

**O/0318/25**

**TRADE MARKS ACT 1994**

**CONSOLIDATED PROCEEDINGS**

**IN THE MATTER OF INTERNATIONAL REGISTRATION**

**NO. WO0000001669464**

**DESIGNATING THE UK**

**BY SSE IP, LLC**

**AND**

**IN THE MATTER OF OPPOSITION THERETO**

**UNDER NO. OP000438391**

**BY DARREN ISAAC**

**AND**

**IN THE MATTER OF**

**TRADE MARK REGISTRATION NOS.**

**UK00003039275 AND UK00003055919**

**IN THE NAME OF**

**DARREN ISAAC**

**AND APPLICATIONS FOR REVOCATION FOR NON-USE**

**UNDER NOS.**

**CA000505992 AND CA000505993**

**BY SSE IP, LLC**

## Background and pleadings

### Opposition

1. SSE IP, LLC ("Party B") is the holder of the international registration ("the IR") shown below. The IR was registered on 11 March 2022. With effect from the same date, the holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol of the Madrid Agreement.

No. WO0000001669464

**SMOKESHACK**

2. The holder seeks protection of the IR in relation to the following goods:

Class 30      Hamburger sandwiches.

3. The IR was published for opposition purposes on 23 December 2022 and Darren Isaac ("Party A") opposed the IR on 3 January 2023 on the basis of section 5(1) of the Trade Marks Act 1994 ("the Act").
4. The opponent relies upon the mark detailed below.

UK00003055919, filed on 16 May 2014, registered on 24 October 2014.

**SMOKE SHACK**

5. The opponent opposes the holder's goods and is reliant upon all of its goods and services as follows:<sup>1</sup>

- Class 29    Dried meat; Meat paste; Meat, fish poultry and game; Meat stocks; Cooked meat dishes; Food pastes made from meat; Fresh meat; Frozen meat products; Meat conserves; Meat gelatines; Pie fillings of meat; Prepared dishes consisting principally of meat; Prepared meals made from meat [meat predominating]; Prepared meat dishes; Quenelles [meat]; Sausage meat; Steaks of meat; Turkey meat; Meat preserves; Meat [preserved]; Meat extracts; Meat jellies; Meat, tinned [canned (Am.)]; Meat, preserved.
- Class 30    Barbecue sauce; Cheese sauce; Chili sauce; Hot sauce; Picante sauce; Pizza sauce; Spaghetti sauce; Tartar sauce; Teriyaki sauce; Brown sauce; Concentrated sauce; Dried sauce in powder form; Pesto sauce; Sauce (tomato-); Sauce [edible]; Sauce mixes; Sauce powder; Sauce powders; Sweet and sour sauce; Tartare sauce; Tomato sauce; Sauce (Tomato -); Ketchup [sauce]; Pesto [sauce]; Meal; Flavourings for snack foods [other than essential oils]; Foodstuffs in the form of snack foods; Meat pies [prepared]; Sauces for barbecued meat; Seasoned coating for meat, fish, poultry; Steamed buns stuffed with minced meat (niku-manjuh); Crackers flavoured with meat; Filled yeast dough with fillings consisting of meat; Flavourings made from meat; Frozen pastry stuffed with meat; Frozen pastry stuffed with meat and vegetables; Pastries consisting of vegetables and meat; Pies containing meat; Sandwiches containing meat;

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<sup>1</sup> The opponent ticked "Some goods and services" in response to Question 1 in Section A of its Form TM7, but it then listed "CLASSES 29, 30, 40, 43" which are all the classes for which Party A holds a registration and therefore I take it to be reliant upon all of its goods and services.

Poultry and game meat pies; Meat gravies; Gravies (Meat -);  
Meat pies; Pies (Meat-).

Class 40    Smoking of meat.

Class 43    Restaurant reservation services; Restaurant services;  
Carvery restaurant services; Fast food restaurant services;  
Catering for the provision of food and beverages; Catering of  
food and drinks; Catering services; Catering services for the  
provision of food and drink; Catering services for the  
provision of food; Catering (Food and drink); Mobile catering  
services; Cafe services.

6. Under section 5(1), Party A claims that the marks are identical, and the goods and services are identical.

7. Party B filed a Form TM8 and counterstatement denying the claims made.

#### Revocation applications

#### CA000505992

8. On 11 April 2023, Party B filed an application to revoke Party A's earlier mark on grounds of non-use. The application for revocation is directed against all of Party A's goods and services. Details of Party A's mark are below.

9. Trade mark registration No UK00003039275,<sup>2</sup> a series of two. The trade mark was filed on 24 January 2014 and completed its registration procedure on 2 May 2014.

1 of 2

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<sup>2</sup> The mark in question expired on 25 January 2024, but that does not discharge me from my obligation to make a decision on this revocation application since at the time of filing of the opposition in object (i.e. 3 January 2023) Party A's earlier mark was still valid.



2 of 2



This mark is registered for the same goods and services as Party A's UK00003055919 mark as detailed at paragraph 5.

10. Revocation of the contested mark is sought on grounds of non-use under sections 46(1)(a) and (b) of the Act.
11. Revocation is sought under section 46(1)(a) as a result of alleged non-use during the 5-year time period immediately following the date of completion of the registration procedure i.e. 3 May 2014 to 2 May 2019 ("the first relevant period in respect of the UK00003039275 mark"). On this basis Party B requests revocation of the contested mark with effect from 3 May 2019.

CA000505993

12. On 11 April 2023, Party B filed an application to revoke Party A's UK00003055919 mark as detailed at paragraphs 4 and 5. The application for revocation is directed against all of Party A's goods and services.

13. Revocation of the contested mark is sought on grounds of non-use under sections 46(1)(a) and (b) of the Act.

14. Revocation is sought under section 46(1)(a) as a result of alleged non-use during the 5-year time period immediately following the date of completion of the registration procedure i.e. 25 October 2014 to 24 October 2019 (“the first relevant period in respect of the UK00003055919 mark”). On this basis, Party B requests revocation of the contested mark with effect from 25 October 2019.

#### Consolidated proceedings

15. For both revocation applications, as an alternative to the section 46(1)(a) claims, revocation is sought under section 46(1)(b) as a result of alleged non-use for the following 5-year periods:

a) From 10 March 2017 to 9 March 2022, with effect from 10 March 2022 (“the second relevant period”), claiming an effective date of revocation of 10 March 2022.

b) From 11 April 2018 to 10 April 2023, with effect from 11 April 2023 (“the third relevant period”), claiming an effective date of revocation of 11 April 2023.

16. Party A filed counterstatements in response to both revocation applications denying the claims made in respect of the following goods and services:

“CLASS 29 / 30

Sauces

Prepared meals, snack foods

CLASS 43

Takeaway services”

17. On 18 October 2023, the Tribunal wrote to the parties informing them of the consolidation of the opposition case and the revocation applications.

18. Party A is unrepresented, and Party B is represented by Venner Shipley LLP.

19. Both parties filed evidence. Neither party asked to be heard, but Party B filed written submissions in lieu of a hearing. Following a careful perusal of these papers, I will refer to the evidence and submissions as necessary in my decisions.

## **Evidence**

20. Party A's evidence consists of the witness statement of Darren Michael Isaac, the owner of the marks that are subject to revocation proceedings, signed and dated 16 April 2024 (that being the version of Mr Isaac's witness statement that was admitted). The witness statement is accompanied by three exhibits (B-D). The witness statement is referenced as Exhibit A.

21. Party B's evidence consists of the witness statement of Yoann Rousseau, a Chartered UK Trade Mark Attorney at Venner Shipley LLP, signed and dated 8 April 2024. The witness statement is accompanied by one exhibit (YR1).

22. On 27 May 2024, Party A filed submissions in the form of two emails in reply to Party B's evidence.

## **The law in relation to revocation and genuine use**

23. Section 46 of the Act states that:

“(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.

[...]



(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 existed at an earlier date, that date.”

24. 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.”

25. 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.

26. 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 C40/01 *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 Marken 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].

27. In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander QC (as he then was) as the Appointed Person stated that:

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

fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

28. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, Mr Geoffrey Hobbs QC (as he then was) as the Appointed Person stated that:

“21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller-General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35: ‘[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.’

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not ‘show’ (per Section 100 of the Act) with regard to the

actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use.”

29. What I take from this case law is that there is no requirement to produce any specific form of evidence, but that I must consider what the evidence as a whole shows me and whether on this basis I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the mark.

### Evidence of use

30. I will consider both marks that are subject to the revocation applications in my assessment of genuine use.

31. In his witness statement, Mr Isaac says, “The "Smoke Shack" brand was created in 2014, possibly earlier, as a business venture for BBQ and smokehouse themed restaurants and food products. The brand started to operate commercially in 2015-2016, with pilot restaurants in Milton Keynes and Bedford and its own branded sauces and takeaway products.”

32. Mr Isaac goes on to say, “The intention for the brand is to roll out a chain of restaurants and either create or license our own food products and dining experiences. We are currently in lengthy talks with capital funders/investors to create products and open new restaurants.” Given that this is a statement of intended future activity made in April 2024, such activity falls outside of the relevant periods.

33. Exhibit A being his witness statement, Mr Isaac describes Exhibit B as “The brand identity and its application to the property design, merchandise and the sauce products, used on site and sold to customers.”

34. This exhibit is undated and shows the UK00003039275 mark and what I consider to be artist’s impressions of what the UK00003039275 mark would

be like in use. The exhibit shows a restaurant building, a food truck, sauce bottles, a menu background, meal vouchers, a T-shirt and an apron (see below). The reason that I take the view that these are impressions is that the footer of the exhibit has on the left-hand side, a logo, “TFA” along with “Building better brands”, and on the right-hand side, “Smoke Shake” with “Restaurant Chain Branding & Collateral” underneath. This is indicative of a design agency having been commissioned to mock up branding ideas for Party A.



35. As these are impressions, this exhibit does not constitute evidence of the merchandise and sauce products featured as having been “used on site and sold to customers.”
36. Exhibit C is “Photographic evidence of the Stony Stratford restaurant pilot, our online Google presence, an awards ceremony for the brand's success and the physical branded sauce products in use.” The photographs are undated.
37. In respect of the “Stony Stratford restaurant pilot”, there is a photograph of the exterior of a restaurant with a banner featuring the UK00003039275 mark with the word “OPENING” next to it, but it is not possible to see when the restaurant was due to open. Given that it is referred to as a “pilot” and the

photograph shows the restaurant prior to opening its doors to the paying public and given that no information has been supplied in terms of revenue, invoices, or numbers of patrons, we do not know whether the restaurant in question went on to open fully and move beyond the pilot stage.

38. I take the “online Google presence” evidence to be snippet featuring the same photograph referred to above with the heading “Smoke Shack (Stony Stratford)” with the sub-headings “All”, “Menu”, “Food & Drink”, “Vibe” and “Burger”.

39. With the “awards ceremony” photograph, it features four men, one of whom is holding a certificate with a logo that corresponds to the award logos in the background, but it is not possible to make out which awards ceremony it was, when it took place, or whether the award was related to any activity under the “SMOKE SHACK” brand.

40. The final photograph in this exhibit shows some branded sauce bottles on a table with a burger and some chips and an empty glass as shown below.



41. The logo is blurred, but in outline it does seem to correspond to the UK00003039275 mark.



42. According to Mr Isaac, Exhibit D is “The Smoke Shack menu showing branded product names and application across various food types, included branded burger names.” However, this is clearly a menu template that was never handed to a customer because all the prices say “£TBC”. Furthermore, while there are various menu items that play on the word “shack”, there is nothing to show what the name of the establishment is and hence no specific “SMOKE SHACK” branding on the menu.

#### Form of the mark

43. To the extent to which the marks could be said to be in use to any extent at all (and I note that none of the evidence is dated and hence none of it can be confirmed as being from the relevant periods), the UK00003039275 mark is shown as registered on a banner on the pilot restaurant building and, albeit blurred, in the photograph of the sauce bottles. Again, it is blurred, but the restaurant sign in the “Google presence” photograph is what appears to be a gold-on-black version which would constitute normal and fair use of the black-and-white second in a series of two marks registered as UK00003039275.

44. The word only UK00003055919 mark, “SMOKE SHACK”, does not appear separately, but if I was to consider the words alone as incorporated into the UK00003039275 mark, the addition of the stylisation and the colours and the smaller strapline “BBQ GRILL & SMOKEHOUSE” does not alter their distinctive character.

## Sufficient use

45. 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.<sup>3</sup>
46. I remind myself that, as per section 100 of the Act and the *Awareness Limited* case, the burden lies on the opponent to prove use.
47. Party A has failed to put forward any evidence of any revenue accruing from its use of its marks, hence there is no breakdown of sales supplied, nor are there any invoices offered in evidence. Furthermore, there is no evidence of any marketing expenditure, nor is there any information as to market share.
48. None of the evidence is dated and hence we cannot know whether any of it dates from the relevant periods.
49. The undated Exhibit B, given that it consists of what I consider to be artist's impressions of what the UK00003039275 mark would be like in use, does not constitute evidence of the merchandise and sauce products featured as having been "used on site and sold to customers."
50. Mr Isaac says that his brand "started to operate commercially in 2015-2016, with pilot restaurants in Milton Keynes and Bedford" and offers an undated photograph of the "Stony Stratford restaurant pilot". This photograph is of the exterior of a restaurant with a banner featuring the UK00003039275 mark with the word "OPENING" next to it, but it is not possible to see when the restaurant was due to open. Given that it is referred to as a "pilot" and the photograph shows the restaurant prior to opening its doors to the paying public and given that no information has been supplied in terms of revenue, invoices, or numbers of patrons, we do not know whether the restaurant in question went on to open fully and move beyond the pilot stage.

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<sup>3</sup> *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

51. In Party A's submissions in the form of two emails on 27 May 2024 in reply to Party B's evidence, Mr Isaac says that he "spent five years creating and building a food and restaurant brand that had investment of £100,000. Though the trading restaurant business had to be closed due to disagreements between management, I was always the personal owner and creator of the brand." However, we do not know which five-year period he is referring to nor what form the investment of this alleged sum of money took. I note that these submissions do not have the same standing as the evidence filed with a sworn statement and I hasten to add that in any event I do not consider "disagreements between management" to constitute proper reasons for non-use. Rather, they are a normal part of the day-to-day running of a business.

52. I have looked at the evidential picture as a whole. This includes taking account of Party B's submissions and evidence. I particularly note paragraph 27 of its submissions in lieu of 1 July 2024 as follows:

"With Exhibit B, Party A provided a document which appears to have been prepared by a design and marketing agency called "TFA Building Better Brands". Party B conducted checks into this company, which is either the marketing agency called "The Fuel Agency (UK) Ltd" (with company no. 12532831) or the marketing agency called "TFA Marketing Ltd" (company no. 07074043, which used to be called "The Fuel Agency Ltd"). Party B submits the following:

a. Party B has conducted checks into both of these companies. According to the Register of Companies, both companies only have one director: Mr. Darren Michael Isaac (who is Party A). That information can be found in Exhibit YR1 attached to the Witness statement of Yoann Rousseau (pages 8 to 13 and 27). Therefore, it seems that the document shown at Exhibit B is a document that was produced by a company whose sole director is Party A.

b. Notwithstanding the document found at Exhibit B, this document is what is called a “mock-up”. The document shown at Exhibit B does not show real pictures; it shows computer-generated photomontages that a marketing agency created to present a new design to a client.

...”

53. I further note that Party B found that there was a company, company no. 10202818 with the name Smoke Shack (Stony Stratford) Ltd with a company address in Milton Keynes. Stony Stratford was referred to in the evidence and Milton Keynes was one of the pilot restaurant sites mentioned by Mr Isaac. The company was incorporated on 27 May 2016, with an application to voluntarily strike the company off the Register being made on 9 August 2016, and the company was dissolved on 1 November 2016.
54. Taking all of the above into account, while there may have been said to have been the beginnings of an attempt to create a market for Party A’s goods and services, no dated evidence has been filed to corroborate Mr Isaac’s statement that his brand started to operate commercially in 2015-2016. We have no evidence from Mr Isaac that the Stony Stratford pilot restaurant shown in the photograph ever moved from the pilot phase to fully opening its doors to paying customers, and Party B’s evidence shows that a company using that name was set up in May of 2016 and an application to voluntarily strike it off was made in August 2016.
55. Had further evidence been available to Party A, it was open to it to file such evidence, but it has not done so.
56. I find that the material provided is inconclusive and wholly insufficient to demonstrate genuine use within the relevant periods and therefore Party A has not shown genuine use of its marks for any of the goods and services relied upon.

57. I further note that, even if the evidence in question had been considered as potentially demonstrative of genuine use, there was no evidence of any “sauces” ever having been offered for sale or sold on a standalone basis, nor was there any evidence whatsoever of the marks being used in relation to “prepared meals” or “snack foods”. “Takeaway services” were not shown as being available: the only restaurant services shown were of the dine-in variety.

## CONCLUSION

58. Subject to any appeal, the application for revocation on grounds of non-use against Party A’s registrations, Nos. UK00003039275 and UK00003055919, have been wholly successful with the effective dates of revocation being 3 May 2019 and 25 October 2019 respectively.

59. Party A’s opposition no. OP000438391, filed on 3 January 2023, was reliant upon the mark UK00003055919. This mark having been revoked with effect from 25 October 2019, the opposition case falls away. Party B’s request for protection in the UK for IR no. WO0000001669464 may be granted.

## COSTS

60. As the successful party in these consolidated cases, Party B is entitled to a contribution towards its costs in line with Annex A of Tribunal Practice Notice 2 of 2016, detailed below.

Official fees:	£200 x 2 = £400
Preparing statements and considering the other side’s statements:	£400
Preparing evidence and considering and commenting on the other side's evidence:	£750

Preparing submissions:	£300
<b>Total:</b>	<b>£1850</b>

61. I order Darren Isaac to pay SSE IP, LLC the sum of £1850. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 3<sup>rd</sup> day of April 2025**

**JOHN WILLIAMS**  
**For the Registrar**