

**o/0985/24**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION NO. UK00003171298**

**BY BRISTOL LABORATORIES LIMITED**

**FOR THE FOLLOWING TRADE MARK:**

**SALIO**

**IN CLASS 5**

**AND**

**AN APPLICATION FOR REVOCATION**

**UNDER NO. 505804**

**BY SALIOGEN THERAPEUTICS, INC.**

## **BACKGROUND AND PLEADINGS**

1. The trade mark shown on the cover page of this decision (“the Contested Mark”) stands registered in the name of Bristol Laboratories Limited (“the proprietor”). The application for the Contested Mark was filed on 24 June 2016 and registered on 28 October 2016. The Contested Mark stands registered for the following goods:

Class 5        Pharmaceuticals, excluding pharmaceuticals for the prevention and treatment of respiratory disease.

2. On 6 February 2023, Saliogen Therapeutics, Inc. (“the applicant”) sought revocation of the Contested Mark on the grounds of non-use for all of the proprietor’s class 5 goods.

3. Under section 46(1)(a) of the Trade Marks Act 1994 (“the Act”) the applicant claims non-use in the five-year period following the date on which the mark was registered, i.e. 28 October 2016 to 27 October 2021. In its Form TM26N, the applicant requests an effective date of revocation of 29 October 2021.

4. Under section 46(1)(b) of the Act the applicant claims non-use in respect of the Contested Mark for the period of 5 February 2018 to 4 February 2023, with an effective date of revocation of 5 February 2023.

5. The proprietor filed a counterstatement defending its registration for all the goods for which the Contested Mark is registered.

6. The applicant is represented by Page, White & Farrer Limited and the proprietor is represented by WP Thompson. Both parties filed evidence in chief and the proprietor also filed evidence in reply. Whilst neither party requested a hearing, they both filed submissions in lieu. I make this decision having taken full account of all the papers, referring to them below as necessary.

7. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the

European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

## **EVIDENCE**

8. The proprietor's evidence consists of the witness statement of Priti Ramachandran dated 21 August 2023. P Ramachandran is the Director of the proprietor, and their statement is accompanied by 10 exhibits (BL1-BL10).

9. The applicant's evidence consists of the witness statement of Taryn Jennifer Byrne dated 20 October 2023. T Byrne is a Trade Mark Attorney for Page, White & Farrer Limited, the representatives for the applicant. T Byrne's statement is accompanied by 8 exhibits (TJB1-TJB8).

10. The proprietor's evidence in reply consists of the witness statement of Priti Ramachandran dated 30 January 2024. P Ramachandran's statement is accompanied by 2 exhibits (BL11-BL12).

11. Whilst I do not propose to summarise it here, I have taken all of the evidence into consideration in reaching my decision and will refer to it where necessary below.

## **DECISION**

12. Section 46 of the Act states:

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

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the

goods or services for which it is registered, and there are no proper reasons for non-use;

(b) 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”.

13. 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.”

14. However, in this instance, the proprietor has not made use of the Contested Mark during the relevant periods. I therefore only have the proprietor’s defence to consider, which is that there were “proper reasons for non-use”.

15. In the judgement of *Armin Häupl v Lidl Stiftung & Co. KG*, Case C-246/05 the Court of Justice of the European Union (“CJEU”) held that:

52. In particular, as correctly stated by the Advocate General in [79] of his Opinion, it does not suffice that “bureaucratic obstacles”, such as those pleaded in the main proceedings, are beyond the control the trade mark proprietor, since those obstacles must, moreover, have a direct relationship with the mark, so much so that its use depends on the successful completion of the administrative action concerned.

53. It must be pointed out, however, that the obstacle concerned need not necessarily make the use of the trade mark impossible in order to be regarded as having a sufficiently direct relationship with the trade mark, since that may also be the case where it makes its use unreasonable. If an obstacle is such as to jeopardise seriously the appropriate use of the mark, its proprietor cannot reasonably be required to use it nonetheless. Thus, for example, the proprietor

of a trade mark cannot reasonably be required to sell its goods in the sales outlets of its competitors. In such cases, it does not appear reasonable to require the proprietor of a trade mark to change its corporate strategy in order to make the use of that mark nonetheless possible.

54. It follows that only obstacles having a sufficiently direct relationship with a trade mark making its use impossible or unreasonable, and which arise independently of the will of the proprietor of that mark, may be described as “proper reasons for non-use” of that mark. It must be assessed on a case-by-case basis whether a change in the strategy of the undertaking to circumvent the obstacle under consideration would make the use of that mark unreasonable. It is the task of the national court or tribunal, before which the dispute in the main proceedings is brought and which alone is in a position to establish the relevant facts, to apply that assessment in the context of the present action.

55. Having regard to the foregoing considerations, the answer to the second Proper question referred for a preliminary ruling must be that Art.12(1) of the Directive must be interpreted as meaning that obstacles having a direct relationship with a trade mark which make its use impossible or unreasonable and which are independent of the will of the proprietor of that mark constitute “proper reasons for non-use” of the mark. It is for the national court or tribunal to assess the facts in the main proceedings in the light of that guidance.

16. In *Naazeen Investments Ltd v OHIM*, Case T-250/13, the General Court (“GC”) held that on-going litigation was not necessarily a proper reason for non-use. The court stated that:

“70. As regards the revocation proceedings brought on 5 December 2008 by a third party against the mark at issue, the applicant complains that the Board of Appeal took the view that the proprietor of the mark at issue ought to have assessed and calculated the risks, that is to say, of using the mark despite the risk of having to pay damages or of backing down and abstaining from using the mark, and consequently, of cancellation proceedings being brought.

According to the applicant, while revocation proceedings were pending against the mark and its validity was called in question, it would have been unreasonable to make additional investments, or to carry out marketing or sales activities and negotiations with interested business partners or potential licensees or sub-licensees.

71. It must be pointed out, first, that the fact that revocation proceedings have been brought against a trade mark does not prevent the proprietor of that mark from using it.

72. Second, it is indeed always possible that, should such revocation proceedings lead to the revocation of the mark, an action for damages might be instituted. However, an order to pay damages is not a direct consequence of the revocation proceedings.

73. Furthermore, OHIM states, rightly, that it is for the proprietor of a trade mark to conduct an adequate assessment of its chances of prevailing in the revocation proceedings and to draw the appropriate conclusions from that assessment as to whether to continue to use its mark.

74. Accordingly, the applicant cannot claim that the Board of Appeal was wrong to take the view that the revocation proceedings brought in 2008 by a third party did not constitute a proper reason for non-use of the mark at issue.”

17. The judgment of the General Court was upheld on further appeal to the CJEU: see Case C-252/15 P.

18. The period within which the mark has been challenged under section 46(1)(a) is 28 October 2016 to 27 October 2021, and the period within which the mark has been challenged under section 46(1)(b) is February 2018 to 4 February 2023.

19. I note that the two periods significantly overlap, meaning that some of the same evidence will apply to both. On this basis, I will deal with both periods as a collective.

20. In its counterstatement, the proprietor states that between 2016 to 2019 they were unable to launch their products due to a supply disruption and then to regulatory issues. Then in early 2020, the COVID-19 pandemic broke out, which “forced the proprietor to focus on the demands of the NHS and the Department of Health to meet the country’s needs” which resulted in the suspension of the launch of new products as well as the manufacture of existing products. In 2022, the proprietor completed a deal with its manufacturer and now its products are ready to be launched this year. I note that this claim is supported by the witness statement of P Ramachandran. I note the following from this evidence:

- a) At the time of registration in October 2016, the proprietor was seeking approval from the Medicines and Healthcare products Regulatory Agency (“MHRA”) for its oral rehydration solutions (“ORS”) which were to be sold under the contested SALIO mark.
- b) On 13 December 2016, the proprietor received the MHRA approval letter, which included approval of the artwork for its packaging and leaflets, as exhibited in **BL1**.
- c) P Ramachandran states that the proprietor made efforts towards the commercialisation of its goods, which is evidenced in the internal email correspondence dated between January 2017 to May 2017 exhibited in **BL2**. The employees email names are redacted, as well as some of the information within the emails, however, there is clearly a discussion about the 20-sachet Salio pack and its “artwork” and questions being asked such as “is it possible to share the production status for --- Salio please?” and “further to my email below to you have any update on the production status for --- sachets and Salio?”.
- d) **Exhibit BL3** contains a MHRA letter dated 23 August 2017. It states that inspections were carried out by GMP inspectors on the proprietor’s premise between 24 and 28 April 2017 and 17 to 21 July 2017. It states that “*after careful examination of the inspection findings and your subsequent responses, the Licencing Authority has concluded that these fail to provide adequate*

*assurance that you are able to achieve and maintain an acceptable level of GMP compliance at your site. As a result, the decision has been made to withdraw any previously issued CMP certificates*". The letter also states that should the proprietor desire to regain a CMP compliant status, they will be subject to a full reinspection.

- e) The letter exhibited at **BL3** also states that a CMP certificate will be issued for "medically critical" products which is contained in Annex 1 of the letter. However, I do not see the mark "Salio" or "oral rehydration solutions/ORS" goods listed. P Ramachandran confirmed that ORS were not considered essential and therefore "all of the research and development and on-going projects not marketed yet had to be put on hold".
- f) An article exhibited at **BL4** from "GENERICS BULLETIN" dated 6 June 2019 confirms that the suspension was finally lifted from the proprietor, with MHRA fully reinstating a CMP status for their sites, "enabling the firm to resume complete supply to the UK market".
- g) In his witness statement, P Ramachandran states that following the above suspension, they prioritised "critical" products that had already been launched "to remedy the market share loss" caused by it, but this required "considerable time and efforts". This therefore postponed the launch of its SALIO goods, which are "neither critical nor in urgent demand".
- h) **Exhibit BL9** contains the proprietor's internal emails to demonstrate that it "had not abandoned its plans to launch its SALIO products". I note that these emails have been heavily redacted and therefore I am not able to extract any information from them, apart from the clear references to "rehydration salts" "ORS" and "salio". The emails are all dated September 2020.
- i) As a consequence of the COVID-19 pandemic, between 2020 and 2021 P Ramachandran states that the proprietor's operations were disrupted by a shortage of Personal Protection Equipment Kits. I note that **exhibit BL6** contains a British Medical Association Covid Review which confirms that in the first wave of the pandemic in particular, there were real shortages of Personal

Protection Equipment (“PPE”) and that the supply of PPE “was a major issue”. The report also states that whilst PPE supplies improved from April 2020 to May 2020, there were still reports of PPE shortages as late as August 2020.<sup>1</sup>

- j) Whilst P Ramachandran did not confirm how the proprietor’s operations were disrupted by the shortage, the review in **BL6** confirms that “PPE is designed to protect the wearer from exposure and damage from a hazardous substance at work” and that it has always played a role in health and social care settings.
- k) P Ramachandran states that the proprietor is one of the biggest suppliers of paracetamol in the UK, and its operations were disrupted by a surge of demand for this product. This is supported by **exhibit BL7** which contains an article from “iNews” dated 23 March 2020 titled “Coronavirus: pharmacies urge people to stop stockpiling paracetamol”, with the contents of the article referring to how Boots could run out of it “by the end of the week”.
- l) P Ramachandran also states that its operations were disrupted by the surge of demand for hydroxychloroquine. Whilst it is not apparent why a surge for this product caused disruption, **exhibit BL8** contains a BBC news article dated 27 July 2020 commenting on how hydroxychloroquine was being used as a preventative and treatment of covid.
- m) The proprietor also had to deal with staff absences due to the COVID-19 pandemic. Whenever any person tested positive, the proprietor “was required to shut and fumigate the entire area where the relevant person was working”, and only once this was completed the staff could re-access this area. P Ramachandran claims that “this has led to a setback of 2-3 days each time it happened”. Moreover, due to covid absences, the proprietor “was running at 25-30% of its capacity”.
- n) **Exhibit BL11** contains a breakdown of the proprietor’s “covid-related” staff absences from 2020 to 2022. I note that there are 200 recorded absences, which vary from the worker or their relatives testing positive or being “unwell”,

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<sup>1</sup> Page 19 of the Covid Review

or sickness due to the vaccines. I also note that some are in relation to family deaths or “embassy” appointments (which is clearly a typographical error).

- o) **Exhibit BL12** contains a covid tracker that the proprietor created in October 2020. I note that there are 133 entries, detailing what department the worker is from, the date of their symptoms, when they were last on site, if they had tested (and if this was under NHS track and trace) and the result of their tests. I note that the latest date of workers testing positive is November 2022.
- p) In their witness statement, P Ramachandran claims that due to the decline of prescriptions, due to consumers being hindered from seeing a doctor during covid, the proprietor had a large stock of its generic pharmaceutical products which were reaching the end of its shelf life (2021/2022) and therefore they made efforts to move these along over its SALIO goods.
- q) P Ramachandran stated that the proprietor was “required to stockpile critical products in preparation for a possible no-deal Brexit” and has provided a BBC article, dated 9 June 2020, contained in **exhibit BL5** to support this. However, I note that the contents of this article states that the original stockpiles of medical supplies were used up by covid, and that a memo seen by the BBC only advises the government to buy and store “critical medicines to treat the virus” and to prepare for a no-deal Brexit.<sup>2</sup>
- r) P Ramachandran states that the proprietor was able to “resume normal practices between April and May 2022” and was therefore able to complete a deal with a manufacturer for its ORS.
- s) As of February 2023, the goods are at an “advanced stage of production and procurement, ready to be launched this year”. Whilst **exhibit BL10** has been provided to show the proprietor’s “efforts to expedite [the] launch”, the emails contained within this exhibit are so heavily redacted I cannot extract any useful information from them, or determine how they were expediting the launch.

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<sup>2</sup> I bear in mind that planning for a no-Brexit deal/stockpiling for this was not pleaded as a reason for non-use in its counterstatement (Form TM8).

21. In response to the above, the applicant filed its own evidence, and I note the following:

- i. T Bryne claims that MHRA granted marketing authorisation to the proprietor on 10 January 2002 for its SALIO Granules which is supposedly supported by **TJB1**. However, this exhibit only contains an email that shows the following information with no reference to the above date:

Salio Granules for Oral Solution has been granted a marketing authorisation held by Bristol Laboratories Limited as below:

Authorisation Number	Licensed Product Name	Authorisation Holder Company Name
PL 17907/0462	SALIO GRANULES FOR ORAL SOLUTION	BRISTOL LABORATORIES LIMITED

- ii. **Exhibit TJB2** contains emails between the applicant’s representatives and MHRA, and it states that the ownership of the “licence” was transferred to the proprietor on 15/11/2013, with “the additional brand name Salio Granules for oral solution was added to the licence on 3/6/2016”. From the information I have before me, the licence is referring to the marketing authorisation.
- iii. Whilst T Bryne has attached extracts from GOV.UK which talks about good manufacturing practice and good distribution practice in **exhibit TJB3**, I am unsure what the relevance of this exhibit is, apart from drawing my attention to the fact that these inspections are notified in advance.
- iv. **Exhibit TJB4** contains an article called “UK pulls manufacturing authorization from Bristol Laboratories” dated 29 August 2017 which states that the certification was pulled after regulators found “two critical deficiencies relating to the integrity and recording of GMP critical data as well as issues with the facility’s ongoing stability monitoring program”. The exhibit also contains an article from “C+D2” dated 18 April 2019 titled “PSNC monitoring generics shortages as Bristol labs suspension extended” which states that MHRA issued a partial suspension of the manufacturer’s licence in August 2017, and then two further inspections were carried out in November 2017 and January 2018, in

which the partial suspension was extended. The article also clarifies that the partial suspension stops the proprietor from providing batches of non-critical product. Thus, T Bryne states that the above shows it took nearly 2 years and 3 inspections for the proprietor to satisfactorily rectify the deficiencies.

- v. T Bryne has stated that the proprietor was permitted to manufacture a third of its medicines in its existing product range throughout the suspension. Whilst this is true, I fail to understand the relevance of this, as it is clear the proprietor could not distribute the “non-critical” goods to be sold under the SALIO mark.
- vi. I note that **exhibit TJB5** has been provided with no narrative evidence. The exhibit contains the proprietor’s product list. It shows at number 129 that they produce hydroxychloroquine sulphate film-coated tablets, and at numbers 191 and 192 it shows they produce paracetamol capsules, tablets and caplets. Also under the heading “upcoming health brands”, number 15 is “salio rehydration salts”. However, this exhibit is undated.
- vii. **Exhibit TJB6** contains a UK Government timeline of the covid lockdowns and measures from March 2020 to December 2021. I note that by 19 July 2021, “most legal limits on social contact [are] removed in England, and the final closed sectors of the economy are reopened”.
- viii. **Exhibit TJB7** contains a Wikipedia entry on the pandemic, however, this is a platform that allows entries to be updated by the public. Therefore I consider that the information from Wikipedia should be approached with a certain degree of caution.
- ix. **Exhibit TJB8** contains a press release from GOV.UK setting out a roadmap to continuously ease lockdown restrictions dated 22 February 2021.

#### Conclusions on proper reasons for non-use

22. I note that there are multiple reasons for non-use provided by the proprietor, spanning over the years 2016 to 2023. However, I consider that these can be split up

into 3 categories, and I will deal with all three for the purposes of my assessment, to determine if separately or together they are proper reasons for non-use.

### **2016 to 2017- The Preparation Period**

June 2016	The proprietor adds SALIO to its MHRA marketing authorisation licence.
October- December 2016	The MHRA issues an approval letter for SALIO's packaging and leaflets.
January- May 2017	The proprietor is emailing internally regarding its 20-sachet pack for SALIO.

23. There is not much to comment on this period, it shows preparation to use, and internal use of, the contested SALIO mark on oral rehydration salts.

### **2017 to 2019 – The Suspension Period**

August 2017	The first partial suspension of the proprietor's manufacturer's licence is issued.
November 2017 January 2018	Two further inspections were carried out in which the partial suspension was extended.
June 2019	"GENERICS BULLETIN" confirms that the suspension is finally lifted from the proprietor, enabling the firm to resume complete supply to the UK market.

24. As set out in the case law cited above, a proper reason for non-use may be described as something that makes use of a trade mark impossible or unreasonable, and which arises independently of the will of the proprietor of that mark. In this case, the proprietor was suspended from manufacturing its non-critical goods, including its SALIO rehydration salts, due to a fault of its own. As noted in the first suspension letter, the proprietor "*failed to provide adequate assurance that [they were] able to achieve and maintain an acceptable level of GMP compliance at [their] site*". The responsibility was on the proprietor to ensure that their site was in compliance with

GMP, and it was also their responsibility to remedy this as soon as possible. The letter also made it clear that they would be subject to a full reinspection to regain its CMP compliant status. However, in this case, the suspension was extended after two further inspections were carried out. Furthermore, the only reasoning I have been provided as to why the site failed the inspection is contained within the applicant’s evidence, and the proprietor does not provide any elaboration on this, or why it took them nearly 2 years to remedy the issue so that the suspension could be finally lifted (including whether this was in or out of their control). This non-use line of argument is, therefore, dismissed.

**2020 to 2023- The COVID-19 Period**

March 2020	Covid-19 lockdown comes into force in the UK. It is reported that paracetamol is running low due to the surge of demand for it during covid.
June 2020	It is reported that original stockpiles of medical supplies were used up by covid, and that a memo for the government has urged them to store a much broader list of medicines in the event of a no-deal Brexit.
July 2020	Article reports that hydroxychloroquine is being used as a preventative and treatment of covid.
August 2020	PPE shortages up until this date.
October 2020	The covid staff tracker is created by the proprietor- it is noted that 200 staff absences are tracked until the end of 2022.
April- May 2022	The proprietor resumes normal practices.
February 2023	The proprietors goods were at an advanced stage of production and procurement, ready to be launched that year.

25. I also note that during this period, P Ramachandran states the proprietor was making efforts to get rid of its stock of generic pharmaceutical products which were reaching the end of their shelf life (2021/2022). However, the proprietor has not provided any further information or evidence on this. Therefore I have no idea how the proprietor “made efforts to move these along over its SALIO goods”. I have also not

been provided with a total figure of the stock, nor the dates between which I assume they were sold. P Ramachandran has also not clarified specifically how getting rid of these generic pharmaceutical products would have stopped the production of its oral rehydration salts.

26. Whilst the news articles report that paracetamol and hydroxychloroquine were being used for the treatment of covid, and that the proprietor claims their efforts was therefore focused on the production of these goods, I note that I have not been provided with any evidence of this. I have not been provided with sales or production figures of these goods by the proprietor, and the only evidence I have to confirm that they sell these goods is its product list provided by the applicant which is undated. In any event, the decision to focus on other products marketed under other marks was a commercial choice within the proprietor's control.

27. I also note that whilst the stockpile article refers to a memo which advised the government to stockpile medical supplies, the proprietor has not provided any evidence which confirms that this advice was taken by the government, nor any evidence to confirm how many of the proprietors medical supplies were stockpiled. Moreover, the proprietor has not explained how long they stockpiled the goods for and the actual effect it had on the business, including on the production of its SALIO goods. Moreover, whilst I appreciate that the review in **exhibit BL6** confirms that PPE protects the wearer from exposure and damage from hazardous substances at work, there is nothing else within the narrative evidence to clarify how the PPE shortages specifically affected the proprietor as a whole, and again on the production of its SALIO goods.

28. For the year 2021, I have not been provided with any submissions or evidence as to the reasons for non-use of the proprietor's mark in that year. However, the applicant's COVID-19 Government timeline evidence confirms that by July 2021, most legal limits on social contact were removed in England, and the final closed sectors of the economy were reopened.

29. Lastly, I note that P Ramachandran states that the proprietor was able to resume to normal practices between April to May 2022, however, there is no specific reasons as to why this occurred at this date. From the covid tracker evidence, it is still apparent

that staff were still taking sickness absences due to the virus up until the end of 2022, with a total of 25 absences between April to November 2022. Furthermore, between May 2022 and February 2023, the proprietor has provided no evidence as to why they were still not using the contested SALIO mark. Moreover, as noted above, the email evidence dated February 2023, exhibited at **BL10**, is so heavily redacted that I am unable to determine how the proprietor was expediting the launch of its SALIO goods.

30. Taking all of the above into account, whilst I sympathise that the COVID-19 pandemic would have had some affect on the proprietor between March 2020 to July 2021, I do not consider that the proprietor has provided enough evidence or clarity as to how all of the above genuinely prevented the proprietor from producing its SALIO goods, and using its Contested Mark. Therefore, without anything sufficiently solid before me, I am not willing to accept the COVID-19 pandemic and its affects on the proprietor is a proper reason for non-use in the present case, and this argument is, consequently, dismissed.

31. After considering all of the proprietor's above evidence, I find that none of the reasons provided above qualify as "proper" reasons for non-use. That is, they are not "obstacles having a direct relationship with a trade mark which make its use impossible or unreasonable and which are independent of the will of the proprietor of that mark".<sup>3</sup>

## **CONCLUSION**

32. No use of the mark has been made and the proprietor has failed to establish proper reasons for non-use within the meaning of the law.

33. The application for revocation on the grounds of non-use therefore succeeds under both sections 46(1)(a) and 46(1)(b). The registration will be revoked in respect of all goods for which it is registered.

34. The effective date of revocation is 29 October 2021, the earliest date requested by the applicant.

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<sup>3</sup> See *Armin Häupl v Lidl Stiftung & Co. KG*, Case C-246/05

## **COSTS**

35. The applicant has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of **£1,500** as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Preparing a statement and considering the other side's statement	£250
Considering the proprietor's evidence, and preparing and filling its own evidence	£700
Preparing and filing written submissions in lieu	£350
<b>Total</b>	<b>£1,500</b>

36. I therefore order Bristol Laboratories Limited to pay Saliogen Therapeutics, Inc. the sum of £1,500. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 15<sup>th</sup> day of October 2024**

**L FAYTER**

**For the Registrar**