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**TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION NUMBER UK3905129
BY UNITED KINGDOM PRACTICAL SHOOTING ASSOCIATION
TO REGISTER THE FOLLOWING MARKS AS A SERIES IN CLASS 41:**

Mini Rifle
Mini-Rifle
Minirifle

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Background

1. On 26 April 2023, United Kingdom Practical Shooting Association ‘(UKPSA’ or ‘the applicant’ who is not represented) applied to register the marks shown above. This decision is based on the following services which remain, following withdrawal or deletion of other goods and services during the examination process¹:

Class 41 Sports training; Educational and training services relating to sport; Organisation of training courses; Provision of education and training; Conducting of sports competitions; Provision of sporting competitions; Provision of training courses.

2. On 5 May 2023, 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 goods and services as follows:

“Section 3(1)(b) and (c)

All three marks of the application are not acceptable in Classes 13, 16, 28, 35 and 41. There is an objection under Section 3(1)(b) and (c) of the Act. This is because the marks consist exclusively of a sign which may serve in trade to designate the kind of the goods and services e.g. covers for mini rifles, instructional materials relating to mini rifles, firearm targets to be used with mini rifles, retail services relating to the sale of mini rifles, provision of education and training in relation to mini rifles.

The word “mini” is defined by the Collins English dictionary as “small; miniature”.

With “rifle” defined as “a firearm having a long barrel with a spirally grooved interior”. As a result, the average consumer would see the marks as indicating

¹ As originally filed, the specification is set out at Annex A.

that the goods and services on offer simply relate to small firearms.

As a result, it is considered that the average UK consumer would see “mini rifle”, “mini-rifle” and “minirifle” as a mere description of the goods and services and would not perceive the signs as trade marks.

The purpose of a trade mark is to distinguish your goods and services from those of your competitors. This cannot be achieved if the average consumer cannot see past the descriptive message that the mark sends or if the mark is simply not distinctive enough to do the job.”

3. The applicant responded by letter dated 4 June 2023 which reads, in full:

“The term Mini-Rifle, Minirifle & Mini Rifle refers to a shooting sport discipline which is part of the International Practical Shooting Confederation (IPSC) franchise.

It relates to a small or 'miniature' calibre (.22lr) as defined in the 1968 Firearms Act. Whilst the 1968 Firearm Act refers to 'miniature rifles', the discipline of 'Mini-Rifle' is specific to IPSC shooting who are the global governing organisation, with the United Kingdom Practical Shooting Association (UKPSA) as the Regional Directorate for Great Britain.

Mini-Rifle is a well recognised shooting sports discipline within the United Kingdom licenced shooting community and it is very clearly associated with IPSC sports shooting. However, as a specific discipline which requires an advanced level of training and competency, particularly for those who offer instruction, the threshold of skill level is significantly higher than that of a 'miniature rifle range' as described in the 1968 Firearms Act.

As such it is of critical importance to protect the general public from those whom may claim to be proficient or competent in providing Mini-Rifle training, competition or equipment when they are outside the governance and control of the IPSC as the Global Governing Organisation, or the UKPSA as the National Governing Organisation in Great Britain.

With regards to causing confusion to the general public, it is highly unlikely the British general public would be interacting with Mini-Rifle product and/or events as shooting sports in the United Kingdom is a highly regulated and specialist activity, with a significant licensing architecture and a requirement for those wishing to participate in such activities to obtain a firearms certificate as laid down in the 1968 Firearms Act and its amendments. As such, whilst it may be normal to consider what 'the man on the Clapham omnibus' might assume for general trademarking, in this case it is imperative to protect the public from those who might use what should be a protected title i.e. Mini-Rifle, when they

do not have the requisite training, skills or competency to be offering goods or services in relation to that activity.

Currently the situation is that any person or entity can offer activities, goods and services relating to MiniRifle but have no qualification, accreditation or insurances relating to the actual discipline. This can and does result in the public being duped into buying goods and services which are not appropriate, potentially highly unsafe and damaging to the existing IPSC & UKPSA brand. Protecting the term Mini-Rifle will ensure the public can be assured that what they are buying is directly related to the sport of IPSC, and sanctioned by the Regional Directorate.

The risk of a slight confusion to the general public is de minimis compared to the potential harm that could be caused by not allowing the term to be protected by the appropriate national governing organisation for Great Britain.”

4. I have quoted the applicant’s letter in full above as it comprehensively explains the rationale for filing the application and sets the tone for subsequent exchanges. The examiner responded by letter dated 9 June 2023 noting, in summary:

- the applicant had apparently accepted the descriptive nature of the words applied for;
- even if the words had been coined by one undertaking that did not avoid their descriptive nature;
- the contention that use of a mini rifle required a higher level of competency or training was not a factor in allowing the term to be registered as a trade mark, and
- the conferring of a monopoly on the words would be unfair to other traders.

The examiner further drew attention to the nature and function of a trade mark, in the sense that it had to distinguish the goods or services of a single undertaking from those of anyone else and that a plainly descriptive term could not do that and would result in an objection. In the context of the specific application the words applied for would simply designate the kind or type of goods involved or services relating to, or connected with such goods. The examiner concluded the letter by alerting the applicant to provisions relating to a certification mark.

5. By letter dated 26 July 2023, the applicant responded to the examiner’s concerns regarding creating an unfair monopoly by withdrawing or deleting classes 13, 16, 28 and 35. In so doing, the applicant stated that, by proceeding with class 41 only, this would provide a ‘reasonable balance between protecting the UKPSA’s rights as Regional Directorate and franchise owner of the International Practical Shooting Confederation (‘IPSC’) whilst ensuring those within the trade may still use the term “Mini Rifle” without infringing upon our intellectual property or brand.”²

² I appreciate that although the reasons given for deleting these goods or services are flawed, in the sense that such an offer is not based on “creating a reasonable balance between an unfair monopoly and protecting the

6. The applicant further noted that by securing this registration it would complement the applicant's other registrations, including UK3063126 which was secured in 2014.
7. As regards the crucial question of a trade mark descriptiveness and non-distinctiveness, the applicant said the term 'Mini Rifle' was descriptive of a small or miniature-calibre rifle but that it had developed distinctiveness and recognition within the United Kingdom licensed shooting community as a particular shooting sports discipline and was/is not a common or generic term used in the firearms industry. The mark's association with the organisation, the UKPSA, has contributed significantly to its recognition and distinctiveness as a source indicator for goods and services provided within this specific discipline. In that way the applicant says the term has acquired secondary meaning as being synonymous with the goods and services offered exclusively by the applicant via, for example, shooting events, competitions and training programmes. In particular, the applicant says that in class 41 the term serves the function of a trade mark by distinguishing the services of the applicant from those of others.
8. Again, these submissions failed to persuade the examiner who, by letter dated 1 August 2023, reiterated the fact that the applicant had conceded the descriptive nature of the words and indicated they did not consider the earlier right referred to by the applicant to be on a par with this application. Whilst the words may be associated with the applicant or even coined by the applicant, the examiner's view was that the term 'mini rifle' was already in use by many undertakings. The examiner had conducted a GOOGLE search (on the date of their letter) on the terms "mini rifle" + 'training' to support this. The results are annexed to the letter and include, for example:

www.maidstonepistolclub.co.uk
www.olivegroup.training/about-us
www.silverstoneshootingcentre.co.uk/product/introduction-to-practical-shooting
9. On 20 September 2023, the applicant responded by reaffirming its contention that the words function as a trade mark of the applicant. This, said the applicant, is reinforced by what the applicant terms 'Supporting Information'. This supporting information is, in essence, concerned with the status of the applicant within the overall international umbrella organisation, the 'IPSC'.
10. The applicant states that when one searches GOOGLE or YOUTUBE on the terms 'IPSC' and 'UK', the UKPSA is consistently amongst the top results, thus

applicant's rights", this matter was not reopened at any later stage. The examiner simply complied with the request and no more was said in relation to the deleted goods or services. For the benefit of any doubt in the matter, had the issue been re-opened the outcome would have been no different to that I have arrived at in relation to the remaining services of class 41.

confirming the applicant as the foremost domestic authority concerning IPSC. The earlier rights were 'entrusted' to the UKPSA, says the applicant, thus confirming their status as *the* domestic IPSC authority. The applicant further states that, 'This was in response to an unsuccessful bid by another national governing body for shooting sports which sought to control of the IPSC franchise. Strikingly, this same entity, the applicant says, is now employing 'mini rifle', seemingly with the deliberate intention of creating confusion and blurring the lines between IPSC disciplines such as 'mini rifle' and non-IPSC disciplines such as 'gallery rifle'. Granting the trade mark to UKPSA will alleviate any such confusion and the possibility the public may be trained by people lacking the necessary skills. The applicant says the term is inherently descriptive within the context of IPSC shooting. It not only coined the term but has 'been instrumental in the continuous development of the term as its intellectual property via the establishment of an experimental rules set in 2002, acceptance by IPSC Rules Committee in 2011 and finally, approval and ratification as an IPSC discipline by the IPSC General Assembly in 2011. Also, the applicant says that only it provides mini rifle training courses. All of this is evidenced within what is termed a 'supporting information pack'.

11. The applicant says that 'prior to 1997 the term 'mini rifle' did not exist, but subsequent to the Firearms Amendment Act 1997 (No 2) being enacted, those IPSC athletes who lost their sport re-established a new IPSC discipline based upon the same or similar 'courses of fire' (that is to say the same target configurations and distances over which those targets would be engaged), utilising those firearms that were still legally available in mainland Great Britain, and suitable for those shooting range facilities that had been formally utilised by IPSC handgun disciplines.
12. It is well known within the licensed shooting community, the applicant says, that it was at a UKPSA affiliated club (Harlow Practical) that 'mini rifle' was first organised as a target shooting discipline, run by UKPSA members. The UKPSA as a National Governing Body for target shooting sports continued to develop and organise the discipline, regularly lobbying government and the Home Office and liaising with police firearm licencing department inquiries regarding the use of .22lr rifles for the use in 'mini rifle' when firearm certificate applicants listed this as their 'good reason' for the acquisition and possession of firearms.
13. The applicant states further that, of the examples of use of the term by others produced by the examiner, these are all affiliated clubs linked to the applicant. Further, that it is recognised by the Home Office as the authority for IPSC or Practical Shooting here in the UK. There is also reference to other similar trade marks which the applicant says reinforces its argument that it is entitled to registration. These include, for example 3456676 YOGA STUDIO, 3482921 FOOTBALL COACHING, 3543210 GYMNASTICS SCHOOL, 3485709 SKI SCHOOL, and others.

14. The applicant's case is, in effect, summed up by saying that 'mini rifle' is synonymous with IPSC, which in turn is irrefutably linked to the applicant. 'Mini rifle' is not a term used by any other target shooting discipline, other than those who choose to participate in 'practical shooting', which inevitably leads the consumer to the applicant.
15. The examiner maintained their position and the matter came before me at a hearing on 2 November 2023 at which the applicant was represented by Mr Richard Clifton of the UKPSA. In addition to the detailed submissions already made in writing, I note from my hearing report of 14 November 2023 the following:
- The applicant is a charity run by volunteers;
 - The term 'mini-rifle' was first developed by the applicant in 1997/98 and under the auspices of the IPSC;
 - The applicant effectively controls the term by virtue of being the governing body in the UK and that it is responsible for the development of ratified rules by the IPSC;
 - It is the only organisation able to provide training in the 'mini rifle' discipline;
 - In order for any member of the public to compete in any IPSC event they must be granted a license by the applicant;
 - Significant resources had been expended over the years by the applicant in promoting and educating the relevant consumer in 'mini rifle';
 - The relevant consumer in this case is a relatively small and niche group of specialised persons. There are approximately 100,000 certificate holders of Section 1 firearms.
16. My hearing report and decision on inherent characteristics (the prima facie case) records that the words applied for would be seen as a description of the services. In other words, the terms are clearly descriptive and would describe a 'small rifle'. The applicant itself had conceded as much on more than one occasion. The applicant is even more specific about the precise nature of the rifle's 'smallness', being .22 calibre, but for my purposes, all I needed to determine was that, based purely on dictionary definitions, the words would, or could designate a characteristic of all the services in class 41. I thus maintained the prima facie objection under section 3(1)(b) and (c) of the Act.
17. That said, I nonetheless agreed, following the hearing that the applicant should be given the opportunity to file evidence of acquired distinctiveness. I allowed two months from the date of my hearing report in which this should be done.
18. Evidence in the form of a witness statement dated 14 January 2024 by Mr Richard Clifton was duly filed. In large part, it simply reiterates the submissions already made in writing, namely the relationship between the IPSC and the UKPSA and the latter's involvement in training, rule-making and otherwise controlling in the UK the sport of 'mini rifle' shooting. There are just a few further facts I would like to draw out. In 2011 the IPSC General Assembly (annual meeting of all affiliated IPSC

countries), 'Mini Rifle' was first proposed as an IPSC discipline under Motion L of the Agenda which was passed for a trial period of one year. Following the trial, in 2013, 'Mini Rifle' was formally ratified as an IPSC discipline. It has been extant ever since with the rule set being released in April 2023. In 2025 IPSC will host the first ever 'Mini Rifle' World Shoot (World Championships). The UKPSA is the only body that is authorised and responsible for the selection and administration of national squads. The UK Government recognises the applicant as the body responsible for organising and administering IPSC or 'practical target shooting'. For example, UKPSA Range Officers (Primary Safety Supervisors and Umpires) and instructors are recognised by the UK Government. Finally the British Sports Shooting Council ('BSSC') is the umbrella body representing all shooting National Governing Organisations in the UK. It brings together representatives from the entire range of shooting disciplines with the aim of presenting a unified voice relating to shooting sports and gun ownership in the UK. The applicant is a Council Member of the BSSC representing the interests of practical shooting. The remainder of the witness statement seeks to set out the numbers of people holding relevant firearms certificate in the UK (147,140 based on ONS figures), noting this only represents 0.22% of the total UK population.

19. By letter dated 8 February 2024, I said I did not believe the evidence showed that a significant proportion of relevant consumers regard the term 'mini rifle' or its variants as a trade mark. In particular I noted that none of the exhibits or examples to the witness statement showed use of the mark in trade as such. The evidence also failed to show material such as: market share, turnover figures, how intensive, geographically widespread and long standing the use had been, or that third parties, including professional associations, recognised the mark as a trade mark. The evidence further did not specify how much the applicant had spent promoting the mark as a trade mark. Nonetheless, I understood how niche the relevant consumer was, and offered to accept 'additional evidence' should the applicant have wished to submit it. Failing that, and if no response to my letter was received within two months, the application would be formally refused under section 37(4) of the Act.
20. No response having been made within the two months specified the application was formally refused on 25 April 2024.
21. On 29 May 2024 the applicant filed a Form TM5, requesting me to provide a statement of grounds for my refusal which I now provide. In doing so, I will deal with both the refusal in the prima facie case, which has not been expressly conceded by the applicant, and the reliance on acquired distinctiveness. I should also clarify that the grounds of my refusal are under section 3(1)(c) of the Act which automatically invokes section 3(1)(b). I should note that although section 3(1)(b) is automatically invoked by virtue of there being an objection under section 3(1)(c), the two are in this case co-extensive and so, no separate or independent rationale will be provided under section 3(1)(b). In addition, I have made a finding

that acquired distinctiveness has not been shown in this case and I will seek to explain my reasons for that as well.

The Law – Sections 3(1)(b) and (c)

22. 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)

23. 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 2018 (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 European Union.

24. 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”

Application of the legal principles – the case in the prima facie or inherent characteristics

25. 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 specified, in this case that characteristic would be the subject matter, type or kind of services specified in class 41. In order to do this, I must first assess who I consider the relevant consumer to be.

26. In this case the applicant has been very clear who they consider the relevant consumer to be, namely a specialist shooting enthusiast who holds a particular firearms certificate. This has enabled the applicant to provide a specific number of such persons in the UK, of around 147,000. The difficulty with this argument however is that the specification in class 41 is not so limited. The specification reads as follows:

Class 41 Sports training; Educational and training services relating to sport; Organisation of training courses; Provision of education and training; Conducting of sports competitions; Provision of sporting competitions; Provision of training courses

Based only on the specification (as I must), the relevant consumer will be the general public at large, specifically those interested in sports training and education, but not exclusively as, 'education and training' at large, is included. The services may also be accessed at a corporate level as well. These are not specialist services as the applicant has submitted. I would stress however, that even if I accepted the applicant's view that the relevant consumer is a niche specialist, this would not have resulted in my overall findings being any different.

27. As I have said in the background above, the applicant has repeatedly conceded the descriptive nature of the mark, to the point where it identifies a 'mini rifle' as being of .22 calibre. The words are also plainly defined in a dictionary and would be readily understood by all types of relevant consumer. In the circumstances, I have no alternative, indeed it would be perverse to make any other finding other than that, based only on its inherent characteristics, the application must fall foul of section 3(1)(c) and by virtue of that, section 3(1)(b) of the Act.

Acquired distinctiveness.

28. As already mentioned in paragraph 22, section 3 of the Act states that a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) of the Trade Marks Act 1994 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.

29. The guiding principles when assessing evidence to demonstrate acquired distinctiveness are set out in *Windsurfing Chiemsee* (CJEU Joined cases C-108/97 and C-109/97) as follows:

51. In assessing the distinctive character of a mark in respect of which registration has been applied for, the following may also be taken into account: the market share held by the mark; how intensive, geographically widespread and longstanding use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant class of persons who, because of the mark, identify goods as originating from a particular undertaking; and statements from Chambers of Commerce and industry or other trade and professional associations.

52. If, on the basis of those factors, the competent authority finds that the relevant class of persons, or at least a significant proportion thereof, identify goods as originating from a particular undertaking because of the trade mark, it must hold that the requirement for registering the mark laid down in Article 3(3) of the Directive is satisfied. However, the circumstances in which that requirement may be regarded as satisfied cannot be shown to exist solely by reference to general abstract data such as predetermined percentages.

53. *As regards the method to be used to assess the distinctive character of a mark in respect of which registration is applied for, Community law does not preclude the competent authority, where it has particular difficulty in that connection, from having recourse, under the conditions laid down by its own national law, to an opinion poll as guidance for its judgments (see, to that effect, Case C-210/96 Gut Springenheide and Tusky [1998] ECR I-4657, paragraph 37)"*

30. It is of course understood that the principles set out in *Windsurfing Chiemsee* do not represent a simple 'tick box' exercise but that a full evaluation of the totality of the evidence must be undertaken.

31. The way in which an inherently non-distinctive mark may acquire a distinctive character was elaborated upon by the CJEU in Case C-299/99 *Koninklijke Philips Electronics NV v Remington Consumer Products Ltd* [2002] ECR I-5475 at paragraph 64:

*"...the identification, by the relevant class of persons, of the product as originating from a given undertaking must be as a result of the **use of the mark as a trade mark** and thus as a result of the nature and effect of it, which make it capable of distinguishing the product concerned from those of other undertakings."* (Emphasis added)

32. In other words, an inherently non-distinctive mark can only acquire a distinctive character if the maker or supplier of the goods and services concerned uses the mark in such a way that it comes to guarantee to consumers that the product originates from a particular undertaking. I must therefore assess the evidence and determine whether a significant proportion of relevant consumers have come to perceive the mark as designating the goods of a single undertaking and that it serves to distinguish those goods from those of other undertakings as a result of the use made of it. In that respect, such use must be use as a trade mark, in other words, it must be used in a manner that enables the relevant consumer to perceive the goods designated exclusively by the mark applied for, as opposed to any other mark which might also be present, as originating from a particular undertaking.

33 In Case C-353/03 *Société des Produits Nestlé SA v Mars UK Ltd* [2005] ECR I-6135 the CJEU has also held that a non-distinctive mark may have acquired distinctive character if it has been used as part of or in conjunction with a registered trade mark.

26. In regard to acquisition of distinctive character through use, the identification, by the relevant class of persons, of the product or service as originating from a given undertaking must be as a result of the use of the mark as a trade mark (judgment in Philips, paragraph 64).

27. In order for the latter condition, which is at issue in the dispute in the main proceedings, to be satisfied, the mark in respect of which registration is sought need not necessarily have been used independently.

28. *In fact Article 3(3) of the directive contains no restriction in that regard, referring solely to the ‘use which has been made’ of the mark.*

29. *The expression ‘use of the mark as a trade mark’ must therefore be understood as referring solely to use of the mark for the purposes of the identification, by the relevant class of persons, of the product or service as originating from a given undertaking.*

30. *Yet, such identification, and thus acquisition of distinctive character, may be as a result both of the use, as part of a registered trade mark, of a component thereof and of the use of a separate mark in conjunction with a registered trade mark. In both cases it is sufficient that, in consequence of such use, the relevant class of persons actually perceive the product or service, designated exclusively by the mark applied for, as originating from a given undertaking.”*

Application of the law to the facts

30. In my opinion the applicant’s case is, in essence, based upon its status within the shooting community. I regard this focus as misconceived in the context of acquired distinctiveness for the purposes of trade mark registration. It is clear from the legal principles I have set out above the law places the emphasis on the efforts of a party relying on acquired distinctiveness to show that they have, (a) used the mark as a trade mark, (b) to educate the relevant public to the point that a significant proportion of that group understand the particular term, in this case, to guarantee the origin of the services. Instead of focussing attention on the sign itself, as it should have done and as the law requires, the applicant’s main focus is its own ‘de facto’ standing in relation to the sport of ‘mini-rifle’.

31. That is to say, the applicant asks me to accept a number of links or assumptions leading to the conclusion, in its submission, that the sport of ‘mini-rifle’, from its inception and continued development, is in fact the responsibility of the applicant and would be understood to be as such by relevant consumers. Thus, says the applicant, the term is effectively functioning as a trade mark. As far as I can ascertain those links are as follows: ‘mini-rifle’ would be assumed to be sport linked with ‘practical shooting’ which in turn is, at an international level, governed by the IPSC. The applicant, in further turn, is the recognised franchise holder or regional directorate, for the IPSC in the UK. As such, it has been responsible for, e.g. through its affiliate bodies the introduction of the sport, subsequent rule-making, training, and liaison with broader responsible bodies, such as the BSSC and the Government. Taking these links and assumptions into account, the relevant consumer would inevitably conclude that the applicant would be responsible for and control the term ‘mini rifle’ and its variants.

32. I only have the applicant’s say so that these assumptions and links will be made but, critically, the links do not address the crucial question of how the relevant consumer will regard the term ‘mini-rifle’. Has the applicant used the term in such a way that it will be seen as a guarantee of origin?

33. I have concluded from the evidence that the applicant does not even get it to the 'first base' in my assessment, being that the words must be used as a trade mark. The applicant would seemingly respond by saying that, by virtue of its own standing, any use made by it of the term, would inevitably lead back to them. This argument is purely circumstantial in a case such as this. Admittedly, the analogy is not perfect but it is a bit like saying, only the Passport Office in the UK is responsible for issuing passports in the UK, everyone knows that and so they would be entitled to have trade mark rights in terms such as 'e-passports' in class 9. Such an argument ignores or conveniently side steps the entirely descriptive nature of such terms.
34. I have considered the use made of the term contained in the 'support information' pack, supplied by the applicant and without exception, I would say it would only be perceived as a description of a particular shooting sport and not as a trade mark.
35. On that basis, and even without detailing the deficiencies in the evidence as regards the *Windsurfing* case above, namely, the importance of showing e.g.:

“the market share held by the mark; how intensive, geographically widespread and longstanding use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant class of persons who, because of the mark, identify goods as originating from a particular undertaking; and statements from Chambers of Commerce and industry or other trade and professional associations.”

the application to rely on acquired distinctiveness must fail.

The question of prior acceptances

36. For the sake of completeness I wish to deal, briefly, with the contention, frequently made, that the registry has accepted other, similar marks and this should, at least, be factored into my assessment. It is a well-established principle that such prior acceptances create no binding precedent on the registrar. This principle has been expressly made in decision BL O/262/18 'BREXIT', see para 9 and following, and more recently decision BL O/431/24 'THINKING OF YOU', see para 28. Whilst this decision was in respect of Section 3(1)(b), I believe its guiding principles to be relevant also to section 3(1)(c):

“It is because bare “state of the register” evidence is so rarely helpful to a tribunal that it is often said to be “irrelevant” (BREXIT (O/262/18), [10]; British Sugar plc v James Robertson & Sons Ltd [1996] RPC 281 at 305) or even “worthless”: Lifestyle Equities CV v Royal County of Berkshire Polo Club Ltd [2022] EWHC 1244 (Ch). In short, the assessment under section 3(1)(b) is not about assessing the sign against other marks on the register, but against the statutory standard.”

Conclusion

37. The application is refused under section 37(4), for all services claimed. Having read all the papers and as a result of the hearing the refusal is substantively on the basis that the objections under section 3(1)(b) and (c) are justified in the circumstances.

Dated this 23rd day of July 2024

Oliver Rose'Meyer

For the registrar

The Comptroller General

Annex A

Class 13

Covers for firearms

Class 16

Instructional and teaching materials; Printed educational materials

Class 28

Firearm targets

Class 35

Retail services in relation to sporting equipment

Class 41

Sports training; Educational and training services relating to sport; Organisation of training courses; Provision of education and training; Conducting of sports competitions; Provision of sporting competitions; Provision of training courses.
