O/0665/25

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK REGISTRATION NO. 917925002
IN THE NAME OF HILLTOP CEYLON TEE GMBH
IN RESPECT OF THE TRADE MARK

IN CLASSES 30 & 35

AND

THE APPLICATION FOR REVOCATION THEREOF UNDER NO. 506703
BY GORAN-TEE GROßHANDEL GMBH & CO. KG

Background and pleadings

1. Hilltop Ceylon Tee GmbH ("the proprietor") is the registered proprietor of comparable trade mark registration no. 917925002[1] for the mark shown on the cover page of this decision. The trade mark was filed on 29 June 2018 and completed its registration procedure on 9 November 2018. It is currently registered in respect of the following goods and services:

> Class 30: *Teas and substitutes therefor.*
> Class 35: *Business management of wholesale outlets for the sale of tea.*

2. On 17 November 2023, GORAN-TEE Großhandel GmbH & Co. KG ("the cancellation applicant") filed an application for the revocation of the above registration, on the grounds of non-use. This is based upon section 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 ("the Act").

3. Revocation is sought under section 46(1)(a) of the Act in respect of the 5-year period following the date of completion of the registration procedure, namely 10 November 2018 – 9 November 2023, with an effective date of 10 November 2023. Revocation is also sought under section 46(1)(b) of the Act in respect of the time period 17 November 2018 – 16 November 2023, with an effective date of 17 November 2023.

4. The proprietor filed a counterstatement denying the claim of non-use under both grounds, insofar as it applies to the goods outlined in the specification above.[2]

5. Both sides filed evidence in these proceedings. This will be summarised to the extent that it is considered necessary.

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[1] On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all right holders with an existing EUTM. As a result of the opponent's EUTM being registered as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable UK mark is now recorded on the UK trade mark register, has the same legal status as if it had been applied for and registered under UK law, and retains its original filing date.

[2] The proprietor did not defend the full specification of goods and services, and as such the registration was partially surrendered at the outset of these proceedings.

6. A short form hearing took place before me via telephone conference on 25 June 2025. The cancellation applicant is represented in these proceedings by Marks & Clerk LLP and was represented at the hearing by Graeme Murray of the same. The proprietor is represented in these proceedings by Gill & Gill and was represented at the hearing by David Gill of the same.

The evidence

7. The proprietor filed its evidence in these proceedings in the form of a witness statement in the name of Dinesh Nandalal Deheragoda, Director of the proprietor. The statement introduces 9 exhibits, namely Exhibit DND01 - Exhibit DND09. It is dated 11 January 2024.

8. The cancellation applicant filed its evidence in the form of a witness statement in the name of Johanna Puhr, the German trade mark representative for the cancellation applicant. This introduces a single exhibit, namely Exhibit JP01. It is dated 12 July 2024.

Decision

19. 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)

(2) For the purpose of subsection 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"

20. As the mark is a comparable mark, paragraph 8 of part 1, schedule 2A is relevant. It reads:

(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the "five-year period") has expired before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding EUTM; and
(b) the references in sections 11A and 46 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 [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM ; and
(b) the references in sections 11A and 46 to the United Kingdom include the European Union".

General principles of genuine use

21. 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*

Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

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

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

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle*

at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

22. Section 100 of the Act states that:

> "100. 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."

23. The burden is on the proprietor to show use within the relevant periods, those being 10 November 2018 – 9 November 2023 and 17 November 2018 – 16 November 2023, within the relevant territory, and in respect of the goods and services for which the mark has been registered. As per schedule 2A paragraph 8 part 1 of the Act (outlined previously) the relevant territory is considered as the EU up until 31 December 2020, after which it will be the UK only.

The effect of the notification of possible revocation to the proprietor

24. Section 46(3) provides that use after the expiry of the five-year period but within the period of three months before the making of an application for revocation shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made. I note in this instance the cancellation applicant notified the proprietor of its intention to revoke the mark on the basis of non-use on 20 September 2023. However, in this case, not only had the proprietor made its first sale prior to this date, but this notification fell within the five-year period following the registration of the trade mark. As such, I cannot exclude use made by the proprietor falling after this date within the provisions of 46(3). However, this date may still be relevant to the assessment of the evidence made. In *Kerly's Law of Trade Marks and Trade Names* 17th Ed., it is explained:

> 12-095
> *This second constraint is subject to the qualification in the proviso to s.46(3). Essentially, it provides a three-month grace period after the end of the five-year period in question. Commencement or resumption of genuine use within that three-month period is disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application*

for revocation might be made. This creates something of a dilemma for the applicant for revocation. If they notify the proprietor of their intention to bring an application at too early a stage, they might give the proprietor the chance to put their mark into use before the five-year period in contemplation had elapsed. The applicant then has to deal with the issue of whether the use was genuine or not, which it is better to avoid. If the notification comes too late, then the proprietor might have begun preparations for commencement or resumption of use before they were aware an application might be made, giving rise to the risk that the application would be defeated by commencement or resumption of use within the three-month grace period. Perhaps the best, but not necessarily perfect solution to the dilemma is to notify the proprietor as the five-year period expires. The applicant takes the risk that preparations for use have begun. If, however, it is clear that the preparations began precisely because the proprietor was aware that their five-year period was about to elapse, there would be a strong argument that they were not preparing for genuine use, but to use the mark for the purpose of defeating an application for revocation.

25. Whilst I will therefore assess the evidence with the notification date in mind, use from after the notification date, which in this instance fell within the five year periods for the proprietor to make genuine use, will not be disregarded.

Evidence of use

26. In this instance, the evidence filed may be summarised relatively briefly. I will set this out chronologically below.

The proprietor's evidence

27. As a reminder, the witness statement is filed by a Mr Deheragoda. Mr Deheragoda confirms he is the director of the proprietor and also confirms he is the director of the companies Black Tea Exports (Pvt) Ltd and Mevlana Ceylon Tea (Pvt) Ltd.[3] This information becomes relevant below:

[3] See paragraphs 1 & 2 of the witness statement of Mr Deheragoda.

- Between 10/17 November 2018 and 13 July 2023 the mark was owned by a third party. There is no evidence of use covering this period.

- On 14 July 2023, the mark was assigned to the proprietor.[4]

- Also on 14 July 2023, the proprietor registered the domain name http://ozmevlanacav.uk.[5] In the printout provided by the proprietor dated 14 December 2023, it states that this site was last updated on the day it was purchased.[6]

- On 18 July 2023, the German website https://ozmevlanacav.de was launched.[7] An image of this website is provided from the web archiving site the Wayback Machine, dated 21 September 2023.[8] The UK domain is said to redirect customers to this German website (although it is not confirmed when this began).[9] The German website shows the below variants of the mark:

- In August 2023, the first sale of tea under the mark to the UK was made. This is evidenced by an invoice dated 25 August 2023. It relates to the sale of 300 cartons (each containing 10 1kg packs) of 'Oz MEVLANA CEYLON TEA' with a value of 13,500 USD.[10] It is confirmed by Mr Deheragoda that the mark displayed on the cartons of tea was the registered mark.[11] The shipment was

[4] See paragraph 5 of the witness statement of Mr Deheragoda.
[5] See paragraph 12 of the witness statement of Mr Deheragoda and Exhibit DND06.
[6] See Exhibit DND06.
[7] See paragraph 12 of the witness statement of Mr Deheragoda.
[8] See Exhibit DND05.
[9] See paragraph 12 of the witness statement of Mr Deheragoda.
[10] See Exhibit DND01.
[11] See paragraph 8 of the witness statement of Mr Deheragoda and Exhibit DND02.

made in the name of Black Tea Exports (Pvt) Ltd, but Mr Deheragoda confirms this was for and on behalf of the proprietor.[12]

- The recipient of the tea in the UK was N Joy Catering Ltd.[13] Mr Deheragoda states he "understands" they have sold on their tea primarily to Turkish grocery stores in North and North-East London.[14]

- On 27 September 2023 (7 days after the notification date of 20 September 2023), a second shipment of tea was made to N Joy Catering Ltd in the UK, of 600 cartons each containing 20 500g packs, to the value of 43,800 USD.[15] The shipment was made in the name of Mevlana Ceylon Tea but Mr Deheragoda confirms this was for and on behalf of the proprietor.[16] These also bear the registered mark.[17]

- Between 7 and 11 October 2023, the proprietor attended a trade fair in Cologne, at which the mark was displayed prominently at its stall.[18] This is said to be the world's largest trade fair attended by international visitors including those from the UK,[19] and preparations to attend the fair were said to have been in place well before the notification date of 20 September 2023, although there are no supporting documents demonstrating the preparations.

The cancellation applicant's evidence

- Searches for the proprietor's mark on the website of N Joy Catering Ltd conducted on 31 January 2024 did not produce any results.[20]

[12] See paragraph 11 of the witness statement of Mr Deheragoda.
[13] See Exhibit DND01 and paragraph 8 of the witness statement of Mr Deheragoda.
[14] See paragraph 9 of the witness statement of Mr Deheragoda.
[15] See Exhibit DND03 and paragraph 10 of the witness statement of Mr Deheragoda.
[16] See paragraph 11 of the witness statement of Mr Deheragoda.
[17] See paragraph 10 of the witness statement of Mr Deheragoda and Exhibit DND04.
[18] See paragraph 13 of the witness statement of Mr Deheragoda and Exhibit DND05.
[19] See paragraph 13 of the witness statement of Mr Deheragoda and Exhibit DND06.
[20] See paragraphs 3 – 5 of the witness statement of Ms Puhr and Exhibit JP1.

28. Whilst the above summary does not offer extensive detail about every document provided in the evidence, it is my view it offers a fair representation of the evidence provided in this case. The evidence itself has been considered in full.

29. I begin firstly by considering the use in respect of the defended class 35 services, those being *business management of wholesale outlets for the sale of tea.* At the hearing, Mr Gill highlighted that Mr Deheragoda was providing management services to three different companies dealing with the wholesale of tea. However, it is clear from the evidence that Mr Deheragoda is the director of these three companies. At the hearing, I asked Mr Gill if he could point to any evidence showing the proprietor offering these services to third parties. He confirmed he could not. It is my view there is no evidence of the mark in use in relation to these services, and as such, the revocation filed based on both sections 46(1)(a) and 46(1)(b) must succeed against the same. The mark is revoked in respect of these services from the earliest effective date of 10 November 2023.

30. Next, I will consider the use made of the mark in relation to the class 30 goods *teas and substitutes therefor.* It is my view this term provides protection for two different categories of goods which should be treated distinctly, those being teas, and tea substitutes. I will begin by considering use in relation to tea substitutes. At the hearing, Mr Gill submitted for the proprietor that arguably, items such as herbal teas might count as substitutes for teas. I asked Mr Gill if there was more than one type of tea demonstrated in the evidence. He confirmed there was not. The evidence cannot, therefore, demonstrate use for both teas and substitutes for teas. It is my view that the evidence relates to tea only, and not to substitutes for tea, whether or not I consider certain types of herbal tea may fall within the meaning of the same. I therefore find no genuine use in relation to substitutes for tea, and the mark will be revoked in respect of the term "*substitutes therefor*" from the earliest effective date of 10 November 2023.

31. I will now move on to consider the evidence provided in respect of *teas*. I note firstly that whilst I have considered the cancellation applicant's evidence showing that the proprietor's tea could not be found on the website of N Joy Catering Ltd on 31 January 2024, it is my view that this is not sufficient to cause me to question the veracity of the evidence provided by the proprietor. As Mr Gill submitted at the hearing,

the proprietor stated that it believed N Joy Catering Ltd to have sold goods directly to shops in the North and North-East of London. These goods may have featured on its website only briefly and sold out quickly, or not at all, and I do not find the cancellation applicant's evidence sufficient to persuade me to disbelieve the witness, or to draw any other inference about the evidence in this instance. I therefore move on to consider the sufficiency of the evidence only.

32. I consider firstly, there was no use of the mark for at least the first 4 years and 8 months of the relevant periods. Whilst I note the mark was not owned by the proprietor for this period of time, this does not mean I can entirely discount this considerable period of non-use. Clearly, the proprietor will have been aware of the precarious position of the registration in terms of use at the time of purchase. Assignment from a third party is not an excuse for a mark not to meet the use requirements within the relevant period, and this cannot result in parties circumventing these requirements. However, it does help to shed light on why the evidence of use of the mark is bunched into the last four months of the five-year periods in this case, and in my view it is something to keep in mind when considering whether the use made during those four months was genuine.

33. In respect of the following four months, the proprietor set up a UK domain, and made two reasonably sized shipments/sales to the UK. One of these was made prior to the date of notification given by the cancellation applicant, and one after, although both are within the relevant periods for proving use in this instance. Whilst I note the presence at the German trade show and the existence of a German website to which the UK consumer is said to be "redirected", it is my view these add very little to the proprietor's position. I note Mr Gill's reference to *Standard International Management LLC* v *EUIPO* (Case T-768/20, EU: T:2022:458),[21] and the argument that this confirms the principle that whilst use must generally be shown to take place in the jurisdiction or the territory in which the trade mark is registered, genuine use can also be in the form of advertising or promotional activity emanating from outside that jurisdiction or territory, but directed at consumers from within that jurisdiction or territory. However,

[21] It is acknowledged that this case is not binding but only persuasive as it was decided after the end of the transition period.

in this case, the fact UK consumers *can* be redirected to the German site via a .co.uk domain (and I remind myself the date this redirect began is not confirmed), does not establish that any UK consumers did or had reason to visit the website, the .co.uk version of which had clearly not been independently established. Further, the fact that there was a UK presence at the German trade fair does not establish that UK consumers were targeted or spoken to. There is no evidence that the presence at the trade fair led to any business leads in the UK, or that this was the purpose (either solely or partially) of the proprietor's attendance at the same.

34. That said, based on the two sales to the UK at the end of the relevant periods, and the establishment of the UK domain name, it must be found from the evidence that there was use of the mark within the relevant territory, and within the relevant periods, in respect of *teas.* The question therefore is whether this use was token, trivial or genuine.

35. I note at this stage that the proprietor would have, in my view, been in a stronger position had I been provided with evidence relating to any continued UK based use after the end of the relevant periods. At the hearing, Mr Gill submitted this sort of evidence would have been dismissed as it would fall outside of the relevant periods, but I disagree. If the proprietor had been able to show that the activities carried on and there had been further sales (or chasing of sales) after the end of the relevant periods, whilst it could not have been solely relied upon to prove use of the mark within these periods, it would have helped put the two isolated sales that took place at the very end of the relevant period into context. It could have helped the proprietor paint a broader picture of continued use.

36. As it stands, I have only the evidence of two sales during the relevant periods to consider. I do not know if these sales continued after September 2023. One sale was made prior to the notification date, but with the end of the five-year periods in clear sight. The second larger sale was made seven days after the notification date for the revocation action. I have no evidence that preparations for this sale were in place prior to the notification date, but it does seem fairly short notice for a sale of that size to be secured as a reaction to the same. Considering the sum of the evidence, it is my view that whilst it is possible these sales were "token", simply made as a reaction to the end

of the use periods being in plain sight and the subsequent notification of possible revocation, on balance, the evidence does not quite support a finding of that nature. Whilst I may have considered it so had the mark been under one ownership throughout the five year period, the fact it was sold to the new owner only four months prior to the end of the periods puts some context to what may otherwise have been reasonably considered as token use.

37. I therefore go on to consider whether the use shown is warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question. At the hearing, Mr Gill put to me that, considering the proprietor had only purchased the mark in July 2023, making two large sales prior to the end of the relevant periods was impressive. I have no evidence regarding how long it usually takes to generate a sale of this kind, but I do consider these have likely been made relatively quickly. However, this does not negate the fact that they stand alone and are not supported by any evidence of efforts made to make further sales, to advertise or promote the mark in the UK, or of any onwards sales made to consumers. There is no evidence showing any preparations made for ongoing use, which, although may have been beyond the end of the relevant period, could have helped put the two sales made into further context, and show the continuing efforts of the proprietor to use the mark at the date the evidence was filed. I must make a decision as to whether the use of the mark was warranted in the economic sector for tea, which I consider to be an undoubtedly huge market, based almost exclusively on two sales to a single onward distributor, amounting in total to 3000 1kg packets of tea and 12,000 500g packets of tea, made approximately one month apart.

38. In *Jumpman* BL O/222/16, Mr Daniel Alexander QC, as the Appointed Person, upheld the registrar's decision to reject the sale of 55k pairs of training shoes through one shop in Bulgaria over 16 months as insufficient to show genuine use of the EU trade mark in the European Union within the relevant 5 year period. Whilst I note this case relates to use within the EU, I consider also that the use shown in that case was higher than the use shown in this instance, and was spread more consistently throughout the relevant period.

39. I note however, that sales do not always have to be quantitively significant to constitute genuine use. In *Masterbuilders, Heiermann, Schmidtmann GbR v EUIPO*, T-76/21, EU:T:2022:16, the General Court held that relatively low sales volumes of timers and downloadable application software in class 9 were sufficient to be genuine use of the trade mark. Approximately 2,700 timers had been sold during the five-year period, some by the unit (with or without an accompanying book), the majority in crates of eight. There was also evidence that 970 items, totalling EUR 28,000, had been sold via an e-commerce platform in 23 Member States during the relevant period. Although this volume was not very significant, the goods were not everyday consumer goods and the sales volume had been achieved in the first few years of the goods being marketed. In addition, the sales covered a wide territory. The Court held that these factors offset the low volume of sales. In respect of downloadable application software, there had been 1,621 downloads of the software, 99% of which were in the EU. The Court said that the number of downloads was not particularly significant but not token either, and that it was sufficiently significant to demonstrate the frequency and territorial scope of the use of the mark at issue in the marketing of the application, particularly in circumstances where the application had been available for download for less than six months at the end of the relevant period. I note however, that this case was decided after the end of the Brexit transition period and is not binding.

40. With the above matters in mind, I consider again the particular circumstances of this case. There is evidence of two sales equating to a total of 15,000 packets of tea to one customer, within a month of each other, in the final four months of the relevant period. The protected goods are general consumer goods. Whilst I note the statement in the evidence that the goods have been sold on to Turkish grocery stores in particular, there is nothing confirming the type of tea sold is particularly niche, and the registration offers protection for the general category of tea at large. The geographical spread of the use throughout the UK is not clear, but even on the most generous reading of the evidence, I can find at best some (it is unclear how many) onward sales may have taken place to stores in North and North East London only. There is no functioning UK website, or proof of any online sales or website visits made to or by customers in the UK. There is no evidence of UK promotion or marketing taking place within the relevant periods (or at all), and no evidence of any further sales, promotion, or marketing efforts, taking place between the end of the relevant periods and the date

the evidence was filed. It is my view, considering the evidence as a whole, that the proprietor has not evidenced sufficient use of its mark as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question. The application for revocation therefore succeeds under both section 46(1)(a) and 46(1)(b) of the Act.

Final remarks

41. The application for revocation of the mark has been successful, and subject to any successful appeal, the mark will be revoked in its entirety from the earliest effective date of 10 November 2023.

COSTS

42. The cancellation applicant has been successful and is entitled to a contribution towards its costs. In the circumstances I award the cancellation applicant the sum of £1850 as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Official fee:	£200
Preparing and filing the TM26(N) and considering the counterstatement:	£350
Considering the other side's evidence and preparing and filing evidence:	£600
Preparing and attending a hearing:	£700
Total:	**£1850**

43. I therefore order Hilltop Ceylon Tee GmbH to pay GORAN-TEE Großhandel GmbH & Co. KG the sum of £1850. The above sum should be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 18th day of July 2025

Rosie Le Breton

For the Registrar