹

Assessment of the sufficiency of use

14. Although different periods were identified as relevant, Mr Nicholson clarified that the evidence relates to the fourth relevant period, (i.e., 23 July 2019 – 22 July 2024).² I will focus on this relevant period for my assessment of the evidence. If there is use in the fourth relevant period, then this will automatically save the registration for the other relevant periods due to the application of section 46(3) of the Act. I will consider the earlier relevant periods only if necessary.

15. Mr Nicholson clarifies that the Contested Marks were assigned from Gradman Limited to Westland (GM) Limited in 2018 and subsequently, on 31 August 2019, from Westland (GM) Limited to the Proprietor.³ The evidence shows copies of the assignments.⁴ Ms Kirkpatrick criticises this part of the evidence contending that the assignments do not clearly show that the Contested Marks' goodwill was assigned to the Proprietor.⁵ However, goodwill is a distinct concept not relevant to section 46. The evidence provided is intended to show that use by Westland (GM) Limited is use by the Proprietor or with their consent. This is the only aspect of the evidence that is relevant for my assessment. As there is no dispute that the trade marks were assigned, any evidence of use of the Contested Marks by Westland (GM) Limited as the Proprietor's predecessor in title may be relied upon.

16. Mr Nicholson clarifies that the Proprietor distributes its goods mainly via the company's website 'www.gardenhealth.com' and the Proprietor's e-commerce platform 'marshallsgarden.com' as well as Amazon UK and a variety of third-party UK distributors located throughout the UK.⁶ The evidence contains a list of such

¹ *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.

² Mr Nicholson's witness statement at [6].

³ Mr Nicholson's witness statement at paragraph [9].

⁴ Exhibit KN1.

⁵ Ms Kirkpatrick's witness statement at paragraph [5].

⁶ Mr Nicholson's witness statement at paragraphs [12] and [15].

third-party retailers.⁷ In this regard, Mr Nicholson provided extracts from the 'gardenhealth.com' website (dated outside the relevant period) and extracts from the Marshalls Garden website dated July 2025.⁸ Although I appreciate that the evidence dated July 2025 shows the 2024 copyright disclaimer, I am unable to determine to which part of 2024 this part of the evidence refers (i.e., whether within or outside the relevant period).

17. It is also reported that in the first half of 2024 over 1,500 third-party stores/retail outlets were selling the Proprietor's goods under the Contested Marks throughout the UK.⁹ Mr Nicholson provides a list of the names of these retailers.¹⁰ The evidence does not provide further details.

18. The evidence also contains extracts from the Wayback Machine database showing screenshots from the Proprietor's websites (i.e., 'www.gardenhealth.com' and 'marshallsgarden.com'), dated between 11 May 2020 and 21 May 2022.¹¹ The evidence shows uses of GROW IT (stylised and as word only) to offer for sale a variety of the Proprietor's goods, namely, windowsill propagator sets, seed tray inserts, growhouses (including covers and shelving for growhouses), plant supports (including bamboo canes, hoops and sticks), cold frames, bell cloches, potato planter bags, raised beds and raised bed liners (for gardening), heavy-duty fleeces, "Frostgard", "InsectGard", protective plant jackets, grow tunnel hoops, garden protective/support netting (including knitted garden netting), knitted garden screens, poly sheets, grow bag cane support frames, "Nutrigel", garden stakes, capillary mattings and seedling cloches.

19. Mr Nicholson reports that the Proprietor has generated a total of over £25 million in revenues retailing its goods under the "GROW IT" trade mark, between 2017 and 2024. Mr Nicholson provides a table breaking down the revenue figures in relation to the general categories of goods as shown below:

⁷ Exhibit KN2.

⁸ Exhibit KN5 (Part 1).

⁹ Mr Nicholson's witness statement dated 21 July 2025, at paragraph [12].

¹⁰ Exhibit KN2.

¹¹ Exhibit KN5 (Part 2), pages 20 - 24.

Sales Product Sub Category	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	Total
Growhouse	£72,126	£145,422	£1,280,859	£2,126,703	£1,788,328	£362,028	£1,020,060	£7,077,445
Bamboo & Gard Stakes	£0	£61,099	£623,082	£875,973	£798,360	£1,062,983	£885,611	£5,047,662
Metal Support	£0	£97,563	£298,591	£443,739	£429,148	£608,531	£499,262	£2,893,521
Tree Stakes	£0	£31,649	£292,996	£481,236	£249,002	£344,272	£406,162	£2,149,618
Trays and inserts	£38,770	£180,069	£276,409	£461,224	£250,463	£209,806	£228,797	£1,872,528
Crop Netting	£0	£32,808	£270,250	£290,412	£214,285	£227,196	£202,504	£1,407,978
Weather Protection	£0	£52,277	£237,293	£197,627	£226,311	£185,660	£269,603	£1,320,530
Fibre Pots	£57,966	£80,269	£303,148	£505,268	£40,707	£21,037	£20,798	£1,064,467
Planters & Raised beds	£47,846	£58,473	£57,816	£144,064	£142,451	£119,159	£85,403	£743,443
Cloche & Tunnel	£0	£3,664	£100,843	£94,702	£119,643	£72,755	£104,862	£558,308
Plant Support	£0	£28,074	£342,576	£34,419	£2,689	£19,055	£0	£426,813
Propagators	£25,307	£40,310	£61,595	£136,827	£7,065	£3,786	£5,175	£287,659
Hanging Garden	£64,825	£101,195	£66,906	£34,146	£401	£513	£65	£267,920
Propagation	£28,074	£26,935	£56,914	£50,335	£136	£1,345	£90	£171,828
Protection	£0	£3,330	£29,342	£2,716	£0	£0	£0	£35,387
Fixings & hardware	£0	£0	£0	£0	£13,211	£4,317	£0	£17,528

20. Mr Nicholson also provides a more detailed list of total revenues and quantity retailed for each individual type of goods sold between 2018 and 2024.¹² The evidence shows that the Proprietor has generated revenues for the following goods: metal hoops and grow tunnel hoops, plant supports (including stakes, “gard” stakes, rings, metal supports, frames, tomato cages, arch supports, conical plant supports, hoops, willow sticks, bamboo canes, bamboo hoops, tree stakes, support grids) and accessories for plant supports (i.e., couplers and links), lawn edgings, grow bag cane support frames, growbag water reservoirs, growbags (including potato planter bags), fibre pots, plant pots, potato tubs, watering/growing/plug trays, seed and cutting trays, growing kits, propagators (including unheated propagators), compost discs, growhouses and accessories (i.e., growhouse covers, fleeces, shelves covers, shelving), poly tunnels (with covers) and grow tunnels (covered with fleece, net, polythene, mesh), grow tunnels, seedling cloche (with cover), bell cloches, greenhouses (including greenhouse bases and shadings), cold frames, raised beds and raised bed liners, vegetable planters, plant protection fleeces, netting, hydroponic indoor gardens, terrariums, garden screens (knitted), bubble insulation, “Frostgards”, insect protection mesh, protective plant jackets (covering) and capillary matting.

21. Mr Nicholson provides sample invoices from the Proprietor to a number of garden centres and nurseries or other businesses located in various places throughout the UK. The evidence, dated between 18 July 2019 and 19 June 2024,¹³ shows that

¹² Exhibit KN6.

¹³ The evidence also contains one invoice dated 16 October 2024 which falls outside of the relevant period.

the Proprietor has distributed significant quantities of some of its goods: seed/growing/cutting trays, garden netting, support and protective netting, grow tunnels (including with fleece cover), “gard” stakes, tree stakes, bamboo hoops, plant link support, bamboo canes (bulk bundle), “InsectGards”, growhouses, growhouse covers, plant sticks, fibre pots, plant supports, plastic watering cans, greenhouse rainwater harvester kits.¹⁴

22. The evidence features extracts of the Proprietor’s product catalogues dated between 2019 and 2024.¹⁵ The catalogues feature the stylised words “Grow It” and advertise a variety of the Proprietor’s goods. The evidence shows use for a series of goods already listed above (e.g., growhouses, tunnels, cold frames, terrariums, plant supports, netting and covers for gardening, growing trays and propagators, pots) as well as for additional goods, namely, “gard” screens, materials for gardening (including weed control fabric/woven),¹⁶ watering cans and sprayers,¹⁷ tree ties,¹⁸ hanging baskets and their liners,¹⁹ plant support obelisks and trellis.²⁰

23. Mr Nicholson also states that since the first use of the Contested Marks, the Proprietor has spent around £100,000 per year to advertise and promote its goods. More specifically, Mr Nicholson indicates that the Proprietor’s promotional and marketing expenditure (including attending trade shows) was £533,000 in 2023 and £567,000 in 2024.²¹ With regard to the Proprietor’s advertising efforts, the evidence shows that the Proprietor has advertised a variety of its goods through product catalogues and in a third-party specialist magazine (i.e., Garden Trader News).²²

24. Looking at the evidence, I appreciate that it presents a few shortcomings (e.g., some of it falls outside the relevant period and there is limited evidence of marketing activity). Nonetheless, the evidence includes extracts from two of the Proprietor’s websites, dated within the relevant period, showing a variety of its

¹⁴ Exhibit KN7.

¹⁵ Exhibits KN8 and KN10.

¹⁶ Exhibit KN8 (Part 1), pages 25-26; Exhibit KN10, page 22.

¹⁷ Exhibit KN10, page 8.

¹⁸ Exhibit KN10, page 15.

¹⁹ Exhibit KN10, pages 25-27 and 32.

²⁰ Exhibit KN10, pages 33 and 37.

²¹ Mr Nicholson’s witness statement at paragraph [19].

²² Exhibit KN9.

goods being offered for sale, together with a series of sample invoices issued by the Proprietor to various distributors throughout the UK. Therefore, the evidence clearly demonstrates that the Proprietor has distributed, within the relevant period, a variety of its goods across the UK.

25. Mr Nicholson has also shown that, within the relevant period, the Proprietor generated total revenues of just over £25 million from a variety of its goods. The evidence further provides a breakdown of the revenues for each category of goods and indicates the quantity of goods that have been retailed. For each category identified, the evidence shows consistent revenues throughout the relevant period. Although the Proprietor has not provided evidence of its market share, I find that the revenues figures are nevertheless sufficiently substantial to demonstrate genuine use of the Contested Marks.

26. In light of the above considerations, I find the evidence provided shows use sufficient to be genuine in relation to a variety of horticultural goods. I will return to the matter of a fair specification as necessary later in this decision.

Form of the mark

27. I must now consider whether I find the use of the marks as shown in the evidence to be use of the Contested Marks as registered or an acceptable variant of the registered marks.

28. For convenience, I reproduce the series of registered marks below:



29. The marks consist of the words “Grow It” presented in a handwriting-like rounded cursive style. The word “It” is integrated with a figurative device depicting a flower bud or bloom with a long stem with two green leaves on either side of it. The flower’s stem forms part of the letter “I” of “it”. In the first mark, the stylised “grow it” and the flower device are placed on a yellow/orange background that fades from

the top-right corner to the bottom-left corner. The series of marks feature the described stylised mark also in greyscale and with the device in colour placed on a white background.

30. Nowhere in the evidence are the Contested Marks reproduced as registered. Mr Nicholson, throughout his witness statement, refers to the Contested Marks as the “GROW IT” mark. In part of the evidence, the word-only “Grow It” is used to identify some of the Proprietor’s goods.²³ The rest of the evidence shows the words “GROW IT” presented in a bold handwritten style, as reproduced below:

Grow it

Figure 1

31. The same stylised “Grow it” words are displayed in the evidence in different colours and placed on different backgrounds. See below a few examples:



32. Throughout its submissions in lieu, the Applicant essentially contends that both the reference to the word-only mark “GROW IT” as well as the stylised version of the “Grow it” mark (Figure 1) are not acceptable variant uses of the Contested Marks with the result that Mr Nicholson’s evidence does not show genuine use of the Contested Marks.

²³ Exhibit KN5 (part 2), pages 20 - 23.

33. The Proprietor argues that the distinctive element of the Contested Marks is the word “GROW IT” and the stylisation of these words, as shown in the Contested Marks, does not alter the distinctive character of the marks. It is also argued that the relevant consumers will not perceive the stylisation of the marks, as reproduced in Figure 1, as well as their colour variations, as different marks from the Contested Marks. The Proprietor therefore argues that the visual variations of the Contested Marks in the evidence all constitute genuine use of the marks as registered.²⁴

34. In *Lactalis*, Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under section 46(2).²⁵ He said:

“13. [...] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*,

²⁴ Proprietor’s submissions in lieu at paragraphs [24] – [26].

²⁵ *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22.

EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word “MEDIA” would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still.”

35. I note that normally the public tends to read figurative elements that are reminiscent of a letter when such elements are linked to or form part of a word that is known to them.²⁶ I therefore agree with the Proprietor that the relevant consumers are likely to read the Contested Marks as the words “Grow It”. It is my view that the words “grow it” possess a low degree of inherent distinctiveness in relation to horticultural and gardening goods. The expression is immediately understandable, and the average consumer is likely to perceive those words as a promotional or motivational message encouraging them to engage in gardening or cultivation activities. I therefore find that the incorporation of the flower device into the Contested Marks, although not highly distinctive, plays an important role in the marks’ overall impression. It follows that I find that the removal of the flower device in both the handwritten stylisation and the word-only “grow it” is not the simple removal of a non-distinctive element; such omission from the forms used is not a negligible alteration and changes the distinctive character of the marks as

²⁶ T-146/08.

registered. It follows that the Proprietor cannot rely on these forms as acceptable variants.

Conclusion

36. Although the evidence may have been sufficient to demonstrate a genuine commercial presence in the marketplace, it does not feature the Contested Marks or acceptable variants of those marks. Since genuine use must be shown in relation to the marks as registered, or a form that does not alter their distinctive character, the evidence fails to establish the requisite use of the Contested Marks. Accordingly, the evidence is insufficient to prove genuine use of the Contested Marks during the relevant period.

37. For the sake of completeness, my findings above would not have put the Proprietor in a stronger position in respect of any of the earlier relevant periods. The few extracts in the evidence that pertain to earlier relevant periods do not feature the Contested Marks or acceptable variant forms. Therefore, also for the other earlier relevant periods the evidence does not show genuine use of the Contested Marks.

Outcome

38. The revocation is successful in its entirety under section 46(1)(a) and section 46(1)(b) of the Act. UK trade mark number 2506288 shall be revoked from the first revocation date sought, namely 6 June 2014.

Costs

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

Official fee:	£200
Preparing and filing the TM26(N) and considering the counterstatement:	£350
Considering the proprietor's evidence:	£600

Preparing submissions in lieu and considering proprietor's submissions in lieu:	£ 350
Total:	£1,500

40. I therefore order Westland Horticulture Limited to pay ShelterLogic Corp the sum of **£1,500**. The above sum should be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 6th day of October 2026

Andrea Rossi

For the Registrar

Annex A

List of registered goods under trade mark number UK00002506288

Class 1: Chemicals for use in horticulture; horticultural growing media; compost; fertiliser; fertilising preparations; soil conditioning chemicals; chemicals for soil analysis; water absorbing and water retaining compounds.

Class 6: Building materials; structures of metal for agricultural or horticultural use; cloches; pipes and tubes; doors, door frames; door mats; door handles; door knockers and bells; keys, locks and bolts; safes and case boxes; furniture fittings; articles or metal hardware or the home; door furniture; door bells; house numbers and house signs; letter boxes; mail boxes; post boxes; newspaper holders; door stops; wire; garden wire; barbed wire; chains, hooks, clips and fastenings, netting and plant supports; fencing; trellis; brackets and stands for hanging baskets, pots, planters and troughs; hanging baskets; garden structures, arches and obelisks of metal; lawn edging; greenhouses; greenhouse frames; garden buildings and stores; garden edging (metallic); compost bins; water butts; tree ties, tree guards and plant ties; plant supports; plant stakes; horticultural frames, door scrapers; shoe scrapers of metal; bird baths; bird tables; garden structures; arches and obelisks; trellis; compost bins; water butts.

Class 8: Hand tools and implements for gardening.

Class 12: Wheelbarrows, trolleys and carts.

Class 16: Rubbish sacks; bubble packaging; packaging; bags of paper or plastics; hanging basket liners of paper or card; plant label of plastics, paper or card; plants ties; tree ties.

Class 17: Plastic sheeting; plastic webbing; sheets and webs for weed suppressing; ground cover sheeting; bubble insulation; weed suppressing membranes; screening; plastic mesh and netting.

Class 19: Fencing and screening; trellis; plastic fencing, mesh and netting; garden structures, arches and obelisks; greenhouses; greenhouse frames; cloches; garden

buildings and stores; building fabrics; building membranes; garden edging (non-metallic).

Class 20: Plant supports; garden furniture; hanging baskets; furniture covers; hanging basket liners of plastics; bird tables and bird boxes; lawn edging; compost bins; water butts; tree ties and tree guards; plant ties of plastic; nest boxes for animals and insects; hooks, clips and fastenings.

Class 21: Plant pots; gardening gloves; plant propagators; tree ties and tree guards; dustbins; watering cans; plant ties and labels; bird feeders and/or animal feeders; bird baths; planters and troughs for plants; gardening gloves.

Class 22: Tree guards; ropes, strings, twine nets, tents, awnings, tarpaulins, sacks and bags.

Class 24: Garden fleece and capillary matting; weed control fabrics and membranes; weed suppressant fabrics and membranes; fabrics and membranes for weed control.