O-0926-25

TRADE MARKS ACT 1994
IN THE MATTER OF
TRADE MARK APPLICATION NO.3969470
BY URBAN OUTFITTERS IRELAND LIMITED
TO REGISTER

APOTHECARY 18

AS A TRADE MARK
IN CLASSES 3, 4, 16, 21 & 35
AND OPPOSITION THERETO (UNDER NO. 445769)
BY
APOTHECARY 87 LTD

Background & pleadings

1. Urban Outfitters Ireland Limited ("the applicant") applied for the trade mark **APOTHECARY 18** on 19 October 2023. The mark was published for opposition purposes on 10 November 2023 in class 3, 4, 16, 21 and 35. Opposition is directed at classes 3, 4, 21 and 35 only for the following goods and services:

> *Class 3: Cosmetics; essential oils; incense; incense sticks; soaps; skin cleansers; body cleaning and beauty care preparations; body wash; lotions; body lotion; body scrub; creams (cosmetic); skin creams; body creams; hand creams; eye cream; moisturizers; body gels; face gels; face oils; beauty serums; skin masks; cosmetic masks; non-medicated balms for use on skin and lips; lip balm; non-medicated skin care preparations, namely, body mist; non-medicated skin care preparations, namely, body balm; perfume; eau de cologne, body sprays, fragrances for personal use; eau-de-toilette; eau-de-perfume; fragrance sachets; perfuming sachets; sachets for perfuming linen; room fragrances; room fragrance preparations; fragrance emitting wicks for room fragrance; scented room spray; air fragrance reed diffusers; reed diffusers; reed diffusers comprised of scented oils and also including reeds and a diffuser container.*
>
> *Class 4: Candles; wicks for candles.*
>
> *Class 21: Incense burners; incense stick holders; perfume sprayers; perfume sprayers [sold empty]; aromatic oil diffusers, other than reed diffusers; aromatic oil diffusers, other than reed diffusers, electric and non-electric.*
>
> *Class 35: Retail store services and online retail store services connected with the sale of beauty care products, cosmetics, personal and home fragrance, candles, and home goods, namely, drawer liners, incense burners, incense holders, and diffusers and gifts consisting of the aforementioned goods.*

2. Apothecary 87 Ltd ("the opponent") partially opposed the application on 9February 2024 under sections 5(2)(b), 5(3) and 5(4)(a) of the Trade Marks Act 1994 ("the Act").

For sections 5(2)(b) and 5(3), the opponent relies on its comparable mark[1] namely UK TM No. 913025416, the detail of which is set out below.

Earlier registration	Goods & services relied on
Apothecary 87 Filing date: 24 June 2014 Registration date: 8 October 2014	3: Hair preparations and treatments; Hair wax; Hair balm; Hair gels; Hair emollients; Hair oils; Hair lotions; Hair tonics; Hair rinses; Hair thickeners; Hair mousse; Hair lacquers; Hair texturizers; Hair moisturisers; Hair conditioner; Hair creams; Hair color; Hair dyes; Hair shampoos; Hair pomades; Hairspray; Hair lighteners; Hair removal and shaving preparations; Beard dyes; Lotions for beards; Moustache wax; Facial washes; Facial cleansers; Facial cream; Facial scrubs; Shaving creams; Shaving sprays; Shaving gels; Shaving mousse; Shaving soaps; Pre-shave creams; After-shave lotions; Shaving balm; After-shave preparations. 21: Hairbrushes; Hair combs; Electric hair combs; Shaving stands; Shaving pots; Shaving bowls; Shaving brushes; Hair brushes; Scrubbing brushes; Brushes for personal hygiene; Electric

[1] Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all rights holders with an existing registered EUTM or International Registration designating the EU. As a result, the opponent's mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

	brushes, except parts of machines; Electric combs; Combs. 44: Barber shop services; Hairdressing; Hair styling; Hair cutting; Hairdressing services; Salons (Hairdressing -); Information, advisory and consultancy relating to all aforesaid services.

3. Under section 5(4)(a) the opponent relies on the sign **Apothecary 87** for which it claims use since 2013 throughout the UK for the "goods and services listed on the registration as well as retail candles, clothing and personal grooming paraphernalia".

4. The opponent's registration has a filing date that is earlier than the filing date of the contested application and is therefore considered an earlier mark, by virtue of section 6 of the Act. As the registration procedure for UK TM No. 913025416 was completed more than 5 years prior to the filing date of the contested application, it is subject to the use conditions, as per section 6A of the Act. The opponent made a statement of use in respect of all the goods and services it relies on.

5. The applicant filed a counterstatement in which it denied all grounds of opposition and put the opponent to proof of use.

6. Both sides filed evidence and written submissions in lieu of a hearing in these proceedings. Both sides have been professionally represented throughout. The applicant has been represented by Marks & Clerk LLP and the opponent by The Trademark Helpline.

7. I make this decision based on a reading of all the material before me.

8. 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 that predate the UK's withdrawal from the EU.

EVIDENCE

Relevant period

9. My first task is to establish whether, or to what extent, the opponent has shown genuine use of its earlier registration no. 913025416 for the mark **Apothecary 87** within the 'relevant period'. The relevant period is defined as being a period of five years ending with the filing date of the contested application. In this case the relevant period is 20 October 2018 to 19 October 2023.

Opponent's evidence in chief

10. The opponent filed a witness statement, dated 20 May 2024, in the name of Sam Martin, who is the director of the opponent company. Mr Martin attached 9 exhibits.

11. Mr Martin states that the first use of the mark **Apothecary 87** was in 2013. He states it is currently used on the opponent's website, marketing materials, its physical premises and products which Mr Martin states to be skincare and grooming products, washbags, candles, incense and apparel.

12. With specific reference to candles, Mr Martin states that retail of candles began in early 2022.

13. Exhibits SM1 comprises an undated screenshot (although it has a ©2024 date in its footer) of the opponent's website www.apothecary87.co.uk. The screenshot indicates a number of goods for sale in pounds sterling. These are shampoos, beard oil, paste, balm, combs, shaving cream, shaving brush, candle and a towel. The following mark is used on the goods APOTHECARY87 and the same mark with additional embellishments is used on the towel namely  . The screenshot also

includes detail of the barber premises and a number of undated client reviews of the goods.

14. Exhibit SM2 contains an undated advertisement placed in FHM magazine. The APOTHECARY87 mark is prominent in the advertisement and the word **Apothecary 87** appears in the text. The exhibit also contains an undated feature from Mode magazine featuring an interview with the declarant.

15. Exhibit SM3 contains several undated images of the interior of the opponent's barbering premises in Doncaster. The 

mark is used on the fabric of the barber's chairs.

16. Exhibit SM4 contains several undated images of the word mark and its variants applied to the contested goods.

17. Exhibit SM5 contains screenshots and images of the contested goods for sale on the Amazon retail platform. The screenshots are undated, but under the section titled "Additional information" on page 3 of 3 in relation to the **Apothecary 87** beard oil product, it states that the product was first available on 25 April 2022.

18. Exhibit SM6 consists of a screenshot of the goods available to purchase from the opponent's website. These goods listed are grooming toiletries, a shaving towel, a candle, a t-shirt, a wash bag, razor, shaving brush and a shaving set (comprising shaving cream, oil, a towel and shaving brush with stand). All goods show either the APOTHECARY87 or 

mark variants.

19. Exhibit SM7 contains screenshots of the opponent's social media presence. Its Instagram screenshot (page 1 of 5) is undated. Its X/Twitter screenshot (page 2 of 5) states the opponent joined the platform in November 2013 and the two posts featured

are dated March 2021. Its Facebook screenshot (page 3 of 5) is undated. Its TikTok screenshot (page 4 of 5) is undated. Its YouTube screenshot (page 5 of 5) is undated but there are references to some 27 videos being posted between 5 and 9 "years ago".

20. Exhibit SM8 contains several undated images showing awards won by the opponent. There is a 2016 Barber Awards trophy for "Grooming Range of the Year", an undated silver award from Transform Awards Europe for "Best Visual Identity from the Retail Sector" and a Certificate of Achievement for completion of HM Government's "Passport to Export Programme". This exhibit also contains undated customer reviews from google.com and some dated reviews from the opponent's own website. The reviews are dated between 2018 and 2023 and appear to relate to the opponent's candles.

21. Exhibit SM9 consists of screenshots of what appears to be the opponent's Instagram account dated 8 September 2020 and 23 July 2020. The screenshot shows images the opponent's candle and shaving oil product. There are also some posts about the candle by the opponent and some responses from other Instagram users. This exhibit also contains images of the applicant's candles, included by the opponent to show that the applicant is using a similar fragrance to the opponent's own fragranced goods, namely sandalwood and vanilla, under the contested mark.

Applicant's evidence in response

22. The applicant filed a witness statement dated 8 July 2024 in the name of Claire Keating, a Chartered Trade Mark Attorney for Marks & Clark LLP, the legal representative for the applicant. Ms Keating's evidence focuses on the number of candle manufacturers and retailers who use sandalwood and vanilla fragrances.

Opponent's evidence in reply

23. A second witness statement dated 19 September 2024 was filed in the name of Sam Martin. Mr Martin challenged the applicant's assertion that the opponent was claiming exclusive use of sandalwood and vanilla as a fragrance and clarified that in his first witness statement he was intending to highlight the similarity between the goods fragranced with sandalwood and vanilla which bear the contested trade mark and similar goods by the opponent using its mark.

24. That concludes my summary of the evidence.

Relevant statutory provision: Section 6A:

25 . “(1) This section applies where,

(a) an application for registration of a trade mark has been published,

(b) there is an earlier trade mark of a kind falling within section 6(1)(a), (aa) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and

(c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has 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, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) 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

(b) 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.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services."

26. As the opponent's earlier mark No. 909822751 is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

"7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the "five-year period") has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) 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 section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union".

27. Section 100 of the Act states that:

> "100. If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

28. 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]."

29. I also find the following case law to be helpful where in *Awareness Limited v Plymouth City Council*[2], Mr Daniel Alexander Q.C. (as he was then) sitting 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

[2] Case BL O/236/13

regard to the interests of the proprietor, the opponent and, it should be said, the public."

and further at paragraph 28:

"28. ..... I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as "tuition services", is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to "tuition services" even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted."

30. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*[3]*,* Mr Geoffrey Hobbs Q.C. (as he was then) also sitting 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

[3] Case BL O/404/13

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."

31. I also note Mr Daniel Alexander's comments in *Guccio Gucci SpA v Gerry Weber International AG.*[4] He stated at [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 up 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 a 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].

[4] O/424/14.

Sufficiency of use

32. The opponent's evidence is deficient in a number of areas, which I set out below, and were also commented on in the applicant's written submissions. These deficiencies cause concern for the opponent's task of proving genuine use, reputation and goodwill. I remind myself that the relevant period for proving genuine use under section 5(2)(b) is 20 October 2018 to 19 October 2023. The relevant date for sections 5(3) and 5(4)(a) grounds is the applicant's filing date namely 19 October 2023.

Turnover

33. The opponent has failed to provide any kind of turnover information emanating from sales of its specified goods or its services. There are no indications of the volume of sales, examples of customer orders, invoices or any other material showing what sales had taken place during the relevant period. There is also no indication of where online customers are based in order to establish a UK wide customer base. Some customers appear to be local to the physical barbershop premises in Doncaster but that is an assumption on my part and is not specified in evidence. Moreover, there is no indication of the market share the opponent holds in the relevant goods or services

Undated material

34. The evidence supplied by the opponent is mostly undated. This is clearly unhelpful in establishing what use was made of the mark and its variants before the relevant date. Where screenshots of the opponent's website are given, such as in exhibits SM1 and SM6, I have assumed these were taken at or around the time the witness statement was made, i.e. 20 May 2024, as I have no other information to the contrary. This effectively means the opponent's exhibits relating to its website cannot be relied upon to show what the position might have been within the relevant period. Much of the social media material given in exhibit SM7 faces the same issue. The screenshots given for Instagram, Facebook and TikTok are undated so I cannot tell when they were taken. I presume it was at the same time as the witness statement which is outside of the relevant period.

Dated material

35. Some of the opponent's evidence is dated and appears to fall within the relevant period. In exhibit SM5 containing screenshots of the Amazon retail platform, there is a reference to Apothecary 87 beard oil being first available on that platform from 25 April 2022. However there was no contextual information from the opponent as to what sales were generated from the Amazon platform for that product (or any others) from that date. So as a piece of evidence in isolation, it does not advance the opponent's case. Likewise, the opponent's screen shot of its X/Twitter account shows that two posts were made on 31st and 29th March 2021. The 31st March post was offering a discount code and an opportunity to join a mailing list, and the 29th March post was stating that the opponent's barber premises would be reopening shortly after that date, presumably following the lifting of pandemic restrictions. However there are no analytics to show the reach of the posts or even if any other posts were made during the relevant period. With regard to the screenshots from YouTube, and if they were taken at the time of the witness statement, then it is possible to date the videos using the YouTube dating system of posts from "9 years ago", "4 years ago" etc. Some of the videos clearly did fall in the period prior to the relevant date and I can see from the titles of the videos that the opponent's mark is used. However it is not enough to offset the other deficiencies in the evidence.

Advertising

36. The opponent has not provided any advertising expenditure figures nor demonstrated any indication of other promotional or marketing activity it had undertaken. What was provided was slim and undated. In exhibit SM2, the opponent provided a single advertisement from the magazine FHM. The image appears to be taken from the print version of the magazine, but it is undated so I cannot determine when the advertisement was placed. Nor is there any information as to whether this was a single occasion or if the opponent took out multiple advertisements in this publication or what the circulation/reach of the publication was. Likewise, the image taken from Mode magazine is undated so I cannot determine if it was within the relevant period. Nor is there any information on Mode magazine or its reach. I note that in exhibit SM1 on page 3 of 4, the footer of the screenshot from the opponent's website states, "as seen in FT, GQ, BBC, Vogue, FHM, Marie Claire, Kerrang!" but no

examples of such advertising, advertising features or appearances online or in print were given in evidence.

Candles

37. The opponent's evidence as it relates to candles is dated but there is an inherent tension as Mr Martin's witness statement states that the retail of candles began in "early 2022" whereas the reviews for the candles, taken from the opponent's website in exhibit SM8, are dated between 2018 and 2023. Nevertheless they are at least dated before the relevant date. Additionally there are dated Instagram posts from 23 Jul 2020 and 8 September 2020 relating to candles which garnered 240 likes. However as previously stated there is no indication of the level of sales, the volume of orders for the candles or a widespread customer base. In the absence of such evidence, I cannot draw any conclusions on use of the opponent's mark to generate goodwill under section 5(4)(a).

Conclusion on evidence

38. The purpose of evidence in these proceedings was to demonstrate genuine use under section 5(2)(b), evidence of reputation under section 5(3) and establishment of goodwill under section 5(4)(a). In my view the evidence provided by the opponent is insufficient to satisfy any of the criteria under the three grounds for the reasons set out above. I find the opponent's evidence falls short of the sufficiency and solidity needed to meet the standards of proof required. The opponent has failed to provide the relevant evidence needed to for me to determine if there has been genuine use, reputation or goodwill. I am guided in my decision by the case law set out above in *Awareness Limited* and *Dosenbach-Ochsner*. If the mark had been put to genuine use on the goods and services relied on within the relevant period, then it should not have been a difficult matter for the opponent to show it. It did not. Accordingly, the earlier mark and sign may not be relied on to support the opponent's claims under section 5(2)(b), 5(3) and 5(4)(a) of the Act. The opposition falls at this hurdle.

Overall Conclusion

39. The opposition brought under sections 5(2)(b), 5(3) and 5(4)(a) of the Act is unsuccessful. Subject to any appeal of this decision, the application may proceed to registration.

Costs

40. The applicant has been successful, and as such is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 1/2023. Bearing in mind the guidance given in this TPN, but being mindful that the applicant's evidence in this case did not assist me in my findings, I award costs as follows:

£400 Considering the Notice of Opposition and filing counterstatement.
£400 Preparation of written submission
£800 Total

41. I order Apothecary 87 Ltd to pay Urban Outfitters Ireland Limited the sum of £800. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 30th day of September 2025

June Ralph
For the Registrar
The Comptroller-General