

O/0587/24

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION UK00915175821 IN THE

NAME OF GÜROK TURIZM VE MADENCILIK ANONIM SIRKETI

AND

APPLICATION 505675 BY OLAV GMBH

TO REVOKE REGISTRATION UK00915175821

Background and Pleadings

1. UK00915175821 ('the Contested Mark') stands registered in the name of Gürok Turizm Ve Madencilik Anonim Sirketi, the Registered Proprietor ('the RP'). The details of the registration are as follows:



Filing date: 3 March 2016

Date of entry in register: 7 December 2017

Registered for the following goods and services:

Class 8:

Hand tools and implements (hand-operated); cutlery; side arms; razors; table cutlery made of precious metals or coated therewith, namely, knives, spoons and forks; non-electric egg and cheese slicers, non-electric pizza cutters, non-electric vegetable and fruit peelers.

Class 11:

Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; bath tubs; bidets; bath installations; shower enclosures; urinals (sanitary fixtures); water closets; toilets, portable; lavatories; sinks.

Class 19:

Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal; shaped building, construction and road construction materials made of concrete, gypsum, earthen, clay, sand, natural stone, artificial stone, wooden, plastic or synthetic materials; buildings, poles, barriers; natural or synthetic non-metallic surface coatings for building purposes in the form of plates or strips

(heat-adhesive); glass blocks for building, glass bricks, glass tiles, glass panes, glass panels for building construction purposes.

Class 21:

Household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes; dishes, jars, cookie jars, glasses, cups, trays, egg cups, coffee cups, saucepans, carafes, cake molds, teapots, tableware (other than knives, forks and spoons) made of glass and porcelain, namely, bowls, mugs, plates, salt and pepper shakers, gravy boats, jugs and vases; statuettes, statues and works of art of glass and porcelain.

Class 35:

Advertising; business management; business administration; office functions; the bringing together, for the benefit of others, of hand tools and implements (hand-operated), apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, enabling customers to conveniently view and purchase those goods; the bringing together, for the benefit of others, of building materials, non-metallic rigid pipes for building, non-metallic transportable buildings, monuments, not of metal, household or kitchen utensils and containers, glassware, porcelain and earthenware (excluding the transport thereof), enabling customers to conveniently view and purchase those goods; all of the aforementioned services may be provided by retail stores, wholesale outlets, through mail order catalogues or by means of electronic media, for example, through web sites or television shopping programmes.

Class 37:

Construction services, rental of construction machines and equipment; cleaning services for buildings (interior and exterior), public areas, industrial premises; disinfecting, vermin exterminating services, other than for agriculture, rental of cleaning machines and equipment; vehicles service stations for land vehicles,

maintenance, repair and refueling of land vehicles; vehicles service stations for marine vehicles, maintenance, repair and refueling of marine vehicles; repair and maintenance of air vehicles; upholstering, repair and restoration of furniture; installation, maintenance and repair of heating, cooling and sanitary installations; cleaning, care and repair of clothing; installation, maintenance and repair of industrial machines and equipment, office machines and equipment, communication apparatus, electric and electronic appliances; repair and maintenance of lifts; clock and watch repair; mining services and mining extraction; repair of shoes, bags and belts.

Class 39:

Transport; packaging and storage of goods; travel arrangement; transport commission agency services in the nature of arranging excursions for tourists, freight commission agency services in the nature of freight brokerage, ship agency services in the nature of freight ship transport, tourist bureau services in the nature of tourist agency services and tour guide services, making reservations and bookings for transportation and travel and tour tickets, tour organization services.

Class 41:

Education; providing of training; entertainment; sporting and cultural activities; organization of conferences, symposiums, seminars and congresses.

Class 43:

Services for providing food and drink; temporary accommodation; arranging temporary housing accommodations, namely, hotels, motels, holiday camps, boarding houses.

2. On 22 December 2022, Olav GmbH, the Cancellation Applicant ('the CA'), sought revocation of the RP's registration on the grounds of non-use. Under section 46(1)(a) of the Trade Marks Act 1994 ('the Act'), the CA alleges non-use in the five-year period following the date on which the contested mark was registered, i.e. 8

December 2017 to 7 December 2022, with an effective revocation date of 8 December 2022. Under section 46(1)(b) of the Act, the CA alleges non-use in the five-year period 22 December 2017 to 21 December 2022, with an effective revocation date of 22 December 2022. Non-use is claimed in respect of all of the goods and services in respect of which the Contested Mark is registered.

3. The RP filed a Defence and Counterstatement in which it denies the claim against it in its entirety. The RP claims that it has used its mark for the entire specification of goods/services in respect of which it stands registered.
4. The CA is represented by Potter Clarkson LLP. The RP is represented by Forresters IP LLP.

Evidence and submissions

5. Only the RP filed evidence, which comes from Mr Mehmet Emir Karataş, Head of Export Sales at the RP company. Mr Karataş' Witness Statement is dated 2 June 2023 and is accompanied by 6 Annexes. The evidence seeks to demonstrate that the contested mark has been put to genuine use throughout the relevant 5-year periods. I will refer to the evidence to the extent that it is necessary in my decision. Where the evidence is in Turkish, translations have been provided and certified as correct by way of a sworn statement by Serhat ũrpekli, a sworn translator, of Bursa 3rd Notary, dated 25 July 2023.
6. Neither party filed written submissions during the evidence rounds. A hearing was neither requested nor considered necessary. Neither party filed written submissions in lieu of a hearing.
7. The following decision has been made after careful consideration of the papers before me.

Relevance of EU law

8. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in

accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

Decision

The relevant legislation

9. 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 in referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

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

(4) [...]

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

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

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

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

10. 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 applicable 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 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].”

12. 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.

13. As noted above, the relevant periods are: 8 December 2017 to 7 December 2022 (‘the First Relevant Period’) and 22 December 2017 to 21 December 2022 (‘the Second Relevant Period’).

Comparable UK trade marks

14. Paragraph 7 of Part 1, Schedule 2A of the Act states that:

“7. (1) Section 6A applies where an earlier trade mark is a comparable mark (EU), subject to the modifications set out below.

(2) Where the relevant period to in section 6A(3)(a) (the “five-year period”) has expired before completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

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

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A to the United Kingdom include the European Union”.

15. Use of the Opponent’s earlier mark in the EU, but outside the UK, may therefore be taken into account for the period 8 December 2017 to 31 December 2020. For the portion of the relevant period post-dating IP Completion day, i.e. 1 January to 21 December 2022, only UK use may be taken into account.

16. I note the following from the RP’s evidence:

a) Annex 1 comprises documents relating to the incorporation of the RP company in 2012. The corporate facts relating to the company are not relevant to the instant case.

b) Mr Karataş has given narrative evidence that the RP ‘is the world’s fifth largest glassware manufacturer, supplying 2 million items every day with a large range of tumblers, stemware, bowls, vases, jars, tableware, mugs, glasses, etc’. He states that the RP exports its goods to 130 countries including the UK, France and Spain’.¹

c) Excerpts from the RP’s catalogues for the years 2017, 2018, 2019 and 2021 have been provided:²

¹ Witness Statement of M. E. Karataş, paragraph [2].

² Annex 2 ‘2018’ and ‘2019’.

- The date is visible on the 2017 catalogue cover. The date is visible on the 2018 catalogue by way of its appearance at the top of a page titled 'Design in 2018'. The catalogue labelled as 'Annex 2_2021' bears the date 2022 on its front page, however, I accept that the nature of catalogues is such that the catalogues for the year or season ahead tend to be disseminated/made available in advance. I therefore accept that this catalogue would likely have been made available in 2021 and would have continued to be applicable in 2022. The RP's mark appears prominently in the header of alternate pages in the catalogues. Aside from the aforementioned heading, the sections of text are illegible due to the poor resolution as a result of the extremely small font size due to two catalogue pages being placed within one document page. However, photographs of the following goods are visible, (albeit the accompanying text is illegible): glass tumblers; stemmed drinking glasses; glass cups with handles; lidded glass storage jars; coupé dessert glasses; storage jars shown containing toothbrushes; glass cereal/dessert bowls; glass fragrance diffuser holders; cushions; food mixer; cutlery; oven dishes; cake slices; serving spoon; chair; Christmas decorations. No prices are visible. It is not clear how many catalogues were distributed/viewed online or what geographical locations are targeted.
- The excerpts described as being from the 2019 catalogue bear no dates. Photographs of the following goods are included, although no information on pricing is provided: drinking glasses of various shapes and sizes; a chair; glass bowl; stool set; fruit bowl; lamp shades; glass saucers; glass plates; glass pitchers and jugs; glass sugar bowls; glass food containers with lids; glass preserve jars; glass bottles; glass ashtrays. Text on the final page of the catalogue indicates that the RP exports its glassware to 130 countries, including two European States, France and Spain.

- d) Excerpts from the RP's catalogue for 2023 have been provided.³ Mr Karataş has highlighted what he refers to as the 'company overview' on page 3 which mentions the RP's achievements in 2022.⁴ I note the following text:

"There is; the war, which began with Russia's invasion of Ukraine in 2022, disrupted the post-pandemic normalization process. [...] LAV maintained the momentum it gained the previous year in high-quality production and exports. While we were able to produce a total of 2 million pieces of glass per day in our two production facilities, we also managed to sell about half of that amount in global markets. [...] While increasing the number of alternative suppliers is one of our sustainability goals, 90% of our suppliers were local in 2021."

Text on the final page of the catalogue indicates that the RP exports its glassware to 140 countries, including France and Spain. I note that the contact information for 'Marketing and Sales' provides an address and telephone number for Italy. I remind myself that EU use can only be taken into account up to IP Completion day, 31 December 2020.

- e) The RP has provided the following turnover figures, which I have reproduced in the form in which they were presented by the RP:⁵

YEAR	TURNOVER GBP
2017	3917643,601
2018	556,8371,36
2019	6142685,937
2020	5,728,732,457
2021	5611169,254
2022	5755287,235

The presentation of the figures is less than ideal: the placement of the commas and the absence of decimal points renders them (with the exception of 2018)

³ Annex 2 '2023'.

⁴ Witness Statement of M. E. Karataş, paragraph [3].

⁵ Witness Statement of M. E. Karataş, paragraph [4].

at least capable of being interpreted as being in the £billions. For example, for 2017, the placement of the comma before the three digits '601' does not readily indicate that a decimal point should be there instead, because in the UK we do not express figures to three decimal places. However, taken into consideration alongside the figures addressed below at f), I find that they are more plausibly read as being in the £millions (with the exception of those for 2018 being in the hundreds of thousands) rather than £billions. These figures are nevertheless significant.

- f) Annex 3 comprises a small selection of invoices in respect of goods sold by the RP to retailers. It is convenient to present the relevant details for those relating to the UK market, within the relevant 5-year periods, in the following table:

Invoice date:	Customer and geographical location:	Description of items purchased:	Invoice amount:
16 Mar 2018	Pilot Housewares Ltd, Nottingham, UK	'Glass cup 6 pcs closed' Plus a number of other items listed as what appear to be product codes.	22.290,55 EUR
6 Dec 2018	Poundland, West Midlands, UK	'COM595 SB3795ZX'	9.455,04 EUR
1 Feb 2019	Neville UK plc, Kent, UK	Goods include: 'glass goblet'; 'Goblet 6 box'; 'glass cup 6 closed'; 'glass tumbler beer'; 'glass cup 6'; 'dessert container 6 piece'; 'beverage bar 6'; 'glass cup highball';	18.309,42 EUR

		'glass cup ice cream'; 'fiesta glass'.	
28 Nov 2019	Rayware Limited, Liverpool, UK	Goods are listed as what appear to be product codes.	23.654.21 EUR
10 Oct 2020	Poundland, Walsall, UK	'3LU RTK 24 LU'	12.421,44 EUR
18 Dec 2020	Poundland, Walsall, UK	'3LU RTK 24 LU'	12.426,00 EUR
28 Feb 2021	Rinkit Ltd, Chichester	Goods include: glass tumblers; beer glasses; 'elegant glass bar'.	19.567,60 EUR
19 May 2021	AEGG Limited, Andover, UK	'PRGo38 YTTPS'	5.849,09 EUR
3 Feb 2022	Pure Table Top, Tugby, UK	'Water based opaque green'; 'water based opaque pink'; 'White cord paint'; 'Opaque orange cord paint'. ⁶	39.501,35 EUR
2 Jun 2022	TJ Morris Ltd, Lancashire, UK	'UB0910-UB09114LU RTK 24 LU T'	20.401,92 EUR

I note that the RP's mark does not appear on any of the invoices, nor is it mentioned anywhere in text form. However, as explained by Mr Karataş in his Witness Statement, the products are listed by their product codes. The orders placed are for large numbers of goods.

- g) Annex 4 comprises a selection of undated screenshots from the websites of the following UK retailers/suppliers: Poundland; Home Bargains; EFG

⁶ It is possible to determine that these goods are tumblers from the information in Annex 6 dealt with below.

Housewares; Neville UK; Rayware; Pure Table Top; and Rinkit. Due to the extremely small font size, the vast majority of the text is illegible. However, it is clear from the photographs on each of the web pages that these companies do trade in homewares. The RP's mark does not feature in any of these pages.

- h) 6 photographs have been provided, annotated as having been taken on 2 November 2022, showing boxes of wine glasses and tumblers on which the RP's mark appears prominently, stacked on shelves in a wholesaler called 'EFG Cash and carry', stated by Mr Karataş to be the 'UK's largest independent trade only wholesale business'.⁷ Prices are expressed in £GBP.⁸
- i) Annex 6 includes photographs of various drinking vessels accompanied by product codes. I note that the tumblers whose product code is 'LBR316 KR0027FX' can be reconciled with the items on the invoice dated 3 February 2022. I have no reason to doubt that many of the product codes on the invoices relate to items of glassware which appear either within the RP's catalogues or within Exhibit 6. The construction of the strings of characters of the product codes on the invoices coheres with the format of those in the catalogues i.e. certain strings of characters appear particular to glassware goods.

17. 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.⁹

18. 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

⁷ Witness Statement of M. E. Karataş, paragraph [8].

⁸ Annex 5.

⁹ *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

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.”

19. Based on careful consideration of the totality of evidence before me, it is my view that the RP has demonstrated genuine use of its mark, within the relevant periods, for glass drinking vessels of various shapes, sizes, and for a number of purposes (for example: tea glasses, coffee glasses, beer glasses, to name a few). The UK sales revenue figures are significant, being in the £millions for all but one year within the relevant period. Even at their lowest in 2018 (circa £557,000) the figures are noteworthy. The selection of invoices provided, although small, indicates sales to UK-based retailers at fairly even intervals covering much of the relevant period. Evidence from catalogue excerpts indicates use of the mark within at least two EU member states (France and Spain) in the portion of the relevant period preceding IP Completion day on 31 December 2020. The narrative evidence from Mr Karataş, together with the information within the catalogue excerpts, photographs of goods alongside product codes, and the evidence of deliveries of goods to the UK’s largest wholesaler, is sufficient to persuade me that there has been real commercial exploitation of the contested mark within the relevant periods. The RP’s case would have been strengthened further by the inclusion of, *inter alia*, information on advertising and marketing expenditure in the EU and invoices to demonstrate sales of other goods (and services) besides glassware items.

20. I now consider for which goods and services, in respect of which the earlier mark is registered, there has been genuine use. The specification as registered is set out above at [1].

21. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs K.C. as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

22. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows (although it equally applies to the issue of a fair specification for proof of use assessments):

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) (“Thomas Pink”) at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme

Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46."

23. The majority of the evidence adduced by the RP focuses on the sale of items of glassware for drinking, in a variety of sizes, styles and shapes. The variety of items of glassware held out for sale, and indeed sold, is, to my mind, sufficient to justify retaining registration for the broad term 'glassware'. The provision of catalogues, in my view, together with the other pieces of evidence, is sufficient to demonstrate that a variety of glassware goods are held out for sale. I therefore consider the following to be a fair specification for the registration UK00915175821:

Class 21: <i>Glassware</i>
Class 35: <i>the bringing together, for the benefit of others, glassware, enabling customers to conveniently view and purchase those goods</i>

Conclusion

24. The RP has demonstrated genuine use for the goods and services specified above at [23].

25. Consequently, the Application to revoke registration UK00915175821 has succeeded in respect of the remaining goods and services. Subject to a successful appeal, the RP's registration UK00915175821:

- may remain on the register for the following goods and services only:

Class 21: <i>Glassware</i>
Class 35: <i>the bringing together, for the benefit of others, glassware, enabling customers to conveniently view and purchase those goods</i>

- is revoked, from the earliest revocation date sought, 8 December 2022, for the following goods and services only:

Class 8: <i>Hand tools and implements (hand-operated); cutlery; side arms; razors; table cutlery made of precious metals or coated therewith, namely, knives, spoons and forks; non-electric egg and cheese slicers, non-electric pizza cutters, non-electric vegetable and fruit peelers.</i>
Class 11: <i>Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; bath tubs; bidets; bath installations; shower enclosures; urinals (sanitary fixtures); water closets; toilets, portable; lavatories; sinks.</i>
Class 19: <i>Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of</i>

metal; shaped building, construction and road construction materials made of concrete, gypsum, earthen, clay, sand, natural stone, artificial stone, wooden, plastic or synthetic materials; buildings, poles, barriers; natural or synthetic non-metallic surface coatings for building purposes in the form of plates or strips (heat-adhesive); glass blocks for building, glass bricks, glass tiles, glass panes, glass panels for building construction purposes.

Class 21:

Household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; steelwool; unworked or semi-worked glass (except glass used in building); porcelain and earthenware not included in other classes; dishes, jars, cookie jars, glasses, cups, trays, egg cups, coffee cups, saucepans, carafes, cake molds, teapots, tableware (other than knives, forks and spoons) made of glass and porcelain, namely, bowls, mugs, plates, salt and pepper shakers, gravy boats, jugs and vases; statuettes, statues and works of art of glass and porcelain.

Class 35:

Advertising; business management; business administration; office functions; the bringing together, for the benefit of others, of hand tools and implements (hand-operated), apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, enabling customers to conveniently view and purchase those goods; the bringing together, for the benefit of others, of building materials, non-metallic rigid pipes for building, non-metallic transportable buildings, monuments, not of metal, household or kitchen utensils and containers, porcelain and earthenware (excluding the transport thereof), enabling customers to conveniently view and purchase those goods; all of the aforementioned services may be provided by retail stores, wholesale outlets, through mail order catalogues or by means of electronic media, for example, through web sites or television shopping programmes.

Class 37:

Construction services, rental of construction machines and equipment; cleaning services for buildings (interior and exterior), public areas, industrial premises; disinfecting, vermin exterminating services, other than for agriculture, rental of cleaning machines and equipment; vehicles service stations for land vehicles, maintenance, repair and refueling of land vehicles; vehicles service stations for marine vehicles, maintenance, repair and refueling of marine vehicles; repair and maintenance of air vehicles; upholstering, repair and restoration of furniture; installation, maintenance and repair of heating, cooling and sanitary installations; cleaning, care and repair of clothing; installation, maintenance and repair of industrial machines and equipment, office machines and equipment, communication apparatus, electric and electronic appliances; repair and maintenance of lifts; clock and watch repair; mining services and mining extraction; repair of shoes, bags and belts.

Class 39:

Transport; packaging and storage of goods; travel arrangement; transport commission agency services in the nature of arranging excursions for tourists, freight commission agency services in the nature of freight brokerage, ship agency services in the nature of freight ship transport, tourist bureau services in the nature of tourist agency services and tour guide services, making reservations and bookings for transportation and travel and tour tickets, tour organization services.

Class 41:

Education; providing of training; entertainment; sporting and cultural activities; organization of conferences, symposiums, seminars and congresses.

Class 43:

Services for providing food and drink; temporary accommodation; arranging temporary housing accommodations, namely, hotels, motels, holiday camps, boarding houses.

Costs

26. Given the number of terms in respect of which I have been unable to make a finding of genuine use of the contested mark, the CA has enjoyed the greater measure of success. The CA is therefore entitled to a contribution to its costs based upon the scale published in Tribunal Practice Notice 2/2016, calculated as follows:

Official filing fee	£200
Preparation of statement and consideration of the RP's statement	£200
Considering the RP's evidence	£200
Total:	£600

27. I therefore order Gürok Turizm Ve Madencilik Anonim Sirketi to pay to Olav GmbH the sum of £600. This sum is to 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 21st day of June 2024

N. R. Morris
For the Registrar,
the Comptroller-General