O/1108/25

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NOS. 3159375, 3159384, 3159388 AND 3159380
IN THE NAME OF SYNERGY PROJECT MANAGEMENT LLC

AND THE APPLICATIONS FOR REVOCATION THEREOF
UNDER NOS. 507552, 507553, 507554 AND 507556
BY GHOST L.L.C

BACKGROUND AND PLEADINGS

1. There are four actions involved in these consolidated proceedings,[1] namely four applications for the revocation of four trade mark registrations owned by Synergy Project Management LLC ("Synergy")[2], brought by GHOST L.L.C ("Ghost").

2. On 16 July 2024, Ghost filed four applications seeking to revoke Synergy's trade marks as set out below on the grounds of non-use under section 46(1)(a) of the Act.

GHOST
UK trade mark registration number 3159375
Filing date: 13 April 2016
Registration date: 5 August 2016
Registered in Classes 10, 32 and 34
(The '375 mark); and

GHOST BEVERAGES
UK trade mark registration number 3159384
Filing date: 13 April 2016
Registration date: 5 August 2016
Registered in Class 32
(The '384 mark); and

UK trade mark registration number 3159388
Filing date: 13 April 2016

[1] In a letter dated 1 October 2024, the Registry confirmed to the parties that having considered the nature of the claims in the individual cases, it considered it appropriate to consolidate the proceedings.
[2] I note that a Form TM16 was received on 17 April 2023 requesting the recordal of a change of ownership of each of the marks from Ghost Herbal Concepts Ltd to Vapes-Bars Ltd. A further Form TM16 was received on 21 September 2023, requesting the recordal of a subsequent change of ownership of each of the marks from Vapes-Bars Ltd to Synergy Project Management LLC, the details of which have been recorded accordingly in these consolidated proceedings.

Registration date: 5 August 2016
Registered in Classes 10, 32 and 34
(The '388 mark); and

UK trade mark registration number 3159380
Filing date: 13 April 2016
Registration date: 5 August 2016
Registered in Class 32
(The '380 mark).

3. Under section 46(1)(a) of the Act, Ghost claims non-use of the marks in respect of all of the goods registered under each mark in the five year period following the date on which the marks were registered, i.e. 6 August 2016 to 5 August 2021, with an effective date of revocation of 6 August 2021, being the identical period for all four marks.

4. Synergy filed counterstatements defending the use of each of its marks. It submits that each mark has been put to genuine use for all of the goods that it is registered for, either by the proprietor, or with its consent, in the 5 years following its registration.

5. Only Synergy elected to file evidence. Neither party requested a hearing; both parties filed written submissions in lieu of a hearing, which will be referred to as and where appropriate during this decision. This decision is taken following careful consideration of the papers on file.

6. In these proceedings, Ghost is represented by Rheia IP Limited, and Synergy is represented by Forbes Solicitors LLP.[3]

[3] Form TM33 appointing Forbes Solicitors LLP as representatives to Synergy in each of these proceedings was filed on 7 August 2024, the details of which have been recorded accordingly.

EVIDENCE

7. Synergy filed evidence by way of a witness statement dated 2 December 2024 in the name of Natalia Gosciniak, alongside ten exhibits, labelled NG1 to NG10. Natalia Gosciniak is the Head of Marketing at Synergy, as well as carrying out marketing activities for Vapes-Bars Ltd ("VBL"), being the former owner of the trade marks,[4] a position she has held since 2019.

8. I note that alongside the witness statement and accompanying exhibits, "written submissions" were filed. These submissions clarify that during the preparation of the evidence of fact in support of the defence, Synergy became aware that use of each of its trade marks had taken place outside of the relevant period, but before the date on which Ghost filed its applications for revocation. As such, Synergy states that it relies upon section 46(3) of the Act in support of its defence. I will address this accordingly later in the decision.

9. I have read and considered all of the evidence and I will refer to the relevant parts at the appropriate points in the decision.

DECISION

10. 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.

Section 46

11. Section 46 of the Act states:

[4] See footnote 2.

“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 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".

12. As noted previously, the relevant period for assessing whether there has been genuine use of each of Synergy's marks under section 46(1)(a) is 6 August 2016 to 5 August 2021. As the marks are all UKTMs, the relevant territory in which use must be shown is the UK.

13. As outlined in paragraph 8 of this decision, Synergy has confirmed that use of each of its trade marks has taken place outside of the relevant period and therefore genuine use of the mark between 6 August 2016 to 5 August 2021 has not been demonstrated.

14. However, by virtue of section 46(3) of the Act, commencement or resumption of use after the expiry of the five year period and before the applications for revocation were made will be sufficient to avoid revocation of the marks under section 46(1)(a) provided that such use is deemed to be genuine use.[5] This will be the case even where the evidence in relation to the earlier period is deemed insufficient. The applications for revocation were filed on 16 July 2024. Having regard to section 46(3),

[5] Provided that such commencement or resumption of use did not take place within the three months before the date of the application for revocation, unless the proprietor had begun making preparations for use before it became aware that there might be an application for revocation

I shall now consider whether the evidence is sufficient to show that the marks have been put to genuine use.

15. 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]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(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].

16. Section 100 of the Act states that:

> "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".

Evidence of use

17. In its notices of defence, Synergy has claimed that use has been made of all of the goods for which the marks are registered. I must consider whether, or the extent to which, the evidence shows genuine use of the marks in relation to the goods covered.

18. I note that the goods as registered under class 32 are identical to all four marks, while the '375 mark and the '388 mark have also been registered for identical goods in classes 10 and 34:

Class 10

Vaporisers [medical devices]; personal vaporisers [for medical purposes]; oral vaporisers [for medical purposes].

Class 32

Non-alcoholic beverages; energy drinks; isotonic beverages; juices; drinking water; aerated water; cordials; soft drinks; flavoured carbonated beverages; fruit flavoured beverages.

Class 34

Personal vaporisers and electronic cigarettes, and flavouring and solutions therefor; cigarettes, cigars, cigarillos and other ready for use smoking articles; articles for smokers.

19. I note the following from Synergy's evidence:

- Synergy exclusively licences the use of its trade marks to the former owner VBL. VBL is connected to Synergy by a shared management structure.[6]
- VBL is a manufacturer, retailer and distributor of electronic cigarettes and vaping products across the UK and internationally, and has been active in the vaping industry since 2021. Its most popular sub-brand is its "Ghost" range of electronic cigarettes, which has been in use since 2021.[7]
- The "Ghost Beverages" trade marks were acquired to support plans to introduce a range of non-alcoholic beverages that pair well with the vaping products.[8]
- In addition to website sales, "Ghost" products may be purchased in the UK at various retail stores, including Morrisons, WHSmith, Asda and Tesco, bp and

[6] See the witness statement of Natalia Gosciniak, at [6 and 14].
[7] Ibid, at [7 – 9].
[8] Ibid, at [10 and 41].

Shell, Nisa, Londis, Booker and Premier, and specialist vaping retailer OVAPE.[9]

- The "Ghost" range of products also benefit from strategic distribution agreements with EURO GARAGES, Phoenix 2 Retail and Valli Forecourts.[10]

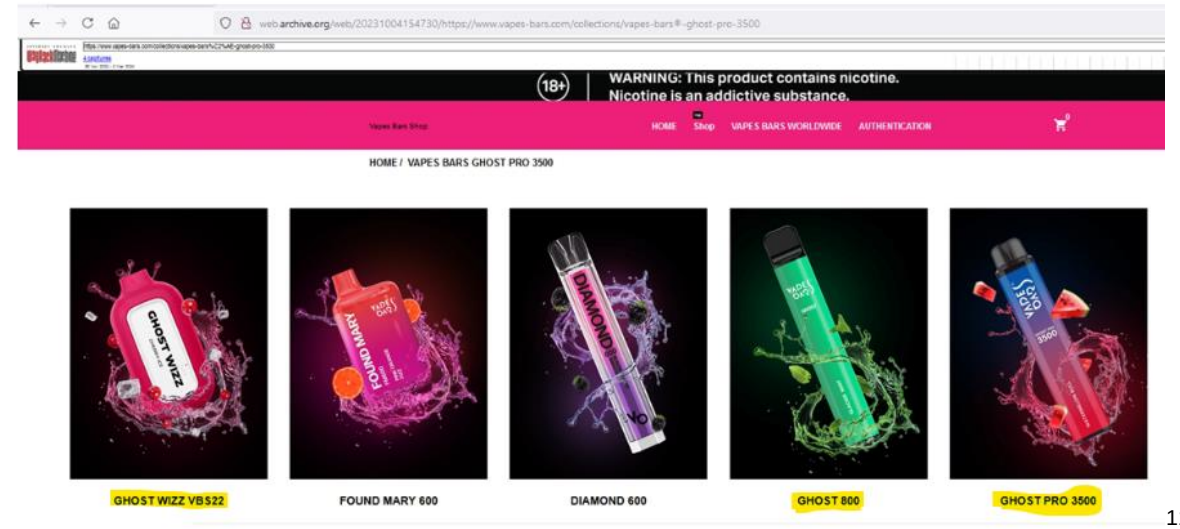
20. The evidence shows use of the word GHOST and Ghost in plain text within the exhibits, for example on invoices and in product descriptions. Further examples show the mark as provided in the promotion of the goods, including the exhibition photos in exhibit NG6 and in social media campaigns (exhibit NG8):

Exhibit NG6

Exhibit NG8

[9] Witness statement of Natalia Gosciniak, at [21].
[10] Ibid, at [22].

21. Exhibit NG1 provides Wayback Machine screenshots of the products and collections pages of the VBL website, indicating the products available as of 7 December 2023; NG2 provides Wayback Machine screenshots of the products being offered for sale via other online retail stores with a .co.uk domain, with prices shown in pounds sterling:



11

12

[11] Page 16 of NG1.
[12] Page 21 of exhibit NG2.

22. I note that the exhibits also show various vaping devices displaying the word "GHOST" in conjunction with other elements, such as "GHOST 800"; "GHOST-WIZZ"; "GHOST PRO 3500"; and "GHOST CLICK & POD", as per the above examples, as well as under the description of the goods in the invoices found at exhibit NG3 and the turnover spreadsheet at NG4. As outlined in *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12,[13] the use of the mark encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark. I consider that the word "GHOST" would be seen as the 'house' mark, with the additional words "WIZZ", "CLICK & POD", "800" and "PRO 800" being seen as either a secondary mark or as a non-distinctive element which in either case makes no material difference to the distinctiveness of the mark as registered. The word "GHOST" within the composite marks plays an independent, dominant role which continues to indicate origin and may be relied upon by Synergy.

23. Ghost submits that there is no evidence of use of the GHOST (stylised) mark (the '388 mark) at any time for the class 34 goods.[14] At point 21 of the written submissions in lieu, Synergy accepts that the Ghost figurative mark has not been displayed on its products/packaging in its registered form. However, relying on *Walton*,[15] it submits that the objective of section 46(2) is "to allow the proprietor of the mark, in the commercial exploitation of the sign, to make variations in the sign, which, without altering its distinctive character, enable it to be better adapted to the marketing and promotion of the goods or services concerned." Synergy continues that whilst the "H" element of the '388 mark is slightly stylised, the overall impression created by the mark is the word "GHOST". I accept that, as outlined in *Lactalis McLelland Limited v Arla Foods AMBA,* Case O/265/22,[16] the use of the mark in a different form may also constitute use of the mark as registered. A word mark registered in standard characters may be considered to cover the use of the same word presented in any normal font. I consider that the presentation of the "H" element of the '388 mark makes a lesser contribution within the word as a whole, and that as per *Lactalis*, the

[13] At [31 – 35].
[14] Written submissions in lieu, at [9].
[15] *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch).
[16] At [13 – 15]. See also *Hyphen GmbH v EUIPO*, Case T-146/15, at [28-32].

presentation of the mark does not alter its distinctive character which lies in the word GHOST. I therefore consider that use of the plain word "GHOST" within the evidence may also be relied upon in relation to the '388 mark.

24. Exhibit NG5 provides what is said to be "a comprehensive breakdown of sales performance over various periods" for the key devices sold under the Ghost brand (as clarified earlier under paragraph 22 of this decision), which is reproduced below:

Period	DEVICE	Pcs	Per pc Price	SALES Values
Oct-2022 to Oct-2023	GHOST 800	1,222,538	£ 2.29	£ 2,799,612.02
Jan-2023 to Feb-2024	GHOST-WIZZ	300,940	£ 1.97	£ 592,851.80
Jul-2023 to Jan-2024	GHOST CLICK & POD	9,400	£ 0.46	£ 4,324.00
				0
	Total Sales	1,222,538		£ 3,396,787.82
	Retailer	21%		£ 713,325.44
	Distribution	79%		£ 2,683,462.38

25. Point 28 of the witness statement confirms that the sales figures shown in the above table are pertinent to the UK market. The figures are corroborated through the selection of five invoices provided in exhibit NG3. Point 23 of the witness statement states that these invoices were issued by Vapes-Bars to its stockists between 2022 and 2024 in connection with the Ghost brand and demonstrates the volume of items that are typically sold in those transactions. As illustrated below, the full recipient address has been redacted on each of the invoices (original emphasis as filed by Synergy). The invoices are dated between 17 August 2022 and 19 October 2023, they are all directed to the UK, and the total sales figures are in pounds sterling. I note that although one of the invoices include goods which do not come under the GHOST product line, such as the FOUND MARY brand, while another refers to WIZZ rather than GHOST WIZZ, sales figures for the GHOST devices are still high. In the following example, for emphasis, I have highlighted in yellow what I consider to be the most pertinent information:

TAX INVOICE

[redacted]
UNITED KINGDOM

Invoice Date
28 Jul 2023

Invoice Number
INV-6342

Reference
PO1506 GHOST- 156360

VAT Number
386560267

Vapes-Bars LTD
80-83 Long Lane
London
EC1A 9ET
United Kingdom
Phone: +44 207 692 8713
Email:
operations@vapes-bars.com
Reg No. 13540609
Vat No. 386 5602 67
EORI: GB386560267000

Description	Quantity	Unit Price	VAT	Amount GBP
VB Ghost, 1.8% Nic - Glacier Mint	28000.00	2.35	20%	65,800.00
VB Ghost, 1.8% Nic - Rainbow	11200.00	2.35	20%	26,320.00
VB Ghost, 1.8% Nic - Watermelon Ice	10000.00	2.35	20%	23,500.00
VB Ghost, 1.8% Nic - Banana Ice	11200.00	2.35	20%	26,320.00
VB Ghost, 1.8% Nic - Blue Bull	9200.00	2.35	20%	21,620.00
VBs Ghost, 1.8% Nic -Papaya Pineapple Mango	10000.00	2.35	20%	23,500.00
VB Ghost, 1.8% Nic - Raspberry Grapefruit Orange	8800.00	2.35	20%	20,680.00
VB Ghost, 1.8% Nic - Cola Ice	21600.00	2.35	20%	50,760.00
VB Ghost, 1.8% Nic - Strawberry Lime	19160.00	2.35	20%	45,026.00
VB Ghost, 1.8% Nic - Juicy Grape Berries	27200.00	2.35	20%	63,920.00
			Subtotal	367,446.00
			TOTAL VAT 20%	73,489.20
			TOTAL GBP	440,935.20
			Less Amount Paid	426,151.20
			Less Amount Credited	14,784.00
			AMOUNT DUE GBP	0.00

Due Date: 10 Sep 2023
BANKING DETAILS - Currency: GBP
Account Name: Vapes-Bars Ltd
Account Number: [redacted]
Sort Code: [redacted]
IBAN: [redacted]
Swift Code: [redacted]

26. I also note that at point 34 of the witness statement, it states that in addition to the overall marketing spend which includes international activities, Synergy invested approximately GBP 369,934.06 in various marketing initiatives across the UK between 2023 and 2024. Exhibit NG9 shows screenshots of reviews received in connection with the Ghost brand, derived from various UK websites.

Assessment on genuine use

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

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

28. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself. It is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof: see *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T- 415/09, paragraph 53. However, where there is no use of the mark in respect of the goods as registered, it follows there has been no genuine use of the mark: *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd,* Case BL 0/404/13.[17]

29. Case law does not specify particular types of documentation that must be adduced in evidence. When considering the evidence, I am entitled "to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive": *PLYMOUTH LIFE CENTRE*, BL O/236/13, paragraph 22.

30. I will begin by assessing the evidence in relation to the goods for which use has been claimed under class 32, as is relied upon under all four marks.

[17] At [22].

31. I note that in the witness statement, Ms Gosciniak states that in or around October 2023, a series of product designs for use in the Ghost Beverages branding were prepared.[18] These designs are illustrated in exhibit NG10, for example:

And

32. I note that in the written submissions in lieu of a hearing, Synergy accepts that it has not used the marks in class 32.[19] Synergy did not base its defence on "proper reasons for non-use", and instead claimed that the marks had been put to genuine use for *all* of the registered goods for which revocation is sought, as indicated at box

[18] At [40].
[19] At [22].

8 on the Form TM8(N). However, this is countered in the written submissions. Paragraphs 22 to 25 of those submissions claim that the evidence demonstrates that there are proper reasons for non-use of its "*Non-alcoholic beverages; energy drinks; flavoured carbonated beverages".* In the witness statement, Ms Gosciniak states that following the assignment of the marks from VBL to Synergy in September 2023, it provided "the first real opportunity" to explore the commercial potential of the marks. She further states that the intent to launch the non-alcoholic beverages range was timed around Halloween 2024, to capitalize on the season and thematic synergy with the "Ghost" brand. However, in spite of the advanced negotiations with a UK-based distributor during September 2023, efforts were significantly disrupted by an intellectual property dispute with another company, which was not resolved until September 2024, leaving limited bandwidth to focus on developing the Ghost Beverages brand.[20] In the written submissions, it is submitted that the circumstances amount to "*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*". While the evidence indicates that the proprietor had begun making preparations for use of the marks in relation to the class 32 goods before it became aware that there might be an application for revocation, it has not provided any details of either the '"advanced negotiations" with the UK-based distributor, nor of the nature of the intellectual property dispute with the other company. Although I accept that a dispute with another company would be likely to cause some disruption to the launch of the range of beverages under the marks, without evidence to the contrary, I consider that it has not been sufficiently established that the reasons given for non-use were entirely independent of the will of the proprietor. I further note the written submissions of Ghost in this respect, and in particular to the references to *Naazeen Investments Ltd v OHIM*, Case T-250/1, at [70 - 74], which I agree are somewhat analogous with the case before me.[21]

33. There has been no real commercial exploitation of the marks, in the course of trade, sufficient to create or maintain a market for the class 32 goods in the UK. In my view, neither has Synergy established any adequately-particularised proper

[20] See, in particular, Points 41 – 44.
[21] See points 13 to 21 of the written submissions in lieu of a hearing dated 14 March 2025.

reasons for non-use of any of the marks in relation to "*Non-alcoholic beverages; energy drinks; isotonic beverages; juices; drinking water; aerated water; cordials; soft drinks; flavoured carbonated beverages; fruit flavoured beverages".* Therefore the criteria to avoid revocation of the marks under section 46(1)(a) by virtue of section 46(3) has not been met. Consequently, the applications for revocation in relation to the '384 and '380 marks succeed in their entirety, and in part in relation to the '375 and '388 marks, i.e. for the class 32 goods.

34. I now turn to the goods for which revocation is sought under class 10 of the '375 and '388 marks, being "*Vaporisers [medical devices]; personal vaporisers [for medical purposes]; oral vaporisers [for medical purposes]."* At point 17 of its written submissions in lieu of a hearing, Synergy "accepts that it has not been able to establish genuine use of the Ghost word mark and the Ghost Figurative mark in class 10 in its entirety". Having considered the evidence, I find no evidence of use of vaporisers which are specifically categorised as being medical devices, with the exhibits indicating personal vaping products of a type which are proper to class 34.[22] As such, the applications for revocation in relation to class 10 of the '375 and '388 marks also succeed.

35. Also at point 17 of the written submissions in lieu, Synergy accepts that it has not been able to establish genuine use of the Ghost word mark and the Ghost Figurative mark in class 34 for "*cigarettes, cigars, cigarillos and other ready for use smoking articles; articles for smokers."* For the avoidance of doubt, neither have I found any evidence of use of the earlier marks in relation to such goods. Given these findings, alongside the admission by Synergy, the applications for revocation by Ghost succeed to this extent. I will now consider whether the opponent has provided sufficient evidence of genuine use of the '375 and '388 marks in relation to the remaining "*Personal vaporisers and electronic cigarettes, and flavouring and solutions therefor"* in class 34.

[22] Although the Nice Classification is purely administrative,[22] I note that in *Altecnic Ltd's Trade Mark Application*, the Court of Appeal ("COA") decided that "the registrar is entitled to treat the class number in the application as relevant to the interpretation of the scope of the application, for example, in the case of an ambiguity in the list of the specification of goods."[22]

36. I remind myself that it is not for this Tribunal to assess economic success or large-scale commercial use, and that there is no *de minimis* rule - even minimal use may qualify as genuine use if it is use warranted, in the economic sector concerned, to maintain or create market shares for the relevant goods.[23] Conversely, even proven commercial use may not be sufficient for a finding of genuine use.[24]

37. The products being offered for sale bearing the "GHOST" trade mark as shown within the exhibits clearly relate to vaping devices and flavoured liquids therefor. The description of the goods on the invoices provided further corroborate this, as does the table of sales performance (exhibit NG5). There is also evidence of the mark in relation to various vaping products in the exhibition photos and the social media campaigns, albeit that not all this evidence is directly related to the UK. I have not been provided with details of the UK market share percentage enjoyed by Synergy in what I would expect to be a multi-billion pound "vape" market. However, as already mentioned in paragraph 26, the UK marketing spend during 2023-2024 was a not insubstantial £369,934.06. I further consider the UK sales figures of the goods at issue to be impressive, with turnover figures of £3,396.787.28 between October 2022 to January 2024 for three of the GHOST vaping product lines.[25]

38. I have considered the overall picture presented by the evidence in relation to "*Personal vaporisers and electronic cigarettes, and flavouring and solutions therefor"* in class 34. In my view, Synergy have done enough for me to find evidence of commencement or resumption of use after the expiry of the five year period but prior to the applications for revocation of the '375 and '388 marks in relation to these goods. As such, the applications for revocation under section 46(1)(a) fail to this extent.

CONCLUSION

Subject to any successful appeal:

[23] *Naazneen Investments Ltd v OHIM*, Case T-250/13 at [49].
[24] At [115(8)].
[25] At [25-26] of the witness statement.

39. The applications for revocation of UK00003159384 and UK00003159380 succeed in their entirety. The registrations are revoked in full, with effect from the earliest date requested, being 6 August 2021 for both registrations.

40. The applications for revocation of UK00003159375 and UK00003159388 have been partially successful. The registrations are revoked for the full specifications in classes 10 and 32, and for "*cigarettes, cigars, cigarillos and other ready for use smoking articles; articles for smokers"* in class 34. The effective date is from the earliest date requested, being 6 August 2021 for both registrations.

41. With regard to the remaining goods in class 34, the applications for revocation of UK00003159375 and UK00003159388 under section 46(1)(a) have failed. By virtue of section 46(3), these trade marks remain registered in class 34 for "*Personal vaporisers and electronic cigarettes, and flavouring and solutions therefor"* only.

COSTS

42. In these consolidated proceedings, both parties have enjoyed a share of success, with the greater part going to the cancellation applicant, who is, in principle, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice ("TPN") 1/2023. I have made a slight reduction to the costs to reflect the partial extent of the success, taking into account that the content of the individual applications were largely the same and that one set of submissions were made addressing all four marks. As Ghost has been successful to varying degrees in all four of its applications for the revocation of the earlier marks, it is entitled to the reimbursement of the official fees in full.

43. Taking all of the above into consideration, and applying the guidance in the TPN, I consider the following to be fair:

Official fee for filing 4 x applications for revocation @ £200 each:	£800
Preparing the applications for revocation and considering the counterstatements:	£400

Considering the other side's evidence,
and preparing written submissions in lieu of a hearing: £600

Total: **£1800**

44. I therefore order Synergy Project Management LLC to pay GHOST L.L.C the sum of £1800. 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 26th day of November 2025

Suzanne Hitchings
For the Registrar,
the Comptroller-General