O/0809/24

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NUMBER UK00904870408

IN THE NAME OF MAINMARK CORPORATION SDN BHD

IN RESPECT OF THE FOLLOWING TRADE MARK

MARRYBROWN

IN CLASS 43

AND

AN APPLICATION FOR REVOCATION THEREOF

UNDER NUMBER CA000504895

BY MARY BROWN'S INC.

Background and pleadings

1. Trade mark number UK00904870408 stands registered in the UK for the mark shown on the front page of this decision ("***the Contested Mark***") in the name of MAINMARK CORPORATION SDN BHD ("***the Proprietor***"). The Proprietor's registration is a comparable mark (EU).[1] It was filed on 25 January 2006 and completed its registration process on 28 September 2007. At this date, the mark was registered for the following goods and services:

   Class 16: Address plates for addressing machines, address stamps, adhesive tape dispensers [office requisites], adhesive tapes for stationery or household purposes, advertisement boards of paper or cardboard, albums, almanacs, announcement cards (stationery), bags (conical paper-) bags [envelopes, pouches] of paper or plastics, for packaging, bibs of paper, blackboards, book bindings, book ends, bookmarkers, boxes for pens, boxes of cardboard or paper, calendars, catalogues, charts, clips for offices, coasters of paper, diagrams, dish mats of paper, document files stationery, drawing pads, engravings, envelopes [stationery], erasing products, face towels of paper, files [office requisites], filter paper, folders [stationery], folders for papers, forms [printed], graphic, prints, graphic representations, forms [printed], graphic prints, greeting cards, handbooks [manuals], hygienic paper, index cards [stationery], ledgers [books], letter trays, loose-leaf binders, magazines [periodicals], note books, packing paper, pads [stationery], pamphlets, paper, paper sheets [stationery], paper-clips, paperweights, pastels [crayons], pen cases, pencil holders, pencil sharpeners, pencils, penholders, not of precious metal, periodicals, photograph stands, photographs, pictures, plastic for modelling, pocket handkerchiefs of paper, postcards, posters, printed matter, printed publications, printed timetables, prints [engravings], prospectuses, rubber erasers, rulers

[1] Following the end of the transition period of the UK's withdrawal from the EU, all EU trade marks ("EUTM") registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A 'comparable trade mark (EU)' retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

(drawing-), school supplies [stationery], signs of paper or cardboard, stationery, table linen of paper, table mats of paper, table napkins of paper, tablecloths of paper, teaching materials (except apparatus), tear-off calendars, tickets, towels of paper, wrappers [stationery], wrapping paper, writing materials, writing or drawing books, writing pads and writing paper, all included in class 16.

Class 29: Beans, preserved, burgers, butter, cheese, croquettes, fillets (fish-), fish (products made from-), foods prepared from fish, fruit jellies, fruit salads, jams, jellies for food, margarine, meat, meat extract, meat gravies, milk, milk products, pickles, potato chips, potato crisps, poultry, not live, preparations made from chicken, sardines, sausages, soup (preparations for making), soups, tomato juice for cooking, tomato puree, vegetable soup preparations, vegetable salads, and yogurt, all included in Class 29.

Class 43: Restaurant services; self-service restaurant services; preparation and providing food and drink for consumption on and off premises.

2. At IP Completion Day (i.e., 31 December 2020) the Contested Mark was subject to revocation proceedings at the EUIPO. On 25 April 2023 the Cancellation Division at the EUIPO partially revoked the Contested Mark with an effective date of 20 February 2020 (i.e., date of filing of revocation action at the EUIPO). On 16 January 2024 the EUIPO Board of Appeal (BoA) upheld the Cancellation Division's decision, and the Contested Mark remained registered for the following services:

   Class 43: Fast food restaurants.

3. On 23 May 2022, MARY BROWN'S INC. ("***the Applicant***") sought revocation of the mark, in its entirety, for non-use under sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 ("***the Act***").[2] The period in respect of which non-use is

[2] 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 Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

claimed under section 46(1)(a) is **29 September 2007 to 28 September 2012** ("***the first relevant period***"), with an effective date of revocation of **29 September 2012**. The period in respect of which non-use is claimed under section 46(1)(b) is **23 May 2017 to 22 May 2022** ("***the second relevant period***"), with an effective date of revocation of **23 May 2022**. As the Contested Mark is a comparable mark, pursuant to paragraph 8 of Part 1, Schedule 2A of the Act, use within the EU is relevant for any part of the relevant period which falls prior to IP Completion Day (i.e., 31 December 2020).

4. Paragraph 21A of Schedule 2A of the Act requires that where an EU trade mark is subject to ongoing cancellation proceedings at IP Completion Day, and is subsequently cancelled, the outcome shall be applied to the corresponding UK comparable right unless the grounds would not have applied to the comparable mark (EU). The Proprietor did not seek to derogate from the EU decision and the Contested Mark was revoked in part from 20 February 2020.[3] It follows that the Contested Mark's original specification (i.e., classes 16, 29 and 43) remains valid and relevant for these proceedings for the entirety of the first relevant period and for part of the second relevant period (i.e., 23 May 2017 – 20 February 2020). From 20 February 2020 to the end of the second relevant period, the relevant specification of the Contested Mark consists of "*Fast food restaurants*" services in class 43.

5. On 22 August 2022 the Proprietor filed a defence and counterstatement, on Form TM8(N), denying the claims made by the Proprietor, requesting the cancellation application to be dismissed and a costs award to be made in its favour.

6. The Applicant is represented by Bird & Bird LLP. The Proprietor is represented by Reddie & Grose LLP.

Evidence and submissions

7. During the evidence rounds, only the Proprietor filed evidence, in the form of the witness statement of Ong Siew Chong dated 20 August 2024, and its corresponding exhibits (labelled OSC01 – OSC13). Ong Siew Chong has been the director of MAINMARK CORPORATION SDN BHD (i.e., the Proprietor) since 12

[3]See Rule 43A of the Trade Marks Rules 2008.

November 2004. Therefore, Ong Siew Chong is duly authorised to make submissions (and provide evidence) on behalf of the Proprietor.

8. Neither party requested a hearing, however both parties filed written submissions in lieu. The submissions will not be summarised here but will be referred to as and where appropriate during this decision. A summary of the Proprietor's evidence is provided below. This decision is taken following a careful perusal of all the papers.

Preliminary matters

Translation of evidence

9. In the official communication dated 2 September 2024, the Registry informed the Proprietor that it had included in the evidence "*numerous screenshots through their evidence of use from social media that contain foreign language without translations*". Accordingly, the Registry required the Proprietor to provide the relevant translations.

10. The Proprietor replied stating that "*the social media evidence includes posts in Swedish, which is the local language of the Proprietor's restaurant (in Stockholm, Sweden). […] this evidence cannot be simply discounted because it contains elements of a foreign language. The registered trade mark is still clearly visible (for example, "Marrybrown Sweden" is visible on the posts), as are the dates on the social media posts. The evidence was filed to demonstrate dated use of the registered trade mark on a social media page specific to the EU, including examples of local language being used. It is possible from the material filed to discern the use of the registered mark, in the relevant period, in the relevant territory and therefore the material should be considered without translations being necessary (as it was in the EU where the language of the proceedings was English)*".[4]

11. The Registry accepted that translations were not necessary if the evidence exclusively aimed at showing use of the trade mark in object. However, it was specified that foreign language portions of the social media evidence would not be considered unless in the English language and allowed time for the Proprietor to

[4] Email from the Proprietor dated 3 September 2024.

file the relevant translations.[5] The Proprietor did not provide translations to this regard.

Relevant period to show use

12. The Proprietor submitted that "*the relevant periods for showing genuine use are 29 September 2007 to 28 September 2012 and 23 May 2017 to 22 May 2022*" and that "*the Cancellation will not be successful if genuine use is shown in the latter of those periods. I will therefore refer to 23 May 2017 to 22 May 2022 as the "relevant Period"*".[6] While the relevant periods differ, section 46(3) of the Act states that the registration of a trade mark shall not be revoked if genuine use is resumed or commenced prior to a period of three months before the date of the application for revocation (i.e., 23 May 2022). Given the proviso at section 46(3) of the Act, if the Proprietor can establish genuine use in the most recent period (i.e., 23 May 2017 – 22 May 2022), the registration will not be revoked.

Form of the mark

13. From the summary of the evidence below, it will emerge that the Contested Mark has been used in a stylised manner and/or with additional matter. I find such uses of the mark, as shown in the evidence, to be use of the Contested Mark as registered as further explained below. As outlined in *Lactalis McLelland Limited v Arla Foods AMBA*, Case O/265/22,[7] the use of the mark in a different form may also constitute use of the mark as registered.

14. The test under section 46(2) of the Act (i.e. whether the form in which the mark has been used differs in elements which do not alter the distinctive character of the mark) was summarised as follows by Phillip Johnson, sitting as the Appointed Person, in *Lactalis McLelland Limited v Arla Foods AMBA*, Case BL O/265/22:

> "13. […] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is,

[5] Official communication dated 12 September 2024.
[6] Ong Siew Chong's witness statement, [10].
[7] At [13] - [15]. See also *Hyphen GmbH v EUIPO*, Case T-146/15, at [28] - [32].

the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. […] Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient)."

15. I also note that in *hyphen GmbH v EUIPO*, Case T-146/15, EU:T:2016:469, the General Court ("GC") held that use of the mark shown on the left below constituted use of the registered mark shown on the right. The court held that the addition of a circle, being merely a banal surrounding for the registered mark, did not alter the distinctive character of the mark as registered.[8]

[8] See also *Menelaus BV v EUIPO*, Case T-361/13, EU:T:2015:859; *Sony Computer Entertainment Europe v OHIM,* Case T-690/14, EU:T:2015:950; *LTJ Diffusion v OHIM*, Case T-83/14, EU:T:2015:974 and *PAL-Bullermann v EUIPO*, Case T-397/15, EU:T:2016:730.

16. In *Dreamersclub Ltd v KTS Group Ltd*, BL O/091/19, Mr Philip Johnson, as the Appointed Person, found that the use of the mark dreams qualified as use of the registered word-only mark 'DREAMS'. This was because the stylisation of the word did not alter the distinctive character of the word mark. Rather, it constituted an expression of the registered word mark in normal and fair use.

17. In Ong Siew Chong's witness statement, it is stated that "*the MARRYBROWN chain adopts consistent branding across its franchises using a red colourway, the name MARRYBROWN, including in stylised form* Marrybrown *and in addition, its "MB" logo* Mb. The Applicant did not provide any submissions on this point.

18. According to Ong Siew Chong's evidence, I note that although the Contested Mark is registered as a word-only mark, most of the evidence shows use of the mark with some stylisation: the word 'Marrybrown' is represented with a stylised rounded typeface with capital 'M'. The mark's letters are represented in white on a red background (Figure 1). The evidence also contains the representation of the Contested Mark with the same rounded typeface but in red on a yellow background (top-left corner in Figure 2).

Figure 1

Figure 2

19. As the Contested Mark is registered as a word mark, it may be used in a variety of fonts and colours, and in upper or lower case. I find that use of the Contested Mark in its stylised variations amounts to use of the mark as registered because the verbal component of the Contested Mark 'Marrybrown' remains clearly visible in the mark and the level of stylisation in the variant forms does not alter the distinctive character of the mark. Consequently, it is fair and notional use of the registered

mark and/or use upon which the Proprietor can rely in accordance with the guidance in *Lactalis*.

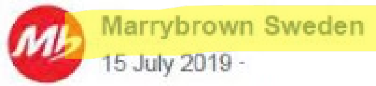
20. In the evidence there are also instances where the Opponent has used the mark in its registered word-only form; this is clearly use upon which it may rely.

21. Additionally, I note that, in most instances, the Proprietor's mark (in its acceptable stylised forms or as word only) has been used alongside the stylised letters 'Mb' in different colour variations, for example, red on a white background or white on a red background as shown below ("***the 'Mb' logo***"):

22. Whilst I find that use of the letters 'Mb' alone would not constitute an acceptable variant form of the Contested Mark, I consider that the use of 'Marrybrown' (whether in its accepted stylised forms or as word only) along with the 'Mb' logo, does not prevent the element 'Marrybrown' from being viewed independently to indicate the origin of the goods and services.[9] Therefore, I find that 'Marrybrown', even when showed in combination with the 'Mb' logo, remains an acceptable use of the Contested Mark.

23. For the sake of completeness, I note that the evidence shows instances where the Contested Mark is used along the word 'Sweden'. This is especially used to refer to the Proprietor's Facebook (Figure 3) and Instagram (Figure 4) accounts for the 'Marrybrown' fast food restaurant located in Stockholm (Sweden).

[9] As per *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12



The wait will be over! Sweden Marrybrown fans no longer have to travel to Dubai or Malaysia to get their fix as the wildly popular Malaysia No. 1 fast food chain is set to open soon in Stockholm, Kista Galleria.

The world's largest Halal fast food restaurant chain is coming to Scandinavia

#Marrybrownsweden #Halal #madeinmalaysiafortheworld #Sweden...
See more

Figure 3

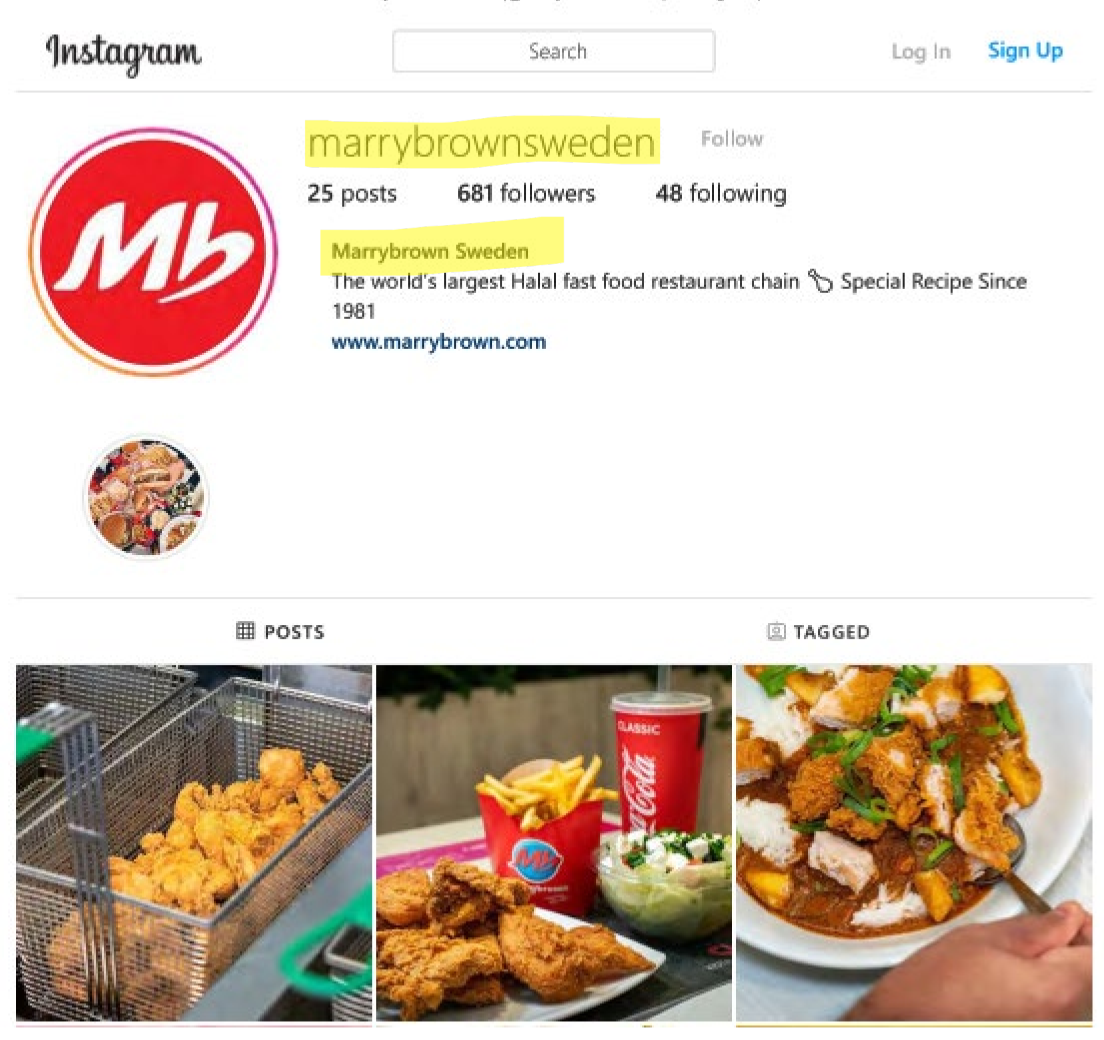


Figure 4

24. In the instances represented above, the Contested Mark 'Marrybrown' is clearly in use in an acceptable variant and the addition of 'Sweden' is manifestly descriptive of the location of the 'Marrybrown' restaurant where the Proprietor's services are offered. Therefore, the addition of the descriptive word 'Sweden' does not prevent the element 'Marrybrown' from being viewed independently to indicate the origin of the goods and services. I therefore find this other use of the Contested Mark to be an acceptable variant of the mark as registered in line with *Lactalis*.

Summary of the evidence of use

25. Ong Siew Chong opened the witness statement referring me to the proceedings concerning the Contested Mark that took place at the EUIPO (i.e., cancellation action number C41429) and to the evidence the Proprietor filed at the EUIPO for

the related application for revocation ("***the EUIPO evidence***"). **Exhibit OSC01** features a copy of the application for revocation filed by the Applicant at the EUIPO against the EU trade mark registration number 004870408 ("***the EUIPO proceedings***"). **Exhibit OSC02** shows a copy of the official communication from the EUIPO dated 28 May 2024 titled "*Entry on the Register of a Decisions on an Application for Revocation*". Ong Siew Chong explained, in the witness statement, that this communication followed from the decision of the EUIPO BoA becoming final and revoking the trade mark registration number 004870408 with the exception of "*Fast food restaurants*" in class 43. The exhibit also contains a screenshot from the EU Register showing that the EU trade mark remained registered for "*Fast food restaurants*" in class 43.

26. Ong Siew Chong's witness statement continued providing an introduction of the Proprietor's business. It is reported that 'MARRYBROWN' is a fast-food restaurant chain first established in Malaysia in 1981. Since then, the Proprietor's enterprise has expanded to be one of the largest Halal fast-food chain in the world serving millions of customers in over 500 outlets across 16 countries including Malaysia, Sweden, Singapore, Indonesia, Thailand, Myanmar, India, Maldives, Africa and the Middle East.

27. Ong Siew Chong also clarified that the use of 'MARRYBROWN' made in the EU by the Proprietor's franchisee Fastilicious Group AB is authorised use by the Proprietor.[10]

28. **Exhibit OSC03** features screenshots from the 'MARRYBROWN''s website ('marrybrown.com') detailing the brand's background, history and achievements. Regarding the achievements, the exhibit contains the screenshot of a page titled "Malaysia AWARDS & RECOGNITIONS" followed by a list of awards won by the Proprietor between 2010 and 2024. For the 'background' section, the exhibit shows an extract from the 'www.marrybrown.com' webpage reporting that 'Marrybrown' is a global fast-food chain with a wide demographic of consumers. The evidence features an image of a building (i.e., the Proprietor's new headquarters opened in 2012 in Johor) carrying the name 'Marrybrown' (in its acceptable styled form) followed by the 'Mb' logo' (Figure 5):

[10] Ong Siew Chong's witness statement dated 27 August, [15].

Figure 5

29. With regard to the 'history' section, the exhibit features another extract from the 'www.marrybrown.com' website providing a year-by-year timeline of the development of the Proprietor's company from 1981 to 2023. The timeline shows that for most of the time in the Proprietor's history, the commercial activity took place outside of the EU or UK (i.e., Malaysia, China, India, Middle East, Africa, Maldives, Myanmar, Brunei, Thailand, Singapore and Australia). The evidence also reports that the Proprietor opened its first outlet in Europe in February 2020 (i.e., in Sweden).

30. Ong Siew Chong's witness statement continues providing further information on the Proprietor's activity in Sweden. Ong Siew Chong says that the 'MARRYBOWN' restaurant is located in one of the largest shopping centres in Sweden and that its food court (called 'Kista Galleria') hosts approximatively 6 thousand diners a day and the shopping centre hosts over 18 million shoppers annually.[11] Kista Galleria is also reported to be the third biggest shopping centre among the Nordic countries (i.e., Finland, Sweden, Norway, Denmark and Iceland).[12]

[11] These numbers are reported in Exhibit OSC04, Annex 3 to the EUIPO evidence [21] (2018 Kista Galleria Brochure) and in Exhibit OSC05, Attachment 1 (page 15) to the EUIPO evidence.

[12] Reported in Attachment 1 (page 20) to the EUIPO evidence/submissions in Exhibit OSC06.

31. Ong Siew Chong points out that the Proprietor, before opening its first restaurant in Stockholm (Sweden) on 3 February 2020, had started preparations for such opening already in 2019. To this end, Ong Siew Chong reports that the Proprietor signed a tenancy agreement[13] with Kista Galleria AB on 22 May 2019, which had effect from 1 August 2019 (and for a period up to 31 July 2022) and that a 'MARRYBROWN Sweden' Facebook page was set up in June 2019. In the witness statement, one of the first posts of the 'Marrybrown Sweden' Facebook account is reproduced, showing an image of a few fried chicken legs placed next to a food container. The stylised variant of the 'Marrybrown' name (along with the 'Mb' logo) is featured on the food box and at the top right-hand side of the image (Figure 2 above). The witness statement contains another image from the 'Marrybrown Sweden' Facebook page showing a large advertisement board covering the Proprietor's shop front in the Kista Galleria (Figure 3 above). The board contains the clearly visible name 'Marrybrown' (in its stylised variant form) and the 'Mb' logo. The post is dated 15 July 2019. Ong Siew Chong asserts that the thousands of diners per day that frequent the Kista Galleria would have been exposed to the advertisement.

32. Ong Siew Chong also says that the 'MARRYBROWN' restaurant in Sweden was consistently promoted on other social media channels including Instagram and the Kista Galleria Facebook page.

33. Ong Siew Chong says that, following the opening of the Proprietor's restaurant in Sweden, independent articles published the news regarding the opening. Ong Siew Chong's witness statement reproduces a paragraph from one article (untitled and published on 'www.theiskandarian.com'), dated 13 April 2020, where it is reported that, on the first day of opening, the restaurant had a 150-metre-long queue and that such queues continued for the following days. The witness statement also features a screenshot from the 'Marrybrown global' Facebook page (also tagging the Kista Galleria food court), dated 9 February 2020, showing pictures of customers queuing for the Proprietor's newly opened restaurant. These pictures are more clearly reproduced in **Exhibit OSC04** which shows five photographs (all dated 9 February 2020) from the 'Marrybrown global' Facebook

[13] The agreement is reproduced (partially redacted) in Annex 2 to the EUIPO evidence in Exhibit OSC04.

page.[14] Out of the five pictures, two show consumers queuing in front of the restaurant's counter. In one of these two pictures, the 'MARRYBROWN' name is displayed above the counter (Figure 6).

Figure 6

34. Two other pictures show the 'Marrybrown' staff at the counter. In one of them the same 'MARRYBROWN' signage is displayed above the counter (Figure 7).

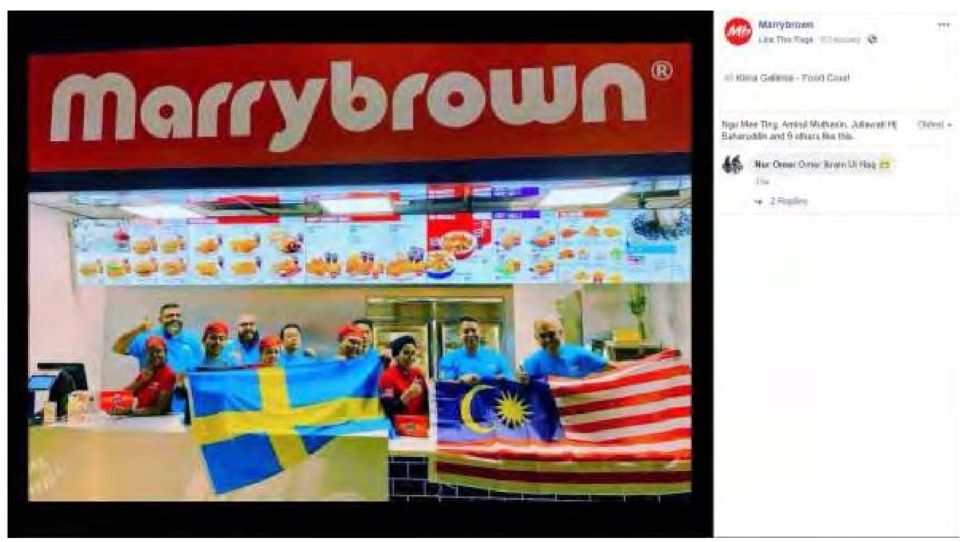


Figure 7

[14] Exhibit OSC04, page 19, EUIPO evidence at [29].

35. The other picture features the same restaurant counter without customers nor staff. Also in this picture the stylised name 'MARRYBROWN' (in the acceptable stylised variant) figures above it (Figure 8).

Figure 8

36. Ong Siew Chong's evidence is that the Contested Mark is used consistently across the consumer experience at the 'MARRYBROWN' restaurant in Sweden. Accordingly, the witness statement reproduces three pictures from reviews, dated February 2020, showing the use of the name 'Marrybrown', in the same stylised variant forms, on food packaging and trays.

37. Ong Siew Chong, in the witness statement, also says that the EUIPO evidence contains receipts (contained in Annex 14 to the EUIPO evidence reproduced in Exhibit OSC04), a few samples of paper receipts (contained in Annex 15 to the EUIPO evidence reproduced in Exhibit OSC04) and sales reports (contained in Annex 13 to the EUIPO evidence reproduced in Exhibit OSC04) for the 'MARRYBROWN' restaurant in the Kista Galleria for the period 1 February 2020 – 30 June 2020. Ong Siew Chong submitted there were 21,801 transactions for total sales of 2,500,000 Swedish Krona (approximately valued £193,625.00 at the time of writing). The Proprietor submitted that these sales figures were redacted and rounded down to ensure confidentiality. Ong Siew Chong submitted that the 'Marrybrown' restaurant opened in Stockholm on 3 February 2020 and, thus, on 30

June 2020 it had been operating for a total of 149 days. Therefore, the sales figures show an average amount of over 16,700 Swedish Krona (in excess of 1,500 euros)[15] worth of sales per day across the whole period. In Exhibit OSC06 (page 7) the Proprietor submitted that such sales figures (per day) are significant for fast food products considering that they are cheaper in nature.

38. Ong Siew Chong also provided, in the witness statement, a table detailing figures concerning sales figures and sales transactions for the 'MARRYBROWN' restaurant in Stockholm for the years 2020, 2021, 2022 and part of 2023 (table reproduced in Exhibit OSC11, [52]). Ong Siew Chong submitted, in the witness statement, that these figures were filed to show commercial activity for 2020 and to show continuity of activity of the Swedish 'MARRYBROWN' restaurant even after the end of the relevant periods.[16] The table is reproduced below:

Time period	**Sales figures (Swedish Krona)**	**Sales transactions**
Feb 2020 – Dec 2020	6 million (€500,000)	49,000
Jan 2021 – Dec 2021	7.1 million (€600,000)	56,000
Jan 2022 – Dec 2022	7.2 million (€610,000)	54,000
Jan 2023 – Sep 2023	4.2 million (€355,000)	29,000

39. In addition to these receipts/reports, Exhibit OSC13 contains sales reports (including invoice data) for the 'MARRYBROWN' Sweden restaurant for the period between 2 February 2020 and 31 December 2020. The sales reports and

[15] The Proprietor provided the €1,500 figure in Exhibit OSC04 (page 29) (i.e., the Proprietor's submissions in the EUIPO evidence [35]). This figure is estimated to equate to £1,301.77 at the time of writing.
[16] ONG SIEW CHONG's witness statement dated 20 August 2024, [28].

transactions are broken down, per each month of 2020, detailing the product groups, amount sold and price for each transaction being reported (e.g., regular meal, side orders, family meals, chicken burger meal (regular), hot wings (4 pcs), cheesy chicken meal (regular), etc.).

40. Ong Siew Chong submitted, in the witness statement, that 'MARRYBROWN' was available in 2020 on food delivery platforms consisting of Uber Eats and Foodora (a popular platform for restaurant food delivery which operates in Sweden and other Nordic countries). In this regard, Exhibit OSC04 contains the (partially redacted) agreements between the Proprietor (through the company Fastilicious AB, authorised to use the Contested Mark), Uber Eats (signed and dated 24 March 2020) and Foodora. This latter contract is provided in the original version in Swedish along with a (partial) English translation.[17] The date is not clear from the contract, but the Proprietor's evidence is that the contract was signed in 2019 (the exact date is not clearly specified).[18]

41. Exhibit OSC04 also features a series of screenshots taken from the Uber Eats (Sweden) platform showing the products available for purchase (e.g., chicken burger, mushroom soup, chicken nuggets, mashed potato, Hawaiian coleslaw, French fries, soft drinks).[19] The extracts are all dated 30 June 2020. The name 'Marrybrown' is reproduced at the top of the Uber Eats page (without stylisation). The stylised variant of the 'Marrybrown' name (along with the 'Mb' logo) is reproduced on the food containers of some items offered on this platform (i.e., French fries, Hawaiian coleslaw and mashed potatoes). The Proprietor also provided screenshots from the Foodora platform to show some of the goods being offered online. All the prices are in Swedish Krona.[20]

42. Exhibit OSC04 also contains extracts from the Proprietor's social media platforms. These consist of the following:

- A series of screenshots from the 'MARRYBROWN Sweden' Facebook account. For example, there are reproduced six posts dated, respectively, 28 June 2019, 4 July 2019, 15 July 2019, 23 October 2019, 8 November 2019 and 29 January

[17] Exhibit OSC04, Annex 17 (pages 148 – 156) to the EUIPO evidence.
[18] Exhibit OSC04, page 31 (Proprietor's submissions at [41] of the EUIPO evidence).
[19] Exhibit OSC04, Annex 16 to the EUIPO evidence (pages 134 – 139).
[20] Exhibit OSC04, Annex 17 of the EUIPO evidence (pages 157 – 160).

2020. They all feature the name 'Marrybrown Sweden' and the 'Mb' logo. Most of the posts advertise the Proprietor's products (e.g., fried chicken legs and burgers) and one post features a picture of the Proprietor's advertisement board affixed in the Kista Galleria advertising the future opening of the 'Marrybrown' restaurant (Figure 3). Five posts are in English and one in Swedish.[21] This exhibit contains a few additional Facebook posts from the 'Marrybrown Sweden' page featuring promotional advertisement from the Proprietor of its food products. I note that most posts are in Swedish as well as the related comments from consumers.[22]

- One screenshot from the 'Marrybrown Sweden' Facebook account advertising the soft opening of the Proprietor's restaurant at the Kista Galleria Food Court.[23] The Facebook post shows the event was set for 3 February 2020 and that around 25 people responded to the post advertising this event.[24]
- One still from the Kista Galleria's Facebook account, dated 9 December 2019, regarding a video post made to promote the opening of the 'MARRYBROWN' restaurant in the Kista Galleria. The post is in Swedish. The Proprietor submitted that this post presumably had a wide reach because shortly before the post was published (i.e., 21 November 2019), 37,782 people liked and 37,044 people followed the Kista Galleria Facebook page. To this regard the Proprietor provided an extract from the Wayback Machine database (dated 21 November 2019) showing a screenshot of the Kista Galleria's Facebook profile page showing these numbers.[25] I note the Kista Galleria's Facebook profile page provided is mostly in Swedish.
- One screenshot from the 'MARRYBROWN Sweden' Instagram account featuring the first post from this account, dated 29 January 2020, showing a picture featuring an advertisement board affixed in the Kista Galleria (Figure 3). This is the same picture published on the 'Marrybrown Sweden' Facebook page.

[21] Exhibit OSC04 (pages 9 -15), Proprietor's submissions in the EUIPO evidence [22] – [23].
[22] Exhibit OSC04, Annex 4 to the EUIPO evidence (pages 59 – 76).
[23] Exhibit OSC04, [27].
[24] Exhibit OSC04 (page 94), Annex 8 to the EUIPO evidence.
[25] Exhibit OSC04 (page 82), Annex 6 to the EUIPO evidence.

- One screenshot of the 'Marrybrown Sweden' Instagram profile page. This piece of evidence is undated. It indicates a total of 681 followers along with a few of the account's pictures showing advertising material and photos of real-life food items being offered by the Proprietor (Figure 4).[26]

43. Exhibit OSC04 contains online news articles referring to the Proprietor. These are the following:

    - One article from 'www.foodnet.se', dated 14 October 2019, titled "*Malaysian fast food chain to Europe – choose Kista Galleria*" and one article from www.fastighetsvarlden.se', dated 11 October 2019, titled "*Three trendy food concepts make their entrance in Kista Galleria*". Both articles are originally in Swedish and talk about the 'MARRYBROWN' brand as well as its future opening in Stockholm. The Proprietor provided English translations.[27]
    - One article from 'www.theiskandarian.com', dated 13 April 2020, which describes the opening day of the 'MARRYBROWN' restaurant in Stockholm reporting the restaurant's success in its first period after opening.[28]

44. Exhibit OSC04 features reviews of the 'MARRYBROWN' restaurant in Stockholm which consist of:

    - Seven reviews from customers posted on the 'Marrybrown Sweden' Facebook page between 4 and 12 February 2020. Four reviews are in Swedish and three are in English.[29]
    - One review from INFINITY INFINITY 'Local Guide' left in February 2020 on Google reviews. The review contains one image of the restaurant's menu, one real-life picture of a tray from the 'Marrybrown' restaurant, one image of a tray with food packaging and a zoom in on the 'Marrybrown' name placed on the packaging. All the images feature the name 'Marrybrown' in its stylised variant and the 'Mb' logo.

---

[26] Exhibit OSC04 (pages 78 – 80), Annex 5 to the EUIPO evidence.
[27] Both articles and their translations are reproduced in Exhibit OSC04, Annex 7 to the EUIPO evidence.
[28] Exhibit OSC04, Annex 9 to the EUIPO evidence.
[29] Exhibit OSC04, EUIPO evidence, pages 22 – 24.

45. Exhibit OSC04 also features a sample menu from the ‘MARRYBROWN’ restaurant in Stockholm. The menu shows the prices in Swedish Krona.[30] The Proprietor submitted that this part of the evidence shows that some of the goods in class 29 (e.g., burgers, cheese, meat, potato chips, potato crisps, poultry, not live, preparations made from chicken, soups and vegetable salads) are sold under the Contested Mark. This evidence is undated.[31]

46. In Exhibit OSC04, the Proprietor submitted that the Contested Mark has been used also for class 16 goods. To this end, it provided examples of the use of the name ‘Marrybrown’ on bags, food wrappers, food containers, napkins, table mats, menu cards and flyers.[32] More specifically, this evidence features:

- One image showing two paper bags carrying the name ‘Marrybrown’ on the side;
- One image of packaged paper napkins (along with the detail of one napkin) showing the ‘Mb’ logo;
- A few images of food wrappers in different colours (green, yellow and orange) along with two zoom ins on the wrappers’ pattern showing the name ‘Marrybrown’ (in its stylised variant) and the ‘Mb’ logo;
- One image of a food container for French fries carrying the name ‘Marrybrown’ (in its stylised variant);
- One image of a table mat displaying the acceptable stylised variant of ‘Marrybrown’ at the top and bottom of the mat;
- A screenshot of a restaurant menu showing the name ‘Marrybrown’ (in its stylised variant) at the top of the menu along with the ‘Mb’ logo;
- One image of a flyer advertising available job positions at the ‘Marrybrown’ restaurant at the Kista Galleria. The flyer shows the stylised variant name of ‘Marrybrown’ and the ‘Mb’ logo placed at the top of the flyer in a dominant position.

[30] Exhibit OSC04, Annex 12 to the EUIPO evidence.
[31] Exhibit OSC04, Proprietor’s submissions at [33] in the EUIPO evidence.
[32] Exhibit OSC04, Proprietor’s submissions at [43] in the EUIPO evidence.

47. **Exhibit OSC05** contains submissions by the Applicant filed in the EUIPO proceedings criticising the Proprietor's evidence of use filed for those proceedings (i.e., also consisting of the evidence provided for the proceedings at hand). In particular, the Applicant contended that the Proprietor reported use of the Contested Mark exclusively in relation to one single outlet (i.e., the restaurant in Stockholm). It is argued that such territorial scope is very limited when considering that the whole EU population counts 447 million people and Stockholm has a population of 1.5 million inhabitants (as submitted by the Proprietor).

48. **Exhibit OSC06** reports submissions by the Proprietor, filed in the EUIPO proceedings, in reply to the Applicant's comments on the Proprietor's evidence. The Proprietor provided further clarification on each piece of evidence submitted for the EUIPO proceedings to directly address the Applicant's arguments. The Proprietor referred to the same evidence and restated the same submissions already provided before during the EUIPO proceedings (and already considered also for these proceedings). The Proprietor also provided some new evidence to further clarify its arguments:

- Screenshots from the Wayback Machine database, dated 21 November 2019, from the Citycon website ('www.citycon.com') providing information on the Kista Galleria.
- Screenshot of a Wikipedia page titled "*List of largest shopping centres in the Nordic countries*". The page lists Kista Galleria in 3rd place.
- A series of real-life pictures of the Proprietor's menus, food containers and paper trays dated February 2020.
- One article from 'halalfocus.net' titled "*Malaysia: Marrybrown eyes Europe entry*" dated 1 December 2014.

49. **Exhibit OSC07** contains comments by the Applicant, filed in the EUIPO proceedings, submitted in reply to the Proprietor's additional submissions and evidence reproduced in Exhibit OSC06.

50. **Exhibit OSC08** features submissions in reply by the Proprietor, filed in the EUIPO proceedings, disputing the Applicant's comments on the Proprietor's further evidence and submissions.

51. **Exhibit OSC09** contains a copy of the decision from the EUIPO Cancellation Division on cancellation number C41429, dated 25 April 2023, which found genuine use of the 'Marrybrown' mark in the EU for "*Fast food restaurants*" in class 43 and partially revoked the Contested Mark from the effective date of 20 February 2020.

52. **Exhibit OSC10** shows a copy of the Applicant's notice of appeal and statement of grounds, respectively dated 26 August and 24 August, filed in the EUIPO proceedings against the EUIPO Cancellation Division's decision for cancellation number C41429 (appeal number R1298/2023-1). The Applicant appealed, arguing that the EUIPO Cancellation Division erred in allowing the Contested Mark to remain registered for "*Fast food restaurants*" in class 43 because the Proprietor failed to show sufficient genuine use for such services.

53. **Exhibit OSC11** contains the Proprietor's response and further evidence filed in reply to the Applicant's arguments submitted in the notice of appeal for the EUIPO cancellation proceedings. The Proprietor filed additional evidence showing the 'Marrybrown' restaurant in Stockholm continued to operate after its opening in February 2020. To this end the Exhibit contains:

<u>Annex A</u>:

- a screenshot from the Kista Galleria website showing 'Marrybrown' listed as a restaurant in the Kista Galleria.
- One screenshot from Google Maps showing 'Marrybrown' located at the Kista Galleria as "open". Google Maps also indicates that the restaurant has received 328 reviews.
- Screenshots of the Uber Eats and Foodora websites showing the availability of 'Marrybrown' products and services in Sweden.

54. For the purposes of these proceedings, I note that all this evidence is dated 24 October 2023, which seems to be the date when the evidence was presumably extracted. No other dates appear from the evidence itself. Thus, the evidence is dated outside of the relevant periods.

<u>Annex B</u>:

- Nine screenshots from the 'marrybrown' Instagram account (one screenshot is reproduced twice) mostly showing real-life pictures of food placed on a table or trays. One screenshot shows a post of a customer sitting at a table consuming fast food and one other post shows a picture of the Proprietor's restaurant's counter with the sign 'Marrybrown' placed above it.[33] The descriptions and the dates in the posts are not clearly legible. However, the Proprietor gives evidence that the posts originate from third parties and the '@marrybrownsweden' Instagram account and that the posts are respectively dated 12 August 2021, 10 October 2021, 23 April 2022, 20 October 2022, 24 April 2023 and 3 August 2023 to show continuous use of the Contested Mark in Sweden.[34] As the Instagram posts seem to exclusively relate to the EU market (i.e., Swedish consumers), for the purposes of these proceedings, these posts are dated outside of any of the relevant periods.

Annex C:

55. Google reviews from the Google maps 'marrybrown' page for the 'Marrybrown' restaurant at the Kista Galleria (Stockholm). All the evidence carries the date of 24 October 2023 (presumably the date when this evidence was gathered). The exhibit features twenty-four reviews from customers. Of all the reviews, four indicate they were submitted "3 years ago" (i.e., October 2020) and fall within the relevant period. The other reviews indicate they were left more recently (i.e., after the end of 2020) and fall outside of the relevant periods.

Annex D

- One article from 'The Malaysian Reserve' dated 22 December 2022 titled "*Marrybrown sweeps 2022 Best Franchise Award*".
- One article from 'www.therakyatpost.com', dated 30 June 2022, titled "*Does Marrybrown's New Oishii Japan Menu Makes You Teri-fied Or Wanna Teri-ak? [Review]*".

56. Both articles are in English.

[33] Exhibit OSC11, Annex B, pages 1 – 10.
[34] Exhibit OSC11, paragraph [49], page 10.

57. The exhibit also contains a table showing the sales figures and sales transactions for the ‘Marrybrown’ Sweden restaurant already reproduced above in this decision.

58. **Exhibit OSC12** reproduces a copy of the decision form the EUIPO BoA in the cancellation proceedings R 1298/2023-1 where the Board upheld the Cancellation Division’s decision.

59. **Exhibit OSC13** reports the total sales and total transactions for the year 2020. The evidence is broken down by each month in 2020 indicating the product group being offered and the corresponding value for each transaction.

60. That completes my summary of the Proprietor’s evidence.

Decision

Statutory provisions

61. The relevant provisions of section 46 of the Act are as follows:

> “(1) The registration of a trade mark may be revoked on any of the following grounds –
>
> > (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
> >
> > (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;
> >
> > (c) […]
> >
> > (d) […]
>
> (2) For the purpose of subsection (1) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name

of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as in referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

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

(4) […]

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

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

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

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

62. Section 100 of the Act is also relevant, which reads:

"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."

63. Given that the Proprietor's mark is a comparable mark, paragraph 8 of part 1, schedule 2A of the Act is also relevant, which states:

"8.— Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)

(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".

Relevant case law

64. 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].

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. Case T-78/19 *Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33]. In *Awareness Limited v Plymouth City Council,* Case BL O/236/13, Mr Daniel Alexander QC (as he then was) as the Appointed Person stated that:

> "22. The burden lies on the registered proprietor to prove use. […] However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public."

65. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd,* Case BL 0/404/13, Mr Geoffrey Hobbs QC (as he then was) as the Appointed Person stated that:

> "21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:
>
> > '[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.'
>
> 22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not *'show'* (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

66. What I take from this case law is that there is no requirement to produce any specific form of evidence, but that I must consider what the evidence as a whole shows me and whether on this basis I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the mark.

67. In *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, the Court of Justice of the European Union ("CJEU") noted that:

> "36. It should, however, be observed that […] the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase 'in the Community' is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.
>
> […]
>
> 48. To determine whether the condition of genuine use in the Community is satisfied, I consider that the national court must examine all forms of use of the mark within the internal market. In that context, the geographical definition of the relevant market is the entire territory of the 27 Member States. The borders between Member States and the respective sizes of their territories are not pertinent to this inquiry. What matters is the commercial presence of that mark, and consequently that of the goods or services covered by the mark, in the internal market.
>
> […]
>
> 50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as 'genuine use', it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national mark. […]

55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77)."

72. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited* [2016] EWHC 52, Arnold J (as he then was) reviewed the case law since *Leno* and concluded as follows:

"228. Since the decision of the Court of Justice in *Leno* there have been a number of decisions of OHIM Boards of Appeal, the General Court and national courts with respect to the question of the geographical extent of the use required for genuine use in the Community. It does not seem to me that a clear picture has yet emerged as to how the broad principles laid down in Leno are to be applied. It is sufficient for present purposes to refer by way of illustration to two cases which I am aware have attracted comment.

229. In Case T-278/13 *Now Wireless Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* the General Court upheld at [47] the finding of the Board of Appeal that there had been genuine use of the contested mark in relation to the services in issue in London and the Thames Valley. On that basis, the General Court dismissed the applicant's challenge to the Board of Appeal's conclusion that there had been genuine use of the mark in the Community. At first blush, this appears to be a decision to the effect that use in rather less than the whole of one Member State is sufficient to constitute genuine use in the Community. On closer examination, however, it appears that the applicant's argument is not that use within London and the Thames Valley was not sufficient to constitute genuine use in the Community, but rather that the Board of Appeal was wrong to find that the mark had been used in those

areas, and that it should have found that the mark had only been used in parts of London: see [42] and [54]-[58]. This stance may have been due to the fact that the applicant was based in Guildford, and thus a finding which still left open the possibility of conversion of the Community trade mark to a national trade mark may not have sufficed for its purposes.

230. In *The Sofa Workshop Ltd v Sofaworks Ltd* [2015] EWHC 1773 (IPEC), [2015] ETMR 37 at [25] His Honour Judge Hacon interpreted *Leno* as establishing that 'genuine use in the Community will in general require use in more than one Member State' but 'an exception to that general requirement arises where the market for the relevant goods or services is restricted to the territory of a single Member State'. On this basis, he went on to hold at [33]-[40] that extensive use of the trade mark in the UK, and one sale in Denmark, was not sufficient to amount to genuine use in the Community. As I understand it, this decision is presently under appeal and it would therefore be inappropriate for me to comment on the merits of the decision. All I will say is that, while I find the thrust of Judge Hacon's analysis of *Leno* persuasive, I would not myself express the applicable principles in terms of a general rule and an exception to that general rule. Rather, I would prefer to say that the assessment is a multi-factorial one which includes the geographical extent of the use."

Assessment of the sufficiency of use and conclusions

73. I remind myself that for the purposes of these proceedings the relevant period in which the Proprietor must demonstrate genuine use is 29 September 2007 to 28 September 2012 under Section 46(1)(a) and 23 May 2017 to 22 May 2022 under Section 46(1)(b).

74. As a preliminary matter, I note that in Ong Siew Chong's witness statement it is submitted that the Contested Mark only covers "*Fast food restaurants*" in class 43 following the partial revocation after the EUIPO proceedings.[35] This is not entirely correct. The Contested Mark's partial revocation (also affecting the UK comparable mark) took effect from 20 February 2020. This means that for the first relevant period (ending in September 2012) the Contested Mark remains valid for the goods

[35] ONG SIEW CHONG's witness statement dated 27 August 2024, [8].

and services for which it was initially registered (i.e., classes 16, 29 and 43) and any evidence of use in this sense is relevant. With regard to the second relevant period, up to 20 February 2020 use concerning the Contested Mark's goods and services is also relevant. Following 20 February 2020, only use concerning "fast food restaurants" is relevant.

75. The evidence provided (summarised above in this decision), shows use of the 'MARRYBROWN' mark (as word-only and in its acceptable variant forms) started in June 2019 concerning some limited promotional activity on social media for the opening of the Proprietor's restaurant in the Kista Galleria. Most of the evidence is dated between 3 February 2020 and 31 December 2020 (IP Completion Day) showing use of the Contested Mark in relation to one fast-food restaurant placed in a shopping centre (i.e., Kista Galleria) in Stockholm (Sweden). It follows that there is no evidence relating to the use of the Contested Mark in the EU prior to 2019. Therefore, the section 46(1)(a) of the Act claim will succeed and the registration will be revoked for all the goods and services unless the Proprietor can establish genuine use in the most recent period (i.e., 23 May 2017 – 22 May 2022), in which case the registration will not be revoked in light of the proviso at section 46(3) of the Act.

76. As clarified above, the Contested Mark's class 16 and class 29 are valid up to 20 February 2020. Therefore, any evidence relating to the goods in class 16 (e.g., boxes of cardboard or paper, table napkins of paper, wrapping paper) and class 29 (e.g., potato chips, preparations made from chicken, burgers) provided in the period 29 September 2007 - 28 September 2012 and between 23 May 2017 - 20 February 2020 could show genuine use of such goods. The Proprietor's evidence is dated from 3 February 2020 onwards (apart from some evidence of commercial preparatory activity in 2019). With regard to classes 16 and 29, the only evidence of use, for the second relevant period, concerns the period between 3 February 2020 and 20 February 2020. I note the evidence shows a few pictures of the food (e.g., fried chicken legs) and food containers offered by the Proprietor either posted on social media or via other different channels (i.e., signage in the Kista Galleria) as well as some consumer reviews of the Proprietor's products. I also appreciate that the sales report lists, for example, chicken products being sold in February 2020. However, as the February sales report is not broken down by day, I am

unable to determine if the sale of these goods (and to what amount) refers to the period 3 February 2020 – 20 February 2020. Thus, overall, although the evidence contains a few references to the Proprietor's goods for this limited period, I find it insufficient to constitute genuine use of the Contested Mark for the goods at hand. Turning to the class 16 goods, the evidence features a few images of the Contested Mark used, for example, on napkins, food wrapping paper, table mats, menus, and bags. All this evidence is undated. In any case, I find such evidence merely shows some ancillary use for these goods in relation to the fast-food restaurant services and it fails to show any actual commercial use (e.g., I was not provided with any sales figures, advertising expenditure, invoices). Therefore, I find that the Proprietor has failed to show genuine use of the goods in class 16 and class 29 in either relevant period, and I will focus my assessment on the evidence provided relating to the "*Fast food restaurants*" services in class 43.

77. In carrying out my assessment of the Proprietor's evidence, I must remind myself that for the use to be genuine, it must have been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the services at issue in the relevant territory during the relevant five-year period. Until 31 December 2020, that territory is the EU; after that, it is the UK.

78. The Proprietor provided evidence concerning some preparatory activity that took place in 2019 relating to the opening of the fast-food restaurant in the Kista Galleria in early February 2020. Such preparatory activity consisted of signing a tenancy agreement with the Kista Galleria for the opening of the Proprietor's restaurant, setting up the 'MARRYBROWN Sweden' Facebook page, affixing an advertisement sign in the Kista Galleria to announce the future opening of the fast-food restaurant, and the promotion of the restaurant's opening on social media platforms. In *Ansul* it is set out at [37] that:

> "[…] genuine use of the mark entails use of the mark on the market for the goods or services protected by that mark and not just internal use by the undertaking concerned. […] Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns".

79. Whilst advertisement on social media platforms and the affixing of advertising signs in public spaces (i.e., the Kista Galleria's premises) are clearly public uses amounting to external use of the mark (albeit merely preparatory), I must assess whether the signing of a tenancy agreement to open the Proprietor's restaurant could as well be considered as a preparatory use of the mark. I remind myself that a mark must be used publicly and outwardly in the context of commercial activity with a view to economic advantage for the purpose of ensuring an outlet for the goods and services that it represents.[36] Outward use does not necessarily imply use aimed at end consumers, but also at other professional users such as, for example, distribution companies.[37] I find that the use of the Contested Mark in connection with a tenancy agreement involving a third-party business (i.e., Kista Galleria), for the purpose of offering the Proprietor's services, whilst it is a genuine preparatory step and it is not merely token use, it does not, however, constitute genuine use of the mark. Firstly, the Kista Galleria's landlord is not the relevant consumer of the Proprietor's goods and/or services (i.e., it is not part of the supply chain or an end user). Secondly, the signing of a tenancy agreement is not genuine use of the Contested Mark as a trade mark to identify the fast-food restaurant services.

80. The Proprietor also provided evidence of user engagement with the Proprietor's services (i.e., a fast-food restaurant). More specifically, extracts from the Proprietor's social media accounts (i.e., Facebook and Instagram) showed consumers queuing at the counter in the Kista Galleria. Following the opening of the Kista Galleria's restaurant the Proprietor showed continued social media engagement with the services' consumers (e.g., posts on social media platforms and related comments) and user reviews on such platforms.

81. The 'Marrybrown' restaurant opened in Stockholm (i.e., Kista Galleria) on 3 February 2020.[38] The Proprietor provided a sales report dated 1 February 2020 – 30 June 2020 showing that, in this period, 21,801 transactions took place. The

---

[36] Case T-174/01, *Silk Cocoon*, [39]; Case T-131/06, *Sonia Sonia Rykiel*, [38].

[37] Case T-211/03, *Faber Chimica v OHIM – Industrias Quimicas Naber (Faber)* [2005] ECR II-1297, [24] – [26].

[38] Ong Siew Chong stated, in the witness statement, that the Kista Galleria restaurant opened on 3 February 2020. The sales report provided at Exhibit OSC13 (page 1) show the invoice data begins on 2 February 2020 (i.e., period between 2 February 2020 and 29 February 2020). Based on the overall evidence, particularly the social media posts, I can safely conclude that the Kista Galleria restaurant opened, in fact, on 3 February 2020.

number for the total sales is redacted.[39] The Proprietor provided additional sales reports for the period 2 February 2020 – December 2020.[40] These sales reports show 49,000 transactions overall for a total sale value of 2,500,000 Swedish Krona (approximately valued £193,625.00 at the time of writing), amounting to over 16,700 Swedish Krona (approximately £1,300) worth of sales per day across the whole period. The Applicant contended that such sales numbers are extremely low in terms of both value and transaction numbers, even considering the low-cost goods and the short duration of sales, to show genuine use.[41] Whilst I bear in mind that the use of a trade mark does not need to be quantitively significant, I find that the number of transactions and level of sales provided by the Proprietor are sufficient to show genuine use of the Contested Mark and it cannot be said to be merely token use. This is especially considering that the Proprietor had just started its commercial activity in February 2020, along with the fact that in the early months of 2020 the Corona virus (COVID-19) pandemic hit various EU countries. In this regard, the Proprietor submitted that although Sweden did not declare any restrictions, commercial activities were lower than under normal circumstances.[42]

82. The Applicant submitted that "*[…] there is evidence to suggest that the Respondent's outlet in the Kista Galleria shopping centre in Sweden may have been shut down after the end of the Relevant Period*"[43] and referred me to the news article, dated 12 August 2022, stating: "*As of today, Marrybrown has steadily made its way beyond Malaysia, spreading into much of the Asian continent, even reaching Tanzania and Sweden (though this particular outlet later shut down)*".[44] In reply to this argument, the Proprietor provided sales figures for the years 2021 (totalling to 600,000 euro, i.e., £518,220), 2022 (totalling to 610,000 euro, i.e., £ 526,857) and for the period January 2023 - September 2023 (totalling to 355,000 euro, i.e., £306,613). The Proprietor also provided evidence showing that on 24 October 2023 'Marrybrown' was listed as a restaurant in the Kista Galleria (on the same date, Google Maps reported it as "open"), and that up to August 2023 the Instagram account for 'marrybrownsweden' had been active promoting to the Kista

[39] Exhibit OSC04, p-age 113 – 119.
[40] Exhibit OSC13.
[41] Cancellation Applicant's submissions in lieu dated 26 November 2024, [17] and [22].
[42] Proprietor's submissions in lieu dated 26 November 2024, page 11.
[43] Exhibit OSC10, page 8, [20].
[44] Exhibit OSC10, Annex 2, page 26.

Galleria's visitors the 'Marrybrown' restaurant services. I appreciate that following IP Completion Day (i.e., 31 December 2020) evidence concerning the EU market is not relevant to assess genuine use. I nonetheless find that such evidence shows continuity of the Proprietor's restaurant's activity also in the years following the end of the second relevant period and it further corroborates the argument that the use of the Contested Mark by the Proprietor is genuine, and it does not amount to mere token use.

83. The Proprietor's sales reports also show that the fast-food restaurant services were available on the food delivery platforms Uber Eats and Foodora at least for the period February 2020 – December 2020.[45] The Proprietor also provided the contracts signed with these food delivery platforms and some screenshots from these platforms showing the Proprietor's products available for purchase. Although the Proprietor did not provide further clarification to this regard, such evidence seems to indicate that, at least for part of the second relevant period, the Proprietor offered not only fast-food restaurant services in the premises of the Kista Galleria, but also food delivery to online customers (thus, potentially in other parts of Stockholm). However, I note that the extracts from the Uber Eats pages exclusively feature the Kista Galleria address (i.e., Hanstavägen 55f, 164 53 Kista). The screenshots of orders placed on the Foodora platform all report one address which, whilst it is not identical to the one shown on Uber Eats, it seems to be part of the same 'Kista' complex (i.e., Torsnästorget 19 Kista 164 40). Therefore, absent further clarification from the Proprietor, whilst I appreciate that part of the sales figures likely derives from orders placed on Uber Eats and/or Foodora, I am unable to determine whether the Proprietor has, in fact, provided its fast-food restaurant services outside of the Kista Galleria's premises. The Proprietor also submitted that the Kista Galleria is one of the largest shopping centres in Sweden and that its food court hosts approximately 6 thousand diners a day with the shopping centre hosting over 18 million shoppers annually. Kista Galleria is also reported to be the third biggest shopping centre among the Nordic countries (i.e., Finland, Sweden,

[45] The sales reports in Exhibit OSC13 for the period February 2020 – June 2020 only show "Marrybrown" and "card" as payment methods. For the following months, up to December 2020, the payment methods include "Uber Eats" and "Foodora". However, Exhibit OSC04 shows "Uber Eats" and "Foodora" as payment methods already for the period February 2020 – June 2020. Therefore, I find the two exhibits complete each other showing that the Proprietor provided its services for the whole period February 2020 – December 2020 also via the food delivery platforms Uber Eats and Foodora.

Norway, Denmark and Iceland). Whilst I accept the Proprietor's evidence about the size of the Kista Galleria and the food court and that the sales figures show some of these customers used the Proprietor's services, I am unable to determine with more precision what proportion of the shoppers did so without further precise evidence from the Proprietor.

84. When determining whether the Proprietor has made genuine use of the Contested Mark, I must remind myself that the assessment of genuine use is a multifactorial one that must take into consideration all the facts and circumstances pertinent to the case under exam. Accordingly, the territorial extent of the mark's use is only one of the elements to consider in my overall assessment. To this regard, the evidence submitted shows that the place of use is part of Sweden for a period prior to Brexit. Although the evidence does not refer to a wider part of the European Union or the UK, the CJEU has clarified that, in assessing whether the EUTM has been put to 'genuine use', the territorial borders of the Member States should be disregarded.[46] Therefore, I find the evidence can be considered to relate to the territory of the European Union.

85. Furthermore, I appreciate that almost the totality of the evidence provided relates to the period spanning from 3 February 2020 to 31 December 2020 and that only a small part of the evidence showed some preparatory activities already in 2019. Nonetheless, I must bear in mind that, to show genuine use, use of the Contested Mark does not need to have been made throughout the whole period of five years, but rather within the five years of the relevant period under examination.[47] Thus, the use the Proprietor made of the Contested Mark for the eleven months of 2020 (along with some preparatory activity in few months of 2019) is relevant for my assessment of genuine use.

86. In summary, the Proprietor provided evidence of 1) some preparatory activity in view of the opening of the fast-food restaurant in Stockholm; 2) sales figures averaging half a million pounds sterling for the period February 2020 – December 2020 (i.e., 11 months) with consistent sales in each month of this period; 3) advertising activities on social media platforms advertising the Proprietor's services before the opening of the fast-food restaurant and continued social media

[46] Case C-149/11, *OMEL / ONEL*, [44].
[47] Case T-86/07, *Deitech*, [52].

advertising following the opening of the restaurant; 4) consumer engagement (i.e., comments and reviews posted on social media platforms); 5) independent news magazines (both in Swedish and English) talking about to the Proprietor's fast-food services and the opening of the new fast-food outlet in Stockholm. Taking all of the above into account and bearing in mind that it is important to consider the evidential picture as a whole, not just whether each individual piece of evidence shows use on its own,[48] I consider that the evidence provided, in spite of its limited territorial extent and the fact that all of the evidence concerns one single outlet, on balance, is sufficient to show genuine use of the Contested Mark to maintain or create a share in the market for "*Fast-food restaurants*" services in class 43. I reach this finding especially in light of the revenue numbers the Proprietor provided for the eleven months of activity within the second relevant period.

87. I appreciate that evidence prior to 20 February 2020 relating to the Proprietor's "*Restaurant services; self-service restaurant services; preparation and providing food and drink for consumption on and off premises*" would have been relevant to show genuine use for such services. However, the evidence does not show any use of the Contested Mark for these services. This confirms my finding above that the evidence exclusively shows use for "*Fast-food restaurants*" services in class 43.

Fair specification

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

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

[48] *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09.

89. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal set out the proper approach to partial revocation, as follows:

> "245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.
>
> 246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.
>
> 247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.
>
> 248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.
>
> 249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. […] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range

of goods or services within the scope of the terms describing the goods or services for which its mark is registered.”

90. As outlined at paragraph 76 and 87 above, I find that the Proprietor has failed to show use for the following goods and services:

Class 16 Address plates for addressing machines, address stamps, adhesive tape dispensers [office requisites], adhesive tapes for stationery or household purposes, advertisement boards of paper or cardboard, albums, almanacs, announcement cards (stationery), bags (conical paper-) bags [envelopes, pouches] of paper or plastics, for packaging, bibs of paper, blackboards, book bindings, book ends, bookmarkers, boxes for pens, boxes of cardboard or paper, calendars, catalogues, charts, clips for offices, coasters of paper, diagrams, dish mats of paper, document files stationery, drawing pads, engravings, envelopes [stationery], erasing products, face towels of paper, files [office requisites], filter paper, folders [stationery], folders for papers, forms [printed], graphic, prints, graphic representations, forms [printed], graphic prints, greeting cards, handbooks [manuals], hygienic paper, index cards [stationery], ledgers [books], letter trays, loose-leaf binders, magazines [periodicals], note books, packing paper, pads [stationery], pamphlets, paper, paper sheets [stationery], paper-clips, paperweights, pastels [crayons], pen cases, pencil holders, pencil sharpeners, pencils, penholders, not of precious metal, periodicals, photograph stands, photographs, pictures, plastic for modelling, pocket handkerchiefs of paper, postcards, posters, printed matter, printed publications, printed timetables, prints [engravings], prospectuses, rubber erasers, rulers (drawing-), school supplies [stationery], signs of paper or cardboard, stationery, table linen of paper, table mats of paper, table napkins of paper, tablecloths of paper, teaching materials (except apparatus), tear-off calendars, tickets, towels of paper, wrappers [stationery], wrapping paper, writing materials, writing or drawing books, writing pads and writing paper, all included in class 16.

Class 29: Beans, preserved, burgers, butter, cheese, croquettes, fillets (fish-), fish (products made from-), foods prepared from fish, fruit jellies, fruit salads, jams, jellies for food, margarine, meat, meat extract, meat gravies, milk, milk products, pickles, potato chips, potato crisps, poultry, not live, preparations made from chicken, sardines, sausages, soup (preparations for making), soups, tomato juice for cooking, tomato puree, vegetable soup preparations, vegetable salads, and yogurt, all included in Class 29.

Class 43: Restaurant services; self-service restaurant services; preparation and providing food and drink for consumption on and off premises.

91. In contrast, I find the Proprietor's has shown genuine use for "*Fast food restaurants*" in class 43. Therefore, the Proprietor's fair specification consists of the following:

Class 43 Fast food restaurants.

Outcome

92. The application for revocation succeeds with regard to classes 16 and 29 and partially succeeds with regard to the services in class 43 except for the services "*Fast food restaurants*" in class 43 for which the Contested Mark remains registered.

93. As a result, the Contested Mark is, subject to any successful appeal, hereby revoked for all the goods in classes 16 and 29 and in part, for the services specified at paragraph 90, above, in class 43. The Contested Mark remains registered for "*Fast food restaurants*" in class 43. The effective date of revocation is 29 September 2012.

Costs

94. As the Applicant for revocation has been mostly successful, it is entitled to a contribution towards its costs. Bearing in mind the relevant scale set out in the Tribunal Practice Notice (TPN) 2/2016 I award costs as follows:

Official fee	£200
Preparing revocation application and considering the registered proprietor’s defence and counterstatement	£250
Preparing submissions in lieu of a hearing	£350
Total:	**£800**

95. I order MAINMARK CORPORATION SDN BHD to pay MARY BROWN'S INC. the sum of **£800**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 2nd day of September 2025

Andrea Rossi

For the Registrar