O/0702/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00004044069

BY CENTRAL CELLAR LTD

TO REGISTER THE TRADE MARK:

ZVF

IN CLASS 10

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 448332

BY KAIFENG SHISHEN TRADING CO., LTD

BACKGROUND AND PLEADINGS

1. On 25 April 2024, Central Cellar Ltd ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK. The application was published for opposition purposes on 10 May 2024. The applicant seeks registration for the following goods under the above application:

Class 10 Disposable syringes.

2. The application was opposed in full by Kaifeng Shishen Trading Co., Ltd ("the opponent") on 28 June 2024 based upon section 5(4)(a) of the Trade Marks Act ("the Act").

3. Under section 5(4)(a), the opponent relies upon its **ZVF** sign which it claims to have used throughout the UK (and elsewhere) since 2022 for disposable syringes, disposable hypodermic syringes, syringes for injections, disposable dispenser syringes for laboratory use, reusable dispenser syringes for laboratory use, scientific apparatus and instruments and tool measuring instruments. The opponent claims that use of the applicant's mark would be contrary to the law of passing off.

4. The applicant filed a counterstatement denying the claims made.

5. The opponent is represented by YAYIPCOM and the applicant is unrepresented. Both parties filed evidence in chief. Neither party requested a hearing, or filed submissions in lieu. I make this decision having taken full account of all the papers and evidence, and I will refer to them where necessary below.

EVIDENCE

6. The opponent's evidence consists of the witness statement of Kunlong Wang dated 15 November 2024. His statement is accompanied by 56 exhibits (KL1-KL56). Mr Wang's statement has been filed in Chinese, and therefore I have also been provided with the witness statement of Mon-Yin Lin Chien dated 15 November 2024. This statement declares that she is conversant in both the Chinese and English language,

and that she has translated, verified and attached a true and correct translation of Mr Wang's statement and the accompanying business licence of the opponent. I note that the translation confirms that Mr Wang is the legal representative of the opponent.

7. The applicant's evidence consists of the witness statement of Aaliyah Hudson dated 14 January 2025.[1] Her statement is not accompanied by any exhibits. I note that Ms Hudson's statement details that she conducted a search of the register to ensure that "ZVF" was not already in use, and that there were no trademarks registered under this name or in the relevant class. She also states that she "did everything required […] under the law […]" conducting the proper searches and following the necessary procedures.

8. Firstly, I note that section 38 of the Act reads as follows:

> "(1) When an application for registration has been accepted, the registrar shall cause the application to be published in the prescribed manner.
>
> (2) Any person may, within the prescribed period of time from the date of publication of the application, give notice to the registrar of opposition to the registration."

9. The "prescribed manner" that section 38(1) refers to is the publication of the application in the Trade Marks Journal. Once it is published, there is an initial 2 month period (the opposition period) in which anyone can make observations on the trade marks acceptance, or oppose its registration. This is also outlined in the Tribunals letter which is headed "Advertisement of a Trade Mark Application" which includes the following wording:

> *"If you proceed, your application will be published in the online Trade Marks Journal and anyone can oppose it should they consider they have grounds to do so. If such action were to be successful, this would likely result in a costs award against you."*

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[1] Ms Hudson states that she is the applicant for the trade mark (however the applicant is Central Cellar Ltd). Nevertheless, Ms Hudson is listed as a registered Director of the applicant on Companies House.

10. Therefore, the Tribunal makes it clear from the onset that an applied for mark could be opposed, regardless of the checks and searches that may have been performed by the applicant.

11. Secondly, the application was opposed under section 5(4)(a), which is a ground that allows the opponent to rely upon an unregistered right. This means that regardless of the searches performed by the applicant on the UKIPO register, the applicant would have not come across the opponent's mark, as it is indeed, unregistered.

12. Therefore, taking all of the above into account, the applicant's witness statement does not assist them and I will say no more about it.

DECISION

Section 5(4)(a)

13. Section 5(4)(a) of the Act states as follows:

> "5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –
>
> > a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,
> >
> > aa)…
> >
> > b) …
>
> A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of "an earlier right" in relation to the trade mark".

14. Subsection (4A) of section 5 of the Act states:

> "(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application."

15. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 IPEC, Her Honour Judge Melissa Clarke, sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

> "55. The elements necessary to reach a finding of passing off are the 'classical trinity' of that tort as described by Lord Oliver in the Jif Lemon case (*Reckitt & Colman Product v Borden [1990] 1 WLR 491 HL, [1990] RPC 341, HL*), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.
>
> 56. In relation to deception, the court must assess whether "a substantial number" of the Claimants' customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21)."

Relevant date

16. Whether there has been passing off must be judged at a particular point (or points) in time. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O-410-11, Mr Daniel Alexander QC, sitting as the Appointed Person, considered the relevant date for the purposes of s.5(4)(a) of the Act and stated as follows:

> "43. In *SWORDERS TM* O-212-06 Mr Alan James acting for the Registrar well summarised the position in s.5(4)(a) proceedings as follows: 'Strictly, the relevant date for assessing whether s.5(4)(a) applies is always the date of the application for registration or, if there is a priority date, that date: see Article 4 of Directive 89/104. However, where the applicant has used the mark before

the date of the application it is necessary to consider what the position would have been at the date of the start of the behaviour complained about, and then to assess whether the position would have been any different at the later date when the application was made.'"

17. As the applicant has filed no evidence of use of its mark, I have only the prima facie relevant date to consider i.e. 25 April 2024.

Goodwill

18. The House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 (HOL) provided the following guidance regarding goodwill:

> "What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in customers. It is the one thing which distinguishes an old-established business from a new business at its first start."

19. In *South Cone Incorporated v Jack Bessant, Dominic Greensmith, Kenwyn House and Gary Stringer (a partnership)* [2002] RPC 19 (HC), Pumfrey J. stated:

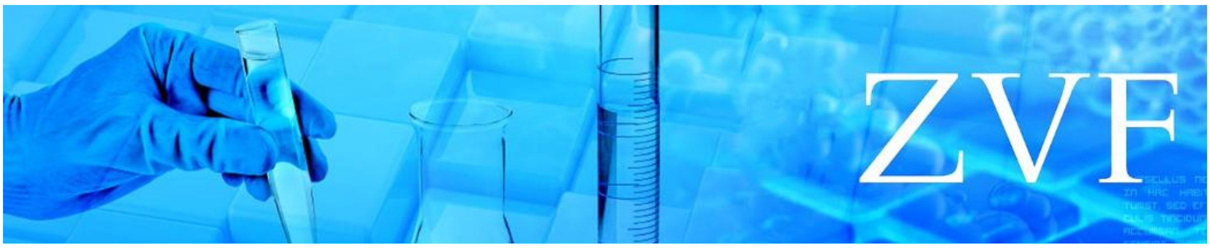
> "27. There is one major problem in assessing a passing off claim on paper, as will normally happen in the Registry. This is the cogency of the evidence of reputation and its extent. It seems to me that in any case in which this ground of opposition is raised the registrar is entitled to be presented with evidence which at least raises a prima facie case that the opponent's reputation extends to the goods comprised in the applicant's specification of goods. The requirements of the objection itself are considerably more stringent that the enquiry under s.11 of the 1938 Act (see Smith Hayden & Co. Ltd's Application (OVAX) (1946) 63 R.P.C. 97 as qualified by BALI Trade Mark [1969] R.P.C. 472). Thus the evidence will include evidence from the trade as to reputation; 54 evidence as to the manner in which the goods are traded or the services supplied; and so on.

> 28. Evidence of reputation comes primarily from the trade and the public, and will be supported by evidence of the extent of use. To be useful, the evidence must be directed to the relevant date. Once raised, the applicant must rebut the prima facie case. Obviously, he does not need to show that passing off will not occur, but he must produce sufficient cogent evidence to satisfy the hearing officer that it is not shown on the balance of probabilities that passing off will occur."

20. However, in *Minimax GmbH & Co KG v Chubb Fire Limited* [2008] EWHC 1960 (Pat) Floyd J. (as he then was) stated that:

> "[The above] observations are obviously intended as helpful guidelines as to the way in which a person relying on section 5(4)(a) can raise a case to be answered of passing off. I do not understand Pumfrey J to be laying down any absolute requirements as to the nature of evidence which needs to be filed in every case. The essential is that the evidence should show, at least prima facie, that the opponent's reputation extends to the goods comprised in the application in the applicant's specification of goods. It must also do so as of the relevant date, which is, at least in the first instance, the date of application."

21. Mr Wang states that since July 2022, the opponent has been using the non-registered mark "ZVF" to sell products on its "ZVF" shop on Amazon.[2] **Exhibit KL3** contains an undated screenshot of the "ZVF.store" Amazon information page, and under the detailed seller information, the opponent's name is clearly listed. **Exhibit KL4** also contains an undated screenshot of the opponent's Amazon.co.uk page which contains the sign "ZVF" on a banner across the page, as follows:



[2] Paragraph 3 of his translated witness statement.

22. Mr Wang states that the opponent sells 7 products on its Amazon shop, “namely, dispensing tools, measuring tools for laboratory use, etc”.[3] To support this, I have been provided with screenshots of the opponent’s Amazon.co.uk page in **exhibits KL5** to **KL11**, which shows the following:

a) 20 pack of 3ml/cc plastic tube lab dispensing tools, individually packaged for essential oils, lubricants, sealants and more. Under the heading brand and manufacture, it lists “ZVF”, and it shows that the date these goods were first available was 28 July 2022. It also shows that the goods are sold by “ZVF.store”.

b) 21 pack of 3ml/cc plastic tube lab dispensing tools, individually packaged for essential oils, lubricants, sealants and more. Under the heading brand and manufacture, it lists “ZVF”, and it shows that the date these goods were first available was 28 July 2022. It also shows that the goods are sold by “ZVF.store”.

c) 1 ml syringes laboratory measurement tool, 20 individually packed. Under the heading brand and manufacture, it lists “ZVF”, and it shows that the date these goods were first available was 28 July 2022. It also shows that the goods are sold by “ZVF.store”.

d) 2.5ml/cc 25Ga plastic tube lab dispensing tools, individually packaged-pack of 20. Under the heading manufacturer, it lists “ZVF”, and it shows that the date these goods were first available was 3 February 2023. It also shows that the goods are sold by “ZVF.store”.

e) ZVF 20 pack 0.5cc with 29Ga ½-inch (13mm) lab dispensing tools plastic tube, individually sealed (20 pack). Under the heading brand and manufacture, it lists “ZVF”, and it shows that the date these goods were first available was 6 May 2023. It also shows that the goods are sold by “ZVF.store”.

f) ZVF 50 pack 0.5cc with 29Ga ½-inch (13mm) lab dispensing tools plastic tube, individually sealed (50 pack). Under the heading brand and manufacture, it lists

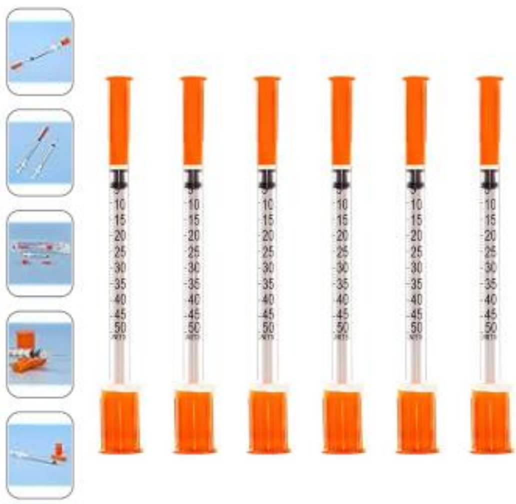
[3] Paragraph 4 of his translated witness statement.

"ZVF", and it shows that the date these goods were first available was 6 May 2023. It also shows that the goods are sold by "ZVF.store".

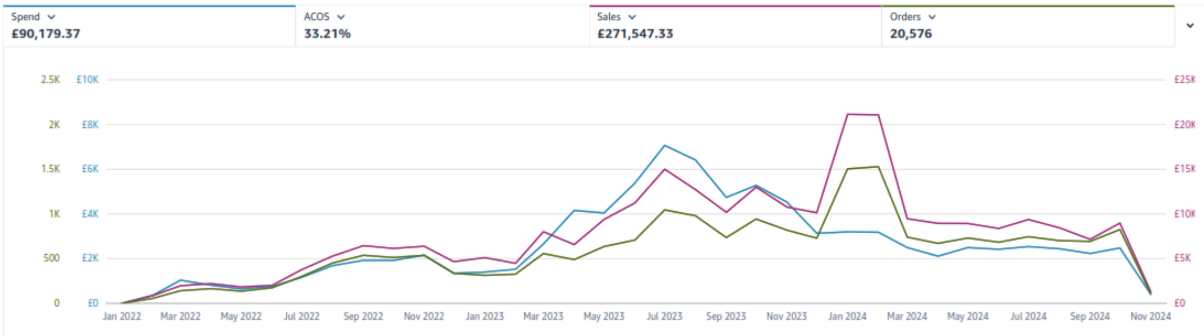
g) ZVF 100 pack 0.5cc with 29Ga ½-inch (13mm) lab dispensing tools plastic tube, individually sealed (100 pack). Under the heading brand and manufacture, it lists "ZVF", and it shows that the date these goods were first available was 6 May 2023. It also shows that the goods are sold by "ZVF.store".

23. I note that the above "plastic tube dispensing tools" are shown as follows:

24. I therefore find that these goods are needle syringes. As noted above, the opponent also has "syringes" and "lab dispensing tools plastic tube" for sale, which appear identically within the Amazon listings as follows:



25. Mr Wang states that **exhibit KL12** and **LK13** shows evidence of the opponent's advertising investment. I note that both of these exhibits consist of screenshots from "advertising.amazon.co.uk" which shows the UK advertising campaign data[4] for the "ZVF.store". **Exhibit KL12** contains the following graph generated from its 335 advertising campaigns dated January 2022 to November 2024:



Create campaign | Find a campaign | Filter by | Bulk actions | Columns | Date range: Lifetime | Export

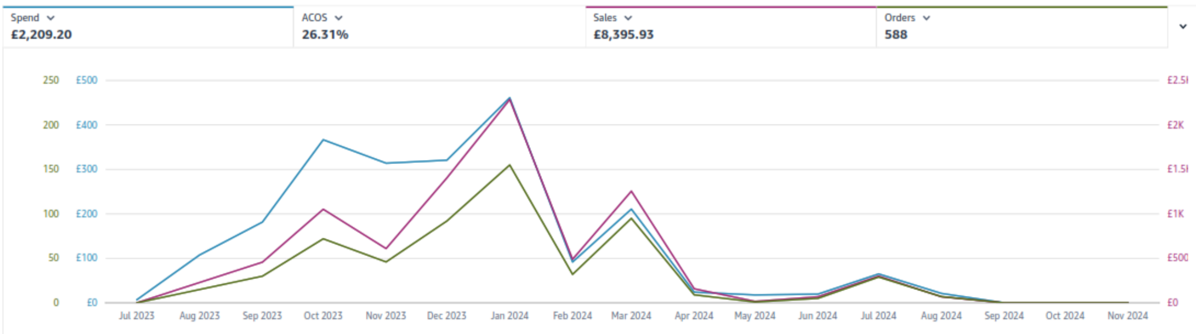
Active	Campaigns	Status	Start date	Budget	Impressions	Clicks	Spend	CPC	O..	Sales	ACOS	ROAS
	21G-25mm-syringe wit...	Paused Details	20 Jan 2022	£20.00 - daily	18,860	308	£204.70	£0.66	30	£400.45	51.12%	1.96
	23G-38mm-needle-Phr...	Paused Details	20 Jan 2022	£20.00 - daily	216,045	3,791	£2,017.93	£0.53	359	£4,904.10	41.15%	2.43
	21G-25mm-Phrase	Paused Details	8 Feb 2022	£20.00 - daily	36,014	287	£245.59	£0.86	46	£628.95	39.05%	2.56
	23G-38mm-Lab Dispen...	Paused Details	8 Feb 2022	£20.00 - daily	84,319	999	£694.03	£0.69	181	£2,501.02	27.75%	3.60
	21G-25mm-Loose match	Paused Details	9 Feb 2022	£20.00 - daily	924	8	£9.79	£1.22	—	—	—	—
	23G-38mm-Loose match	Paused Details	9 Feb 2022	£20.00 - daily	2,516	16	£7.53	£0.47	—	—	—	—
	21G-ASIN 1	Paused Details	10 Feb 2022	£20.00 - daily	3,425	12	£3.38	£0.28	1	£14.99	22.55%	4.43
	23G-ASIN	Paused Details	10 Feb 2022	£20.00 - daily	91,558	982	£452.15	£0.46	141	£1,890.83	23.91%	4.18
	23G-ASIN 2	Paused Details	11 Feb 2022	£20.00 - daily	8,697	77	£26.86	£0.35	5	£71.61	37.51%	2.67
	21G-ASIN 2	Paused Details	16 Feb 2022	£20.00 - daily	105,148	546	£222.05	£0.41	65	£899.96	24.67%	4.05
	Totals for 335 Campaigns				**21,411,880**	**127,238**	**£90,179.37**	**£0.71**	**20,576**	**£271,547.33**	**33.21%**	**3.01**

26. The above graph is made up of 3 lines in the colours blue, red and green. The blue line indicates advertising spend, the red line indicates sales made and the green line indicates the amount of orders made.[5] As demonstrated above, the graph is accompanied by a table which confirms that the start date of these advertising campaigns date back to January and February 2022. However, I have not been provided with an end date, and the status of these campaigns are paused (as indicated by the status column). I am therefore unable to determine for how long the campaigns contained in the table were run, and if a proportion of the impressions, clicks and sales

[4] This is signposted by the top-left hand corner which contains the wording "Country: United Kingdom".
[5] This is indicated by the "spend", "sales" and "orders" colour key at the top of the graph.

generated from these campaigns fall after the relevant date.[6] This screenshot also provides the total amount of advertising sales generated by the ZVF.store from January 2022 to November 2024, which amounts to £271,547.33. While I note that the sales from 24 April 2024 fall after the relevant date, the red line on the graph, and the accompanying red numbers on the right hand side of it, gives me an indication as to what turnover was generated by the opponent's advertising up until the relevant date. I also bear in mind that I have not been provided with the name of all 335 campaigns, and the 10 names of the products in the table are cut off. 2 of them refer to "25mm syringe" and "lab dispen…", and therefore I consider that these campaigns both pertain to the opponent's syringe goods depicted in paragraph 24 above.

27. **Exhibit KL13** also contains the following graph and accompanying table for its 9 "sponsored brands" campaigns from July 2023 to September 2024 from the UK:[7]



Filter Type: Sponsored Brands ✕ Remove all

Create campaign | Find a campaign | Filter by | Bulk actions | Columns | Date range: Lifetime | Export

Active	Campaigns	Status	Start date	Budget	Impressions	Clicks	Spend	CPC	O..	Sales	ACOS	ROAS
	ZVF-brand1-1ml	Paused Details	12 Apr 2023	£10.00 - daily	—	—	—	—	—	—	—	—
	3ml syringe-brand	Paused Details	19 May 2023	£10.00 - daily	—	—	—	—	—	—	—	—
	insulin--SB	Paused Details	7 Jun 2023	£10.00 - daily	—	—	—	—	—	—	—	—
	0.5ml syringe-brand	Paused Details	14 Jun 2023	£8.00 - daily	—	—	—	—	—	—	—	—
	ZVF 1ML 2ML 3ML-BRA…	Paused Details	14 Jul 2023	£22.00 - daily	801,600	2,908	£1,052.46	£0.36	250	£3,863.90	27.24%	3.67
	new+0.5+2.5-100-SB	Paused Details	15 Jul 2023	£8.00 - daily	—	—	—	—	—	—	—	—
	2ml 3ml broader	Paused Details	10 Oct 2023	£15.00 - daily	755,703	2,910	£990.84	£0.34	282	£3,849.66	25.74%	3.89
	ZVF SD VCPM	Paused Details	26 Dec 2023	£5.00 - daily	—	—	—	—	—	—	—	—
	NEW 0.5ML INSULIN SY…	Paused Details	19 Mar 2024	£10.00 - daily	1,094,202	917	£165.90	£0.18	56	£682.37	24.31%	4.11
	Totals for 9 Campaigns				**2,651,505**	**6,735**	**£2,209.20**	**£0.33**	**588**	**£8,395.93**	**26.31%**	**3.80**

[6] The top of the table contains the wording "date range: Lifetime", and the print date of the page is 6 November 2024. Therefore it is reasonable to infer that it shows the opponent's data past the relevant date.

[7] This is signposted by the top-left hand corner which contains the wording "Country: United Kingdom".

28. Mr Wang does not provide any information as to how these brand campaigns differ to the campaigns contained in the graph shown in paragraph 25. However, this data has still be extracted from the ZVF.store and therefore it is reasonable to infer that the campaigns relate to ZVF goods. I have not been provided with the impressions, clicks and sales generated from all 9 of the campaigns contained in the table above. For those which have been provided, I have only been provided with a start date of the campaigns and not an end date, and the status of them are paused. I am therefore unable to determine if a proportion of the impressions, clicks and sales generated from the campaigns contained in the table fall after the relevant date. Nevertheless, this data shows that the total amount of advertising sales generated by the ZVF.store for July 2023 to November 2024 amounts to £8,295.93. Whilst some of the turnover generated falls after the relevant date, as noted above, the red line on the graph, and the accompanying red numbers on the right hand side of it, gives me an indication as to what turnover was generated by the opponent's advertising up until the relevant date. Whilst the name of the products in all 9 campaigns are cut off, I note that 3 of them refer to "3ml syringe", "3ml syringe-brand" and "0.5ml syringe-brand".

29. **Exhibits KL14** to **exhibit KL20** contains search catalogue performance dashboards for the Amazon "ZVF store United Kingdom" page. The pages are dated quarterly, and include the fourth quarter of 2022, all four quarters for 2023, and the first quarter of 2024. The dashboard "shows how many customers interact with [the] brand's products throughout the search shopping journey. It includes search engagement metrics such as impressions, clicks, basket adds and purchases".[8] This evidence introduces further products sold under the ZVF mark (as well as goods which were not purchased). I note that the ZVF goods which were purchased include the following (but are not limited to):

a) 20/100 pack 3ml/cc plastiktube
b) 1ml/cc plastic tube 30g-0.5in/13mm (100pcs)
c) Glass oil bottle with silicone brush head 2-in-1 olive old dispense
d) 20 pack 3ml/cc plastic tube lab dispensing tools
e) 20 pack 3ml/cc with 0.6 x 25mm, plastic measuring tool lab

[8] This is the description of the dashboard on the Amazon page itself.

f) 100pcs dispensing accessories stainless steel pipe
g) 20 pack 1ml/cc disposable plastic tubes
h) 20 pack 1ml 0.3x8mm plastic multiple uses measuring tools
i) ZVF 1ml 25 gauge 1 inch (0.5x25mm), disposable lab supplies
j) 1ml laboratory measurement tool, 20 pack individually packed

30. I note that the only item which appears not to be dispensing tools or measuring tools for laboratory use is the "glass oil bottle with silicone brush head 2-in-1 olive old dispense". However, I note that only one of these items was sold. Whilst there were other similar items for sale, such as the "silicone oil bottle with brush, 2 in 1 with scale oil dispenser", 0 sales were made on this item.

31. **Exhibits KL21** to **KL30** contains printouts from Amazon's "market basket analysis page" which states that it "provides insight into the products which are most frequently purchased together". The printouts are from the "ZVF store United Kingdom" page, and shows the opponent's goods being ordered in bulk quantities between 19 to 337. The products that were being bulk ordered between these dates are "dispensing accessories", "1cm/cc plastic tube", "plastic tube lab dispensing tools", "dispensing accessories stainless steel pipe", "plastic multiple uses measuring tools", "ZVF 1ml 25 gauge", "ZVF 1ml 25 syringe" and "disposable plastic tubes". As highlighted by the photographic evidence contained in paragraph 24 above, the opponent's "lab dispensing tools plastic tube" are clearly syringes.

32. Mr Wang states that **exhibits KL31** to **KL40** shows the repurchase rate of the opponent's products. The Amazon printouts contained within this exhibit are from the "ZVF store United Kingdom" page, and contain the following details:

a) In 2022 quarter 1, the ZVF brand had a total of 233 orders, 4 units of which were repeat orders, which generated £53.28 in sales, and the opponent had 1 repeat customer.

b) In 2022 quarter 2, the ZVF brand had a total of 664 orders, 13 units of which were repeat orders, which generated £169.00 in sales, and the opponent had 12 repeat customers.

c) In 2022 quarter 3, the ZVF brand had a total of 1,940 orders, 113 units of which were repeat orders, which generated £1,210.06 in sales, and the opponent had 90 repeat customers.

d) In 2022 quarter 4, the ZVF brand had a total of 2,518 orders, 266 units of which were repeat orders, which generated £3,087.62 in sales, and the opponent had 190 repeat customers.

e) In 2023 quarter 1, the ZVF brand had a total of 2,168 orders, 179 units of which were repeat orders, which generated £2,358.69 in sales, and the opponent had 134 repeat customers.

f) In 2023 quarter 2, the ZVF brand had a total of 5,331 orders, 588 units of which were repeat orders, which generated £8,050.48 in sales, and the opponent had 419 repeat customers.

g) In 2023 quarter 3, the ZVF brand had a total of 7,113 orders, 915 units of which were repeat orders, which generated £13,388.06 in sales, and the opponent had 636 repeat customers.

h) In 2023 quarter 4, the ZVF brand had a total of 6,436 orders, 690 units of which were repeat orders, which generated £10,272.61 in sales, and the opponent had 512 repeat customers.

i) In 2024 quarter 1, the ZVF brand had a total of 7,492 orders, 945 units of which were repeat orders, which generated £13,764.58 in sales, and the opponent had 644 repeat customers.

33. I note that the above evidence shows that 3,713 repeat orders were made before the relevant date, which generated £52,354.38 in sales of ZVF goods. However, I also bear in mind that whilst the above evidence clearly shows that the opponent had repeat customers, it does not provide a breakdown of what goods were ordered repeatedly. It only confirms that the brand of the goods were ZVF.

34. Mr Wang states that **exhibits KL41** to **KL45** shows “the huge search volume and exposure of [the opponent’s] brand “ZVF” from 2022 to 2024”. These exhibits contain search query performance dashboards for the Amazon “ZVF store United Kingdom” page. The printouts confirm that “this dashboard lists the top queries that led customers to your brand products”. I note that all of the search queries include the key words “needles” or “syringes”.

35. **Exhibit KL46** contains a customer loyalty analytic dashboard for the Amazon “ZVF store United Kingdom” from quarter 1 of 2024, which shows that the opponent had a total of 20,256 customers.[9] The data on this page also shows that £91,442.63 in sales were made from the opponent’s new and repeat customers.[10]

36. **Exhibits KL48** to **KL56** contains customer orders for the Amazon “ZVF store United Kingdom” page. While the opponent has customised the date range to show the sales for between 1 March 2022 and 5 November 2024, I note that the actual sales exhibited are dated between 1 November 2022 and 3 March 2023. I also bear in mind that the search is also broken down via the 3 following products that the opponent has sold:

<u>Plastic tube lab dispensing tools</u>

20 Pack 3ml/cc Plastic Tube Lab Dispensing Tools, Individually Packaged for Essential Oils, Lubricants, Sealants and More (3ML-23#, 20)
ASIN: **B0B7X3CYSX**
SKU: Z3-CUFH-9G4O
Quantity: **1**
Item subtotal: £11.99

37. 4,405 orders were made for the above goods.

[9] **Exhibits KL47** contains the same pages for quarter 2 of 2024 which I note clearly falls after the relevant date.
[10] The sales for new customers amounted to £77,678.05. The sales from repeat customers amounted to £13,764.58, which is confirmed by **exhibit KL39** and paragraph 32(i) of this decision.

2.5ml/cc 25Ga Plastic Tube Lab Dispensing Tools, Individually Packaged-Pack of 20
ASIN: **B0BTS16VKJ**
SKU: OY-Q6S9-B8RO
Quantity: **1**
Item subtotal: £12.99

38. 5,714 orders were made for the above goods.

<u>Plastic tube</u>

1ml/cc plastic tube 30G-0.5in/13mm (20pcs)
ASIN: **B0B1TT5GSP**
SKU: 3G-38VD-3UWX
Quantity: **1**
Item subtotal: £10.99

20/100Pack 3ml/cc Plastiktube 23Ga-1Inch seperatly packaged (20pcs)
ASIN: **B0B1TVTGT8**
SKU: C7-AXZF-27XZ
Quantity: **1**
Item subtotal: £11.99

39. More than 10,000 orders were made for the above goods.

40. The order details for all of the above goods confirms that they were sold via "Amazon.co.uk". The above listings also confirm that the goods are priced between £10.99 to £12.99. I bear in mind that the above photographs match the photographs from the amazon listings shown in paragraphs 23 and 24 above.

41. Throughout Mr Wang's statement, he has submitted that the above evidence shows exposure of the brand and the unregistered mark "ZVF" in the UK market, as well as customer loyalty (especially from the repeat custom evidence). I bear in mind that in order to show that it has a protectable goodwill, the opponent needs establish

that it has customers in the UK: see *Starbucks (HK) Limited*, paragraph 47. **Exhibits KL14** to **KL56** contain printouts from the opponent's Amazon Seller Central account; "sellercentral.amazon.co.uk" (the URL of which appears at the bottom of all of the Amazon printouts). The printouts also indicate that the information contained within them pertain to the UK, as follows:

42. The data contained in **exhibits KL12** and **KL13** were obtained from the website "advertising.amazon.co.uk", the screenshots of the opponent's amazon listings contained in **exhibits KL5** to **KL11** are from amazon.co.uk. The customer orders contained in **exhibits KL48** to **KL56** also confirm that they were made via "Amazon.co.uk". I therefore find it reasonable to infer that all of the opponent's evidence pertains to the UK, and establishes that it indeed has UK customers.

43. Goodwill arises as a result of trading activities, which would typically be evidenced via a table of turnover figures broken down by the different goods sold by the opponent, up until the relevant date. Whilst I have not been presented with the opponent's turnover in such a way, I have been provided with evidence of sales of the opponent's ZVF goods via 4 different types of Amazon UK pages, that being:

1. The advertising graph data.

2. The search catalogue performance dashboards.

3. The repeat custom page.

4. The customer order page.

44. Notwithstanding the deficiencies relating to the advertising graph data, the search catalogue performance dashboards and the repeat custom page, the customer order page evidence clearly shows the sale of some of the opponent's products, that being

its tube lab dispensing tools and plastic tube goods, on its Amazon store.[11] The photographs from the Amazon listing and customer order pages allows me to determine that these goods are syringes and needle syringes, and that whilst these goods were not affixed with the ZVF mark, they were clearly sold under the ZVF mark in its Amazon listing name. The customer order evidence also shows that the ZVF syringes and needle syringes were sold to customers between 1 November 2022 and 3 March 2023, and that during this period, over 20,164 sales of these goods were made via the opponent's Amazon UK page. As I have been provided with the price of the goods, ranging between £10.99 to £12.99, I can also determine that in this period, the opponent would likely have generated more than £221,600.00 in turnover from the sale of these goods to UK customers.[12] I also bear in mind that the advertising graph data confirms that at the beginning of 2022, these goods were advertised by the opponent on Amazon UK, and the search query performance dashboards confirms that the top queries which led customers to the ZVF store all included the key words "needles" or "syringes".

45. I remind myself that I should not look at each individual piece of evidence by itself, but should look at the evidential picture as a whole, and, as a collective, it is clear that the opponent has clearly advertised and sold syringes and needle syringes to customers based in the UK via its Amazon.co.uk store before the relevant date. As highlighted above, there are deficiencies with the opponent's evidence, and therefore whilst I am satisfied that the opponent has demonstrated goodwill in relation to disposable syringes and syringes for injections,[13] I find that it is only a relatively small, but more than trivial goodwill. I also find that the ZVF sign was distinctive of the opponent's goodwill at the relevant date.

Misrepresentation and damage

46. In *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473, Morritt L.J. stated that:

[11] Paragraph 20 of Mr Wang's witness statement.
[12] This was worked out by multiplying the 20,164 products by the cheapest product price, being £10.99.
[13] Both of which are terms relied upon by the opponent under section 5(4)(a), as highlighted by paragraph 3 of this decision.

> "There is no dispute as to what the correct legal principle is. As stated by Lord Oliver of Aylmerton in *Reckitt & Colman Products Ltd. v. Borden Inc*. [1990] R.P.C. 341 at page 407 the question on the issue of deception or confusion is
>
> > "is it, on a balance of probabilities, likely that, if the appellants are not restrained as they have been, a substantial number of members of the public will be misled into purchasing the defendants' [product] in the belief that it is the respondents' [product]"
>
> The same proposition is stated in Halsbury's Laws of England 4th Edition Vol.48 para 148. The necessity for a substantial number is brought out also in *Saville Perfumery Ltd. v. June Perfect Ltd*. (1941) 58 R.P.C. 147 at page 175; and *Re Smith Hayden's Application* (1945) 63 R.P.C. 97 at page 101."

And later in the same judgment:

> ".... for my part, I think that references, in this context, to "more than *de minimis*" and "above a trivial level" are best avoided notwithstanding this court's reference to the former in *University of London v. American University of London* (unreported 12 November 1993). It seems to me that such expressions are open to misinterpretation for they do not necessarily connote the opposite of substantial and their use may be thought to reverse the proper emphasis and concentrate on the quantitative to the exclusion of the qualitative aspect of confusion."

47. I bear in mind that both the opponent's sign and the applicant's mark are identical; that being "ZVF". I also note that the goods for which the opponent has established goodwill includes "disposable syringes", which is identical to the applicant's class 10 "disposable syringes" specification.

48. On this basis, given the identity of the goods and the identity of the signs/marks, misrepresentation and damage are inevitable. Therefore, the opposition based on section 5(4)(a) is successful in its entirety.

CONCLUSION

49. The opposition is fully successful, and the application is refused in its entirety.

COSTS

50. The opponent has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the opponent the sum of £1,050 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Filing a Notice of opposition and considering the applicant's counterstatement	£250
Preparing and filing evidence	£600
Official Fee	£200
Total	**£1,050**

51. I therefore order Central Cellar Ltd to pay Kaifeng Shishen Trading Co., Ltd the sum of £1,050. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 4th day of August 2026

L FAYTER
For the Registrar