

BL O/0848/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

**IN THE MATTER OF
INTERNATIONAL REGISTRATION NO. WO0000001803433
BY NİSHANE İSTANBUL TASARIM ORGANİZASYON TURİZM TİCARET VE
SANAYİ ANONİM ŞİRKETİ**

**AND IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 450529
BY JETHARAM NEMARAM GEHLOT**

AND

**IN THE MATTER OF UK REGISTRATION NO. 3394767
IN THE NAME OF JETHARAM NEMARAM GEHLOT**

**AND THE APPLICATION FOR THE REVOCATION THEREOF
UNDER NO. 508343
BY NİSHANE İSTANBUL TASARIM ORGANİZASYON TURİZM TİC**

BACKGROUND AND PLEADINGS

1. This decision involves cross-proceedings wherein Jetharam Nemaram Gehlot (“Party A”) and NİSHANE İSTANBUL TASARIM ORGANİZASYON TURİZM TİCARET VE SANAYİ ANONİM ŞİRKETİ (“Party B”) brought actions against one another. I will summarise the relevant proceedings below, beginning with Party A’s opposition on the basis that it was brought first.

The Opposition

2. Party B is the holder of the following international trade mark registration (“IR”):

NISHANE

IR designating the UK under no.: WO0000001803433

International registration and UK designation date: 11 June 2024

Priority date: 10 June 2024 (TR)¹

The IR was accepted and published for opposition purposes on 23 August 2024, in respect of goods in classes 3, 5, 14, 18 and 21, as set out in the Annex to this decision.

3. On 31 October 2024, Party A partially opposed the protection of the IR in the UK based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all the IR’s class 3 goods.² Party A relies upon the following trade mark:

Nisha

UKTM no.: 3394767 (“the Earlier Mark”)

Filing date: 25 April 2019

Registration date: 23 August 2019

Relying upon all the goods in class 3³

¹ TURKEY (TR) 2024/076357.

² See the goods comparison at paragraph 64.

³ See the goods comparison at paragraph 64.

4. Party A's mark qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application date for the contested mark, it is not subject to the use provisions contained in section 6A of the Act. Consequently, Party A may rely upon all of the class 3 goods for which the earlier mark is registered without having to establish genuine use.

5. Party A claims that the parties' marks are similar and that the respective goods are either identical or similar, resulting in a likelihood of confusion and association on the part of the public.

6. Party B filed a counterstatement accepting that the class 3 goods are similar to a degree, however it denied that there exists a likelihood of confusion and association on the basis that the marks are not similar.

PRELIMINARY ISSUES

7. In its counterstatement Party B raises a point that I intend to address as a preliminary issue, and to explain why, as a matter of law, the point raised will have no bearing on the outcome of these proceedings.

8. With regard to the similarity of the goods, Party B states:

“The conflicting goods in class 03 are similar to a degree, however, at the best knowledge of the Applicant, the Opponent's mark has not being used on these goods. Therefore, the Applicant requests the Tribunal to refuse the opposition based on Section 5(2)(b), as the conditions are not met.”

9. With regard to Section 5(2)(b), the earlier mark is not subject to the use provisions under section 6A of the Act. An opponent may rely on any or all of the goods for which its mark is registered if it had been registered for less than five years on the date on which an opposed application (or registration in the case of IRs) was filed. As Party A's mark had been registered for less than five years on 10 June 2024, it may rely upon all the goods identified in its pleadings without having to prove it has made genuine use of the mark.

10. I note that Party B also relies on the fact that it owns another UK registration for a mark containing the word 'Nishane', namely 'Nishane Istanbul' & device, in class 3, which has not been opposed or cancelled. However, that registration is not the contested mark in these proceedings. Further, the fact that a different mark has proceeded to registration, or has not been challenged, does not determine whether there is a likelihood of confusion between the marks presently before me. I must assess the likelihood of confusion by reference to the specific marks and goods at issue in these proceedings. Accordingly, I do not consider Party B's other registration to assist it.

11. Additionally, it is noted that Party A has raised a point in its statement of grounds that I intend to address and explain why the point raised will have no bearing on the outcome of these proceedings.

12. With regard to the use of its earlier mark in other territories, Party A submits the following:

"The Opponent's mark NISHA is being widely used across the globe and by virtue of, inter alia, the arbitrary nature, prior adoption, long, extensive and continuous use, marketing, tremendous advertising and promotional efforts, extensive sales in India as well as internationally, the said trade mark 'NISHA and its variants' are exclusively associated with the Opponent alone and have acquired reputation and goodwill in India as well as across the globe.

[...]

Further to the above the NISHA mark has a strong global recognition.

[...]

The Opponent's trademark is a well-known trademark throughout the world. It is pertinent to mention that the first application for the mark NISHA of the Opponent dating back to 1987 with use since 1954 in India. The Opponent holds more than 58 Registrations for the mark NISHA and its variants in India.

In order to obtain worldwide statutory protection, the Opponent has applied for the Trademark NISHA in various countries and besides this has obtained legal protection in 136 countries as well as through WIPO and Madrid as also through direct country filing.

[...]

The enhanced reputation and well-known status of the prior mark increase the likelihood of confusion.”

13. Trade mark rights are territorial. The fact that there are other registrations owned by Party A in other territories is not relevant to these proceedings. None of these marks are the subject of these proceedings, and their existence will have no bearing on whether, for instance, there is a likelihood of confusion between the contested mark and the earlier mark. Moreover, it is well established that decisions taken in other trade mark jurisdictions are not binding on the Registrar.

The Revocation

14. On 17 January 2025, Party B filed an application seeking to partially revoke Party A's mark on the ground of non-use under section 46(1)(a) of the Act. The application is based on the five-year period following the date on which Party A's mark was registered, i.e. 24 August 2019 to 23 August 2024, with an effective date of revocation of 24 August 2024. The application concerns the following goods:

Class 3	Cosmetics; depilatory preparations; cleaning lotions; abrasives; soaps; shampoos; hair oils; hair gels; bath oils; deodorants; anti-perspirants for personal use, dentifrices.
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15. Party A filed a counterstatement denying the grounds of revocation and defending its registration in respect of the above class 3 goods.

16. On 2 June 2025, the Registry directed that the cross-proceedings be consolidated pursuant to Rule 62(g) of the Trade Marks Rules 2008.

17. Both parties filed evidence and written submissions during the evidence rounds. Neither party requested a hearing, nor did they file written submissions in lieu of the same.

18. Party A is represented by Sandersons; Party B is represented by RightPro IP & Legal Consultancy Ltd.

EVIDENCE & SUBMISSIONS

19. On 4 August 2025, Party A filed evidence in chief in the form of the witness statement of Mr Jetharam Nemaram Gehlot dated 31 July 2025, which is accompanied by 10 exhibits (Exhibit JNG1 to Exhibit JNG10). Mr Gehlot is the Managing Director of Yutika Naturals Pvt Ltd (his company). The purpose of the evidence is to demonstrate that the earlier mark has been put to genuine use during the relevant period in relation to the goods relied upon. Mr Gehlot also filed written submissions at the same time.

20. On 20 October 2025, Party B filed evidence in reply in the form of the witness statement of Hatice Ahu Güneyli Havelock, which is accompanied by three exhibits (Exhibits 1 to 3). Ms Havelock is a trade mark lawyer representing Party B. Ms Havelock also chose to file written submissions at the same time.

21. Party B's evidence appears principally directed at showing that its IR has been used continuously in the UK over a sustained period and has therefore acquired goodwill and reputation. However, as the opposition is based on section 5(2)(b) of the Act, goodwill and reputation are not determinative of the issues before me. Party B also relies on the use of its mark to support its position that the parties' marks have coexisted without confusion. Whilst evidence of honest concurrent use, or market coexistence without confusion, can be relevant to the assessment of likelihood of confusion where it demonstrates that the relevant public has been exposed to both marks in the UK, in relation to the goods at issue, over a sufficient period and on a sufficient scale, the absence of evidence of actual confusion is not determinative. In this regard, in *The European Limited v The Economist Newspaper Ltd* [1998] FSR 283, Millett L.J. stated that:

"Absence of evidence of actual confusion is rarely significant, especially in a trade mark case where it may be due to differences extraneous to the plaintiff's registered trade mark."

RELEVANCE OF EU LAW

22. 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.

DECISION – *The revocation*

23. Section 46 of the Act states as follows:

"46. - (1) The registration of a trade mark may be revoked on any of the following grounds-

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) [...]

(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 is 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”.

24. 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.”

25. 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 Marken 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 Ltd v Plymouth City Council* [2013] RPC 24, Mr Daniel Alexander KC sitting as the Appointed Person said:

19. For the tribunal to determine in relation to what goods or services there has been genuine use of a mark during the relevant period, it should be provided with clear, precise, detailed and well-supported

evidence as to the nature of that use during the period in question from a person properly qualified to know.

...

22. ... 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 ... 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.”

26. Proven use of a mark which fails to establish that “the commercial exploitation of the mark is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark” is, therefore, not genuine use.

27. I remind myself that the relevant period for assessing whether there has been genuine use is 24 August 2019 to 23 August 2024 (“the relevant period”).

Evidence of use

28. In its notice of defence, Party A claims that use has been made in respect of some of the goods for which the mark is registered.⁴ I must therefore consider whether the evidence shows genuine use of the mark in relation to those goods, and if so, to what extent.

⁴ As set out in paragraph 14 of this decision.

29. I note the following from the witness statement and exhibits of Mr Gehlot (Party A):

- The trade mark 'Nisha' has been used in India and many other countries including the UK, by Party A and its predecessor-in-title since 1954.
- Party A and his brothers started a family business in 1998 under the name 'Prem Mehendi Center'. In 2012, Party A and its predecessor-in-title incorporated a company by the name of 'Prem Henna Private Limited'. Party A and his brothers are promoters, directors and shareholders of this company. The company uses the 'Nisha' trademark under licence for continuous and open use in the market.
- Due to the growth of its business, in 2018 Party A incorporated 'Yutika Naturals Pvt Ltd', which also uses the trademark 'Nisha' under licence for use in an open and continuous manner in the market. Use of the mark 'Nisha' by the aforesaid companies is deemed as use by Party A.
- Party A states that its 'Nisha' soap has been available to purchase via eBay in the UK since 2023.⁵
- Party A explains that it has invested heavily in marketing and advertises its products via a range of social media platforms, including Facebook, LinkedIn, Instagram, YouTube, and X (formerly Twitter).
- Party A indicates that its range of 'Nisha' shampoos and conditioners were promoted and sold within the UK during the relevant period, and the marketing of these goods took place via various online platforms.⁶

⁵ Exhibit JNG2 contains a screenshot from the online retail platform 'eBay' showing 'Nisha' soap being advertised.

⁶ Exhibit JNG4 contains screenshots showing shampoos available to purchase on the online retail platform 'eBay'.

- Party A states that the sample invoices contained in the evidence demonstrate sales of 'Nisha' shampoos and haircare products, and other cosmetic products in the UK, during the relevant period.⁷
- Party A mentions that it has produced hair oils in the form of serum-based products comprising argan oil as well as other ingredients. However, it explains that the hair oils were only introduced into the UK towards the end of August 2024.
- Similarly, with regard to hair gels, Party A explains that these are a relatively new product to the UK market and therefore evidence of use is limited.⁸
- Party A states that evidence taken from various social media platforms demonstrate that Party A's products are available in the UK.⁹
- Party A explains that it has undergone research and development over the last 2 to 3 years in relation to a range of additional products, including depilatory preparations, abrasives, bath oils, deodorants and anti-perspirants for personal use as well as dentifrices, all of which are due to be launched soon. However, Party A mentions in its witness statement that due to the nature of these products and the need for extensive testing, it has taken longer than anticipated to get these products on the market in the UK, which was further exacerbated by the restrictions encountered due to the Covid-19 pandemic during the relevant period.
- Party A indicates that there is a strong global recognition of its 'Nisha' trademark and its variants.
- Party A explains that its first trade mark application for 'Nisha' was filed in 1987 with use since 1954 in India. Additionally, Party A submits that it holds more than 58 registrations in India for the mark 'Nisha' and its variants, in relation to

⁷ Exhibits JNG5 and JNG8.

⁸ Exhibit JNG7 contains screenshots showing Party A's hair gel products being promoted on various social media platforms.

⁹ Exhibit JNG9.

class 3 products. In order to obtain worldwide statutory protection, Party A mentions that it applied for the 'Nisha' trade mark in various countries via WIPO (Madrid applications) and also through direct national country filing.

- Party A states that it has obtained trade mark protection in 136 countries.
- Party A explains that it has received awards from various entities such as 'Channelier FMCG Awards', TAM AXIS, KANTAR - Media Group, NielsonIQ, Lokmat International Awards, AsiaOne Awards and the Department for Promotion of Industry and Internal Trade (Ministry of Commerce and Industry) organised by the Office of Controller General of Patents, Designs & Trade Marks.¹⁰ As a result of its popularity, Party A states in its witness statement that the High Court of Patan in Nepal has held in a decision that its 'Nisha' trade mark is well-known.¹¹

Form of the mark

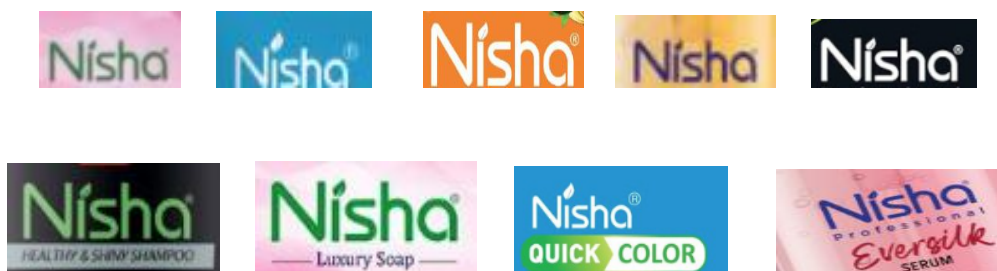
30. Before I move on to assess whether Party A has shown genuine use of its mark during the relevant period, I must first consider whether the use of the mark shown in the evidence constitutes use of the mark as registered.

31. Party A's registration is in respect of the word mark 'Nisha'. Where the evidence contains examples of the mark in use as registered, this will clearly be use upon which Party A can rely. For the avoidance of doubt, this would also include slight variations to the mark, which do not alter its distinctive character.

32. In this regard, I note that Party A's evidence also includes the following variations to the mark as registered:

¹⁰ Exhibit JNG10 contains a selection of Party A's awards.

¹¹ Case No.070-DP-1425, Decision No. 62 (DB), dated 12th September 2015.



33. I remind myself that section 46(2) of the Act enables the proprietor (Party A) to rely on use of a mark “in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered”. With regard to the above marks, I acknowledge that where a registered mark is shown in a different typeface (colours and colourful backgrounds) or is used with additional matter (i.e., the leaf figurative device incorporated into the word ‘Nisha’), this may still constitute acceptable use of the mark as registered, where the registered element continues to act independently as an indicator of origin.¹²

34. Accordingly, I am of the view that use of the marks shown above constitutes use of acceptable variants of the mark as registered. Firstly, the different typefaces and colours used make no material difference to the distinctive character of the mark as registered. Secondly, where extraneous matter is included, such as ‘luxury soap’ and ‘quick color’, etc., as ‘Nisha’ continues to be perceived as indicative of the origin of the goods at issue. In accordance with *Colloseum*, this is use of the mark as registered. Consequently, I find that use of the above marks is use upon which Party A can rely.

Genuine use

Assessment of Evidence

35. Whether the use shown in the evidence is sufficient to constitute genuine use will depend on whether there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the UK, during the relevant five-year period. In making my assessment, I must consider all relevant factors, including:

¹² *Colloseum Holdings AG v Levi Strauss & Co. and Lactalis McLelland Limited v Arla Foods AMBA*.

- the scale and frequency of the use shown;
- the nature of the use shown;
- the goods for which use has been shown;
- the nature of those goods and the market(s) for them; and
- the geographical extent of the use shown.

36. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself. It is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof: see *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T- 415/09, paragraph 53. However, where there is no use of the mark in respect of the goods as registered, it follows there has been no genuine use of the mark: *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, paragraph 22.

37. Case law does not specify particular types of documentation that must be adduced in evidence. When considering the evidence, I am 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”: (see *PLYMOUTH LIFE CENTRE*, BL O/236/13, paragraph 22). However, I remind myself that I must evaluate all the evidence submitted in an overall assessment, and that although pieces of evidence may be insufficient by themselves, they may contribute to proving use in combination.

38. Accordingly, the burden is on Party A to prove that it has used its mark in the UK, within the relevant period, on the class 3 goods for which use is claimed.

39. Allowing for favourable assumptions, Party A has provided some evidence of use. However, I find the evidence to be scant and to contain numerous shortcomings. Notably, turnover figures resulting from relevant UK sales during the relevant period are absent from the evidence.

40. That said, I note that Party A made the following submission in its statement of grounds concerning turnover:

“It is imperative to mention that the Opponent is exporting its goods under the trademark NISHA in around 87 Countries. Consequently, the total sales turnover of the Opponent under the trade mark NISHA has increased from USD 1295.89 for the year 2005-2006 to USD 36,869,997.17 for the year 2023-2024. The Opponent's sales through traditional sales channels, exhibitions and online shopping portals have increased enormously.”

41. I bear in mind that the above figures are contained in Party A's statement of grounds and are not repeated, particularised or supported in Mr Gehlot's witness statement or exhibits. In any event, the figures relate to worldwide sales across 87 countries, are expressed in US dollars, and have not been broken down by country or by goods. Accordingly, they do not enable me to ascertain what proportion, if any, of the stated turnover derived from sales in the UK during the relevant period. I therefore place no material weight on these figures when assessing whether Party A has demonstrated genuine use of the mark in the UK.

42. However, I acknowledge that nine invoices have been included in the evidence (in exhibits JNG5 and JNG8), dated between 2020 and 2024, demonstrating the purchase of some of the goods at issue by UK-based consumers. In this regard, I have incorporated the relevant information into the following tables:

Exhibit JNG5 – Five invoices dated between 2021 and 2022, namely:

a) 09/06/2021- 'Nisha' branded goods exported from Yutika Natural Private Limited, India, to Middlesex, UK:

Description of Goods	Quantity in Carton	Unit rate in GBP	Amount in GBP
Nisha Cream Hair Color Mix Shades 20GM + 20ML	384	0.300	115.20
Nisha Cream Hair Color Mix Shades 60GM + 60ML	288	0.790	227.52
Nisha Naturemate Powder Hair Color 60GM	48	0.580	27.84
Nisha Quick Color 60GM	48	0.780	37.44

Nisha Natural Henna Based Hair Color Black 10GM	210	0.087	18.27
Nisha Natural Henna Based Hair Color Brown 15GM	210	0.087	18.27
Nisha Shampoo 80ML	12	0.250	3.00
Nisha Shampoo 175ML	12	0.400	4.80
		Total in GBP	452.34

b) 10/08/2021 - 'Nisha' branded goods exported from Yutika Natural Private Limited, India, to London, UK:

Description of Goods	Quantity in Carton	Unit rate in GBP	Amount in GBP
Nisha Crème Hair Color 20GM+20ML (various colours)	168	0.30	50.40
Nisha Crème Hair Color 20GM+30ML (various colours)	216	0.30	64.80
Nisha Crème Hair Color 60GM+60ML (various colours)	51	0.79	40.29
Nisha Crème Hair Color 60GM+90ML (various colours)	45	0.79	35.55
Nisha Natural Henna Based Hair Color Black 10GM	420	0.087	36.54
Nisha Natural Henna Based Hair Color Brown 15GM	420	0.087	36.54
Nisha Quick Color 60GM	96	0.780	74.88
Nisha Shampoo 6ML	200	0.062	12.40
Nisha Shampoo 80ML	20	0.250	5.00
Nisha Shampoo 175ML	10	0.400	4.00
Nisha Shampoo 600ML	5	1.04	5.20
		Total in GBP	365.60

c) 19/09/2022 - 'Nisha' branded goods exported from Yutika Natural Private Limited, India, to West Bromwich, UK:

Description of Goods	Quantity in Carton	Unit rate in USD	Amount in USD
Nisha Crème Hair Color 20GM + 20ML natural black	2	0.08	0.16
Nisha Crème Hair Color 20GM + 20ML natural brown	1	0.15	0.15
Nisha Crème Hair Color 60 GM + 60ML natural brown	6	0.07	0.42
Nisha Naturemate Hair Color – Natural Black 60GM	2	0.1	0.2
Nisha Naturemate Hair Color – Natural Brown 15GM	6	0.07	0.42
Nisha Quick Color 60GM	2	0.05	0.10
Nisha Natural Henna Based Hair Color 10 GM N Black	2	0.12	0.24
Nisha Natural Henna Based Hair Color 15GM N Brown	1	0.08	0.08
Nisha Shampoo Based Hair Color 10GM+10ML	1	0.25	0.25
Nisha Healthy and Shinny Shampoo 80ML Av & Bra Oil	5	0.03	0.15
Nisha Healthy and Shinny Shampoo 80ML Egg Protein	5	0.03	0.15

Nisha Healthy and Shinny Shampoo Sachet 6ML Al & O	5	0.03	0.15
Nisha Healthy and Shinny Conditioner Sachet 6ML	2	0.08	0.16
Nisha Conditioner 80ML Almond & Olive Actives	5	0.03	0.15
		Total in USD	2.48

However, it is noted from the invoice that the above goods were free of cost samples, not for sale, therefore the above total value of 2.48US dollars is for customs purposes only.

d) 10/06/2022 - 'Nisha' branded goods exported from Yutika Natural Private Limited, India, to Hemel Hempstead, UK:

Description of Goods	Quantity in Carton	Unit rate in GBP	Amount in GBP
Nisha Henna Basic Hair Color 10g – black pack of 10	1	0.10	0.10
Nisha Henna Basic Hair Color 25g – black pack of 10	1	0.10	0.10
Nisha Henna Basic Hair Color 15g – brown pack of 10	1	0.10	0.10
Nisha Henna Basic Hair Color 30g – brown pack of 10	1	0.10	0.10
Nisha Crème Hair Color 60g	5	0.35	1.75
Nisha Quick Hair Color Shampoo (Brown & Black)	2	0.10	0.20
		Total in GBP	2.35

e). 25/11/2022 - 'Nisha' branded goods exported from Yutika Natural Private Limited, India to Surrey, UK:

Description of Goods	Quantity in Carton	Unit rate in USD	Amount in USD
Nisha Crème Hair Color 20GM + 20ML – Natural Brown	1	1.25	1.25
Nisha Crème Hair Color 60GM + 60ML – Natural Black	1	2.00	2.00
Nisha Quick Color 60GM	1	0.90	0.90
Nisha 5 Min Shampoo Hair Color Original Black & Dark Brown	1	1.20	1.20
		Total in USD	5.35

Exhibit JNG8 – 4 invoices dated between 2020 and 2024, namely:

f). 12/10/2020 - 'Nisha' branded goods exported from Yutika Natural Private Limited, India, to Milton Keynes, UK:

Description of Goods	Quantity in Carton	Unit rate in GBP	Amount in GBP
Nisha Henna Based Hair Color 30gm (pack of 10)	1	15.50	15.50
		Total in GBP	15.50

g). 26/10/2020 - 'Nisha' branded goods exported from Yutika Natural Private Limited, India, to London, UK:

Description of Goods	Quantity in Carton	Unit rate in GBP	Amount in GBP
Nisha Henna Based Hair Color 10gm (pack of 10)	1	10.12	10.12
		Total in GBP	10.12

h). 18/11/2021 - 'Nisha' branded goods exported from Yutika Natural Private Limited, India, to Berkshire, UK:

Description of Goods	Quantity in Carton	Unit rate in GBP	Amount in GBP
Nisha Natural Henna Based Hair Color black 10gm	4	37.30	149.20
		Total in GBP	149.20

i) 18/05/2024 - 'Nisha' branded goods exported from Yutika Natural Private Limited, India, to Bedfordshire, UK:

Description of Goods	Quantity in Carton	Unit rate in USD	Amount in USD
Nisha Henna Based powder Hair Color black 10gm	1	84.00	84.00
		Total in USD	84.00

However, it is noted from the invoice that the above goods were free of cost samples not for sale, therefore the above total value of 84.00 US dollars is for customs purposes only.

43. As can be seen from the tables shown at 'c', 'e' and 'i', the prices are shown in US dollars and a conversion of the various amounts on the relevant date has not been provided. Furthermore, it is noted that the details shown in tables 'c' and 'i' were for customs purposes only on the basis that the goods were only 'samples' and therefore were free to the customer.

44. Additionally, the tables above appear to relate to relatively small orders which is reflected in the fact that the seven invoices at issue (not including the two invoices relating to 'samples') only amount to £995.11 and \$5.35 (US dollars) in total. Whilst I have not been provided with any details of the size of the relevant market in the UK, or the percentage share enjoyed by Party A within the relevant market, I would expect such a market to be substantial. Therefore, in my view, the invoice sales figures shown above appear to be very low. Furthermore, the invoices only relate to the sale of shampoos, conditioners and hair colouring products. The invoices do not demonstrate sales of any of the other goods at issue, namely *cosmetics, depilatory preparations, cleaning lotions, abrasives, hair oils, hair gels, bath oils, deodorants, anti-perspirants for personal use or dentifrices*.

45. Furthermore, whilst I note from Party A's written submissions that 'Nisha' branded products, including *soap*, have been advertised and are available to purchase in the UK via the online retail platforms Amazon, eBay and Ubuy, I have not been provided with any sales inventories showing the sale of the 'Nisha' branded products at issue via any of these platforms, during the relevant period.

46. Notably, details of the amount spent on the promotion and advertising of the goods relied upon under the 'Nisha' mark, in the UK, during the relevant period are absent from the evidence.

47. With regards to the advertising and promotion of its mark in relation to the goods at issue, I note that Party A made the following submission in its statement of grounds:

"The Opponent has also advertised his trade mark 'NISHA' and various product variants containing mark 'NISHA' as an essential feature at the trade fairs organized in India and all around the world in about 33 exhibitions worldwide.

The Opponent's sales through traditional sales channels, exhibitions and online shopping portals have increased enormously. It is imperative to mention that the Opponent is exporting its goods under the trademark NISHA in around 87 Countries.”

48. However, I bear in mind that the above information is contained in Party A's statement of grounds and is not repeated, particularised or supported in Mr Gehlot's witness statement or exhibits. In any event, the submission refers broadly to advertising at trade fairs in India and at exhibitions worldwide, as well as to the export of goods under the 'Nisha' mark to 87 countries. It does not identify whether any such exhibitions or advertising activity took place in the UK during the relevant period, nor does it provide any advertising expenditure, visitor figures, sales figures, or other evidence from which I could assess the extent to which UK consumers were exposed to the 'Nisha' mark. Accordingly, I place only limited weight on this information when assessing the scale or reach of any promotion of the mark in the UK during the relevant period.

49. That said, it is noted from Party A's written submissions that it also promotes and markets its products via online retail platforms, including Amazon, eBay and Ubuy, as well as through social media. However, from those submissions and the evidence submitted, it is not possible to ascertain how many UK consumers were exposed to Party A or its 'Nisha' mark during the relevant period. Nor does the evidence show that the UK was specifically targeted.

50. Additionally, Party A submits that the marketing and promotion of its goods in the UK also takes place through its social media presence on Instagram and Facebook. Party A explains that its marketing posts are in English and target all English-speaking territories, including the UK. Exhibit JNG9 contains screenshots from Party A's social media accounts showing 13 posts featuring some of its 'Nisha' branded products between March 2022 and July 2024, each of which received between 35 and 108 “likes”. However, there is no evidence before me as to the number of Party A's social media followers, nor any analytics showing how many followers or interactions were located in the UK. Given that Instagram and Facebook are global platforms, this evidence does not enable me to establish the frequency or geographical reach of the

marketing relied upon, the extent to which UK consumers were exposed to the 'Nisha' mark, or the volume of any UK custom generated by that marketing.

51. Further, whilst Party A states that the mark 'Nisha' has been used in India and many other countries including the UK by Party A and its predecessor-in-title since 1954, it is noted that Party A is based in India, and I have no evidence before me to suggest that Party A has any stores, warehouses or administrative offices, etc., in the UK. On this point, whilst it is noted from its written submissions that Party A utilises the global e-commerce platform 'Ubuy' in order to facilitate the sale of its products in the UK, it is not possible to ascertain from the evidence before me the proportion of UK consumers that visited this site or indeed purchased Party A's 'Nisha' branded products via this site, during the relevant period.

52. Further, whilst it is noted from Exhibit JNG10 that Party A achieved several awards during the relevant period, it is not clear which, if any, of the awards pertain to the UK market.

53. Additionally, in its written submissions Party A explains that research, development and the launch of some of its products in the UK were detrimentally impacted by the effects of the Covid-19 pandemic during the relevant period. On this point, I note that Covid-19 restrictions in the UK broadly affected business activity from around March 2020 until late 2021. Bearing in mind that the relevant period is 24 August 2019 to 23 August 2024, this leaves, broadly speaking, a period of approximately six months before the pandemic and approximately three years after the restrictions eased. I therefore do not consider that the effects of the pandemic explain the absence of more cogent evidence across the relevant period as a whole.

54. Accordingly, in view of the above, I find that I have no evidence before me to sufficiently demonstrate that Party A's mark has been used in the UK during the relevant period in relation to any of the following goods:

Class 3	Cosmetics; depilatory preparations; cleaning lotions; abrasives; hair oils; hair gels; bath oils; deodorants; anti-perspirants for personal use, dentifrices.
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55. With regard to Party A's remaining goods at issue, namely:

Class 3 Soaps; shampoos.

Whilst the proprietor's evidence does show some use of its trade mark on, or in relation to these goods, I have found the evidence to be very scant and, as previously discussed, to contain numerous shortcomings.

56. Accordingly, taking all the above into account, in conjunction with the cancellation applicant's submissions, and bearing in mind not only section 100 of the Act but also the respective comments of Mr Alexander KC and Mr Hobbs KC in *Plymouth Life and Dosenbach*, I find that the evidence of use is insufficiently solid to adequately allow me to find that Party A has demonstrated real commercial exploitation of the earlier mark in relation to the goods for which use is claimed in the UK, during the relevant period. Put simply, the nature of the evidence and the issues discussed throughout my assessment of the same do not, in my view, allow me to make the reasonable inferences necessary in order to find in favour of Party A.

57. I also note Mr Alexander's comments in *Guccio Gucci SPA v Gerry Weber International AG*, Case BL O/424/14, where he stated that:

"56. The Registrar says that it is important that a party puts its best case up front – with the emphasis both on "best case" (properly backed with credible exhibits, invoices, advertisements and so on) and "up front" (that is to say in the first round of evidence). Again, he is right. If a party does not do so, it runs a serious risk of having a potentially valuable trade mark right revoked, even where that mark may well have been widely used, simply as a result of procedural error. ... The rule is not just "use it or lose it" but (the less catchy, if more reliable) "use it - and file the best evidence first time round - or lose it".

(Original emphasis)

58. Accordingly, whilst I consider that Party A has attempted to create a market for some of its class 3 goods under its 'Nisha' trade mark, the evidence fails to sufficiently demonstrate that such a market was established and then preserved. I keep in mind the principles outlined above, which recognise that even proven commercial use may not be sufficient for a finding of genuine use. Accordingly, for the reasons set out above, overall, I am of the view that the evidence is insufficient to allow me to find that Party A has demonstrated real commercial exploitation of its mark in relation to any of the goods for which use is claimed within the relevant period. The consequence of this is that Party A has not shown genuine use of its mark for the goods at issue, and the registration of the mark will be revoked for all the class 3 goods at issue.

CONCLUSION – *The revocation*

59. The partial application for revocation of UK3394767, brought under section 46(1)(a) of the Act succeeds in its entirety. As such, subject to any successful appeal, Party A's registration is revoked for the following goods:

Class 3 Cosmetics; depilatory preparations; cleaning lotions; abrasives; soaps; shampoos; hair oils; hair gels; bath oils; deodorants; anti-perspirants for personal use, dentifrices.

60. The effective date of revocation is 24 August 2024.

61. Party A's trade mark remains registered in respect of the following goods, which were not subject to the revocation proceedings:

Class 3 Henna; henna powder/paste; black mehendi; hair colour; hair dye.

DECISION - *The opposition*

62. Although Party A's mark has been partially revoked, subject to any successful appeal, with effect from 24 August 2024, Party A's opposition action of 31 October 2024 remains valid. This is because the effective date of revocation falls after the relevant date of the contested IR in the opposition, namely 10 June 2024, being the

priority date. This means that Party A's earlier mark was still a validly registered mark on the registration/UK designation date of the contested mark in the opposition proceedings. Therefore, the outcome of the revocation has no bearing upon the opposition, as per the decision of Professor Ruth Annand, sitting as the Appointed Person in *TAX ASSIST* (BL O/220/12).

63. This issue was also the subject of a recent appeal decision from Mr Iain Purvis KC, sitting as the Appointed Person in *MOORES ROWLAND* (BL O/0689/25). Mr Purvis confirmed, as was the case in *TAX ASSIST*, that where the earlier mark is revoked from a date which falls after the filing date of the contested mark, it can still be relied upon in the opposition. It also does not matter that the opposition proceedings were launched on a date which post-dates the revocation date. On this point, I quote paragraph 21 of *MOORES ROWLAND*:

“I should say that in Tax Assist Prof Annand did not explicitly deal with the situation in which the earlier mark had been revoked from a date prior to the date on which the Application for a declaration of invalidity commenced. In Tax Assist itself as in many of the authorities which she cited, the date of revocation was after the date of commencement of the Application to revoke. However, I am at a loss to understand why this distinction could matter. If the relative rights as between the proprietors of conflicting marks are to be decided as of the date of application of the Later Mark (which is the correct and logical position given the wording of s6(1)), there is no obvious reason why it should matter that the Earlier Mark had ceased to exist by the date of commencement of Opposition proceedings, any more than it should matter that it had ceased to exist by the date of the Decision.”

64. Accordingly, what matters is that Party A's earlier mark was extant on the register at the relevant date of the contested mark.

Section 5(2)(b)

65. Section 5(2)(b) of the Act states that:

“A trade mark shall not be registered if because-

(a) [...]

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

66. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor* [2025] UKSC 25:

a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

b) the matter must be judged through the eyes of the average consumer of the goods or services in question. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their mind, and whose attention varies according to the category of goods or services in question;

c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

- e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;
- f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;
- g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks and vice versa;
- h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;
- i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;
- j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and
- k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods

67. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, Case C-39/97, the court stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended

purpose and their method of use and whether they are in competition with each other or are complementary.”

68. In *Kurt Hesse v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case C-50/15 P, the CJEU stated that complementarity is capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“82 ... there is a close connection between [the goods], in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking...”.

69. In *Gérard Meric v Office for Harmonisation in the Internal Market (‘Meric’)*, the GC stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

70. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

71. Specifications should be scrutinised carefully and terms should not be given a wide construction but should be confined to the substance or core of their possible meanings.¹³ For the purposes of assessing similarity, it is permissible to group specified terms together where they are sufficiently comparable in essentially the same way for essentially the same reasons.¹⁴

72. The competing goods are as follows:

Party A's goods	Party B's goods
Class 3 Henna; henna powder/paste; black mehendi; hair colour; hair dye; cosmetics; depilatory preparations; cleaning lotions; abrasives; soaps; shampoos; hair oils; hair gels; bath oils; deodorants; anti-perspirants for personal use, dentifrices.	Class 3 Bleaching and cleaning preparations, detergents other than for use in manufacturing operations and for medical purposes, laundry bleach, fabric softeners for laundry use, stain removers, dishwasher detergents; perfumery; non-medicated cosmetics; fragrances; deodorants for personal use

¹³ See, for instance, *Avnet Incorporated v Isoact Limited* [1998] FSR 16, Jacob J (as he then was) at [19].

¹⁴ See *Separode* Trade Mark (BL O/399/10).

	and animals; soaps; dental care preparations: dentifrices, denture polishes, tooth whitening preparations, mouth washes, not for medical purposes; abrasive preparations; emery cloth; sandpaper; pumice stone; abrasive pastes; polishing preparations for leather, vinyl, metal and wood, polishes and creams for leather, vinyl, metal and wood, wax for polishing.
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Soaps; dentifrices

73. The above contested goods have direct equivalents in Party A's specification. Therefore, the goods are identical due to their identical or near-identical wording.

Non-medicated cosmetics

74. The above goods are included in Party A's broad term *cosmetics*, therefore the goods are considered identical in line with the principle set out in *Meric*.

Deodorants for personal use and animals

75. The above goods are included in Party A's broad term *deodorants*, therefore the goods are considered identical in line with the principle set out in *Meric*.

Dental care preparations: tooth whitening preparations, mouth washes, not for medical purposes

76. The term *dentifrices* present in Party A's specification is a broad term relating to substances used primarily to clean the teeth and mouth. Accordingly, I find that the contested goods are encompassed by Party A's *dentifrices* and are therefore considered identical in line with the principle set out in *Meric*.

Abrasive preparations; abrasive pastes

77. The above goods are included in Party A's broad term *abrasives*, therefore the goods are considered identical in line with the principle set out in *Meric*.

Emery cloth; sandpaper; pumice stone

78. The term *abrasives* present in Party A's specification is a broad term relating to substances that are used for, inter alia, grinding, smoothing, polishing or cleaning a surface. Accordingly, I find that the contested goods are encompassed by Party A's *abrasives* and are therefore considered identical in line with the principle set out in *Meric*.

Polishing preparations for leather, vinyl, metal and wood, polishes and creams for leather, vinyl, metal and wood, wax for polishing

79. As previously mentioned, it is my understanding that *abrasives* are substances used for, inter alia, grinding, smoothing, polishing or cleaning a surface. To the extent that the contested goods consist of, or include, abrasive substances used for polishing surfaces of leather, vinyl, metal or wood, they are encompassed by Party A's broad term *abrasives*. On that basis, I consider the goods to be identical in line with the principle set out in *Meric*.

80. However, if I am wrong in my analysis, then the respective goods are similar to a high degree on the basis that they share a similar nature and purpose and will likely coincide in channels of trade and end users.

Perfumery; fragrances

81. The contested goods are primarily scenting preparations intended to impart a pleasant scent to the user. I am of the view that these goods share a degree of similarity with *deodorants* present in Party A's specification. Whilst I acknowledge that deodorants are principally intended to prevent or mask body odour and therefore are different in nature from the contested goods, I find that there is a degree of overlap in

purpose, insofar as both categories of goods can assist the user in smelling pleasant, however, I do not consider this overlap to be significant. The goods may originate from the same producers and can be sold through the same trade channels and be directed at the same user. However, the goods are neither complementary nor in competition. Taking all of these factors into account, I find the goods to be similar to a low degree.

Bleaching and cleaning preparations, detergents other than for use in manufacturing operations and for medical purposes, laundry bleach, fabric softeners for laundry use, stain removers, dishwasher detergents

82. Broadly speaking, the above goods are all cleaning preparations. Whilst I note that these goods are not present in Party A's specification, I am of the view that the above goods share a degree of similarity with Party A's *abrasives*. As previously stated, abrasives are substances used for, inter alia, grinding, smoothing, polishing or cleaning surfaces. In general, Party B's goods are products that enable the removal of stains or other debris from products, such as dishes, fabric, furniture or surfaces. Whilst I consider that the methods of use will differ, I am of the view that the goods at issue can coincide in purpose, producer, user and trade channels. In particular, both categories of goods can be used to remove stains or other debris from products or surfaces. Overall, I find the goods to be similar to a low degree.

The average consumer and the nature of the purchasing act

83. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

84. In *Iconix* (cited above), the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

- (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
- (e) The average consumer's level of attention varies according to the category of goods or services in question; and
- (f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

85. The average consumer for the goods at issue is the general public. The cost of the goods is likely to be relatively low, and they are likely to be purchased reasonably frequently. I am of the view that factors such as suitability, desired effect, fragrance, colour (cosmetics) and ingredients will be considered by the consumer when purchasing the goods, though I would not expect the degree of attention to be particularly high. Overall, I find that a medium degree of attention is likely to be paid during the purchase of the goods.

86. The goods are likely to be self-selected from the shelves of a retail outlet or an online equivalent, for example. Consequently, visual considerations are likely to dominate the purchasing process. However, I do not discount an aural component to the purchase, given that advice may be sought from retail assistants, etc.

Comparison of the trade marks

87. It is clear from *Sabel BV v. Puma AG*, Case C-251/95 that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated in *Bimbo SA v OHIM*, Case C-591/12P that:

“34. [...] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

88. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the trade marks.

89. The trade marks to be compared are as follows:

Party A's mark	Party B's mark
Nisha	NISHANE

Overall impression

90. The parties' marks consist of the words 'Nisha' and 'NISHANE' respectively. The overall impression of the marks resides in these single words.

Visual comparison

91. Visually, the marks coincide insofar as they share the same first five letters in the same order, namely 'Nisha' / 'NISHA_ _', with the entirety of the earlier mark being contained in the contested mark. Further, this similarity appears at the beginning of the respective marks, being where consumers tend to focus¹⁵ as this position is generally considered to have more impact due to consumers in the UK reading from left to right. I do not consider the distinction in letter case between the earlier mark and the contested mark to be a point of significant difference between them.¹⁶ The marks are visually different in that the contested mark contains the additional letters 'N' and 'E'. This difference appears at the end of the mark, rendering the marks different in length. Overall, I find the competing marks to be visually similar to a medium degree.

Aural comparison

92. Aurally, the earlier mark will likely be pronounced as either 'nee-sha' or 'nigh-sha', whereas the contested mark will likely be pronounced as either 'nee-shane' or 'nigh-shane'. Overall, I find that the competing marks are aurally similar to a medium degree.

¹⁵ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02.

¹⁶ *Bentley Motors Limited v Bentley 1962 Limited*, BL O/158/17, Professor Ruth Annand, sitting as the Appointed Person.

Conceptual comparison

93. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] e.c.r.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

94. With regard to the conceptual similarity of the marks, Party A submits the following:¹⁷

“Conceptually, there is no distinction as both are words without meaning to the average English-speaking consumer.”

95. Conversely, with regard to the meaning of their mark, Party B submits:¹⁸

“The Party B chose the trade mark “NISHANE” because it derives from the Turkish word “nişane” meaning “mark”, “sign”, or “symbol”. The trade mark was adopted to indicate that the Party B and its products are a symbol of the value a person puts on themselves and their loved ones, with unique and sophisticated fragrances and elegant touch of its artistic collections designed with utmost care.”

96. Conceptually, I am of the view that a significant proportion of average UK consumers will perceive Party A’s mark ‘Nisha’ as an invented word with no clear meaning or obvious connection to the goods at issue.

97. With regard to the contested mark ‘NISHANE’, whilst I note Party B’s submissions above, I remind myself that it is settled case law that for a conceptual message to be relevant it must be capable of immediate grasp by the average consumer (in the UK). Accordingly, in the absence of any evidence to the contrary, I do not consider that a significant proportion of UK consumers would know that the word ‘NISHANE’ derives

¹⁷ Written submissions dated 4 August 2025.

¹⁸ Witness statement of Ms Hatice Ahu Güneyli Havelock, filed on 20 October 2025.

from the Turkish word 'nişane' meaning 'mark', 'sign', or 'symbol'. I consider it more likely that the contested mark will be seen by a significant proportion of average consumers as an invented word.

98. Accordingly, I am of the view that 'Nisha' and 'NISHANE' will be perceived as invented words, with no overall concept. Therefore, the conceptual position is neutral.

Distinctive character of the earlier mark

99. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

100. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

101. Dealing first with the inherent distinctiveness of Party A's mark, I consider that the earlier mark 'Nisha' will be perceived by a significant proportion of average UK consumers as an invented word, or at least as a word with no clear meaning in relation to the goods relied upon. I acknowledge that some consumers may perceive 'Nisha' as a female name. However, even for those consumers, the mark has no descriptive or allusive significance in relation to the goods at issue. Consequently, I consider the earlier mark to be inherently highly distinctive.

102. Turning to the question of whether Party A's mark has acquired enhanced distinctiveness through use, Party A filed evidence in relation to the consolidated revocation action, which I have already set out and assessed above. In my view, given the stated shortcomings in the evidence, I find that the evidence of use does not demonstrate that the earlier mark 'Nisha' has acquired enhanced distinctiveness through its use in the UK.

Likelihood of confusion

103. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between them and the goods being down to the responsible undertaking being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average

consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

104. I have found as follows:

- The parties' goods vary from being identical to similar to a low degree.
- The average consumer is a member of the general public who will pay a medium degree of attention during the purchasing process.
- The purchasing process for the goods is predominantly visual, although I do not discount an aural component.
- The marks are visually and aurally similar to a medium degree, and conceptually neutral.
- The earlier mark is inherently distinctive to a high degree, and the evidence of use provided was insufficient for me to find that the degree of distinctiveness had been enhanced through use of the mark.

105. Having regard to the principle of imperfect recollection and recognising that the word 'Nisha' is identically present in the competing marks, I consider that the marks are likely to be mistakenly recalled or misremembered as each other when used on the goods at issue. I am of this view given the medium degree of visual and aural similarity between the marks, the high inherent distinctiveness of the earlier mark, and the predominantly visual purchasing process. Furthermore, I keep in mind that the beginnings of marks tend to make more of an impact than the ends. Accordingly, as the marks share the same beginning, and the earlier mark is fully encompassed within the contested mark, I consider that the only difference between the marks, namely the letters 'N' and 'E' at the end of the contested mark, will be easily overlooked by the average consumer. Accordingly, even where I found the goods at issue to be similar to only a low degree, I consider there to be a likelihood of direct confusion.

106. I will also assess if there is a likelihood of indirect confusion.

107. Indirect confusion was described in the following terms by Iain Purvis QC (as he then was), sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc.*¹⁹

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand 16 extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).

¹⁹ BL O/375/10.

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

108. These examples are not exhaustive, but they provide a helpful focus.

109. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

110. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

111. If consumers notice the letters 'N' and 'E' at the end of the contested mark, while also identifying the shared element 'Nisha'/'NISHA' at the beginning of both marks, they may recognise that the marks are different but have something in common. However, I am of the view that the addition of the letters 'NE' is not a logical brand extension or sub-brand indicator. As such, I do not see a logical step which would induce consumers to believe that the respective goods come from the same or economically linked undertakings. Rather, where the difference is noticed, the average consumer would put the shared element 'Nisha'/'NISHA' down to coincidence rather than economic connection.

CONCLUSION – *The opposition*

112. The partial opposition under section 5(2)(b) of the Act has succeeded in its entirety. Subject to any successful appeal, the protection of Party B's IR will be refused in respect of the following goods:

Class 3 Bleaching and cleaning preparations, detergents other than for use in manufacturing operations and for medical purposes, laundry bleach, fabric softeners for laundry use, stain removers, dishwasher detergents; perfumery; non-medicated cosmetics; fragrances; deodorants for personal use and animals; soaps; dental care preparations: dentifrices, denture polishes, tooth whitening preparations, mouth washes, not for medical purposes; abrasive preparations; emery cloth; sandpaper; pumice stone; abrasive pastes; polishing preparations for leather, vinyl, metal and wood, polishes and creams for leather, vinyl, metal and wood, wax for polishing.

113. Party B's IR will proceed to protection in respect of the following goods, which were not subject to the opposition proceedings:

Class 5 Pharmaceutical and veterinary preparations for medical purposes; chemical preparations for medical and veterinary purposes, chemical reagents for pharmaceutical and veterinary purposes; medicated cosmetics; dietary supplements for pharmaceutical and veterinary purposes; dietary supplements; nutritional supplements; medical preparations for slimming purposes; food for babies; herbs and herbal beverages adapted for medicinal purposes; dental preparations and articles: teeth filling material, dental impression material, dental adhesives and material for repairing teeth; sanitary preparations for medical use; hygienic pads; hygienic tampons; plasters; materials for dressings; diapers made of paper and textiles for babies, adults and pets; preparations for destroying vermin; herbicides, fungicides, preparations for destroying rodents; deodorants, other than for human beings or for animals; air purifying preparations; air deodorising preparations; disinfectants; antiseptics; detergents for medical purposes; medicated soaps; disinfectant soaps; antibacterial hand lotions.

Class 14 Jewellery; imitation jewellery; gold; precious stones and jewellery made thereof; cufflinks; tie pins; statuettes and figurines of precious metal;

clocks, watches and chronometrical instruments; chronometers and their parts; watch straps; trophies made of precious metal; rosaries.

Class 18 Unworked or semi-worked leather and animal skins, imitations of leather, stout leather, leather used for linings; goods made of leather, imitations of leather or other materials, designed for carrying items, included in this class; bags, wallets, boxes and trunks made of leather or stout leather; keycases, trunks [luggage], suitcases; umbrellas; parasols; sun umbrellas; walking sticks; whips; harness; saddlery; stirrups; straps of leather (saddlery).

Class 21 Hand-operated non-electric cleaning instruments and appliances, brushes, other than paintbrushes, steel chips for cleaning, sponges for cleaning, steel wool for cleaning, cloths of textile for cleaning, gloves for dishwashing, non-electric polishing machines for household purposes, brooms for carpets, mops; toothbrushes, electric toothbrushes, dental floss, shaving brushes, hair brushes, combs; non-electric household or kitchen utensils, included in this class, [other than forks, knives, spoons], services [dishes], pots and pans, bottle openers, flower pots, drinking straws, non-electric cooking utensils; ironing boards and shaped covers therefor, drying racks for washing, clothes drying hangers; cages for household pets, indoor aquariums, vivariums and indoor terrariums for animals and plant cultivation; ornaments and decorative goods of glass, porcelain, earthenware or clay namely statues, figurines, vases and trophies; mouse traps, insect traps, electric devices for attracting and killing flies and insects, fly catchers, fly swatters; perfume burners, perfume sprayers, perfume vaporizers, electric or non-electric make-up removing appliances, powder puffs, toilet cases; nozzles for sprinkler hose, nozzles for watering cans, watering devices, garden watering cans; unworked or semi-worked glass, except building glass, mosaics of glass and powdered glass for decoration, except for building, glass wool other than for insulation or textile use.

COSTS

114. With regard to costs in these proceedings, I bear in mind that Party A enjoyed the greater degree of success in the opposition, while Party B enjoyed the greater degree of success in the revocation. Accordingly, as both parties have enjoyed some measure of success, I do not consider it necessary to make an award of costs in favour of either party. The parties are, therefore, ordered to bear their own costs.

Dated this 22nd day of September 2026

Sam Congreve
For the Registrar

ANNEX

- Class 3 Bleaching and cleaning preparations, detergents other than for use in manufacturing operations and for medical purposes, laundry bleach, fabric softeners for laundry use, stain removers, dishwasher detergents; perfumery; non-medicated cosmetics; fragrances; deodorants for personal use and animals; soaps; dental care preparations: dentifrices, denture polishes, tooth whitening preparations, mouth washes, not for medical purposes; abrasive preparations; emery cloth; sandpaper; pumice stone; abrasive pastes; polishing preparations for leather, vinyl, metal and wood, polishes and creams for leather, vinyl, metal and wood, wax for polishing.
- Class 5 Pharmaceutical and veterinary preparations for medical purposes; chemical preparations for medical and veterinary purposes, chemical reagents for pharmaceutical and veterinary purposes; medicated cosmetics; dietary supplements for pharmaceutical and veterinary purposes; dietary supplements; nutritional supplements; medical preparations for slimming purposes; food for babies; herbs and herbal beverages adapted for medicinal purposes; dental preparations and articles: teeth filling material, dental impression material, dental adhesives and material for repairing teeth; sanitary preparations for medical use; hygienic pads; hygienic tampons; plasters; materials for dressings; diapers made of paper and textiles for babies, adults and pets; preparations for destroying vermin; herbicides, fungicides, preparations for destroying rodents; deodorants, other than for human beings or for animals; air purifying preparations; air deodorising preparations; disinfectants; antiseptics; detergents for medical purposes; medicated soaps; disinfectant soaps; antibacterial hand lotions.
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