

O/0994/25

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF THE REQUESTS FOR PROTECTION

IN THE UK FOR THE INTERNATIONAL REGISTRATIONS

WO0000001712116, WO0000001712177 AND WO0000001712188

IN CLASSES 6, 9, 12, 20 AND 40

BY VOESTALPINE STAHL GMBH

AND THE OPPOSITIONS THERETO UNDER NUMBERS 442352, 442355 AND

442363, RESPECTIVELY, BY SEBIR, S.A.

AND

IN THE MATTER OF TRADE MARK REGISTRATIONS UK00910117612,

UK00910376192 AND UK00910117661

IN THE NAME OF SEBIR, S.A.

AND APPLICATIONS 506615, 506618 AND 506619, RESPECTIVELY,

BY VOESTALPINE STAHL GMBH

TO REVOKE THE AFORESAID REGISTRATIONS

Background and Pleadings

1. This decision concerns six cross-consolidated cases: three oppositions (442352, 442355 and 442363); and three applications for revocation (506615, 506618 and 506619).
2. On 20 June 2022, voestalpine Stahl GmbH ('VS') applied for protection in the UK for the following three International Registrations ('the Contested Designations'):

i) WO0000001712116 tfs-operating (Word mark)	The following details apply to all three requests for UK protection: International Registration date: 20 June 2022 Designation date: 20 June 2022 Office of Origin: Austria VS has declared that they wish each designation to be considered as a mark in standard characters only. Request for UK protection published for opposition purposes: 5 May 2023.
ii) WO0000001712117 tfs-measuring (Word mark)	
iii) WO0000001712118 tfs-monitoring (Word mark)	

3. For all three Contested Designations, UK protection is sought for a variety of goods and services in classes 6, 9, 12, 20 and 40, with only classes 6 and 40 opposed.¹ The opposed goods/services, which are the same for all three oppositions, are:

Class 6:

Common metals and their alloys; steel; stainless steel; aluminium; unwrought or semi-wrought common metals; construction materials and construction

¹ The full specification of goods/services is set out at Annexe 1 to this decision.

components of metal, steel, stainless steel and aluminium; goods for construction purposes made of metal, steel, stainless steel and aluminium; structural steel; plated structural steel; pipes and tubes of metal; pipes and tubes of steel and aluminium; cables, wires and chains of metal, steel and aluminium; strip steel, metal strips and metal foils; steel and aluminium in the form of strips; steel, stainless steel and aluminium in the form of reels and coils; sheets, panels and foils of metal, steel and aluminium; heavy plates of metal and steel; thin sheet metal; surface-treated and coated bands, sheets, panels and foils of metal, steel and aluminium; surfacing material of metal, steel, stainless steel and aluminium for indoor use and outdoor use; coated surfacing material and surfacing parts of metal, steel, stainless steel and aluminium for indoor use and outdoor use; claddings and cladding components of metal, steel, stainless steel and aluminium for indoor use and outdoor use; surface-treated and coated claddings and cladding components of metal, steel, stainless steel and aluminium for indoor use and outdoor use; cladding plates, cladding panels, cladding board and cladding rails of metal, steel, stainless steel and aluminium; facades and facade construction components of metal; roof claddings, facade claddings and cladding parts of metal, steel and aluminium; wall elements, wall panels, wall claddings and wall cladding elements of metal, steel and aluminium; floor sheet metals, floor sections and floor tiles of metal; doors, gates and window coverings of metal, steel, stainless steel and aluminium; door construction part and door trim of metal; containers of metal for storage, transport and packaging; straps of metal; metal strapping; storage pallets of metal.

Class 40:

Metal treating; shaping of metal components; metal treating service, namely coating of metals; metal treating, namely, surface coating of metal; surface treating and coating of metal goods and sheet metal as well as strips, plates and foils of metal, steel and aluminium; metal treating by applying conductor traces onto the surface of metal articles and sheet metal as well as onto strips, plates and foils, of metal, steel and aluminium; treatment of metal parts to prevent corrosion; custom manufacture of metal parts as well as strips, sheet metals, plates and foils of metal, steel and aluminium; custom manufacture of surface treated and coated strips, sheet metals, plates and foils of metal, steel and

aluminium; custom manufacture of strips, sheet metals, plates and foils of metal, steel and aluminium, coated with electrical conductor traces; custom manufacture of parts and fittings for land vehicles, air vehicles, water vehicles and space vehicles; custom manufacture of trim parts for vehicle bodies and components for inner bodies and outer bodies of vehicles; custom manufacture of shelves and shelf elements; custom manufacture of measuring, detecting, monitoring and control devices.

4. On 7 August 2023, SEBIR, S.A. ('SS') filed respective oppositions, under numbers 442352, 442355 and 442363, to the requests for UK protection. All three oppositions are based on section 5(2)(b) of the Trade Marks Act ('the Act') and, as noted, they are directed against the goods/services set out above at [3].
5. For all three oppositions, SS seeks to rely upon the three earlier rights detailed below at [6]. Each earlier mark is relied upon to the same extent for all three oppositions. All three earlier rights are comparable marks pursuant to Article 54 of the Withdrawal Agreement, based on EUTMs which were registered prior to the withdrawal of the UK from the European Union.

Earlier marks:

6. (i) UK910117612²

SEBIR TSF (word mark)

Filing date: 28 October 2011

Date of entry in register: 7 March 2012

Registered for the following, those relied upon marked in underline:

Class 1:

Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; Unprocessed artificial resins, unprocessed plastics;

² Based on EUTM 010117612.

Manures; Fire extinguishing compositions; Tempering and soldering preparations; Chemical substances for preserving foodstuffs; Tanning substances; Adhesives used in industry; Soldering fluxes.

Class 6:

Common metals and their alloys; Metal building materials; Transportable buildings of metal; Materials of metal for railway tracks; Non-electric cables and wires of common metal; Ironmongery, small items of metal hardware; Metallic pipes and tubes; Safes; Goods of common metal not included in other classes; Ores of metal, Wire-drawing without phosphate.

Class 40:

Treatment of materials; Metal treatment; Soldering, casting, polishing and laminating of metals; Metal plating.

(ii) UK910376192³



(figurative mark)

Mark Description/Limitation: Colour claimed: burgundy.

Filing date: 13 February 2012

Date of entry in register: 25 May 2012

Registered for the following, those relied upon marked in underline:

Class 1:

Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; Unprocessed artificial resins, unprocessed plastics; Manures; Fire extinguishing compositions; Tempering and soldering preparations; Chemical substances for preserving foodstuffs; Tanning substances; Adhesives used in industry; Soldering fluxes.

³ Based on EUTM 010376192.

Class 6:

Common metals and their alloys; Metal building materials; Transportable buildings of metal; Materials of metal for railway tracks; Non-electric cables and wires of common metal; Ironmongery, small items of metal hardware; Metallic pipes and tubes; Safes; Goods of common metal not included in other classes; Ores of metal, Wire-drawing without phosphate.

Class 40:

Treatment of materials; Metal treatment; Soldering, casting, polishing and laminating of metals; Metal plating.

(iii) UK910117661⁴

TSF (word mark)

Filing date: 28 October 2011

Date of entry in register: 15 June 2012

Relied upon for the sole term in respect of which it stands registered, namely:

Class 6: Steel wire (for cold stamping).

7. SS' pleading is, essentially, the same for each opposition: the parties' respective marks are highly similar, and for identical/highly similar goods and services; leading to a likelihood of confusion.
8. VS filed defences and counterstatements for all three oppositions, denying the claims in their entirety. All three of SS' earlier registrations are subject to the proof of use requirement. For reasons that will become apparent, the 'proof of use' aspect of the pleadings can be more appropriately addressed later at [18].
9. On 16 October 2023, VS applied to revoke the three earlier marks, detailed above at [6], ('the Contested Marks') in accordance with sections 46(1)(a) and 46(1)(b) of

⁴ Based on EUTM 010117661.

the Act (revocations 506615, 506618 and 506619). Revocation is sought in respect of the specifications in their entirety. VS alleges that SS has not used the Contested Marks in the United Kingdom within the five-year periods set out below:

506615

Contested Mark i): UK910117612

SEBIR TSF

i) following the date of completion of the registration process, i.e. 8 March 2012 – 7 March 2017 ('the First Relevant Period'). The earliest possible revocation date is 8 March 2017.

ii) 16 October 2018 – 15 October 2023 ('the Second Relevant Period'). The earliest possible revocation date is 16 October 2023.

506618

Contested Mark ii): UK910376192



i) following the date of completion of the registration process, i.e. 26 May 2012 – 25 May 2017. The earliest possible revocation date is 26 May 2017.

ii) 16 October 2018 – 15 October 2023 ('the Second Relevant Period'). The earliest possible revocation date is 16 October 2023.

506619

Contested Mark iii): UK910117661

TSF

i) following the date of completion of the registration process, i.e. 16 June 2012 – 15 June 2017. The earliest possible revocation date is 16 June 2017.

ii) 16 October 2018 – 15 October 2023 ('the Second Relevant Period'). The earliest possible revocation date is 16 October 2023.

10. SS filed respective defences and counterstatements in which it denied the claims against the three Contested Marks in their entirety. The initial pleading⁵ is the same for each revocation action: it is stated that SS has used the Contested Marks in Europe and in the UK 'for all the goods and services and/or for relevant ones that will cover their category classes, as it will be proved in the evidence round in due course'.⁶

11. SS is represented by Lara Grant. VS is represented by Stevens Hewlett & Perkins. SS has filed evidence. VS filed written submissions during the evidence rounds, dated 1 July 2024. A hearing was neither requested nor considered necessary, and both parties filed written submissions in lieu thereof. I confirm that I have read all of the evidence and submissions, to which I will refer to the extent necessary.

EVIDENCE

12. SS' evidence comes from Marcos Palau-Ribes, Chief Executive Officer of SS. Mr Palau-Ribes' Witness Statement is dated 26 April 2024, and is accompanied by seventeen exhibits: MPR1 to MPR17. The evidence has been adduced in order to support SS' statements of use.

RELEVANCE OF EU LAW

13. 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.

⁵ A concession was since made, which is addressed later in this decision at [18].

⁶ Forms TM8(N) filed in respect of revocations 506615, 506618 and 506619, counterstatements at section [8].

DECISION

My general approach

14. Given that the instant matter is a cross-consolidation of six sets of proceedings, it is helpful to set out an explanation of my approach and the considerations underpinning it.
15. The earlier marks sought to be relied upon by SS in the three opposition actions are themselves subject to attack by way of the three respective revocation actions instituted by VS.

The oppositions: earlier marks

16. In accordance with section 6 of the Act, SS' marks are earlier marks by virtue of their filing dates, *all of which* fell before *each of* the designation dates of the Contested Designations.

Proof of use requirements for opposition proceedings

17. Section 6A of the Act provides that, where the date on which the registration procedure of an earlier mark was completed more than 5 years prior to the application/designation date (or priority date) of the applied-for mark, an Opponent may be required to prove use of the earlier mark. In the instant consolidated proceedings, each of the Contested Marks was registered for more than five years before the requests for UK protection for the Contested Designations were filed. Section 6A of the Act is, therefore, engaged.

Concession on the matter of genuine use

18. For the purposes of the three opposition actions, SS initially pleaded that it had made use of each of its earlier marks (the Contested Marks in the revocation actions) in respect of all the goods/services for which they stand registered. However, SS has since changed its position by way of written submission, dated

12 September 2024, in which it admits that ‘no evidence of use has been filed in support of use of the Earlier Marks with regard to goods in class 1’.⁷ For clarity, I set out the goods in respect of which non-use has been conceded, for the relevant Contested Marks:

Contested Marks (i) UK00910117612 and (ii) UK910376192, the class 1 specification for both being:


Class 1 - Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; Unprocessed artificial resins, unprocessed plastics; Manures; Fire extinguishing compositions; Tempering and soldering preparations; Chemical substances for preserving foodstuffs; Tanning substances; Adhesives used in industry; Soldering fluxes.

Impact of the revocation actions upon the oppositions

19. The outcomes of the revocation actions will determine whether and, if so, to what extent, each of the Contested Marks can be relied upon as an earlier mark for the purposes of the related oppositions. For clarity, I set out the consequences of the possible outcomes on the related opposition actions in the following table:

Mark sought to be revoked:	Revocation dates:	Impact of revocation on ‘earlier mark’ status for related opposition:
Contested Mark (i) 910117612 SEBIR TSF (word mark)	8 March 2017	Ceases to be an earlier mark for any of the three oppositions.
	16 October 2023	Remains an earlier mark for all three oppositions.
Contested Mark (ii) 910376192	26 May 2017	Ceases to be an earlier mark for any of the three oppositions.
	16 October 2023	Remains an earlier mark for all three oppositions.

⁷ SS’ written submissions in lieu of a hearing, [45].

 (figurative mark)		
Contested Mark (iii) 910117661	16 June 2017	Ceases to be an earlier mark for any of the three oppositions.
TSF (word mark)	16 October 2023	Remains an earlier mark for all three oppositions.

20. In the event that all of the revocation actions were to succeed in their entirety, with each Contested Mark liable to revocation from its earliest possible revocation date, then all three Contested Marks would cease to qualify as earlier marks for the purposes of the related oppositions. In such circumstances, all three oppositions would fall away, allowing the Contested Designations to proceed to grant of protection in the UK. It is, therefore, necessary to determine the three revocation actions first.

The Revocations: 506615, 506618 and 506619

The relevant legislation

21. Section 46 of the Act states:

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

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

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

(c) [...]

(d) [...]

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

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

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

(4) [...]

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

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

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

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

22. Section 100 of the Act provides that:

'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.'

The relevant case law

23. 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 Court of Justice of the European Union ('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 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 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].'

24. Proven use of a mark which fails to establish that 'the commercial exploitation of the mark 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.

25. When considering the matter of genuine use of a comparable EU trade mark prior to and including IP Completion Day (31 December 2020), use in the EU remains relevant.⁸

⁸ Kerly's Law of Trade Marks and Trade Names, 17th Ed., [12-073].

26. On the matter of use in relation to an EUTM, in the case of *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, the CJEU noted that:

‘36. It should, however, be observed that..... the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase ‘in the Community’ is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.’

And

‘50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as ‘genuine use’, it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark.’

And

‘55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77).’

The court held that:

'Article 15(1) of Regulation No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to 'genuine use in the Community' within the meaning of that provision.

A Community trade mark is put to 'genuine use' within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market share within the European Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the main proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the market concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity.'

27. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52, Arnold J. (as he then was) reviewed the case law since the *Leno* case and concluded as follows:

'228. Since the decision of the Court of Justice in *Leno* there have been a number of decisions of OHIM Boards of Appeal, the General Court and national courts with respect to the question of the geographical extent of the use required for genuine use in the Community. It does not seem to me that a clear picture has yet emerged as to how the broad principles laid down in *Leno* are to be applied. It is sufficient for present purposes to refer by way of illustration to two cases which I am aware have attracted comment.

229. In Case T-278/13 *Now Wireless Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* the General Court upheld at [47] the finding of the Board of Appeal that there had been genuine use of the contested mark in relation to the services in issues in London and the Thames Valley. On that basis, the General Court dismissed the Applicants' challenge to the Board of Appeal's conclusion that there had been genuine use of the mark

in the Community. At first blush, this appears to be a decision to the effect that use in rather less than the whole of one Member State is sufficient to constitute genuine use in the Community. On closer examination, however, it appears that the Applicants' argument was not that use within London and the Thames Valley was not sufficient to constitute genuine use in the Community, but rather that the Board of Appeal was wrong to find that the mark had been used in those areas, and that it should have found that the mark had only been used in parts of London: see [42] and [54]-[58]. This stance may have been due to the fact that the applicant was based in Guildford, and thus a finding which still left open the possibility of conversion of the Community trade mark to a national trade mark may not have sufficed for its purposes.

230. In *The Sofa Workshop Ltd v Sofaworks Ltd* [2015] EWHC 1773 (IPEC), [2015] ETMR 37 at [25] His Honour Judge Hacon interpreted *Leno* as establishing that "genuine use in the Community will in general require use in more than one Member State" but "an exception to that general requirement arises where the market for the relevant goods or services is restricted to the territory of a single Member State". On this basis, he went on to hold at [33]-[40] that extensive use of the trade mark in the UK, and one sale in Denmark, was not sufficient to amount to genuine use in the Community. As I understand it, this decision is presently under appeal and it would therefore be inappropriate for me to comment on the merits of the decision. All I will say is that, while I find the thrust of Judge Hacon's analysis of *Leno* persuasive, I would not myself express the applicable principles in terms of a general rule and an exception to that general rule. Rather, I would prefer to say that the assessment is a multi-factorial one which includes the geographical extent of the use.'

28. For the instant revocations, I set out the relevant territories for assessing genuine use as follows:

- EU use (which, prior to IP Completion Day, may include UK) is relevant for the entirety of the First Relevant Period *for each of the Contested Marks*, because all pre-date IP Completion Day.

and

- EU use is relevant for the portion of the Second Relevant Periods (being the same for each Contested Mark) from 16 October 2018 to 31 December 2020.

For the portions of the Second Relevant Periods from 1 January 2021 to 15 October 2023, *only UK use* may be taken into account.

My approach to the assessment of genuine use

29. As noted above at [9], there are six relevant five-year periods within which non-use of the Contested Marks has, variously, been alleged. The Second Relevant Periods for the respective Contested Marks overlap entirely. Should genuine use be proven in the most recent relevant periods (i.e. the Second Relevant Periods), the revocation actions would, to the extent that use has been found, be defeated. I note that, for all three actions, the Revocation notification date was 27 September 2023, just under three weeks before the actions were filed on 16 October 2023. I remind myself of the proviso that, should commencement/resumption of use of the Contested Marks be shown to occur within the three months preceding institution of the revocation actions, if SS RP is on notice, such use will be disregarded unless preparations for the commencement/resumption began before SS became aware of the impending actions.⁹ Consequently, should any use be shown up to and including 26 September 2023, such use may be taken into account when considering the Second Relevant Periods. Broadly speaking, the period of time to be considered, is 8 March 2012 to 15 October 2023 (subject to the aforementioned proviso).

The evidence from SS

A note on the interpretation of technical terms referred to in evidence

30. SS' evidence contains several references to what I consider to be technical terms within the 'metals' and metalwork/fabrication trade. I consider it useful, at this point,

⁹ Section 46(3) of the Act; Kerly's Law of Trade Marks and Trade Names, 17th Ed., [12-095].

to set out my understanding of what such terms (whether general terms, or terms within the parties' specifications) mean. Examples include, inter alia: 'wire drawing' and 'cold stamping'. My understanding is, in large part, based on information gleaned from the totality of evidence available to me. In addition, I have consulted dictionaries to gain a basic understanding of what certain terms entail.¹⁰

31. I, therefore, set out my basic understanding of the following terms referred to in the evidence:

Wire drawing - I understand this to refer to the drawing of metal through successively smaller dies to form wire.¹¹

Extrusion - I understand this to refer to the process of pushing a material through a die with a particular cross-section such that the resulting 'extruded' material has a particular cross-sectional profile.¹²

TSF (phosphate-free wire drawing):

There is frequent reference to this throughout SS' evidence. Mr Plau-Ribes, in his narrative evidence, refers to it as 'a new technology developed by SS for cold deformation without added phosphates which reduced industrial and environmental costs and offers better performances than phosphate wire'.¹³ Later, Mr Plau-Ribes refers to 'drawn wire for phosphate-free cold stamping', which I consider to be the treated wire that results from the wire drawing process.¹⁴ It can be inferred from Mr Plau-Ribes' narrative that the wire drawing process can be performed with or without the use of phosphates. I note the following from an extract of SS' website:¹⁵

'WHAT IS PFWD?

¹⁰ In Decision BLO/0293/24, Ms Emma Himsworth, as the Appointed Person, acknowledged that it was open to a Hearing Officer to consult dictionaries as a part of the decision-making process, [31].

¹¹ Collins English Dictionary (online version). Accessed 2 October 2025, at 11:05 GMT.

¹² As above, accessed 2 October 2025, at 11:11 GMT.

¹³ Witness Statement of M Palau-Ribes, [10].

¹⁴ As above, [19].

¹⁵ Exhibit MPR5.

Phosphate-Free Wire Drawing.

New technology developed by SEBIR for phosphate-free [sic] cold forming.

Reduced industrial and environmental costs.

Performs better than phosphate-coated wire’.

Deformation - The Oxford English Dictionary (online version) provides, inter alia, the following definition:¹⁶

‘Chiefly *Geology, Physics, and Materials Science*. The action or process of deforming or distorting something, esp. by the application of stress. Also: the result of this; a change in shape or structure’.

Cold stamping - I note the following references to SS’ processes in evidence by way of material from SS’ website:

‘Wire drawn at high pressure enables the production of cold-formed parts without using phosphate’¹⁷

On phosphate-free wire drawing: ‘This technique enables greater capacity for the geometric definition of cold headed parts’¹⁸

‘SEBIR is the leading family company in Europe for the manufacture of steel wire for cold heading [...]’¹⁹

I understand ‘cold stamping’ to be a form of ‘deformation’ process whereby metal is shaped by applying pressure to it in its unheated state (i.e. at room temperature). I consider ‘cold heading’ to be another name for the same process.

Cold heading wires - I find that this refers to wires used in the cold stamping/heading process.

32. I note the following from SS’ evidence:

¹⁶ Accessed 2 October 2025, at 11:35 GMT.

¹⁷ Exhibit MPR5.

¹⁸ Exhibit MPR6.

¹⁹ As above.

(a) Mr Palau-Ribes has given narrative evidence that SS' main activity is 'the smelting and heat treatment of irons, steels and metals, and the wire drawing of irons and steels'.²⁰ The company's specialty is said to be the 'manufacture, distribution and sale of steel wires for cold heading and cold stamping'.²¹ SS is described as a 'wire drawing company specialised in a single type of application: cold heading wires';²² offering a broad array of wires 'in terms of qualities, processes, and diameters needed to supply any stamping customer'.²³ Mr Palau-Ribes' narrative continues: '[SS] is a solution provider and offers services such as the supply of special steels'.²⁴ It is further stated that SS is a 'pioneer' of a process known as 'TSF[®] (phosphate-free wire-drawing)'; a new technology developed by SS 'for cold deformation without added phosphates'.²⁵

(b) Figures for turnover and 'advertising investment' have been provided in respect of products and services under the Contested Marks, as follows:²⁶

Year:	Turnover €:	TSF Turnover €:	UK TSF Turnover €	Marketing costs €:
2017	35,825,028	5,709,727	0	11,464
2018	41,376,800	6,307,473	0	60,509
2019	37,042,239	6,296,923	0	333
2020	26,641,464	3,964,014	0	4,815
2021	43,894,903	9,119,711	6,895	1,543
2022	58,866,391	14,944,469	96,298	78,423
2023	50,046,482	11,231,045	165,923	n/a

I note that the figures have not been broken down to show the proportion of turnover: (i) referable to each of the three Contested Marks; or (ii) referable to which goods or services.

²⁰ Witness Statement of M Palau-Ribes, [5].

²¹ As above, [6].

²² Witness Statement of M Palau-Ribes, [6].

²³ As above, [7].

²⁴ Witness Statement of M Palau-Ribes, [8].

²⁵ As above, [10].

²⁶ Witness Statement of M Palau-Ribes, [22].

(c) Exhibit MPR1 is described as a print-out of the 'services' section of SS' company website 'containing further information on [its] material treatments services'.²⁷ The pages are undated, save for a 'Copyright Notice' dated 2024 which post-dates the relevant periods. The following mark (which is not one of the Contested Marks) is shown in the header of the webpage:



I note the following from the content:

- **'Beyond the supply of special steels: we are solution providers.**

[...] Our services include the supply of special steels, but SEBIR stands out for its commitment to those who choose us.

Our technical service guarantees you a personalised service to determine the best grades and processes for your product. [...]

Furthermore, at SEBIR we are committed to sustainability, being pioneers of processes such as TSF© (phosphate-free wire-drawing).'

- A photograph showing the exterior of the company building and what appear to be large spools of heavy gauge wire or cable stacked outside in the yard. The mark showing on the premises is:

²⁷ Witness Statement of M Palau-Ribes, [22].



- The services featured appear to be: 'Steel wire transformation', described as a sustainable and economical alternative for steel processing'; 'Distribution'; and 'Profiling'.
- A process called 'cold forging' is described as 'a methodology that provides crucial materials for all types of industries. The resulting steel wire for cold stamping is often used for the manufacture of screws, rivets, bolts, nails and many other items'.
- There is a photograph of what appear to be large spools of wire or cable, of a heavy gauge, wrapped, labelled and stacked in a warehouse. It is not possible to see whether anything is printed on the labels. Another photograph shows a worker in a lab coat operating a machine which features, according to their shape, what I presume to be moulds/dies for pressing metal into nuts.
- Another photograph shows a spool of wire packaged in plastic wrap with a label affixed bearing the following mark:



The fact that it is labelled with one of SS' marks (albeit not one of the Contested Marks) suggests that this is a finished good rather than the raw material to be worked.

(d) Extracts from catalogues have been provided.²⁸ These neither bear the date on their face, nor are they dated by way of narrative evidence. However, the final page of the second catalogue includes some sort of certification/industry accreditation with a validity period of 1 September 2015 to 31 August 2018, thus placing this material within the earlier of the three respective relevant periods. No detail has been provided on the distribution of either catalogue, nor the geographical locations/spread of customers targeted.

The first catalogue:²⁹

I am unable to ascertain the date of this catalogue. The following Contested Mark appears prominently on the front cover, and fairly regularly, throughout the catalogue:



The content is bi-lingual; text is in English and a language that I recognise to be German. The cover features the following text, prominently placed and rendered in a large font: 'ECO-REVOLUTION COLD HEADING WIRES WITHOUT PHOSPHATE'. 'TSF' is described as 'the new wire drawing process for cold heading developed by SEBIR'; a type of high pressure wire drawing without the use of phosphate coating'. The phosphate-free process is emphasised as having less environmental impact. Other advantages underlined are improved product quality and economical savings by way of increased longevity of tools and raw materials used during the process. No specific product listings or prices are shown.

The second catalogue:

The following mark appears prominently on the cover page and the headers of the pages:

²⁸ Exhibits MPR1Bis and MPR1Ter.

²⁹ Exhibit MPR1Bis.

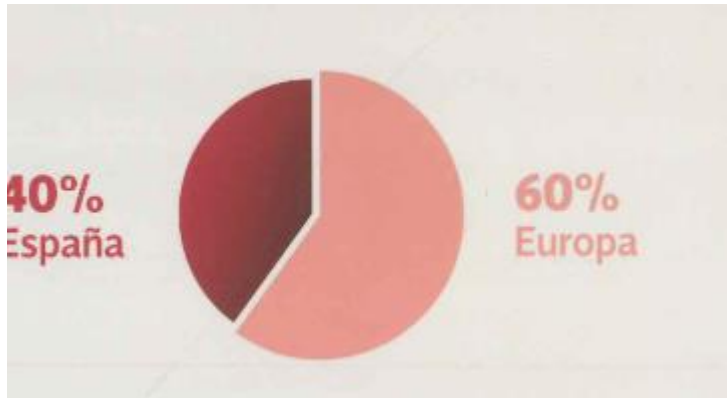


This catalogue appears to be dedicated to 'extrusion and cold heading wire'. Two types of wires are identified: 'TSF (wire drawn without the use of phosphate); and 'PHP' (phosphate wires). The details of these two types are set out beneath the following two marks:



It is clear that the former mark denotes 'TSF' wire, while the latter denotes 'PHP' wire. Photographs show large spools of wire in an industrial setting, although it is not clear whether these are products to be sold as they are, or the raw materials to be used by SS in the provision of its services. Text indicates that the company has over '45 years of experience and international projection'. A map to accompany this information shows that 40% of their output is for the Spanish market, the remaining 60% being destined for 'Europa'. The pie-chart key to the map indicates that the UK is not included in the 60%:





Tables are included to show:

i. various steel alloys available and details of their composition:


Raw material supply norms

Numeric Designation	SEBIR Nr.	Grade	Applications (class)
A			
BORON-CHROMIUM ALLOYED STEEL WITH 1% Cr CONTENT			
1.7076	1.0303	32CrB4	hardening and tempering steels with high hardenability
1.7077	1.0303	36CrB4	
CHROMIUM AND CHROMIUM-MOLYBDENUM ALLOYED STEELS			
1.7034	703	37Cr4	Standard hardenability and toughness steels
1.7035	012	41Cr4	
1.7039	019	41CrS4	
1.7243	402	18CrMo4	High standard hardenability and toughness steels
1.7220	003	34CrMo4	
1.7202	705	37CrMo4	
1.7225	008	42CrMo4	
1.7227	059	42CrMoS4	
STEELS INTENDED FOR ANOTHER USES			
1.7131	054	16MnCr5	Carburizing
1.7711	401	40CrMoW-6	high temperature chq
1.3505	742	100Cr6	ball bearings
1.0718	034	F210E	free cutting
1.0403	407	G15Pb	free cutting
1.0503	717	C42C	nails
1.0613	718	C62C	nails

and

ii. packaging options from which either coil, 'spider' or spool configurations can be chosen.

(e) Wayback prints of SS' web pages have been provided.³⁰ The pertinent details are set out in the following table:

Date:	Territory/location of target market:	Goods/services featured:	Use of Contested Marks and/or other notable details:
URL indicates 2013	To the left of the page, I note the presence of 4 'flag' icons denoting Spain, France, Great Britain and Germany. English content indicates that English-speaking consumers are targeted.	'high tech wire drawing processes', with particular mention of steel. Text states that SS' products have 'a solid base in Europe' with '39 years of experience' and that SS has processed steel since 1971.	The mark  is featured, albeit, as explained below at [37] to [45], this is not one of the Contested Marks.
URL indicates 2014.	As above.	The following are listed under 'processes': Material Reception; Surface Treatment; Heat Treatment; Drawing; Expedition.	As above.
URL indicates 2017.	It is apparent that the presentation of this web-page in English is via a drop-down option, indicating that	The text indicates a focus on 'Phosphate-free wire drawing' for 'cold-stamping'.	The initials 'TSF' appear solus, accompanied by a URL which is

³⁰ Witness Statement of M Palau-Ribes, [17]; Exhibits MPR3 – MPR6.

	English-speaking markets are targeted.	I note the text ‘Wire drawn at high pressure enables the production of cold-formed parts without using phosphate’.	presumed to lead to a page on ‘TSF’.
URL indicates 2021.	Content is in English	<p>Services mentioned include: Production Drawing; Distribution; Research.</p> <p>There is a focus on ‘phosphate-free wire drawing’.</p> <p>Photographs of large spools or coils of wire/cable feature.</p>	<p>I note the following, (which has also been highlighted in SS’ submissions):³¹</p> <p>‘TSF® : an eco-friendly product’ followed by details of this particular wire drawing process.</p> <p>I note that a list of URLs includes the following: Products (https://web. TSF: eco-friendly product TSF (https://web.archive.c</p>

(f) A screenshot of SS’ ‘LinkedIn’ account has been provided. It is undated, save for the Copyright notice dated 2024. This material, therefore, post-dates the relevant periods. The content is in a language that I recognise to be Spanish. The number of followers is 413. The few posts featured have very few ‘likes’. This material is of very

³¹ SS’ written submissions in lieu of a hearing, [25].

little assistance because it is not possible to discern: when the account was first set up; or the territories of the followers. It is, therefore, not possible to determine the following:

- Whether any of the followers were following SS' account during any of the relevant periods;
- the extent, if any, of the following based in EU Member States prior to IP Completion Day;
- the extent, if any, of the following based in the UK post IP Completion Day.

(g) Exhibit MPR8 comprises a list of certifications said to be 'currently in force' for SS.³² It is not clear what time periods are covered by these certifications. No information has been provided as to whether these credentials are mandatory or optional in relation to SS operating. That said, the existence of certain certifications, without more, does not indicate use of the Contested Marks. It merely shows that SS has achieved certain certifications. I note that one of the certificates, dated 1 April 2022, and valid until 31 March 2025, is in recognition of the *management system* of the company SS complying with required standards.³³

(h) Exhibit MPR9 is described as 'a printout of the website of Wire Dusseldorf one of the most important trade fairs in this sector' which takes place every two years, in Dusseldorf, Germany. It is dated 23 March 2012 and titled 'The new TSF wire provides economic, ecologic and quality benefits Sebir-TSF, the first drawn wire without phosphate for cold heading, will be present at the WIRE trade fair'. There are four mentions of 'Sebir-TSF' in the narrative. Information on the number of attendees and their geographical bases would have been helpful. Detail on whether (and if so, the extent to which) any sales of SS' offerings were generated as a result of this event might have further strengthened SS' case. Photographs of SS' attendance at the trade fair have been provided. The following marks are displayed on and around the trade stand:

The Contested 'figurative' Mark:

³² Witness Statement of M Palau-Ribes, [21].

³³ Exhibit MPR8Bis.



For reasons set out below at [37] to [45], the following ‘SEBIR’ mark is not one of the Contested Marks:



In the following, the Contested ‘figurative’ Mark is shown on the left of the signage:



(i) A selection of invoices has been provided, all of which bear the following mark, which, as explained below at [37] to [45], is not a mark in suit, in the header:³⁴



The pertinent details can be summarised as follows:

Date:	Territory of customer:	Goods purchased:	Sum due €:
30/11/2017	Germany	‘17MNB3/O-TSF 04,28 mm’, itemised x2.	21,793.96

³⁴ Exhibits MPR10-MPR16.

15/01/2018	Germany	'17MNB3/O-TSF 02,81 mm', itemised x3.	18,776.29
10/10/2018	France	'17B2/TSF 02,82 mm', itemised x2.	9,999.16
23/10/2018	Barcelona, Spain	'17B2/TSF' – 5 items, of varying gauge in mm.	4,328.92
28/11/2018	Telford, UK	'36MNB4/KGK/HOM 13,79 mm'	2,853.66
28/11/2018	Telford, UK	'20MNB4/KGK/HOM 09,55 mm'; '36MNB4/KGK/HOM' – 3 items, of varying gauge in mm.	10,054.00
13/09/2019	Germany	'17MNB3/O-TSF 02,45 mm'	24,125.74
23/09/2019	Barcelona, Spain	'17B2/TSF' – 11 items, of varying gauge in mm.	74,506.98
13/11/2019	France	'17B2/TSF 05,80 mm'	5,783.58
10/02/2020	France	'17B2/TSF 07,68 mm'	3,674.00
10/03/2020	Germany	'17MNB3/O-TSF 02,45 mm', itemised x 2.	23,173.38
29/05/2020	Barcelona, Spain	'17B2/TSF' – 6 items, of varying gauge in mm.	42,306.50
Post IP Completion Day:			
29/04/2021	Telford, UK	'36MNB4/KGK 15.60 mm'; 'C4C/KGK 06.62 mm'; 'C4C/KGK 04.75 mm'; '23MNB4/S/TSF 04.90 mm'.	23,990.03
28/04/2021	Telford, UK	'23MNB4/KGK', 4 items, of varying gauge in mm; '36MNB4/KGK 15.60 mm'.	28,052.13
29/07/2022	Telford, UK	'36MNB4/KGK', 3 items, of varying gauge in mm.	36,668.39
15/09/2022	Telford, UK	'10B22/KGK 06,93 mm', itemised x2.	43,295.01

5/12/2022'	Telford, UK	'23MNB4/KGK 05,98 mm', itemised x3; '36MNB4/KGK/TSF2 06,38 mm'.	30,532.84.
29/06/2023	Telford, UK	'C4C/KGK 06,62 mm', itemised x2; '36MNB4/KGK/TSF 09,60 mm', itemised x2; '10B37/KGK 04,18 mm'; '22MNB4CR/KGK 09,25 mm'.	38,154.02.

The matter of variant use

33. The evidence includes many instances of the following mark ('the SEBIR Figurative Mark'):



34. As noted, it features on: the header of each invoice; signage and trim at trade fairs; in SS' webpages; on the frontage of SS' premises; on packaging.

35. It is necessary for me to determine whether the SEBIR Figurative Mark above at [33] amounts to acceptable use of the Contested Mark 'SEBIR TSF'.

36. For ease of reference, I reproduce the relevant provision under section 46 of the Act here:

‘(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.’

37. The correct approach to the test under section 46(2) of the Act is set out in the case of *Lactalis McLelland Limited v Arla Foods AMBA*,³⁵ by Phillip Johnson, sitting as the Appointed Person:

‘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

³⁵ Case BL O/265/22.

of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, 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 [sic] 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.

38. Contested mark i) ‘SEBIR TSF’ is a word mark. The definition of a word mark was set out in *LA Superquimica v EUIPO*, Case T-24/17, at paragraph [39]:

[...] it should be noted that a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see judgment of 28 June 2017, *Josel v EUIPO — Nationale- Nederlanden Nederland (NN)*, T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited).’

39. I also note that, in *Adidas AG v EUIPO* Case T-307/17, the General Court (‘GC’) found that:

‘...contrary to what the applicant claims, it must be held that, where a trade mark is extremely simple, even minor alterations to that mark may constitute significant changes, so that the amended form may not be regarded as broadly equivalent to the mark as registered. Indeed, the simpler the mark, the less likely it is to have a distinctive character and the more likely it is for an alteration to that mark to affect one of its essential characteristics and the perception of that mark by the relevant public (see, to that effect and by analogy, judgment of 13 September 2016, Representation of a polygon, T-146/15, EU:T:2016:469, paragraphs 33 and 52 and the case-law cited).’

40. Although the above-mentioned finding by the GC concerned the use of a simple three stripe trade mark, which was claimed to have acquired a distinctive character through use, the finding is considered relevant to assessments of whether use of an extremely simple trade mark with minor alterations constitutes genuine use of the mark.

41. I must first consider the distinctiveness of the Contested Mark ‘SEBIR TSF’ and how that distinctive character arises. Neither party has addressed this matter comprehensively. I note that SS has submitted the following on the comparison of the parties’ competing marks in the opposition actions:³⁶

[73]. The Earlier Marks are mainly composed by three initials ‘TSF’ and in same [sic] cases also include the term SEBIR, which is the company name- the Opponent- or in a stylised form along with other terms in a much smaller font.

[...]

[75] From a visual point of view, the signs coincide almost identically in their initials TFS/TSF which is the most distinctive and dominant element of the Applications and they only differ in the position of the letters FS/SF following the same initial T in the respective marks.

³⁶ SS’ written submissions in lieu of a hearing, [73] and [75].

[...]

[81] Aurally, the marks will be both pronounced quasi identically as it [sic] refers to their initials and main distinctive part:

t-f-s

t-s-f

42. It is clear that SS regards the initials element ('tfs') of VS' opposed marks as their dominant and distinctive element. Although SS does not explicitly identify the dominant and distinctive element of its own Contested Marks, my view is that paragraph [81] of its submissions indicates that it also considers the initials element of its own marks ('tsf') as the distinctive element.

43. I respectfully disagree that the 'TSF' element of 'SEBIR TSF' is to be singled out as the dominant and distinctive element of the mark. My view is that the placement and size of the first element 'SEBIR' is such that it cannot be considered to be secondary to 'TSF' in terms of dominance and/or distinctiveness. I find that the mark, as a whole, will likely be understood by the average UK consumer as a name, (or, perhaps, an unknown word) followed by three initials denoting some unknown names/words. Both word elements are relatively short and, visually speaking, I do not consider either 'SEBIR' or 'TSF' to have dominance over the other. I find that the overall impression resides in the mark as a whole. Whilst I recognise that it is generally the case that initials are weakly distinctive,³⁷ my view is that the distinctive character of the mark rests in the pairing of the two word elements 'SEBIR TSF'.

SEBIR Figurative Mark:	Contested Mark i): SEBIR TSF
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³⁷ *Kunze Folien GmbH v Kartell UK Limited*, BL O/084/14, in which Mr Ian Purvis QC (as he then was) sitting as the Appointed Person, cited with approval the case of *Alfa-Beta Vissilopoulos AE v Agro de Bazan*, Case R 82/2011-4, at [16].



44. The SEBIR Figurative Mark is a composite mark comprising several elements. Importantly, the word element 'TSF' present in the Contested Mark, is omitted. The word 'SEBIR' is rendered in a highly stylised typeface and heavily emboldened font. The initials 'SA' are positioned beneath the 'R' of the SEBIR element in the same stylised typeface and emboldened font, albeit in a greatly reduced size relative to 'SEBIR'. The SEBIR element has been underscored with a thin line, beneath which are the words 'TREFILERIA DE ACEROS ESPECIALES', presented in a plain typeface in a much smaller size relative to 'SEBIR'. My view is that the word 'SEBIR' dominates the mark by virtue of its size and central positioning. I find the stylised 'SEBIR' element to be the most distinctive aspect of the mark, with the additional initials and wording playing a much lesser role within the overall impression.

45. I have borne in mind that the Contested Mark is a word mark and that it may be presented in the same stylised font as the 'SEBIR' and 'SA' elements of the SEBIR Figurative Mark. However, my view is that the absence of the 'TSF' element represents an alteration in the distinctive character of the Contested Mark. I am, therefore, unable to find that the SEBIR Figurative Mark is an acceptable variant of the Contested Mark as registered.

Assessment of genuine use

46. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.³⁸ I note the following dicta on the matter of sufficient use:³⁹

³⁸ *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

³⁹ As above.

[53] In order to examine whether use of an earlier mark is genuine, an overall assessment must be carried out which takes account of all the relevant factors in the particular case. Genuine use of a trade mark, it is true, cannot be proved by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (*COLORIS (T-353/07)*, at [24]). However, it cannot be ruled out that an accumulation of items of evidence may allow the necessary facts to be established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts (see, to that effect, judgment of the Court of Justice of April 17, 2008 in *Ferrero Deutschland GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (C-108/07 P)*, not yet reported, at [36]).

47. In assessing the body of evidence available to me, I bear in mind the case of *Awareness Limited v Plymouth City Council*, Case BL O/236/13, in which Mr Daniel Alexander Q.C. (as he then was) as the Appointed Person stated that:

'22. The burden lies on the registered proprietor to prove use..... However, 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 (which in many cases will be the Hearing Officer in the first instance) 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.'

48. I also bear in mind the case of *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, Mr Geoffrey Hobbs Q.C. (as he then was), as the Appointed Person, stated that:

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

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

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

49. The body of evidence indicates that SS has been operative within the metal trade for a significant number of years. A page from SS' own website, dated 2013, states that it has processed steel since 1971, beginning in Europe. The presence of flag icons denoting Spain, France, Great Britain and Germany indicates that the page is targeted to these four (at that time) EU Member States.
50. It is clear from the totality of material provided that one of SS' specialties is the process of 'wire drawing' and that the company holds itself out as pioneer of a process referred to as 'TSF', which means wire drawing without the use of phosphate. In the context of the evidence as a whole, I consider it reasonable to find that the non-English wording 'trefilado sin fosfato', which is present in the Contested figurative mark (910376192), almost certainly translates as 'wire drawing without phosphate'.
51. The evidence filed indicates that SS has maintained its own web presence since at least 2013. Third party evidence by way of a printout from the website of 'Wire Dusseldorf', described as one of the most important trade fairs in the sector, dated 23 March 2012, foreshadows SS' attendance at the event to promote its, at that time, new 'TSF' wire drawing process. There are several mentions of 'Sebir-TSF' within the body of text in the aforementioned printout. Elsewhere in the evidence, photographs chronicling SS' attendance at the event show the Contested figurative mark displayed prominently on large overhead illuminated signage, and trade stand 'trim'; and it is evident from the signage that the focus of SS' offering at that time was 'cold heading wire'.
52. The figures provided for sales turnover and marketing expenditure span the entirety of the Second Relevant Period. Mr Palau-Ribes has introduced these figures as relating to the three Contested Marks. However, no breakdown has been provided to indicate what proportion of the sums are referable to sales/marketing under each of the Contested Marks, nor in respect of which particular goods or services. Figures provided in the column of the table headed 'Turnover €' are presumed to be global figures relating to the entirety of SS' income from trading, however no detail has been provided on this. At first sight, it is not clear what precisely the respective values in the columns headed 'TSF Turnover €' and 'UK

TSF Turnover €' represent (aside from the fact that the latter relate to the UK) – because the 'TSF' could potentially relate specifically to the pioneering wire drawing process, or one or other of the two 'TSF' marks. However, SS' later submission indicates that, in the context of the table, 'TSF' is being used as some sort of collective reference to the three Contested Marks. This is unhelpful. Aside from 2021, the sales figures are not insignificant. The figures preceding IP Completion Day are noteworthy, although there is no breakdown by EU Member State. The UK figures for 2022 and 2023 are fairly significant. The figures for marketing expenditure appear somewhat erratic, with the highest values in 2018 (60,509€ for the EU) and 2022 (78,423€ for the UK), and the lowest value in 2019 (333€ for the EU).

53. The invoices, summarised at [32(i)], need to be considered in conjunction with material elsewhere in the evidence in order to properly assess their probative value. I have found that the totality of the evidence demonstrates an emphasis on steel and wire drawing. Based on the information on the faces of the invoices, without recourse to any other detail, it is not possible to identify what the goods (or services) enumerated on the invoices are. Further, I am unable to determine whether the items are 'mere' goods, or goods provided in the course of delivering services. Various measurements in 'mm', ranging from fractions of a millimetre to 15.6 millimetres, have been ascribed to the items. In the context of wire drawing, and given the very short distances quoted, I find that these measurements likely refer to the diameters of the cross-sectional profiles of wires. In the absence of any wording on the invoices to identify the materials, it is necessary to refer to the table on 'Raw material supply norms' set out above at [32(d)]. It is not possible to fully cross-reference each of the strings of characters (e.g. '23MNB4/KGK'; 'C4C/KGK'; '22MNB4CR/KGK' etc) to goods/services elsewhere in the evidence. However, my view is that the instances of 'B4' and 'CR' etc most likely refer to metal elements present in the materials of which the wires are composed. The table (noted at [32(d)]) has a section headed 'Boron-Chromium alloyed steel with 1% Cr Content', with the chemical formula presented underneath: '32CrB4'. I, therefore, consider that the 'B4' which appears in several of the product 'codes' likely relates to various steel alloys which include boron. Similarly, I find that the appearance of 'CR' in

various product codes likely indicates a steel alloy which includes the metal chromium.

54. For each of the invoices provided, the mark shown in the header is the SEBIR Figurative Mark. As explained above at [37] to [45], I have found that this mark is not an acceptable variant of the Contested Mark 'SEBIR TSF'. None of the three Contested Marks is visible on the faces of the invoices. Although the lettering 'TSF' does appear frequently as part of what appear to be product codes (for example: '17B2/TSF'), this alone does not demonstrate trade mark use. It is unclear whether the 'TSF' appears in a trade mark sense or whether it refers to a quality or property of the goods (i.e. wires drawn using the 'TSF' process, or to the 'TSF' process itself). Where photographs of packaged goods appear in the evidence, the packaging bears the mark that I have found to be an unacceptable variant. There do not appear to be any other examples of packaging or labelling bearing any of the three Contested Marks, which could have served to indicate that at least some of the product codes containing the lettering 'TSF' were likely to denote goods sold under some or other of the Contested Marks.

55. A further point to note is that there is a potential discrepancy between the sales figure provided for UK sales in 2022 (96,298€), noted at [32(b)], and the total value of sales referable to the three invoices for UK custom in 2022 (110,496.24€). The combined value of the three invoices dated 2022 exceeds the total UK sales figure for that year. One possible explanation might be that the goods enumerated on the invoices do not relate exclusively to goods sold under the Contested Marks, but include goods sold under other trade marks owned/used by SS. However, no such explanation has been provided.

56. It is clear that SS has been actively trading in wire products and wire drawing, with a focus on the cold pressing technique, and that it specialises in wire drawing without the use of phosphates, which it holds out as innovative, and economically and operationally beneficial. I now proceed to determine the extent to which, if any, these offerings have been held out under the Contested Marks.

Contested Mark i): SEBIR TSF

57. I have noted four references to 'Sebir-TSF' in an excerpt from the website promoting the 'WIRE Dusseldorf' trade fair, dated 23 March 2012, announcing the forthcoming participation of SS by way of showcasing its new 'TSF' wire'.⁴⁰ I can see no other concrete examples of this mark being used. This compound presentation (i.e. hyphenating of the two words) is not present in the mark as registered. In my view, in the absence of any other evidential material to demonstrate that the Contested Mark has been put to use, it is not necessary for me to determine whether the compound presentation (Sebir-TSF) constitutes an acceptable variant of 'SEBIR TSF'. I find that the evidence has failed to demonstrate use of this Contested Mark in any of the relevant periods.



Contested Mark ii):

58. Few instances of this mark appear in the evidence. The mark appears most prominently and frequently in the first of two examples of catalogues addressed at [32(d)]. The catalogue is aimed at both English and German-speaking consumers. However, without being able to place a date on the material, I am unable to ascertain whether the use of the mark demonstrated falls within any of the relevant periods. The second catalogue extract can be presumed to be dated at a point within the First Relevant Period in respect of this Contested Mark (26 May 2012 – 25 May 2017) given the presence, on the final page, of the industry certification/accreditations with a validity period of 1 September 2015 to 31 August 2018. However, this second catalogue relates primarily to the SEBIR' Figurative Mark that has been found to be an unacceptable variant. There is one instance of Contested Mark ii) in relation to the 'TSF' (wire drawn without the use of phosphate) wire, which has been distinguished from another type of wire known as 'PHP' (which *does* involve phosphates). A map indicates that SS' entire output is destined for European territories outside of the UK. No information has been provided on

⁴⁰ Exhibit MPR9.

how widely these catalogues were distributed, and neither features any detail on pricing.

59. Use of Contested Mark ii) is also shown in photographs chronicling SS' attendance at the 'WIRE Dusseldorf' trade fair at some time in 2012, likely shortly after 23 March 2012. The mark features prominently on trade stand signage and trim, and it is clear that SS is showcasing 'cold heading wire'. However, as noted, no detail has been provided on the numbers attending the event or the level of sales generated as a result of the event.

60. The evidence reveals no other instances of Contested Mark ii). The fact that the sales figures have not been refined to show sales generated under each mark is unfortunate; and the fact that none of the items enumerated on the invoices can be reconciled with concrete examples of goods/services sold under Contested Mark ii) is unhelpful. If SS had been using its marks for the relevant periods (which, broadly speaking, span some eleven-or-so years) then it would not have been particularly onerous for it to have produced some clear examples of the Contested Marks relating to particular goods or services. Useful examples might have included, inter alia: photographs of goods bearing labels on which the Contested Marks are visible; evidence of specifications provided by customers seeking to engage SS' services; examples of quotes or orders reconciled with invoices. As the evidence stands, not one solid example of a single sale under any of the three Contested Marks, on a date within any of the relevant periods, has been provided. Given that SS has held itself out as a 'pioneer' of the 'TFS' process, I would expect it to be a prominent player in that area of the market. However, no evidence to show the size of the market, or SS' share of it, has been provided. All invoices for UK sales are confined to just one town: Telford, in Shropshire. If it is the case that the market for SS' offerings is particularly small and specialised, then evidence could have been adduced to demonstrate this. In this connection, I bear in mind that the GC has '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'.⁴¹

⁴¹ *easyGroup Ltd v Nuclei Ltd* [2023] EWCA Civ 1247, at [107].

61. As noted above at [53], I have found that evidence by way of the table of 'raw material supply norms', taken alongside invoices, likely indicates that several of the product codes relate to steel alloys containing, inter alia, boron and/or chromium. The catalogue in which the aforementioned table appears include one instance of Contested Mark ii), although it is the 'unacceptable variant mark' that appears most frequently and prominently (i.e. on the cover and the header of each page). Whilst it seems likely that wires made from steel alloys composed of, inter alia, boron and/or chromium were sold, or provided in the course of a service delivered, by SS, my view is that the evidence cannot support an inference that any goods/services were sold under the Contested Mark ii). The discrepancy, noted at [55], between the amounts invoiced to UK customers in 2022 and the total UK sales revenue for that year makes such an inference even more tenuous. Such a finding would be based on mere probability or supposition, which *New Yorker SHK*⁴² emphasises must be avoided.

Contested Mark iii): TSF (word mark)

62. As noted, an instance of this mark appears in SS' webpage, that I have deduced to be dated 2024, as a reference to the 'TSF' (i.e. without the use of phosphates) wire-drawing process. Other instances of the mark appearing in the context of 'TSF' wire drawing are in the following: the second catalogue, that I have deduced to be dated somewhere within the latter part of the first relevant period (16 June 2012 – 15 June 2017); and in the Wayback print of SS' webpage dated 2021. However, as already noted, it is not possible to determine whether the characters 'TSF' have used to designate trade origin or to refer to the TSF process and goods produced in the course of that process. The difficulties that I have identified above at [60] and [61] apply equally here.

63. In summary, the totality of evidence demonstrates, at best, that SS operates in the field of wire drawing, with an emphasis on a process referred to as 'TSF' wire-drawing (i.e. wire drawing without the use of phosphates). It is not clear what mark

⁴² *New Yorker SHK Jeans GmbH & Co KG v Office for Harmonisation in the Internal Market* (Trade Marks and Designs) (OHIM, Case T-415/09).

or marks might have fulfilled the role of designating trade origin of the goods or services sold. It seems more likely that goods/services were sold under the SEBIR Figurative mark (found to be an unacceptable variant) than under any of the three Contested Marks.

64. I have found that none of the three Contested Marks has been put to genuine use in any of the Relevant Periods. Therefore, all three revocation actions succeed in their entirety, from the earliest possible revocation dates.

Outcome of Revocation actions: CA506615, CA506618, CA506619

65. Contested Mark i) UK009910117612 SEBIR TSF, is revoked in its entirety from 8 March 2017;



Contested Mark ii) UK00910376192 , is revoked in its entirety from 26 May 2017;

and

Contested Mark iii) UK00910117661 TSF, is revoked in its entirety from 16 June 2017.

Outcome of related Oppositions: 442352, 442355 and 442363

66. Following the outcomes of the related revocation actions, as set out above at [19], the marks sought to be relied upon in the oppositions cease to qualify as earlier marks. Consequently, all three related oppositions fall away.

67. The Contested Designations WO0000001712116, WO0000001712177 and WO0000001712188 may proceed to grant of UK protection in their entirety.

COSTS

68.VS has been the successful party and is entitled, therefore, to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023, calculated as follows:

Official filing fee for Form TM26(N) ⁴³ x3 @ £200	£600
Preparing statement and considering the other side's Defence and Counterstatement (revocations) x3	£350*
Considering the other side's Notice of Opposition and preparing Defence and Counterstatement (oppositions) x3	£450**
Preparation of written submissions in lieu of a hearing (x6 cross-consolidated actions)	£600
Total:	£2,000

69.I have declined to award the full minimum sum of £250 for each of the three 'revocation' statements and consideration of the respective defences/counterstatements, given the extent of the overlap of material within them.*

70.I have declined to award the full minimum sum of £250 for consideration of each of the three oppositions and the preparation of the respective defences and counterstatements, for the reason provided above at [69].**

71.I, therefore, order SEBIR, S.A. to pay the sum of £2,000 to voestalpine Stahl GmbH. 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.

⁴³ Application to revoke a registration or a protected international trade mark (UK) for reasons of non-use.

Dated this 24th day of October 2025

N. R. Morris

**For the Registrar,
the Comptroller-General**

ANNEXE 1

Full specification in which the Contested Designations stand registered:

Class 6:

Common metals and their alloys; steel; stainless steel; aluminium; unwrought or semi-wrought common metals; construction materials and construction components of metal, steel, stainless steel and aluminium; goods for construction purposes made of metal, steel, stainless steel and aluminium; structural steel; plated structural steel; pipes and tubes of metal; pipes and tubes of steel and aluminium; cables, wires and chains of metal, steel and aluminium; strip steel, metal strips and metal foils; steel and aluminium in the form of strips; steel, stainless steel and aluminium in the form of reels and coils; sheets, panels and foils of metal, steel and aluminium; heavy plates of metal and steel; thin sheet metal; surface-treated and coated bands, sheets, panels and foils of metal, steel and aluminium; surfacing material of metal, steel, stainless steel and aluminium for indoor use and outdoor use; coated surfacing material and surfacing parts of metal, steel, stainless steel and aluminium for indoor use and outdoor use; claddings and cladding components of metal, steel, stainless steel and aluminium for indoor use and outdoor use; surface-treated and coated claddings and cladding components of metal, steel, stainless steel and aluminium for indoor use and outdoor use; cladding plates, cladding panels, cladding board and cladding rails of metal, steel, stainless steel and aluminium; facades and facade construction components of metal; roof claddings, facade claddings and cladding parts of metal, steel and aluminium; wall elements, wall panels, wall claddings and wall cladding elements of metal, steel and aluminium; floor sheet metals, floor sections and floor tiles of metal; doors, gates and window coverings of metal, steel, stainless steel and aluminium; door construction part and door trim of metal; containers of metal for storage, transport and packaging; straps of metal; metal strapping; storage pallets of metal.

Class 9:

Measuring, detecting, monitoring and controlling devices; measuring devices and measuring apparatus; electrical and electronic components; electric measuring devices; electronic measuring devices; electronic measurement sensors; instruments for measuring physical data; weight measuring instruments and

apparatus; strain gauges; densimeters; pressure measuring apparatus, not included in other classes; hygrometers; electronic rain gauges; actinometers; thermal energy measuring devices; sensors, detectors and monitoring devices and apparatus; electronic sensors, electrical sensors; digital sensors; measuring sensors; sensors for measuring instruments; vibration sensors; shock sensors; electronic pressure sensors; heat detectors; heat sensors; humidity sensors; light sensors; light meters; optical sensors; electro-optical sensors; photosensors; electronic sensors for measuring solar radiation; electronic monitoring instruments, other than for medical use; electrical controls; electronic control units, electronic control instruments and electronic control systems; electronic control sensors; electric switches, optical switches; electronic touch sensitive switches; electromagnetic switches; tactile electric switches; connecting modules for electric controls; metal bands, sheet metals, plates and foils of metal, steel and aluminium, coated with electrical conductor traces as sensors, detectors; adapted housings for containing batteries and battery packs; traction batteries; battery boxes and accumulator boxes; parts and fittings for all the aforesaid goods, included in this class.

Class 12:

Parts and fittings for vehicles, not included in other classes; body parts for cars; components for motor vehicles, buses, railway carriages, aircraft and spacecraft; vehicle body parts; structural parts and body parts for vehicles and conveyances; doors for motor vehicles; roof panels and hoods for vehicles; trim panels for vehicle bodies; components for the inner bodies and outer bodies of vehicles; interior panels for vehicles and vehicle roofs; components of metal for automobile construction; housings for parts of motor vehicles, except for engines; holders and supports being integral parts of motor vehicles for batteries and battery packs; battery trays being integral parts of motor vehicles: parts and fittings for all the aforesaid goods, included in this class.

Class 20:

Racks [furniture]; rack elements; rack units; shelving troughs; racks of metal [furniture].

Class 40:

Metal treating; shaping of metal components; metal treating services, namely, coating of metals; metal treating, namely, surface coating of metal; surface treating

and coating of metal goods and sheet metal as well as strips, plates and foils of metal, steel and aluminium; metal treating by applying conductor traces onto the surface of metal articles and sheet metal as well as onto strips, plates and foils, of metal, steel and aluminium; treatment of metal parts to prevent corrosion; custom manufacture of metal parts as well as strips, sheet metals, plates and foils of metal, steel and aluminium; custom manufacture of surface treated and coated strips, sheet metals, plates and foils of metal, steel and aluminium; custom manufacture of strips, sheet metals, plates and foils of metal, steel and aluminium, coated with electrical conductor traces; custom manufacture of parts and fittings for land vehicles, air vehicles, water vehicles and space vehicles; custom manufacture of trim parts for vehicle bodies and components for inner bodies and outer bodies of vehicles; custom manufacture of shelves and shelf elements; custom manufacture of measuring, detecting, monitoring and control devices.