

O/616/21

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 3533934
AND THE APPLICATION BY GREE ELECTRIC APPLIANCES, INC. OF ZHUHAI
TO REGISTER THE TRADE MARK**



IN CLASSES 7, 9 AND 11

AND

IN THE MATTER OF OPPOSITION THERETO UNDER NO. 600001589

BY EASYEQUIPMENT LIMITED

Background and pleadings

1. On 16 September 2020 Gree Electric Appliances, Inc. of Zhuhai (“**the Applicant**”)



applied to register the figurative mark “” (“**the contested mark**”) as a UK trade mark in respect of the following goods:¹

Class 7: *Compressors [machines]; compressors for refrigerators; electric kitchen blenders for home use; electric juicers; electric food processors; washing machines for laundry; wringing machines for laundry; dishwashers; vacuum cleaners; electric motors other than for land vehicles; electric coffee grinder; electric meat choppers for home use; food waste disposers.*

Class 9: *Cell phones; interactive touch screen terminals; integrated circuits; data processing apparatus; downloadable applications for cell phones; remote controls for home use; electrical adapters; batteries; capacitors; electric switches; electronic chips; electric sockets; electric wires; electric cables; electric locks; computer software (recorded); face recognition equipment.*

Class 11: *Refrigerators; freezers; air conditioners; ventilation [air-conditioning] installations and apparatus; radiators, electric; laundry dryers, electric; fans [air-conditioning]; air dehumidifiers for home use; air purifying apparatus; extractor hoods for kitchen use; water heaters for the use of washing (gas or electrical heating); electric water heaters; electromagnetic induction cookers for household purposes; electric drinking water dispensers; electric kettles for home use; air humidifiers for home use ; electric rice cookers; air dryers; air sterilizers; electric hair dryers; dish sterilizing cupboard; solar energy water heaters; bathroom air heaters; gas burners; microwave ovens for household purposes; water purification installations; electric egg boilers for household purposes; bread toasters; electric coffee machines; bakers' ovens for household use; electric slow-cookers; lighting installations; ice machines; electric wine cellars.*

¹ The Applicant also sought to register the plain word mark KINGHOME which is subject to separate fast track opposition proceedings brought by the Opponent (no. 600001588).

2. The application was published for opposition purposes in the Trade Marks Journal on 30 October 2020. On 22 January 2021 EasyEquipment Limited (“**the Opponent**”) filed a Form TM7F, Notice of fast track opposition.² The Opponent relies on its UK trade mark No. 2414328, for the plain text word “KING.” The opposition is brought under the fast track procedure, on the basis of section 5(2)(b) of the Trade Marks Act 1994 (“**the Act**”), which concerns similar earlier trade marks, and identical or similar goods. The Opponent relies on all of the goods under its trade mark:

***Class 11:** Installations and appliances for cooking, grilling, roasting, steaming, boiling, heating, refrigerating, freezing; apparatus and equipment for keeping food warm; apparatus and equipment for heating, refrigerating and/or freezing foodstuffs; heated cabinets and units for foodstuffs; refrigerated cabinets and units for foodstuffs; ice making machines; ice making apparatus; bains-marie; kitchen electrical appliances and utensils; battery operated kitchen appliances and utensils; ovens; microwave ovens, microwave cookers; slow cookers; fryers; deep fryers; electric pressure cooking saucepans; casserole pots; griddles; grills; steamers; bread makers; sandwich makers; toasted sandwich makers; toasters; kettles; coffee machines; coffee makers; tea makers; heated trays; heated trolleys; fans; hot plates; electrical apparatus for the preparation of foodstuffs; electrical machines for use in the preparation of food [cooking]; refrigerated counters; refrigerated food counters; display counters having a heated and/or refrigerated display area; refrigerated sales counters; air conditioning equipment, appliances and apparatus all for air conditioning, air freshening, and air purifying apparatus; filtering apparatus and equipment; filters; parts, fittings and accessories for all the foregoing.*

3. The Opponent’s trade mark was filed on 18 February 2006 and registered on 30 July 2010. As the filing date of the Opponent’s trade mark is prior to the date of application for the contested mark, the Opponent’s mark qualifies as an earlier trade mark under section 6(1)(a) of the Act.

² This TM7F is supplemented by a second TM7F, filed on 9 February 2021 with a corrected response to question 3 concerning the goods for which use of the earlier mark is claimed and providing clearer images of evidence Exhibits 5 and 6.

4. Since the Opponent's mark had been registered for more than five years when the contested mark was applied for, it is subject to the use provisions under section 6A of the Act. The Opponent claims use for some of its goods in Class 11, these being:

Refrigerators; freezers; ice machines; and electric wine cellars.

5. Under the fast track procedure, opponents are required to file proof of use with Form TM7F, Notice of opposition, and parties must seek permission ("leave") to file any further evidence. The Opponent duly filed evidence with its notice of opposition filed on 22 January 2021. On 21 May 2021, the Opponent submitted a witness statement and further evidence of use of its mark. On 4 June, the tribunal advised the Opponent that the submissions received on 21 May 2021 were considered to constitute evidence and that leave would need to be sought for this to be admitted to the proceedings. A further deadline of 19 June 2021 was set for the Opponent to either file submissions or to request leave to file the additional evidence. On 16 June 2021, the Opponent sought more time to file its evidence "*in the correct manner.*" On 1 July 2021, the tribunal informed the Opponent that under the fast track procedure that had been chosen in these proceedings, leave must be sought for the filing of further evidence. A deadline of seven days was set for the Opponent to submit leave to file further evidence. The Opponent did not seek leave. As a result, and as confirmed in the tribunal's communication of 1 July 2021, in reaching my decision, I will disregard the Opponent's submitted materials of 21 May 2021 in so far as they contain evidence of fact.

6. In its Form TM7F, the Opponent claims that:

- (i) the Applicant's mark "KINGHOME" would infringe its mark, creating a connection in the mind of the consumer that the goods are connected, come from the same undertaking, or that the parties are commercially linked;
- (ii) on encountering the mark "KINGHOME," consumers would assume the "KING" brand was being used more on refrigeration products for home use;
- (iii) the Applicant will free ride on the Opponent's power of attraction, prestige and reputation. The brand will then be out of the Opponent's control and poor quality or offensive goods would cause damage to their reputation;

(iv) use of the mark “KINGHOME” would dilute the distinctive character and reputation of the Opponent’s mark.

The Opponent’s evidence

7. The Opponent completed the evidence questions in Form TM7F, including on turnover and promotional expenditure. A statement of truth by Mr Michael Shah, Director of EasyEquipment Limited, was made in respect of the information provided. Seven exhibits were filed.

8. **Exhibit 1A** is a web page featuring a refrigerated salad preparation counter described as a “King KST900.HD 2 Door Stainless Steel Refrigerated Salad Prep Counter.” The price of the product is £389.99. **Exhibit 1B** appears to provide additional information about this product, including its technical details. In Exhibit 1B, the trade mark “KING” is seen as a word and also in white letters, on a dark oval shape. There are no dates on the web pages.

9. **Exhibit 2** shows the product seen in Exhibit 1A and 1B, and two further products described as “King KPS900.HD 2 Door Refrigerated Pizza Prep Counter with Granite Top,” priced £399.99 and “King Double Door Refrigerated Counter with Marble Work Top 240 Litre,” priced £429.99. The Opponent states that this exhibit shows different product categories produced under the KING brand. In this respect, the three counters I have mentioned are visible in the document under the category “Pizza and Salad Prep Counters” and I can see links to “Home;” “Refrigeration & Ice Machines;” and “Commercial Fridges.” There are no visible references to the trade mark “KING” in respect of the categories “Refrigeration & Ice Machines” or “Commercial Fridges” and, with the website showing the products being “EasyEquipment”, Exhibit 2 does not show me that the mark “KING” is used in relation to those categories of goods.

10. **Exhibit 3** features an example invoice for the sale of a “King Z3K.HD 3 Door Refrigerated Pizza and Sandwich Prep Counter,” priced £629.99. The date of the invoice is 14 January 2021.

11. **Exhibit 4** is an image of a commercial-type glass-fronted refrigerator, on the front of which is the mark “KING” in white letters.

12. **Exhibit 5** shows the packaging of one of the Opponent’s products which is described as a “King Refrigerated Countertop Display,” and alongside which the words “KING REFRIGERATION” appear in white letters, on a black oval shape.³

13. **Exhibit 6** is described by the Opponent as showing product serial numbers. What can be seen here is an image of packaging for a product of which only the words “Door Bottle Cooler” are visible. The words “KING REFRIGERATION” appear on a black oval shape on the packaging.

14. **Exhibit 7** is a web page showing five different products, including refrigerated food preparation counters, a refrigerated countertop server, a bottle cooler fridge and a refrigerated food display unit. The prices of the products range from £279.99 to £719.99. Each product name begins with “King” and the web page includes the words “Shop by King” and “Find King Equipment at Unbeatable Prices.” The word KING also appears in white letters on a dark oval shape. There is no date on the web page.

The Applicant’s defence

15. In its Form TM8, Notice of defence and counterstatement, the Applicant submits that:

- (i) there is no similarity between the Applicant’s goods in Classes 7 and 9 and the Opponent’s goods in Class 11;
- (ii) there is similarity between some of the Applicant’s goods in Class 11 and the Opponent’s goods, but no likelihood of confusion because the word KING is non-distinctive, being a laudatory term, conveying that the goods are of superior quality. There are 15 pages of registered UK marks in Class 11 that include the word “KING”, indicating that it is of weak distinctive character. Five examples of these marks are provided. The Opponent should not be allowed a monopoly on

³ On 9 February 2021, at the request of the tribunal, clearer images for exhibits 5 and 6 were submitted.

the word KING. Due to their nature and cost, the Applicant's and Opponent's goods are a highly considered purchase. Mere association between the Applicant's and Opponent's marks is not sufficient to result in a likelihood of confusion.

(iii) the Applicant's and Opponent's marks are visually similar to a very low degree due to the distinctive black background in the Applicant's mark and the addition of the word "HOME".

(iv) the Applicant already holds two registered UK trade marks which include "KINGHOME" and are registered in respect of goods including refrigerators.⁴

(v) there are various weaknesses in the Opponent's evidence;

(vi) the reputation of the Opponent's trade mark cannot be taken into account in a fast track opposition.

16. On 22 April 2021, the Applicant requested a decision from the papers and confirmed that it would file no further submissions.

17. Disregarding the evidence of fact from the Opponent's submissions of 21 May 2021 (for the reasons set out at paragraph 5), the Opponent made the following additional arguments in support of its case:

(i) two brands selling similar goods under Class 11 could lead to confusion and possibly the loss of revenue. It would allow the Applicant to free ride on the Opponent's advertising investment;

(ii) in the examples of other marks on the UK register containing the word "KING," this word is secondary – "ICE KING", "POLAR KING" – whereas in the Applicant's, the word "KING" appears first;

(iii) use of "KING HOME" will dilute the distinctive character of the Opponent's mark and this would be seen as passing off in respect of its mark, damaging the Opponent's goodwill.

18. In these proceedings the Applicant is represented by Lysaght, the Opponent has not engaged professional legal representation.

⁴ UK comparable trade marks (IR) no. 801206177 and no. 801206647 were created at the end of the transition period in respect of the Applicant's international trade marks designating the EU.

19. In respect of the UK's departure from the EU, it should be noted that section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the Transition Period. The provisions of the Trade Marks Act 1994 relied on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case law of EU courts.

PROOF OF USE

The relevant legislation

20. Section 6A of the Act, "Raising of relative grounds in opposition proceedings in case of non-use," states:

"(1) This section applies where

- (a) an application for registration of a trade mark has been published,*
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a),*
- (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and*
- (c) the registration procedure for the earlier trade mark was completed before the start of the relevant period.*

(1A) In this section "the relevant period" means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

(a) within the relevant period the earlier trade mark has 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, or

(b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes -

(a) 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

(b) 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.

[...]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

21. Section 100 of the Act makes it clear that the burden of proof falls on the Opponent to show that it has used its mark.

The relevant case law

22. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J summarised the law relating to genuine use as follows:

“114... The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 Ansul BV v Ajax Brandbeveiliging BV [2003] ECR I-2439, La Mer (cited above), 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], [2013] ETMR 16, Case C-609/11 P Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG [EU:C:2013:592], [2014] ETMR, 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] and Case C-689/15 W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases 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]; Leno at [29]; Centrotherm at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: Gözze at [43]-[51].

(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] and [22]. 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]; Reber at [29].

(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]; Leno at [29]-[30], [56]; Centrotherm at [72]-[76]; Reber at [29], [32]-[34].*

(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] and [76]-[77]; 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].”

Decision on genuine use

23. The burden is on the Opponent to show genuine use of its earlier mark in relation to *Refrigerators; freezers; ice machines; and electric wine cellars*. This use must be shown during the five years up to the date that the contested mark was applied for, i.e. 17 September 2015 to 16 September 2020 (“**the relevant period**”). Whether the use shown is sufficient will depend on whether there has been real commercial exploitation of the Opponent’s trade mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the UK during the relevant period. In making that assessment I must consider all relevant factors, including:

- (i) The scale and frequency of the use shown
- (ii) The nature of the use shown
- (iii) The goods for which use has been shown
- (iv) The nature of those goods and the market for them
- (v) The geographical extent of the use shown



24. In making my determination as to whether the evidence presented shows the necessary genuine use, I also take account of judicial comment as to probative and evidential issues in such cases. In *Awareness Limited v Plymouth City Council*,⁵ Mr Daniel Alexander Q.C. sitting as the Appointed Person stated that:

“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

⁵ Case BL O/230/13, at paragraph 22.

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.”


25. None of the exhibits submitted by the Opponent with its Form TM7F shows the mark “KING” to be used in relation to *freezers* or *ice machines*. In respect of *electric wine cellars*, I do not see any examples of products of this type in the exhibits. It is possible that Exhibit 6 shows the packaging of an electric wine cellar, however, with only the words “Door Bottle Cooler” being visible, it is not possible to confirm this to be the case and the Opponent has not indicated that this Exhibit shows a wine cellar. As a result of the lack of examples of use, and in the absence of any other evidence from the Opponent as to how the mark has been used on these goods, I find that the Opponent is unable to rely on *freezers*, *ice machines* or *electric wine cellars* in support of its opposition.

26. Turning to the Opponent’s *refrigerators*, Exhibits 1A, 1B, 2, 4, 5, 6 and 7 show use on different types of refrigerated units (or their packaging) that may be utilised in a retail outlet, restaurant or take away. The mark appears predominantly in the form in which it is registered - “King” – but also in the form . I will comment briefly on the distinctive character of the Opponent’s mark before addressing whether use of  is use of the mark as registered.

27. The Applicant’s defence places substantial emphasis on the claim that the Opponent’s mark is devoid of any distinctive character, as it claims it to be a laudatory term, appearing in a significant number of UK registered trade marks and being a term that the Opponent should not have a monopoly over. I am not persuaded by the Applicant’s submissions that the word “KING” non-distinctive. While I accept that

“KING” could be used to refer to the best of something, for example “the king of pop,” the word “KING” on its own does not, in my view constitute a laudatory term. I therefore find the word “KING” to possess an average degree of distinctive character.

28. In its counterstatement, the Applicant highlights the variant use of the Opponent’s mark in the evidence of use. Taking into account the average degree of distinctive character of the Opponent’s mark, the fact that the word “REFRIGERATION” is entirely descriptive in respect of the goods concerned and that the black oval shape is a banal surrounding that does not alter the distinctive character of the mark,⁶ I find that use in

the form  constitutes use of the Opponent’s mark as it is registered.

29. In conclusion, Exhibits 1A, 1B, 2, 4, 5, 6 and 7 show the mark as registered, or a variant of the mark, on around six different refrigeration products. Importantly, what is not apparent from these examples of the mark shown in respect of refrigerators, is when this use of the mark was made, meaning that it is not evident that the use was made during the relevant period.

30. As alluded to by the Applicant, the Opponent’s evidence is very thin in substantiating its turnover figures and promotional expenditure. The Opponent’s annual turnover figures covering the relevant period range from £1 million in 2015 to almost £4 million in 2020, with annual promotional expenditure increasing each year over the same period from £100,000 in 2015 to over £700,000 in 2020. No explanation of the promotional activity undertaken, its extent, or examples of it are provided in the Opponent’s evidence.⁷ In respect of turnover, only one example invoice is provided, showing the sale of a product priced £629.99, but with a date that is outside the relevant period. Lastly, while the Opponent has indicated that use has been made of the mark throughout the UK, there is no evidence of the geographical extent of the use. Taking these points into account, together with the limited examples of use in the exhibits, which are not shown to be from the relevant period, I find that the evidence falls far short of the sufficiency and solidity needed to meet the standards of proof required.

⁶ See *Hyphen GmbH v EUIPO*, Case T-146/15.

⁷ This refers only to the evidence filed with the Form TM7F, as the later filed evidence is disregarded for the reasons set out earlier in the decision.

31. As indicated earlier in my decision, the Opponent's additional evidence of 21 May 2021 could not be admitted in these fast track proceedings. I have nevertheless reviewed this evidence and find that even if it had been admitted, it would have been insufficient to prove genuine use of the Opponent's earlier mark.

32. The additional evidence, which I note is not provided in the form of numbered exhibits, includes:

- (i) images of the Opponent's mark in the form of  and undated images appearing to be from a website where this form of the mark is used in respect of the sale of chilled units for displaying food;
- (ii) evidence to show the Opponent's advertising expenditure in the form of two Google Ads account overviews of EasyEquipment Limited, showing expenditure from 1 January 2020 to 15 September 2020; and from 19 February 2012 to 19 May 2021. And a further overview from 19 February 2012 to 19 May 2021 indicating the number of clicks made through Google. The overviews include the Opponent's name, EasyEquipment Limited, but do not mention the KING trade mark and the relationship between the expenditure by the Opponent, the clicks generated, and the Opponent's trade mark KING is not clear;
- (iii) a snapshot of the Opponent's profit and loss account for 2020, showing the Opponent's turnover, which is stated to "*include sales of KING branded items,*" however no indication of the proportion of these sales that relate to KING goods is provided;
- (iv) the results of a Google search for "king beer fridge," which shows the Opponent's commercial beer fridge. The date the search was undertaken is not shown and so it is not clear that the products were made available during the relevant period.

33. There is nothing in the additional evidence to support the Opponent's claimed use in respect of *freezers, ice machines or electric wine cellars*. In respect of *refrigerators*, the additional evidence lacks dates and specificity and so does not materially support the Opponent's claim that it has put its mark to genuine use. I refer again to the

comments of Mr Daniel Alexander Q.C. in *Plymouth City Council* that 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.” Although there is no prescribed particular form of acceptable evidence to demonstrate genuine use, in this respect I highlight that, for instance, a month of sales invoices from the relevant period would be a form of readily available evidence that could be provided in support of sales figures. As well as this, the Opponent could have provided more specific information about its Google Ads expenditure and how this has served to promote the KING trade mark. The Opponent also refers to promotional expenditure on “*advertising offline*,” for which specific details and examples could have been provided, but were not.

34. I therefore conclude that the Opponent has failed to establish genuine use of the its mark “KING” in respect of *any* of the goods in respect of which it claims to have used the mark. If the Opponent’s additional evidence of 21 May 2021 had been admitted in the proceedings, I find that the evidence would still have been insufficient.

35. The Opponent relies on a single mark in these proceedings and has failed to show use of the mark as required under the Act. This being the case, it is not appropriate for me to make an assessment of similarity between the Applicant’s mark “KINGHOME” and the Opponent’s mark “KING.”

Conclusion

36. The opposition fails in its entirety. Subject to any successful appeal against this decision, the application may proceed to registration for the full list of goods applied for.

COSTS

37. The opposition has failed in its entirety and the Applicant is entitled to a contribution towards the costs of defending its application, in line with the scale published in the annex to Tribunal Practice Notice (2/2016). In this respect I take account of the fact that I have already awarded the sum of £300 to the Applicant in the parties' proceedings concerning the Applicant's word mark (opposition no. 600001588). The Applicant's counterstatement is largely the same in both proceedings and the Opponent's arguments and evidence that the Applicant has had to consider are identical. The sum awarded in these proceedings is therefore reduced accordingly.

Considering the other side's statement and preparing a counterstatement	£50
Total	£50

38. I order EasyEquipment Limited to pay Gree Electric Appliances, Inc. of Zhuhai the sum of £50 (fifty pounds). The sum is to be paid within 21 days of the end of the period allowed for appeal or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings (subject to any order of the appellate tribunal).

Dated this 20th day August 2021

Charlotte Champion
For the Registrar
The Comptroller-General