

**O/1000/25**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION NO. UK00912619102  
IN THE NAME OF ALFRED FRANKS AND BARTLETT PLC  
FOR THE FOLLOWING TRADE MARKS:**

**MESSY MUTTS**

**IN CLASSES 3, 18, 20, 21 AND 28**

**AND AN APPLICATION FOR REVOCATION ON THE GROUNDS OF NON-USE  
UNDER NO. 507562  
BY JASCOR HOUSEWARES INC.**

## BACKGROUND AND PLEADINGS

1. Alfred Franks and Bartlett Plc (“the proprietor”) is the owner of the trade mark shown on the cover page of this decision (“the contested mark”).<sup>1</sup> The contested mark was filed on 20 February 2014 and registered on 11 July 2014. It stands registered for the following goods and services:<sup>2</sup>

Class 3      Cleaning preparations, soaps, shampoos and hair conditioners for pets and animals; dry shampoos for pets and animals; cleansing and freshening wipes for pets and animals; fragrances for use on pets and animals.

Class 18     Pet clothing; collars, harnesses, leads and leashes for pets and animals; bags.

Class 20     Beds and baskets for pets; kennels; pet carriers; pet doors and cat-flaps.

Class 21     Pet grooming aids; brushes, combs, flea combs and sponges for pets and animals; feeding bowls for pets and animals; containers (of plastic) for pet food; pet food scoops; toothbrushes for pets; cages for pets and animals; articles for cleaning purposes.

Class 28     Games, toys and playthings for pets and animals.

2. On 16 July 2024, Jascor Houseware Inc. (“the applicant”) applied to revoke the contested mark in respect of all goods for which it is registered based upon section 46(1)(b) of the Trade Marks Act 1994 (“the Act”). The applicant claims non-use in the following five-year periods:

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<sup>1</sup> On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all rights holders with an existing EU trade mark (“EUTM”). As a result of the proprietor having an EUTM protected as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable trade mark shown here is 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 retains its original filing date.

<sup>2</sup> The significance of my underlining parts of the specification is explained at paragraph 15 below.

- a. 16 July 2019 to 15 July 2024, with an effective date of revocation of 16 July 2024.
- b. 16 July 2014 to 15 July 2019, with an effective date of revocation of 16 July 2019.

3. The proprietor filed a counterstatement denying the grounds of revocation.

### **THE HEARING AND REPRESENTATION**

4. A short format hearing took place before me on 17 July 2025. The applicant was represented by John Eldridge of Counsel, instructed by J A Kemp LLP. The proprietor was represented by Matthew Parr of Marks & Clerk LLP. Both parties filed skeleton arguments in advance of the hearing.

### **EVIDENCE AND SUBMISSIONS**

5. The proprietor filed evidence in the form of the witness statement of Laurence Cowan dated 2 December 2024, which is accompanied by 5 exhibits (LC01 to LC05). Mr Cowan is a Consultant for the proprietor, a position he has held for 28 years.

6. The applicant did not file evidence.

### **RELEVANCE OF EU LAW**

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.

## DECISION

8. Section 46 of the Act states:

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

(a) [...]

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c) [...]

(d) [...]

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

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

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

(4) [...]

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

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

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

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

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

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

10. As the contested mark is a comparable mark, the proprietor can rely upon use of that mark in the EU for any and all parts of the relevant period which fall prior to IP Completion Day i.e. 31 December 2021.<sup>3</sup> The only use after that date that is of relevance is use in the UK.

11. 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*

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<sup>3</sup> Paragraph 8 of Part 1, Schedule 2A of the Act.

*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 Bunderversammlung 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].”

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

13. Mr Eldridge also drew my attention to the words of Mr Daniel Alexander KC, sitting as the Appointed Person in *Awareness Ltd v Plymouth City Council* [2013] RPC 34, in which he stated:

“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.”

14. I have borne that in mind in reaching this decision.

## Concessions

15. At the hearing, I identified a number of terms in the proprietor's specification in respect of which, on a preliminary review of the evidence filed, there did not appear to be any use for. These are the terms underlined in paragraph 1 above. I asked Mr Parr whether he accepted that there had been no use for these terms, which he did. Consequently, the contested mark will be revoked in relation to those terms which, by the time of the hearing, were undefended.

## Form of the mark

16. There are examples of the mark in use as registered. Clearly, this will be use upon which the proprietor can rely. It also appears in the following form in brochures:<sup>4</sup>



17. I did not understand it to be in issue between the parties that this is an acceptable use of the mark. However, for the avoidance of doubt, I find that this is plainly acceptable use of the contested mark as registered, albeit as part of a composite mark.<sup>5</sup> Consequently, this is use upon which the proprietor can rely.

## Genuine use

18. The proprietor first started using the contested mark in 2014. The initial product range is reflected in a brochure provided which includes dog shampoo and conditioner, a microfibre towel for dogs, dog brushes, lint rollers for pet owners, anti-flea bedding

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<sup>4</sup> Exhibit LC01

<sup>5</sup> *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12

spray, dog waste bag dispensers and refills and bows for dogs.<sup>6</sup> Whilst this is helpful in demonstrating the range of products available and how the contested mark was applied to those products, as Mr Eldridge pointed out, it does not demonstrate the extent of the use made by the proprietor. Mr Cowan states that the proprietor is no longer constrained by a particular product range, but instead produces items based on the requirements of the individual retailers they supply.

19. The proprietor's products offered under the contested mark have been sold to national retailers.<sup>7</sup> There is evidence of this in the invoices provided, which are dated between 2014 and 2020. The invoices refer to products which are identified by their product description as having been sold under the contested mark (such as a 2in1 shampoo and conditioner product). I also note that there are various other products within the invoices that are not identified as having been sold under the contested mark. Nothing will turn on this for most of these products, because the proprietor has provided spreadsheets which list all of the sales made under the contested mark between 31 October 2014 and 24 June 2020 and 5 June 2020 and 19 September 2024, respectively. Consequently, for the vast majority of these goods, to the extent that they were in fact sold under the contested mark, the sales are recorded in the spreadsheets.

20. However, I note that there are sales of a lint roller recorded in the invoices which do not appear in the spreadsheets. There is, as I've mentioned, a lint roller which appears in the proprietor's brochure, which may suggest that this was in fact a product sold under the contested mark, even though it is not identified in the invoice as having been sold under the contested mark.<sup>8</sup> However, Mr Cowan's narrative evidence is that all sales made under the contested mark are recorded in the spreadsheets provided. The absence of sales for lint rollers in the spreadsheets would, therefore, suggest that these were not in fact made under the contested mark, but under a different brand. Given the ambiguity on this point, I am not prepared to infer that the lint roller described in the invoices was sold under the contested mark. Consequently, the proprietor cannot rely upon that use.

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<sup>6</sup> Exhibit LC01

<sup>7</sup> Exhibit LC03

<sup>8</sup> Exhibit LC01

21. The spreadsheets in question confirm that sales made under the contested mark amounted to over £500,000 (for the period between 31 October 2014 and 24 June 2020) and £350,000 (for the period between 5 June 2020 and 19 September 2024). Clearly, some of these sales fall after the end of the second relevant period (and after the date on which the application for revocation was filed) and so must be disregarded. Specifically, these are the sales made between 16 July 2024 and 19 September 2024. Of those that are within the later relevant period, the sales can be broken down by product as follows (with figures rounded down to the nearest 1000):<sup>9</sup>

Pet cooling mat	£30,000
Noodle drying matt	£17,000
Folding display unit	£73,000
Pet water bottle	£9,700
Paw printed pet blanket	£11,000
Pet cooling towel	£9,000
Pet cooling jacket	£53,000
LED clip on safety light	£5,000
Fleece dog jacket	£45,000
Pet car seat cover	£24,000
Pet drying mitts	£4,000
LED dog collar	£6,000
Pet water fountain	£11,000
Interactive bone puzzle game	£25,000
Pet essential FSDU	£2,000
Pet cooling bandana	£11,000
Day to Day 2in1	£10,000
Easy Clean Out Dead Hair Brush	£11,000
Handy Poop Bag Dispenser	£3,000
Medicated 2in1	£9,000
Refills for Handy Poop Bag Dispenser	£4,000

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<sup>9</sup> I have not included the sales recorded in the invoices here because they should, if they are sales made under the contested mark, be recorded in the spreadsheets. To add the invoice and spreadsheet sales together would, therefore, result in duplication.

Puppy 2in1	£4,000
Dry Shampoo	£7,000

22. I note that it is not absolutely clear on the face of the spreadsheet what products the terms “Day to Day 2in1”, “Medicated 2in1” and “Puppy 2in1” relate to. However, the brochure evidence described above uses the term “2in1” to refer to a combined shampoo and conditioner product range. Consequently, I infer that it is to these goods that the spreadsheet refers, with the terms - “day”, “medicated” and “puppy” - referring to types of those products which are for daily use, medicated treatment or puppies specifically.

23. I accept Mr Eldridge’s submission that it is not clear what product “folding display unit” refers to, nor is it clear what “FSDU” means. There is nothing in the proprietor’s evidence that explains this and, as such, they are not able to rely on this use. In any event, there do not appear to be any terms in the proprietor’s specification to which these goods could possibly relate.

24. I note that the sales which are evidenced for the earlier relevant period within the spreadsheets appear to relate to a narrower list of products than the sales made in the later relevant period. For reasons that are explained below, I need not go into detail about the range of the products sold in the earlier period. I note that the addresses for customers listed in the spreadsheets reflect a wide geographical spread, including Newcastle, Birmingham, London, Blackpool, Suffolk, Yorkshire, Portsmouth, Bristol, Kent and Wales. There is also evidence of the same customers placing repeat orders with the proprietor during the course of the relevant periods.

25. Mr Eldridge raised a number of issues with the invoice and spreadsheet evidence relied upon by the proprietor. These can, broadly, be summarised as follows:

- a. The same product number has been used in conjunction with different product descriptions. For example, product number 72350 appears alongside the descriptions “150ml Dry Shampoo-MessyMutts-Doggy Fresh”, “150ml Dry

Shampoo-MessyMutts-Green-Baby” and “150ml Dry Shampoo-MM-Doggy Lime-16739”.<sup>10</sup>

- b. There are sales recorded in the invoices identified as MESSY MUTTS products which are absent from the spreadsheets. For example, there is a sale of product number 72374 described as “150ml Dry Shampoo Messy Mutts Blue CKI” in the invoices which has no corresponding entry in the spreadsheets.<sup>11</sup> This product number is also an example given by Mr Eldridge of one attributed to different product descriptions (“150ml Dry Shampoo Messy Mutts Doggy Cool” and “150ml Dry Shampoo MM Doggy Blue”) (see point a. above).
- c. In some instances, the addresses between the invoices and the spreadsheets do not match. Mr Eldridge gave the example of Invoice no. IO108313 which records an invoice address of Willenhall and a delivery address of Bilston. However, when the corresponding entry is recorded in the spreadsheets, the delivery address is described as Willenhall.<sup>12</sup>

26. Mr Eldridge’s overarching submission regarding these points is that they render the evidence insufficiently solid, and it would not be rationally possible to conclude that there has been genuine use on the basis of this evidence. He also suggested that whilst these are errors that can be gleaned from an examination of the evidence, there might also be other errors contained within it that are not apparent from the face of the documents. Clearly, there are anomalies within the evidence provided by the proprietor as identified by Mr Eldridge; however, none of these appear to me to be particularly material.

27. The last (point c. above) seems to me to be plainly a typographical error where the delivery/invoice addresses have been recorded in the wrong columns. As both are within the UK, nothing appears to turn on this. The point regarding sales made under the contested mark which are recorded in the invoices but absent from the spreadsheets (point b. above), simply suggests that the proprietor has actually made

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<sup>10</sup> See pages 44 and 47 of Exhibit LC03 and page 1 of LC04.

<sup>11</sup> See page 45 of Exhibit LC03

<sup>12</sup> See page 33 of Exhibit LC03 and page 1 of Exhibit LC04

more use of its mark than it first appears on the face of the spreadsheets. Finally, the point regarding the mismatch of product numbers and descriptions (point a. above) does not make any material difference. This is because all of the product descriptions in question, whilst they might vary in terms of their details (for example, Doggy Fresh v Green Baby) all relate to the same product category e.g. dry shampoo. It does not, therefore, call into question whether the spreadsheet is accurate as to the product type in question, but rather the name attributed to that product by the proprietor. It is the former which is relevant for the purposes of this assessment. I understand Mr Eldridge's argument that given that these errors exist, can the evidence be trusted as accurate? However, I am not convinced that these errors are such that I should disregard the entirety of the spreadsheet evidence because of them. Mr Eldridge's submissions go to the accuracy of the evidence filed; I accept that it is not unusual or inappropriate for such submissions to be made at the conclusion of the proceeding and the onus is, of course, on the proprietor to prove use. However, where a party has avoided criticising the accuracy of the evidence during the written evidence rounds only to unveil an attack after those rounds have concluded there is potential for unfairness because they have deprived the proprietor of an opportunity to reply to the criticisms raised. Whether there is unfairness will depend upon the circumstances of the case. Mr Eldridge's criticisms of the proprietor's failure to explain these errors seem to me to be somewhat unfair, given that the errors were not pointed out until the hearing. The most that can be said, in my view, is that the particular entries in issue should be discounted; however, in that case, the remainder of the evidence is sufficient to support the findings made below in any event.

28. Mr Eldridge also criticised the fact that some of the individual products had only been sold to one customer. That is, of course, a factor to take into consideration. However, when looking at the picture presented by the evidence as a whole, I do not consider that to be fatal for the proprietor. Mr Eldridge also criticised the fact that some of the individual products only had sales recorded for part of the relevant period, as opposed to consistently across the duration of it. However, there is no requirement to show use across the entirety of the relevant period.<sup>13</sup> Whilst the sales of some of the products individually may not be particularly high, I bear in mind that use does not

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<sup>13</sup> BL O/090/20

need to be quantitatively significant in order to be genuine. In my view, the evidence shown is reflective of a genuine attempt to create or maintain a share in the market. Consequently, I find that there has been genuine use of the contested mark for pet blankets, pet cooling towels, pet cooling jackets, LED clip on safety lights, fleece dog jackets, pet car seat covers, pet drying mitts, LED dog collars, pet water fountains, interactive bone puzzle games, pet cooling bandanas, dog shampoos and conditioners, dog hairbrushes, dog waste bag dispensers and refills and dry shampoo for dogs during the second relevant period.

### **Fair specification**

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

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

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

“245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

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

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

### Class 3

31. As noted above, there are various examples of shampoo and conditioner products (including dry shampoo) being sold under the contested mark. Whilst I note that the proprietor has shown use of medicated shampoo/conditioner, I have discounted those goods on the basis that they would not be registered in class 3, but rather class 5. However, as the proprietor has shown use for various other non-medicated products, nothing turns on this. It appears to me when viewing the evidence as a whole that these are specifically for use on dogs (as opposed to other pets or animals). There do not appear to be any examples of other types of cleaning products. Consequently, I

find a fair specification to be *shampoos and hair conditioners for dogs; dry shampoo for dogs*.

### Class 18

32. In terms of the protection that the proprietor has for *pet clothing*, there are examples of dog fleeces and dog jackets being sold during the second relevant period. Again, there is no evidence of clothing being sold for animals (or pets) more widely. I bear in mind Mr Eldridge's submission that the terms listed in the spreadsheets above are ambiguous (the suggestion being that a fleece dog jacket might be something worn by a dog walker and a dog cooling jacket might be a cooling sleeve for a water bottle). I do not accept this submission. In my view, given the ordinary meaning of the words themselves and the inclusion of sizes (such as "s/m") they are plainly items of clothing, and it would seem entirely illogical for someone to describe an item of clothing for a human to wear as a "dog fleece". In any event, Mr Cowan confirms in his narrative evidence that the proprietor sells goods for use on pets, not humans.

33. In terms of *collars*, there are examples of collars being sold which have an LED light fitted to them. In my view, to constrain the proprietor to protection for collars only where they have an LED light fitted to them would be too narrow an approach in light of the guidance in *Merck*. I note that the proprietor also has *bags* registered in this class. The only evidence of bags sold are dog waste bags. However, I agree with Mr Eldridge's submission that these would not be in class 18; typically, these would be in class 16 (being plastic dog waste bags). I note that there is evidence of use of dog waste bag dispensers, which could be registered in this class, but the proprietor does not have protection for those goods. Consequently, I find a fair specification to be *dog clothing; collars*.

## Class 21

34. There is evidence of use for brushes for dogs. There is also use in relation to towels which could be used for the drying aspect of dog grooming. However, these would fall within class 24 and not class 21; this use cannot, therefore, assist the proprietor. The same is also true of the drying mitts which, in my view, would also not be in this class. I consider that the use shown does not justify retention of the broader terms *pet grooming aids* or *articles for cleaning purposes*.

35. I also note that the proprietor has protection for *feeding bowls for pets and animals*. Mr Parr argued that the water fountains and water bottles should be covered by this term. In my view, there are two issues with this submission. Firstly, water bottles/water fountains are for drinking (not feeding) purposes. Secondly, the term covers bowls specifically, rather than other types of apparatus (such as bottles or fountains). Consequently, I do not consider that the proprietor can retain this term. There is no evidence of use for the other terms in this class. As such, I find a fair specification to be *brushes for dogs*.

## Class 28

36. The only evidence of use in relation to these goods is the “interactive bone puzzle game”. Mr Eldridge argued that it is not possible to know what this product is; is it a puzzle game for animals or is it a dog-themed game for humans? I accept Mr Eldridge’s point that the evidence could certainly be clearer and that the product description in the spreadsheet is somewhat ambiguous. However, I must look at the evidence in the round. In this regard, I bear in mind Mr Cowan’s narrative evidence:

“In essence, the MESSY MUTTS range is a range of products and accessories designed for dog owners to keep their pets (typically dogs), clean, smelling fresh and looking good. The range encompasses soaps and shampoos, grooming aids, pet clothing and poop bags; and also includes animal toys and playthings.” (my emphasis)

37. There is no suggestion that the proprietor provides games for humans. Consequently, in light of Mr Cowan's confirmation that the proprietor's product range is mainly focused on dogs, and the "bone" reference in the product description, I infer that this is a game specifically for dogs. Consequently, I consider a fair specification to be *games for dogs*.

38. In this regard, and for the avoidance of doubt, I have borne in mind Mr Parr's submission that there have also been sales of balls for dogs under the contested mark. However, as Mr Eldridge rightly pointed out, these were made after the end of the second relevant period (and after the application for revocation was filed) and so must be disregarded.

### **Final remarks**

39. Due to the effect of section 46(3) of the Act, the contested mark will not be revoked for non-use in the earlier relevant period for the goods that have survived the revocation in the latter period, even though the use shown in the earlier period is narrower (in terms of the goods sold that could be mapped on to the terms in the proprietor's specification) than the use shown in the later period.

### **CONCLUSION**

40. With effect from 16 July 2019, the contested mark is partially revoked. It shall remain registered for the following terms:

Class 3      Shampoos and conditioners for dogs; dry shampoo for dogs.

Class 18     Dog clothing; collars.

Class 21     Brushes for dogs.

Class 28     Games for dogs.

## **COSTS**

41. The applicant has enjoyed the greater degree of success. Consequently, it is entitled to a contribution towards its costs based upon the scale set out in Tribunal Practice Notice 1/2023. I have applied what I consider to be an appropriate reduction to reflect the only partial success. In the circumstances, I award the applicant the sum of **£1,300** calculated as follows:

Preparing a statement and considering the proprietor's statement	£200
Considering the proprietor's evidence	£400
Preparing for and attending the hearing	£500
Official fees	£200
<b>Total</b>	<b>£1,300</b>

42. I therefore order Alfred Franks and Bartlett Plc to pay Jascor Houseware Inc. the sum of **£1,300**. 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 28<sup>th</sup> day of October 2025**

**S WILSON**

**For the Registrar**