

BL O/0606/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER UK00004340956

BY AFGHAN HURJA LTD

TO REGISTER THE FOLLOWING MARK IN CLASSES 43:

PASHTOON CUISINE

Background

1. On 08 February 2024, Afghan Hurja Ltd ('the applicant') applied to register the mark shown above, for the following goods:

Class 43: Restaurants; Catering.

2. On 27 February 2026, the Intellectual Property Office ('IPO') issued an examination report in response to the application. The examination report contained objections under Sections 3(1)(b) and (c) of the Trade Marks Act 1994 ('the Act') against all services.

3. The Section 3(1)(c) objection was raised on the basis the mark consists exclusively of a sign which may serve in trade to designate a characteristic of the services, e.g., those that specialise in Pashtoon Cuisine.

4. The Section 3(1)(b) objection is not independent of the objection under Section 3(1)(c), and the finding of non-distinctiveness was an automatic consequence of the sign being considered as designating a characteristic of the services. This is the approach I shall adopt throughout this statement of grounds.

5. In line with standard IPO procedure, the applicant was allowed a period of two months to respond.

6. No further response was received to the examination report. On 10 May 2026, a formal refusal was issued. In this case the primary reason for refusal of the

application is that the applicant failed to respond and thus did not satisfy the registrar that the requirements for acceptance were met.

7. On 10 June 2026, following formal refusal, the applicant filed a Form TM5.

8. I will first consider the formal grounds of refusal under Section 37(4) following no response to the examiner's letter of 27 February 2026, but for completeness I will also consider the substantive grounds of objection under Sections 3(1)(b) and (c).

The Law – Section 37

9. Section 37 of the Act reads as follows:

37 Examination of application

(1) The registrar shall examine whether an application for registration of a trade mark satisfies the requirement of this Act (including any requirements imposed by rules).

(2) For that purpose he shall carry out a search, to such extent as he considers necessary, of earlier trade marks.

(3) If it appears to the registrar that the requirements for registration are not met, he shall inform the applicant and give him an opportunity, within such period as the registrar may specify, to make representations or to amend the application.

(4) If the applicant fails to satisfy the registrar that those requirements are met, or to amend the application so as to meet them, or fails to respond before the end of the specified period, the registrar shall refuse to accept the application.

(5) If it appears to the registrar that the requirements for registration are met, he shall accept the application

Application of the Legal Principles

10. On 27 February 2026, the application was examined, and the applicant was notified that the mark did not satisfy the requirements of the Trade Marks Act 1994. An absolute grounds objection was raised under section 3(1)(b)&(c). The applicant failed to comply with the final deadline of 27 April 2026, resulting in a mandatory refusal under section 37(4) of the Trade Marks Act 1994.

The Law – Sections 3(1)(b) and (c)

11. Section 3(1) of the Act reads as follows:

3(1) The following shall not be registered –

(a) ...

(b) trade marks which are devoid of distinctive character,

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

(d) ...

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it

The relevant legal principles – Section 3(1)(c)

12. There are a number of judgements of the Court of Justice of the European Union ('CJEU') which deal with the scope of Article 3(1)(c) of the First Council Directive 89/104 (recoded and replaced by Directive 2008/95/EC on 22 October 2008) and Article 7(1)(c) of the Community Trade Mark Regulation (the 'CTMR'), whose provisions correspond to section 3(1)(c) of the UK Act. 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 2011 (as amended by Schedule 2 of the Registered 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.

13. The main guiding principles are shown below:

- Subject to any claim in relation to acquired distinctive character, signs and indications which may serve in trade to designate the characteristics of

goods or services are deemed incapable of fulfilling the indication of origin function of a trade mark (Wm Wrigley Jr & Company v OHIM, C-191/01P ‘Doublemint,’ paragraph 30);

- Article 7(1)(c) (section 3(1)(c)) pursues an aim which is in the public interest that descriptive signs or indications may be freely used by all (Doublemint, paragraph 31);
- When determining whether a sign is devoid of distinctive character or is descriptive of the goods or services in respect of which registration is sought, it is necessary to take into account the perception of the relevant consumer who is reasonably well-informed and reasonably observant and circumspect (Matratzen Concord AG v Hukla Germany SA, C-421/04);
- I have also taken into account the consequences for third parties of granting the applicant a monopoly. In Linde A.G. v Rado Uhren A.G. Case C-53/01 the following guidance was given at paragraphs 73 – 74:

“73. According to the Court’s case-law “Article 3(1)(c) of the Directive pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the characteristics of goods or services in respect of which registration is applied for may be freely used by all, including as collective marks or as part of complex or graphic marks. Article 3(1)(c) therefore prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks (see to that effect, Windsurfing Chiemsee, paragraph 25).

74. The public interest underlying Article 3(1)(c) of the Directive implies that, subject to Article 3(3) any trade mark which consists exclusively of a sign or indication which may serve to designate the characteristics of

goods or a service within the meaning of that provision must be freely available to all and not be registrable”

- I have also considered what may constitute a characteristic of the services claimed for the words PASHTOON CUISINE. In doing so, I have taken guidance from *BEST MANGAL* BL O/224/16, at paragraphs 12-15¹.

12. The applicant contends that the Hearing Officer was wrong to hold that the mark was not inherently distinctive and that the Hearing Officer failed to give due weight to the fact that MANGAL was a non-dictionary word with no meaning in the English language which would have no descriptive meaning to the average consumer and that BEST MANGAL comprises an unusual combination of elements.

13. I am quite unpersuaded by this argument. It is common ground that “mangal” means a type of barbecue cuisine in Turkish. It is the kind of cuisine offered at the applicant’s restaurants. The applicant’s representative rightly accepted, in argument, that any Turkish person would understand the term “mangal” to mean a kind of barbecue or cuisine and that the term was “extremely descriptive, if you apply it to food”. I do not consider that the term “BEST” added to that reduces its descriptiveness. If anything, it increases the likelihood that the composite would be regarded as a descriptor preceded by a laudatory term. This is a case of a concatenation of two highly descriptive terms with no element of distinctiveness arising as a result.

14. The applicant suggests that it is the public in this country that should be considered and not the public in a country far removed from the UK. That is correct in principle but does not assist the argument. The Registrar was entitled to take account of the fact that there is a significant Turkish and Middle Eastern community in the UK to whom the term is likely to be wholly descriptive and of the fact that

¹ [Appointed person decision O/224/16](#)

members of this community and others are likely to want to use the term to describe cuisine of this kind in future, regardless of where they may come from.

15. I have no hesitation in rejecting the argument advanced by the applicant that no account should be taken of the potential future use of the term “MANGAL” by others. To the contrary, EU law requires potential as well as actual descriptive use to be taken into account in evaluating a case under section 3 of the Act. This argument therefore seems to me as misguided as saying that because initially the words “tandoori” or “stollen” may initially have had no meaning to the majority of English speakers, they should be regarded as distinctive. I also do not think there is a material distinction to be made here with respect to the objection under heads (b) and (c) of the sub-section and I am unpersuaded that citation of other different marks (such as THE CLAY OVEN) registered in different circumstances assists the applicant’s argument.

Application of the legal principles

14. From the aforementioned case law, it is clear I must determine whether or not the mark applied for will be perceived by the relevant consumer as a means of directly designating characteristics of the services being provided. In this case the characteristic being a particular kind of cuisine. In order to do this, I must assess who I consider the relevant consumer to be.

15. The services at issue are restaurant and catering services in Class 43. These services are available to members of the general public wishing to attend a restaurant or procure catering services. Accordingly, the average consumer would pay a moderate degree of attention when selecting a restaurant or catering provider.

16. Having established the relevant consumer, I must assess how they would perceive the words PASHTOON CUISINE presented as a word only mark in relation to the services claimed in normal and fair use.

The Oxford English dictionary defines Pashtoon (Pashtun) as:

1. (noun) A speaker of Pashto; a Pakhtun or Pathan. Also more generally: an Afghan
2. (adjective) Of, or relating to, or designating the Pathans or their language; Pakhtun, Afghan.

17. The dictionary definitions shown define the term PASHTOON (PASHTUN or PATHAN) as referring both to an ethnic group native to the Afghanistan region and to the language spoken by that group. Encyclopaedia Britannica describes the Pashtun as the largest ethnic group in Afghanistan residing primarily in the region between Afghanistan and Pakistan. In 2021, the Office for National Statistics recorded 116,167 British Afghans in the UK².

18. The services at issue are restaurant and catering services in Class 43. Although 'Pashtoon' refers to a particular ethnic group, that does not undermine the objection. The relevant consumer, whom I have identified as the general public, is accustomed to selecting restaurant and catering services by reference to ethnic and cultural traditions. Cuisine commonly reflects the history, traditions and heritage of a particular group or geographical area. For example, Cantonese, Yoruba, Malay, and Punjabi cuisines each have distinct regional characteristics rooted in their respective cultures. The UK has a diverse range of cultures, languages, and ethnicities with the Office for National Statistics identifying seventeen ethnic groups in the UK in the 2021 census. Although some consumers may not immediately recognise 'Pashtoon' when viewed in isolation, when combined with the word 'cuisine,' it will clearly be understood as describing the kind of restaurant and catering services offered.

19. The examiner's opinion is that the words PASHTOON CUISINE describes a characteristic of the services, namely that the restaurant and catering services specialise in Pashtoon cuisine. For the reasons given above, I agree.

20. The applicant has not challenged the objections under Sections 3(1)(b) and (c) of the Act. Using the materials available to me, including the dictionary definition of PASHTOON, I find that the objection under section 3(1)(c) to be validly made at the outset, as PASHTOON would, or could designate the type of cuisine being offered. It

follows that the finding of non-distinctiveness is an automatic consequence of the sign designating a characteristic of the services. The objection under section 3(1)(b) is therefore also, and inevitably, made out.

21. As the mark would be understood descriptively and designates a characteristic of the services, the public interest under section 3(1)(c) applies. The description should therefore remain free for others to use in their normal course of trade.

Conclusion

22. It is found for the reasons given above, the application is refused under section 37(4), for all services claimed. Furthermore, the objections under section 3(1)(b) and (c) were justified in the circumstances.

Dated this 13th day of July 2026

**Deborah Steele
For the Registrar
Comptroller-General**