O/0955/26

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION NO. UK00902973691**
**BY XXXLUTZ MARKEN GMBH**

**FOR THE TRADE MARK:**




**IN CLASSES 6, 11, 16, 18, 19, 20, 21, 24, 25, 26, 27, 28 AND 35**

**AND**

**AN APPLICATION FOR REVOCATION**
**UNDER NO. 506489**
**BY TEST RITE INTERNATIONAL CO., LTD.**

## BACKGROUND AND PLEADINGS

1. XXXLutz Marken GmbH is the registered proprietor ("the proprietor") of the trade mark displayed on the cover page of this decision.[1] The registered mark was filed on 13 December 2002 and registered on 31 January 2005 for goods and services in classes 6, 11, 16, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 35. The mark has a priority date of 16 August 2002.[2]

2. Test Rite International Co., Ltd. ("the applicant") made an application to revoke the registered mark on 4 September 2023. The applicant seeks revocation under section 46(1)(a) and (b) of the Trade Marks Act 1994 ("the Act").

3. The applicant claims non-use under section 46(1)(a) in the five-year period following the date on which the mark was registered, i.e. 1 February 2005 to 31 January 2010, ("the first relevant period"). The applicant requests an effective date of revocation of 1 February 2010. This claim is brought against all the goods and services for which the mark is registered which are listed below:

    Class 6: Ironmongery, small items of metal hardware; goods of common metal, included in class 6.

    Class 11: Apparatus for lighting, cooking, refrigerating, drying and ventilating, and sanitary installations.

    Class 16: Paper, cardboard and goods made from these materials (included in class 16).

    Class 18: Leather and imitations of leather, and goods made of these materials (included in class 18); animal skins; trunks and travelling bags; umbrellas, parasols and walking sticks.

[1] On 1 January 2021, the UK left the EU. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UKIPO created comparable UK trade marks for all right holders with an existing EUTM. As a result of the proprietor's EUTM number **2973691** being registered as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable UK mark now recorded on the UK trade mark register has the same legal status as if it had been applied for and registered under UK law, and the original EUTM filing date remains.
[2] Priority is claimed from German trade mark no: 302 41 040.6/20

Class 19: Building materials (non-metallic); non-metallic transportable buildings.

Class 20: Furniture, mirrors, picture frames; goods, included in class 20, of wood, cork, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

Class 21: Household or kitchen utensils and containers (not of precious metal or coated therewith); unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware (included in class 21).

Class 24: Textiles and textile goods (included in class 24); bed and table covers.

Class 25: Clothing, footwear, headgear.

Class 26: Lace and embroidery, ribbons and braid; artificial flowers.

Class 27: Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).

Class 28: Games and playthings; gymnastic and sporting articles (included in class 28); decorations for Christmas trees.

Class 35: Advertising for others.

4. Non-use is also alleged under section 46(1)(b) for the following five-year periods:

- Between 1 February 2010 and 31 January 2015 (the “second relevant period”), seeking an effective revocation date from 1 February 2015;
- Between 1 February 2015 and 31 January 2020 (the “third relevant period”), seeking an effective revocation date from 1 February 2020;

- Between 22 August 2018 and 21 August 2023 (the “fourth relevant period”), seeking an effective revocation date from 22 August 2023.

5. Non-use is alleged under section 46(1)(b) for the above periods against the following goods and services:

Class 16: Paper, cardboard and goods made from these materials (included in class 16)

Class 18: Leather and imitations of leather, and goods made of these materials (included in class 18); animal skins; trunks and travelling bags; umbrellas, parasols and walking sticks.

Class 20: Furniture, mirrors, picture frames; goods, included in class 20, of wood, cork, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

Class 21: Household or kitchen utensils and containers (not of precious metal or coated therewith); unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware (included in class 21).

Class 35: Advertising for others.

6. The proprietor filed counterstatements stating:

*“In response to the application for revocation filed by Test Rite International Co. Ltd, the Proprietor denies that the trade mark subject of UK Registration No. UK00902973691 ("the Registration") has not been put to use in the relevant periods in relation to the goods and services the subject of the application for revocation in Classes 16, 18, 20, 21 and 35.*

*In particular, given that the Registration is a comparable mark, it is noted that the Proprietor can rely not only on use that has occurred in the UK but also on that which occurred in the EU up to 1 January 2021. The Proprietor will demonstrate that it has made use of the trade mark (in a form not differing in elements which alter the distinctive character of the mark in the form in which it was registered), in the EU and/or UK in relation to all of the goods and services against which the application for revocation is directed within (at least) the five year period preceding the date of application for revocation (22.08.2018 - 21.08.2023)."*[3]

7. Whilst the proprietor denies that it has failed to use its goods and services in relation to the application for revocation in Classes 16, 18, 20, 21 and 35. I have interpreted this as referring to the revocation under section 46(1)(b) only, as in the next paragraph the proprietor refers to use of "*all of the goods and services against which the application for revocation is directed…*" which I have taken to cover a denial under section 46(1)(a).

8. No claim is made to there being any proper reasons for non-use.

9. The applicant is professionally represented by IPEY; the proprietor is professionally represented by Stevens, Hewlett & Perkins.

10. Only the proprietor filed evidence in these proceedings No hearing was requested, and neither parties elected to file submissions in lieu. This decision is taken following careful consideration of the papers before me.

**Relevance of EU law**

11. 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

[3] Form TM8, Q8.

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.

**Evidence**

12. The proprietor's evidence comprises the witness statement of Philipp John, dated 11 April 2024, together with Exhibits PJ1 to PJ13. Philipp John is the Managing Director of the proprietor's company. The purpose of the evidence is to demonstrate use of its registered trade mark in relation to goods and services subject to this revocation. Witness statements have also been provided from Janet Eastwood and Máte Makay, both of which are dated 12 April 2024. Each with the purpose of confirming their capacity as professional translators for the corresponding exhibits provided by Mr John. Janet Eastwood providing translations from German to English and Máte Makay providing translations from Hungarian to English.

**LEGISLATIVE PROVISIONS**

13. Section 46 of the Act states:

> "(1) The registration of a trade mark may be revoked on any of the following grounds-
>
> (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
>
> (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c) […]

(d) […]

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as 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".

14. Section 100 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."

15. As the mark at issue is a comparable mark, created from an EUTM, paragraph 8 of Schedule 2A of the Act is also relevant. It reads:

"(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the notifications set out below.
[…]
(3) Where IP completion day falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day-

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM; and
(b) the references in sections 11A and 46 to the United Kingdom include the European Union."

16. Although I have no evidence covering the first and second relevant periods, a finding of genuine use for goods and services falling under the latest relevant period, i.e. the fourth relevant period will be sufficient to avoid revocation of the

mark under section 46(1)(b), and, by virtue of section 46(3), section 46(1)(a). Provided that such use is deemed to be genuine use, this will be the case even if the evidence in relation to the earlier periods is non-existent or deemed insufficient.

**CASE LAW**

17. 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]."

18. Further, 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 and services protected by the mark" is not, therefore, genuine use.

19. I am also guided by *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander Q.C. (as he then was) as the Appointed Person stated that:

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

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."

20. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13, Mr Geoffrey Hobbs Q.C. as the Appointed Person stated that:

"21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in Matsushita Electric Industrial Co. v. Comptroller- General of Patents [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

> [24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the

evidence does and just as importantly what it does not 'show' (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

21. Furthermore, as the contested mark is a comparable UK trade mark, for use to be genuine, there must have been real commercial exploitation of the mark in the course of trade, sufficient to maintain a market for the goods and services at issue in the UK and EU up to 31 December 2020, after which point the relevant territory is the UK only. Given that the EU is the relevant territory, I keep in mind that the Court of Justice of the European Union ("CJEU") noted in *Leno Merken BV v Hagelkruis Beheer BV*[4] that:

"36. It should, however, be observed that..... the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase 'in the Community' is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use."

And

"50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as 'genuine use', it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the

[4] Case C-149/11

territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark."

And

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

22. I observe that since *Leno* the General Court ("GC") has held that genuine use may apply to a contested mark in circumstances where genuine use has been made in relation to services in the London and Thames Valley area,[5] and where genuine use concerned national use of a EUTM in only one member state.[6] Consequently, I accept that use of an EUTM in an area of the Union corresponding to the territory of one Member State may be sufficient to constitute genuine use of an EUTM.

**Genuine use**

23. As referenced above, Philipp John is the managing director at XXXLutz Marken GmbH (the proprietor's company).[7] He explains that sales have been made with

[5] Case T-278/13 *Now Wireless Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* upheld at [47]
[6] Case T-398/13, *TVR Automotive Ltd v OHIM*
[7] Witness statement of Philipp John, paragraph 1

the proprietor's consent by Möbelix GmbH amongst others, which is part of the XXXLutz Group of companies of which the proprietor is also a member.[8] This has not been challenged by the applicant, and I accept that in accordance with the legislation referred to above, genuine use can include use made by the proprietor or by a third party with the proprietor's consent.

24. I observe the following from the proprietor's evidence:

a) Brochure evidence has been provided[9] which the unchallenged narrative evidence confirms is a selection of extracts from brochures featuring the products sold under the "home zone & device" trade mark in Austria and Hungary between August 2018 and January 2021.[10] This is supported by the dates provided in the accompanying translations of the brochures.[11] The brochure evidence shows a diverse range of goods for sale. However, only some of the goods have a 'home zone' mark replicated in the top left-hand corner of the advertisement for each corresponding item, as exampled below, and I note that this is not an exact replica of the mark as registered.




I have enlarged the 'home zone' mark displayed in the brochures for ease below:

[8] Witness statement of Philipp John, paragraph 5
[9] Found at the end of Exhibit PJ2
[10] Witness statement of Philipp John, paragraph 6
[11] Found at the end of exhibit PJ2, pages 44 -88




The following goods (with the above mark) were highlighted in the brochure with accompanying translations provided describing what they were. The goods can be summarised as follows:[12] [13]

- Shelving (steel/wood material),
- Brush sets and brushes (plastic or polypropylene - which I understand to be a type of plastic),
- Swing top bins and pedal bins (stainless steel),
- Folding step ladders (steel) and folding steps (steel),
- Storage boxes (plastic) and storage baskets (plastic),
- Solar lights (stainless steel/acrylic), LED decorative lights (plastic) and night lights (plastic),
- Torches (plastic),
- Precision engineering sets (consisting of screwdrivers, radio pliers, side cutters, tweezers, sockets, and an adapter, amongst other things), in a plastic case,
- Clothes pegs (plastic) and clothes peg bags (polyester)
- Laundry bins (plastic),
- Coat/clothes hanger set (wood), scarf holders (plastic/metal) and shoe rest (plastic)
- Mini safe (carbon steel),
- Door mats (including rubber ring mats and plastic mat),
- Shoe tree (plastic and metal), boot tree (plastic), and shoe rest (plastic),
- Ironing boards (steel/textile),

[12] It should be noted that these goods all contain the above mark in the left top hand corner of the advertisement for the catalogued goods, as exampled above.
[13] Exhibit PJ2

- Floor mops (metal/textile) and replacement pads (microfiber)
- Microfiber cloths, and combi sponges (polyester)
- Gardening equipment, secateurs (carbon steel), plant trowel, rake (metal/plastic), and solar garden thermometer,
- Cordless drill,
- Tool sets
- Folding box trolley (plastic)

b) Distribution figures show tens of millions of brochures were distributed within the relevant periods between 2017 and 2020 in both Austria and Hungary.[14] Mr John confirmed that the brochures were displayed in physical stores as well as being distributed to consumers by direct mail either as inserts in newspapers or as part of an advertising paper.[15]

c) Images are provided of dinnerware items such as plates, bowls and mugs being sold under the mark as registered within supermarkets.[16] Whilst the photos are undated, Mr John confirms that these are photos taken in Austrian stores within the relevant period,[17] but fails to specify exactly when within the relevant period so it is difficult to assess whether the photographs were taken before the 1 January 2021 or on/after.[18]

d) A translation has been provided of the screenshots of goods for sale on Möbelix's website using the Wayback Machine, which are dated between 2019 and 2020.[19] As such, I deduce that these are websites targeted at a German speaking audience, such as Germany and/or Austria.[20] They are sold under the same mark as shown on its brochures at paragraph 24a) above. The goods include (as described in the accompanying translation):

[14] Exhibit PJ3
[15] Witness statement of Philipp John, paragraph 6
[16] Exhibit PJ4
[17] Witness statement of Philipp John, paragraph 7
[18] I note that Mr John also describes the summary of turnover figures as being 'in the relevant period', but as they are generated in the EU, figures dated after 2020 are irrelevant. Therefore, I cannot reliably conclude that the photo is taken within the relevant period applicable to EU evidence.
[19] Exhibit PJ5
[20] Austria's official language being German.

- Felt Discs,
- Broom set (plastic),[21]
- Clothes drying racks (steel),
- Photo frame (glass),
- Laundry basket (plastic) and laundry sorter (metal/textile)
- Side table (metal frame/ MDF tabletop),
- Tea trolley, (stainless steel)
- Bin (plastic),
- Shelving units (metal stand/ MDF shelves), and glass shelf,
- Door and floor mats (plastic).

There is also a screenshot from 2018 offering for sale what the translations describe as 'heavy duty shelving' (wood/metal), under the mark as registered rather than the mark shown above at paragraph 24a.[22]

e) Screenshots from the website Marktguru. Mr John explains that these are dated between 2018 and 1 January 2021. However on close inspection, these appear to be dated in 2020 only.[23] Mr John explains that Marktguru is an online shopping platform which helps users find the best deals and cashback offers from stores in countries including Austria and Germany.[24] The mark as registered appears at the top of the webpage, with the words 'Home Zone' displayed beside each good listed. Goods shown within this evidence as described in the translations are:

- Clothes peg basket,
- Ironing board,
- Door mat,
- Shoe rest,
- Clothes hangers and trouser hanger

[21] Described in the translations as 'Broom set' but from the picture of the goods this appears to be dustpan brushes.
[22] Exhibit PJ5, page 12.
[23] Exhibit PJ6
[24] Witness statement of Philipp John, paragraph 9

- Rugs,
- Pedal bin (stainless steel),
- Storage box and storage basket (plastic),
- Play mat (polypropylene – type of plastic),
- LED decorative light (plastic), and torch (plastic),
- Easy vacuum storage bag.

f) Packaging templates that contain the mark as registered.[25] The product packaging contains multiple languages that can be identified due to the country's flags, and the countries abbreviated letters; these include British Hungarian, Czechian, and Slovakian. The products that appear on the packaging templates are:

- Blinds
- Black out roller blinds,
- A set of 5 hangers,
- A deep-frying pan with glass lid.

However, I have nothing to show that these packaging templates were ever used on the market within the relevant period, or at all, as they are merely packaging template designs.

g) Numerous invoices.[26] The invoices are dated between 2018 and 2020. They cover the geographical area of Austria and Hungary. The invoices themselves do not display the 'home zone' mark either in the header or within the body of the invoices. Instead, they are headed with the word Mobelix, which as discussed above is the name of one of the companies within the proprietor's group is authorised to use the Home Zone mark. Accompanying the invoices are product codes,[27] and screenshots from Mobelix website which feature the

[25] Exhibit PJ7
[26] Exhibits PJ9 and PJ10
[27] Exhibit PJ8

product codes.[28] In relation to this information Mr John states within his witness statement:

> "*Sales records and invoices relating to goods sold under the "home zone & device" trade mark are generated by reference to product codes. A list of product codes relating to articles sold within the relevant period and their corresponding product description is provided at Exhibit PJ8*.
>
> Attached at Exhibits PJ9 and PJ10 are a selection of invoices relating to sales of goods under the "home zone & device" trade mark to customers in Austria and Hungary respectively. The invoices are dated within the relevant period and presented with a screenshot of the relevant product page from the Möbelix website where the product code (referenced in the invoice) is visible.
> Commercially sensitive information has been redacted."[29]

Taking the product code reference numbers on the invoices and matching them to the ones in the accompanying screenshots of the website which feature the mark as replicated at paragraph 24a), I have been able to establish that the following good descriptions appear within the invoices having matched up the extracts highlighted by the proprietor:[30]

- Garden waste bags, (plastic)
- Clothes bags, (plastic)
- Felt glides,
- Storage box sets, (plastic)
- Bin, (plastic)
- Clothes dryer/Laundry rack, (steel)
- Shoe rack, (metal)
- Table, (metal)

[28] Exhibit PJ9 pages 1-42 and PJ10 pages 1-61
[29] Paragraphs 11 and 12.
[30] Highlighted within the invoices was the code 85000030, however, I could not find this within the list of product codes provided.

- Serviettes
- Toilet brush (metal with toilet brush)
- Clip/photo frame
- Sink organiser/set (plastic)
- Floor mop
- Walking poles/stick (plastic)
- Shopping bag (plastic)
- Pinboard
- Lint Roller (plastic/paper)
- Pen/pencil holder
- File holder
- Shoe storage
- Heavy duty shelves (metal)
- Tea trolley shelves (metal)
- Glass shelves
- Towel rack
- Toilet paper holder
- Chopping board

There are a large number of invoices relating to sales in Austria and Hungary. However, despite the large number of invoices, many of these items only appear once. I highlight that the invoice evidence does not make it easy to decipher which goods are displayed on the invoices, even with the assistance of translations. It is not clear to me that any other items are included within these invoices, and no submissions have been forthcoming in assisting me with such.

h) Turnover figures relating to goods under the mark in the EU within the relevant period, as explained by Mr John's narrative evidence.[31] I note that these are broken down into countries where the goods are sold with an indication of the

[31] Witness statement of Philipp John, paragraph 13.

currency corresponding to the figures provided. I replicate them below for ease:[32]

Austria in €

| | |
|---|---|
| 2017 | 233 887,29 |
| Jan – Aug 2018 | 149 222,43 |
| Aug – Dec 2018 | 81511,55 |
| 2019 | 216 416,16 |
| 2020 | 588 083,34 |
| 2021 | 742 724,82 |
| 2022 | 793 933,16 |
| Jan – Aug 2023 | 473 506,56 |

Total within the fourth relevant period, prior to the IP completion date, i.e. from August 2018 to 31 December 2020: €886,011.05.

Czech Republic in CZK

| | |
|---|---|
| 2017 | 383 972,84 |
| Jan – Aug 2018 | 148 056,40 |
| Aug – Dec 2018 | 85 824,03 |
| 2019 | 379 147,00 |
| 2020 | 769 059,64 |
| 2021 | 656 323,00 |
| 2022 | 371216,26 |
| Jan – Aug 2023 | 269 049,00 |

Total within the fourth relevant period, prior to the IP completion date, i.e. from August 2018 to 31 December 2020: in Czech Koruna (CZK) 1,234,030.67, which converts into roughly €50,693.46.

Slovakia in €

| | |
|---|---|
| 2017 | 39 639,75 |
| Jan – Aug 2018 | 24 054,99 |
| Aug – Dec 2018 | 14 896,68 |
| 2019 | 58171,08 |
| 2020 | 64 775,92 |
| 2021 | 67 901,97 |
| 2022 | 69 426,39 |
| Jan – Aug 2023 | 161432,80 |

Total within the fourth relevant period, prior to the IP completion date, i.e. from August 2018 to 31 December 2020: €137,843.68.

[32] Exhibit PJ11.

Hungary in HUF

| | |
|---|---|
| 2017 | 2 202 015,00 |
| Jan – Aug 2018 | 1723440,00 |
| Aug – Dec 2018 | 1412 755,00 |
| 2019 | 3 214 775,00 |
| 2020 | 11 643 751,00 |
| 2021 | 32 317 986,20 |
| 2022 | 41 504 765,15 |
| Jan – Aug 2023 | 24 790 326,17 |

Total within the fourth relevant period, prior to the IP completion date, i.e. from August 2018 to 31 December 2020: in Hungarian Forint (HUF) 16,271,281 which converts into roughly €44,775.13.[33]

Romania in RON

| | |
|---|---|
| 2017 | - |
| Jan – Aug 2018 | 2 493,00 |
| Aug – Dec 2018 | 3 906,00 |
| 2019 | 10 996,34 |
| 2020 | 14 207,46 |
| 2021 | 18156,94 |
| 2022 | 24 796,76 |
| Jan – Aug 2023 | 20 945,91 |

Total within the fourth relevant period, prior to the IP completion date, i.e. from August 2018 to 31 December 2020: in Romanian Leu (RON) 29,109.80 which converts roughly into €5,465.20[34]

.

Slovenia €

| | |
|---|---|
| 2017 | 596,62 |
| Jan – Aug 2018 | 223,03 |
| Aug – Dec 2018 | 115,46 |
| 2019 | 470,42 |
| 2020 | 693,25 |
| 2021 | 403,30 |
| 2022 | 386,71 |
| Jan – Aug 2023 | 1116,67 |

[33] Converted from rate dated 19 October 2026.
[34] Ibid

Total within the fourth relevant period, i.e. from August 2018 to 31 December 2020: €1,279.13

Croatia in HRK

| | |
|---|---|
| 2017 | 6590,24 |
| Jan – Aug 2018 | 1704,45 |
| Aug – Dec 2018 | 625,47 |
| 2019 | 1296,74 |
| 2020 | 278,38 |
| 2021 | 997,03 |
| 2022 | 1848,22 |
| Jan – Aug 2023 in € | 1078,98 |

Total within the fourth relevant period, i.e. from August 2018 to 31 December 2020: in Croatian Kuna 2,200.59 which converts to roughly into €292.07.[35]

Polen in PLN

| | |
|---|---|
| 2017 | - |
| Jan – Aug 2018 | - |
| Aug – Dec 2018 | - |
| 2019 | - |
| 2020 | 6 222,64 |
| 2021 | 21900,51 |
| 2022 | 2 647,18 |
| Jan – Aug 2023 | 1 382,66 |

Total within the fourth relevant period, i.e. from August 2018 to 31 December 2020: in Polish zloty (PLN) 6222.64 which converts roughly into €1,423.60.[36]

As can be seen the figures are provided in a number of different currencies. For each country I have found the total sales for the goods provided and where the figures are not provided in euros, I have converted them into euros. From these figures, I note that the total turnover figures for all goods sold under the mark within the fourth relevant period (prior to IP completion date) across Europe is: €1,127,783.32. Whilst this is not an insignificant sum overall, I acknowledge that the 'home zone' mark is registered for a vast number of different goods and services in different classes.[37] I have not been provided with a breakdown of

[35] Conversion rates correct as of 19 October 2026.
[36] Ibid.
[37] I remind myself that use of all the goods and services are challenged under the first relevant period.

annual turnover figures for each of the goods and services relied upon under the specification. Indeed, I only have a breakdown for the classes which I turn to below.

i) Turnover figures generated in Austria and Hungary by class for the years 2018, 2019 and 2020. The figures have been broken down by certain classes and refer to goods the proprietor has identified as being in either class 16, 18, 20 or 21.[38] However, I observe some deficiencies in information and figures used. Firstly, I observe that not all the goods listed within each of these classes identified belong in that class under the NICE classification. For example, garden waste containers are referred to in class 16, however, under the corresponding product code within the invoices these are described as 'plastic', (see translations for exhibit PJ9, page 61) and thereby clearly not goods within class 16. Equally, shopping bags in class 18 are not included within the goods that the proprietor has registered under its mark as they are not made from leather, nor do they fall under '*trunks and travelling bags'*. In class 20 whilst there is a reference number (2587001201) that matches to the description 'wall board' within exhibit PJ8, this reference is not found anywhere else within the evidence. It is not in the invoices or website evidence, nor is it referred to in the translations. As such it is difficult for me to see the nature of this product to determine if it is indeed goods which the proprietor is registered for in class 20. Wallboard could be used as another term for plasterboard, and if that was the case then I do not consider it to fall under furniture in class 20 but in building materials in class 19. In the absence of evidence showing what this product is, it is impossible for me to determine if the figures can be relied upon. Likewise, felt listed under goods in class 20 does not appear to belong to this class but would instead fall within class 24. Further some of the items listed in class 20 do not belong there, by way of examples, display boxes, sink sets, toilet brush holders. As such the breakdown of these figures and the totals for each classification I do not feel I can rely on. Further, a breakdown of figures based on the class of goods is not that helpful as there can be several different categories of goods within each class. I have considered whether I could tally

[38] Exhibit PJ12.

up the individual figures for each of the goods in each of the classes, however, given the large range of figures provided, for example some goods providing a single figure for 0.76€ for example, this is not a practical solution. Further, it is unclear precisely what figure matches the reference and goods descriptions. As can be seen from the screenshot below by way of an example, some clear descriptions appear to be located above the reference number, whilst others are located below the reference number., However, when they appear in a list format, it is not always clear which reference numbers refer to which goods description. Further, some numbers are not supplied in relation to a reference number at all but just a goods description, creating confusion as to whether there has been any duplication of figures included.

| | | |
|---|---|---|
| wall hanger | | |
| **2587001201** | **34** | **441.66 €** |
| wall board | 2 | 25.98 € |
| wall board Galileo B:120cm | 32 | 415.68 € |
| **2587003601** | **127** | **1,242.35 €** |
| GLASS SHELF | 23 | 224.88 € |
| GLASS SHELF Rocco B:60cm | 104 | 1,017.47 € |
| **3528001401** | **443** | **3,669.94 €** |
| Storage box set | | |
| **3528001603** | **740** | **4,529.21 €** |
| Storage box | 322 | 1,506.61 € |
| Storage box Jan | 418 | 3,022.60 € |
| **3556003701** | **332** | **556.41 €** |
| Box with lid | | |
| **3556003702** | **663** | **2,294.90 €** |
| Box with lid | | |
| **3556003703** | **272** | **1,209.51 €** |
| Box with lid | | |
| **3556003704** | **549** | **2,782.59 €** |

As a result, to be certain that the reference numbers match the goods, it would lead to a task of having to check the reference number against the description in exhibit PJ8, and then researching for that reference number within the invoices and/or website evidence/brochure evidence to determine what material the goods are made from as that is also a relevant consideration in the breakdown of goods in line with the specification relied upon. In addition, some of the references do not match their goods description at all on the list, for example, reference number 2148001701 highlighted below appears to be described as a shelf, but when considering the list of reference numbers against

their product description in exhibit PJ8 the corresponding description is serving trolly which is significantly different from a shelf.

| | | |
|---|---|---|
| **0640004501** | **33** | **757.36 €** |
| Towel holder | | |
| **0640005501** | **40** | **216.45 €** |
| TOILET ROLL HOLDER | | |
| **0640006001** | **18** | **511.97€** |
| TOILET ROLL HOLDER | | |
| **0640039401** | **10** | **199.90€** |
| GLASS SHELF | | |
| **0640039402** | **1** | **19.99 €** |
| GLASS SHELF | | |
| **2148001701** | **38** | **737.03 €** |
| Shelf | | |
| **2587001201** | **11** | **130.89€** |
| wall board | | |
| **2587003601** | **8** | **79.92 €** |
| GLASS SHELF | | |
| **3528001401** | **51** | **486.17€** |
| Storage box set | | |
| **3528001603** | **35** | **279.65 €** |
| Storage box | | |
| **3556003701** | **78** | **130.19€** |

Form of the mark

25. Section 46(2) of the Act states:

> "… 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 is registered…".

26. The mark under attack is:



27. I keep in mind that in *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under s. 46(2). He said:

> "*13. […] While the law has developed since Nirvana [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 Grupo Textil Brownie v EUIPO, EU:T:2020:22, [63 and 64]).*
>
> *14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.*
>
> *15. First, when comparing the alterations between the mark as registered and used* ***it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole****: T-146/15 Hypen v EUIPO, EU:T:2016:469, [30]. Secondly,* ***where a mark contains words and a figurative element the word element will usually be more distinctive:*** *T-171/17 M & K v EUIPO, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.*
>
> *16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 Fashioneast v AM.VI. Srl, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 Artkis, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 Alder, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).*

*17. It is also worth highlighting the recent case of T-615/20 Mood Media v EUIPO, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word "MEDIA" would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still."*

28. In addition to using the mark as registered on boxes and packaging, the brochure and website evidence uses the following mark:




29. No submissions have been provided from either party regarding the use of this variant mark. However, I accept from the case law set out above, that the words used typically are more distinctive than the device element which I consider to be the case here. I observe that the words 'home' and 'zone' are present in the variant form of the mark used, albeit they are conjoined into a single word. That said, in my view it will not prevent consumers from being able to identify them. Further, the same case and font appear as are used as in the registered mark. The major difference between the mark as registered and the variant form used is the device element. In the mark as registered, the device is a simple green house-shaped figure outlined in solid black positioned between the words home and zone, whilst in the mark used the device appears in the background in the middle of the conflated words and is simply the outline of a house in green. However, as both devices depict a house and the same colour green is used, I do not consider the use of the alternative device element to alter the distinctive character of the mark as registered, even when accounting for the different position of the device. As such, I consider this to be an acceptable variant form of the mark as registered.

Sufficient use

30. For use to be genuine, there must have been real commercial exploitation of the mark in the course of trade, sufficient to create or maintain a market for the goods at issue during the relevant periods, within the EU prior to 1 January 2021, and in the UK following that date. In making my assessment I am required to consider all the relevant factors, i.e. the scale and frequency of the use shown, the nature of the use shown, the goods and services for which use had been shown, the nature of the goods and services and the markets for them, and the geographical extent of the use shown.

31. I remind myself that an assessment of genuine use is a global assessment, which involves 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.[39] I keep in mind as per the case law above that whilst it is not strictly necessary to exhibit any particular type of documentation, the onus is on the proprietor to evidence use of its mark for the goods and services registered and I am permitted to be sceptical of a case of use if evidence is not forthcoming. Furthermore, evidence must be sufficiently solid to enable me to evaluate the scope of protection.

32. Having considered the evidence in the round, despite there being a number of deficiencies in the evidence, overall, I am prepared to accept genuine use of the mark for **shelving, storage boxes/storage containers, bins, floor mops, clothes drying/laundry racks and photo frames**. This is because these items can be found in either the brochure and invoice evidence or the website and invoice evidence. Therefore, whilst I have been critical of the lack of breakdown in turnover figures for individual goods relied upon, from the combination of the brochure, website and invoice evidence, on balance, I am still able to ascertain a considerable spread of geographical sales for these items throughout Austria and Hungary. Furthermore, I keep in mind that although use of the mark must be more

[39] *New Yorker SHK Jeans GmbH & Co KG v OHIM*, Case T-415/09, para 53

than token, that use need not always be quantitatively significant for it to be deemed genuine. As such, the scale and frequency of use for these goods is sufficient to demonstrate genuine use.

Framing a Fair Specification

33. In arriving at a fair specification, I must consider how the average consumer would fairly describe the goods shown in evidence; the task is not to describe the use made of the registered marks in the narrowest possible terms, unless that is what an average consumer would do. I remind myself that a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of particular terms covered by the registrations.[40]

34. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 Kitchin LJ (as he then was) sitting in the Court of Appeal set out the proper approach for considering partial revocation which equally applies to framing a fair specification; he set out the following:

> "245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.
>
> 246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.
>
> 247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved,

[40] *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch)

are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. […] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered."

35. In *Euro Gida Sanayi ve Ticaret Limited v Gima (UK) Limited*,[41] Mr Geoffrey Hobbs QC, sitting as the Appointed Person, summed up the law as follows:

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

36. I also keep in mind that as set out in *SkyKick,*[42] the approach in *Merck* must now be viewed in the context of more recent guidance given by the CJEU in, for example, *Ferrari SpA v DU* (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021]

[41] BL O/345/10
[42] *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36 at [261]

Bus LR 106, at paras. 36-53. There the CJEU explained, at para. 40, that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently is their purpose and intended use.

37. The goods for which I have found genuine use above are shelving, storage boxes, storage containers, bins, floor mops, clothes drying/laundry racks and photo frames. These are all goods that fall under either class 20 or class 21.

38. Taking first the goods that would fall under class 20, i.e. shelving, storage boxes, and photo frames. I note that the proprietor's mark is registered for the following goods in class 20.

> "Furniture, mirrors, picture frames; goods, included in class 20, of wood, cork, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics."

39. I accept that *picture frames* is an alternative way of describing photo frames for which I have found there to be use. I consider the rest of the specification in class 20 to be far too wide to describe the goods for which use has been demonstrated. This is the case even in relation to *furniture* as this covers a vast range of different items including sofas, beds, cabinets, none of which is there evidence of use. Instead, I consider a fair specification to be *shelving; storage boxes.* These are each identifiable sub-categories of furniture which have independent purposes and intended uses.

40. I turn to consider the class 21 terms registered under the mark, which are:

> "*Household or kitchen utensils and containers (not of precious metal or coated therewith); unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware (included in class 21).*"

41. None of the goods for which I have found use can be described as "*unworked or semi-worked glass (except glass used in building); glassware, porcelain and*

*earthenware (included in class 21)".* Next, whilst bins, floor mops and clothes drying/laundry racks are all found in class 21, none of them could fairly be described as goods which would fall under the proprietor's broad term "*Household or kitchen utensils and containers (not of precious metal or coated therewith)".* I do not consider even a kitchen or household bin to be accurately described as a household or kitchen container. This is because unlike a household or kitchen container which is used predominantly to store items, a bin is used to collect waste or rubbish in order to dispose of it; they have different purposes and intended uses. However, smaller storage containers such as those for storing dry foods or cosmetics, I accept, are types of household or kitchen containers. That said the current term as it stands, *Household or kitchen utensils and containers (not of precious metal or coated therewith)* is too broad, not least because there is no genuine use for any household or kitchen utensils. Instead, I consider an appropriate description of the goods for which I have found use, to be limited to: *Household or kitchen storage containers.*

42. Moreover, I find nothing to show use of the mark in relation to any of the other terms in the remaining specification and there are certainly no submissions to support use in relation to those goods or services.

43. Consequently, following the guidance given in *Merck* above, I consider that a fair specification of the contested mark for which sufficient evidence of use has been provided is limited to:

Class 20: *Shelving; storage boxes; picture frames.*

Class 21: *Household or kitchen storage containers*

**OUTCOME**

44. Subject to any successful appeal, the application is partially successful.

45. With effect from 1 February 2010, class 20 and class 21 is as follows, and the remaining classes under the mark are revoked in their entirety:

Class 20: *Shelving; storage boxes; picture frames.*

Class 21: *Household or kitchen storage containers*

**COSTS**

46. Both parties have enjoyed some success in these proceedings, with a greater part going to the applicant, who is entitled to a contribution to the costs it has incurred, in line with the scale set out in Tribunal Practice Notice 1/2023 and reflecting the balance of success achieved by each party.

| | |
|---|---|
| Preparing the application for revocation and considering the counterstatement: | £200 |
| Considering the proprietor's evidence: | £600 |
| Total: | £800 |

47. I therefore order XXXLutz Marken GmbH to pay Test Rite International Co., Ltd. the sum of £800. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 23rd day of October 2026**

**Sarah Wallace**

**For the Registrar**