

BL O/690/22

**TRADE MARKS ACT 1994
IN THE MATTER OF
TRADE MARK APPLICATION NO. 3517731
BY BUNZL RETAIL & HEALTHCARE SUPPLIES
LIMITED**

TO REGISTER THE TRADE MARKS:



IN CLASS 35

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NUMBER 600001542

BY GENTUG TEKSTIL ÜRÜNLERİ SANAYİ VE TİCARET ANONİM ŞİRKETİ

Background and Pleadings

1. On 30 July 2020, Bunzl Retail & Healthcare Supplies Limited (“the applicant”) applied to register in the UK the series of two trade marks shown on the cover page of this decision, under number 3517731 (“the contested mark”). The contested mark was published in the Trade Marks Journal for opposition purposes on 04 September 2020, in respect of services in Class 35 (see “Annex” for the full list of services).

2. On 03 December 2020, Gentug Tekstil Ürünleri Sanayi Ve Ticaret Anonim Sirketi (“the opponent”) filed a notice of opposition. The partial opposition is brought under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and is directed against some of the Class 35 services contained in the application.¹

3. The opponent relies upon its International Registration (“IR”) designating the UK, number 1122817, “careshop” (“the earlier mark”), which was applied for on 12 March 2012, and was entered in the register on 25 October 2012, in respect of services in Class 35. For the purposes of the opposition, the opponent relies upon all its Class 35 services, namely:

Class 35 Advertising agencies services, marketing and publicity bureaus services including commercial or advertisement exhibition and trade fair organization services; providing office functions; business management; business administration; import and export agencies; auctioneering; the bringing together, for the benefit of others, of incontinence underwear, anti-allergic bedding sets, namely, bed, pillow and duvet protectors, wheelchair pads, sleeping bags for patients, bibs for adults, stretchers for patient transport, arm, heel and foot protectors, raincoats for wheelchair use (excluding the transport thereof), enabling customers to conveniently view and purchase those goods, all the aforementioned services may be provided by retail stores, wholesale outlets, through mail order catalogues or by means of electronic media, for example, through web sites or television shopping programmes.

¹ See the underlined terms in the “Annex” for the full list of opposed services.

4. The opponent claims that the verbal elements contained in the applicant's mark are identical to its word mark and that the respective retail services are identical or similar, resulting in a likelihood of confusion.

5. The registration procedure for the earlier mark was completed more than five years prior to the filing date of the contested application. Therefore, it is subject to proof of use pursuant to section 6A of the Act. In its notice of opposition, the opponent made a statement of use in relation to some of the services relied upon, namely:

Class 35: The bringing together, for the benefit of others, of incontinence underwear, anti-allergic bedding sets, namely, bed, pillow and duvet protectors, wheelchair pads, sleeping bags for patients, bibs for adults, stretchers for patient transport, arm, heel and foot protectors, raincoats for wheelchair use (excluding the transport thereof), enabling customers to conveniently view and purchase those goods, all the aforementioned services may be provided by retail stores, wholesale outlets, through mail order catalogues or by means of electronic media, for example, through web sites or television shopping programmes.

6. The applicant filed a counterstatement acknowledging that the competing marks contain the same verbal elements but denied a likelihood of confusion on the basis that its mark also contains various other distinctive features, rendering the marks visually and conceptually different overall. Furthermore, the applicant states that there has been honest concurrent use of its marks for more than eight years. The applicant requested proof of use of the opponent's earlier mark.

7. Although the opponent filed a fast track opposition (TM7F), following a request from the applicant to file evidence, the proceedings were transferred to a standard opposition.

8. The opponent submitted nothing beyond the statement of use and evidence contained in the TM7F. The applicant filed evidence and submissions in lieu of a hearing. Neither party requested an oral hearing. The opponent is represented by Hatice Ahu Guneyli, and the applicant is represented by Wynne-Jones IP Limited.

EVIDENCE AND SUBMISSIONS

9. The opponent's evidence was filed at the same time as the form TM7F as per the fast track requirements. Despite the fast track opposition proceedings being transferred to a standard opposition the opponent elected not to file any further evidence or submissions during the proceedings.

10. The opponent's evidence consists of one exhibit ("Exhibit 1") containing 25 pages, the contents of which are listed as follows:

Exhibit 1

- A packing list and invoice dated 15 April 2016, concerning the delivery and shipment of 'PU coated fabric' in various sizes and colours to 'COMFORTEX LIMITED', Oldham, UK. The cost on the invoice is shown as 27,564,36 €.
- A purchase order dated 18 March 2016 from 'COMFORTEX LIMITED' Oldham, UK, for various items which I am unable to decipher due to the size of the print. Although the unit price (in Euros) is listed next to each item along with the quantity, there is no total figure.
- An invoice dated 28 April 2015 and packing list dated 28 April 2016, concerning the shipment and delivery of 'DRIVE MATS' to 'Recticel Midlands', Derbyshire, UK. The cost on the invoice is shown as 4,356,00 €.
- A packing list and invoice, dated 30 November 2018 (duplicated), concerning the shipment and delivery of 'CARESS PILLOW PROTECTORS', 'CARESS MATT PROT', and 'FULL ZIP MAT/COVER to 'SHAWS FABRIC', Altrincham, UK. The cost on the invoice is shown as 6,438,40 €.
- An invoice and purchase order, dated 15 March 2019, concerning the shipment and delivery of 'Trinity + ST Cover' in various sizes and colours to 'ULTIMATE HEALTHCARE LTD' Southampton, UK. The cost on the invoice is shown as 5,535,43 €.

- An invoice and packing list dated 27 March 2019, concerning the shipment and delivery of 'VIDA Washable seat pad' in various colours to 'Able2 UK LTD', Lancashire, UK. The cost on the invoice is shown as 1,088,50 €.
- An invoice and packing list, dated 15 January 2020, concerning the shipment and delivery of 'Trinity + ST Cover' in various sizes and colours to 'ULTIMATE HEALTHCARE LTD', Southampton, UK. The cost on the invoice is shown as 6,691,82 €.
- An invoice and purchase order dated 15 January 2020, concerning the shipment and delivery of 'Carefree Premier Cover' in various sizes, 'Trinity + ST Cover' in various sizes and 'Trinity Prem Cover' in various sizes to 'ULTIMATE HEALTHCARE LTD' Southampton, UK. The cost on the invoice is shown as 18,589,94 €.

None of the aforementioned invoices, purchase orders or packing lists contain the earlier mark.

- A printout dated 7 January 2021, (presumably the date on which the pages were printed from the website) from 'www.youtube.com' listing 14 videos relating to the following 'careshop' products:
 - Wheel Chair Poncho
 - Thermo Blanket
 - Slide & Lock Non Slip Chair Pad
 - Caretex Alzheimer & Demans Overalls Women
 - Caretex Alzheimer & Demans Overalls Men
 - HeatProof Oven Glove
 - Caretex Incontinence Underwear (x 3)
 - EASYTURN ROATATING CUSHION 2
 - EASYTURN ROATATING CUSHION 1
 - Anti Allergy Mattress Protector
 - Abso Reusable Underpad

- Abso Slide – Caress Slide Patient Transfer Aids
- The ‘YouTube’ printout states that the videos have had ‘73 views’ and were last updated on 12 October 2013.
- A printout from the opponent’s website “www.en.careshop.com.tr” dated 7 January 2021, (presumably the date on which the pages were printed from the website), showing various medical textile products, including washable bed pads, pillow protectors, anti-allergic sleeping products, thermal blankets. The pages appear to be from an online Turkish shopping page and features a Turkish helpline number along with product prices shown in Euros.

11. That concludes my summary of the opponent’s evidence, insofar as I consider it relevant.

12. The applicant filed evidence in the form of the witness statement of Barbara Meeks, dated 26 March 2021, and its corresponding 16 exhibits (BM-01 – BM-16). Ms Meeks holds the position of Managing Director at ‘Care Shop UK’, a trading division of ‘Bunzl Retail & Healthcare Supplies Limited’ (“the applicant”). The applicant submits that the evidence demonstrates not only that the competing marks have existed side by side in the same part of the UK market for a significant period of time and without confusion, but also shows the nature of the specialised goods and services and how those goods and services are marketed and selected by relevant consumers. As previously mentioned, the applicant states that there has been honest concurrent use of its marks for more than eight years. The applicant also filed written submissions, dated 06 June 2022, in lieu of a hearing.

13. I have considered the evidence and submissions of both parties and will refer to them, where necessary, during this decision.

DECISION

Relevance of EU law

14. Although the UK has left the EU, 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 relied on in these proceedings are derived from an EU Directive and, therefore, this decision continues to make reference to the trade mark case law of the EU courts.

Proof of use

15. The first issue is whether, or to what extent, the opponent has shown genuine use of its earlier mark. The relevant statutory provisions are as follows:

“6A (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 complete 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.

(5) In relation to a European Union trade mark or international trade mark (EC), any reference in subsection (3) or (4) to the United Kingdom shall be construed as a reference to the European Community.

(5A) In relation to an international trade mark (EC) the reference in subsection (1)(c) to the completion of the registration procedure is to be construed as a reference to the publication by the European Union Intellectual Property Office of the matters referred to in Article 190(2) of the European Union Trade Mark Regulation.

(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.”

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

“100. 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.”

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

“114. The Court of Justice of the European Union (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*, 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 Bunderversvereinigung 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 Behher 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].”

18. Pursuant to section 6A of the Act, the relevant period for assessing whether there has been genuine use of the earlier mark is 31 July 2015 to 30 July 2020.

19. Whether the use shown is sufficient will depend on whether there has been real commercial exploitation of the IR, in the course of trade, sufficient to create or maintain a market for the services at issue in the UK during the relevant five-year period. In making the assessment, I am required to consider all relevant factors, including:

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

20. Before assessing the opponent’s evidence of use, I remind myself of the comments of Mr Daniel Alexander QC, sitting as the Appointed Person, in *Awareness Limited v Plymouth City Council*, where he stated that:²

² Case BL O/230/13

“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.”

21. I also note Mr Alexander’s comments in *Guccio Gucci SPA v Gerry Weber International AG*.³ Although the case concerned revocation proceedings, the principle is the same for proof of use in opposition actions. He stated:

“The Registrar says that it is important that a party puts its best case up front – with the emphasis both on “best case” (properly backed up with credible exhibits, invoices, advertisements and so on) and “up front” (that is to say in the first round of evidence). Again, he is right. If a party does not do so, it runs a serious risk of having a potentially valuable trade mark right revoked, even where that mark may well have been widely used, simply as a result of a procedural error. [...] The rule is not just “use it or lose it” but (the less catchy, if more reliable) “use it – and file the best evidence first time round – or lose it”.”

22. The comments of Mr Geoffrey Hobbs QC in *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, where he sat as the Appointed Person, are also relevant.⁴ He stated that:

³ Case BL O/424/14

⁴ Case BL O/404/13

“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.

23. 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.”

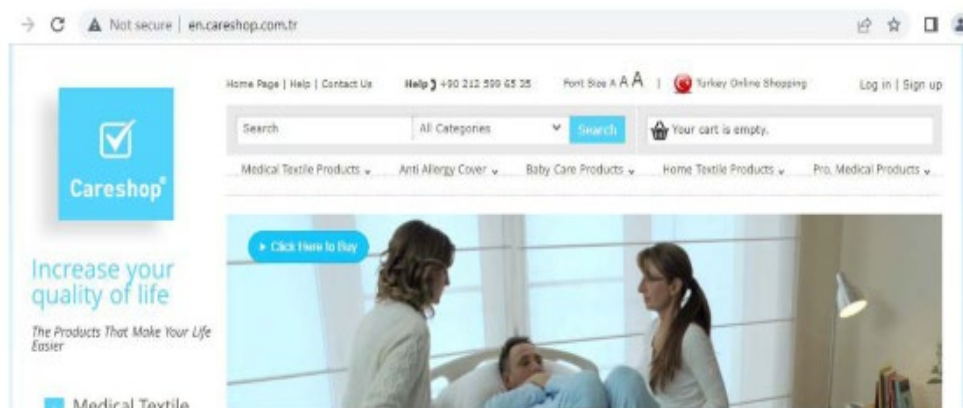
23. I remind myself that an assessment of genuine use is a global assessment, which involves looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.⁵

24. In its counterstatement, the applicant criticised the opponent's evidence as follows:

“The evidence provided by the Opponent is respectfully considered to be insufficient. For example, the Opponent include [sic] invoices with no information linking the items to its CARESHOP mark. The Opponent also provided screenshots of a webpage which shows its CARESHOP mark but is dated 2021. Further, the screenshots include references to “Turkey Online Shopping”, have a Turkish contact number and product prices are in Euros. All of these are not relevant in UK opposition proceedings.”

25. And in its submission the applicant states that:⁶

“The Opponent's Earlier Registration has had registered effect in the UK for greater than a five-year period. The Applicant queries the evidence of use submitted by the Opponent. The evidence consists of website printouts, youtube links and weblinks to a “.com.tr” website which refer specifically to “Turkey Online Shopping” with a Turkish telephone number and prices in EUR rather than GBP. By way of example, see below:



⁵ *New Yorker SHK Jeans GmbH & Co KG v OHIM*, Case T-415/09

⁶ Written submissions in lieu

The Opponent's evidence also comprised of several invoices and purchase orders. None of the invoices, delivery notes or purchase orders mention the "careshop" sign or the sale of products under that sign to entities in the UK. Similarly, no supplementary evidence has been provided to show that any of the goods covered by the invoices were sold in conjunction with the 'careshop' sign as opposed to another sign or trading style used by the Opponent. Moreover, it is unclear how many products referred to on the invoices and other documents relate to any the [sic] particular goods covered by the Opponent's designation e.g., references to "110CM WIDE PU COATED FABRIC" could relate to fabrics used in manufacturing, rather than finished products.

No figures or details were provided in relation to:

- the number of sales achieved under the mark in the United Kingdom.
- promotion of the mark in the United Kingdom.

The references to videos on YouTube are insufficient – they simply suggest that a playlist was accessed 73 times, without indicating the sources of the views (i.e. all of the views could come externally from the United Kingdom). The opponent should not be entitled to rely upon links to websites that may have changed after their application was filed.

Further, some of the documents provided are mere delivery orders and do not provide sufficient information in relation to whether a sale was actually made.

In summary, the Applicant submits the evidence of use provided by the Opponent to establish use in the UK is insufficient and unacceptable to proof [sic] use of its Earlier Registration in the UK."

26. I agree with the applicant's points outlined above. It is important to recall that the onus is on the opponent to provide 'sufficiently solid' evidence in order to prove use. However, I find that there are numerous deficiencies within the opponent's evidence provided. Specifically, turnover figures resulting from relevant retail sales are absent. While I acknowledge that several purchase orders, packing lists and invoices have

been included (one of which pre-dates the relevant period), the products referred to in the invoices are vague in that the exact goods they refer to is not sufficiently clear. Most importantly, no reference to the earlier mark 'careshop' is shown in any of these documents and therefore I am unable to conclude that use of the mark has been shown when the mark itself is not visible anywhere in these documents. Accordingly, these documents fail to demonstrate that the retail services relied upon by the opponent have been offered to UK consumers under the 'careshop' mark.

27. The YouTube website printout dated 7 January 2021, (presumably the date on which the pages were printed from the website) simply show a listing of 14 videos purporting to relate to various 'careshop' products. While I note that the 'YouTube' printouts state that the videos have had '73 views', this information was last updated on 12 October 2013, which pre-dates the relevant period. Furthermore, as submitted by the applicant, the sources of the '73 views' have not been indicated and as such, it is not clear whether these views originate from the United Kingdom. Moreover, the printouts are dated more than six months after the end of the relevant period. As such, this evidence does not assist the opponent in proving use of its mark during the relevant period.

28. The printouts from the opponent's website "www.en.careshop.com.tr", dated 7 January 2021, (presumably the date on which the pages were printed from the website), detail various medical textile products including washable bed pads, pillow protectors, anti-allergic sleeping products and thermal blankets being offered for sale under a 'careshop' trade mark. However, the website printouts appear to be from an online Turkish shopping page which features a Turkish helpline number along with product prices shown in Euros. While it is possible that the goods and services from the Turkish website can be purchased by consumers in the UK, this is not clear from the evidence provided. Furthermore, as previously stated, the printouts are dated 7 January 2021 and are therefore dated more than six months after the end of the relevant period. Consequently, I am unable to determine with any accuracy how the website looked during the relevant period. Accordingly, I find that this evidence does not assist the opponent in proving use of its mark in the UK during the relevant period.

29. The opponent has submitted no evidence relating to advertising or expenditure figures achieved from the promotion of the retail services at issue.

30. Accordingly, while I acknowledge that the use of a mark does not have to be quantitatively significant to be genuine, the only possible evidence of any sales within the relevant period takes the form of five invoices and the goods contained therein do not appear to relate to all the retail services relied on, and most importantly, none of the invoices refer to the 'careshop' mark.

31. Consequently, I have not been persuaded that the opponent's evidence satisfies the criteria of genuine use of its mark. If the mark had been put to genuine use on the services relied on in the UK and within the relevant period, then it should not have been a difficult matter for the opponent to show it. However, it did not.

32. Accordingly, I find that the opponent's evidence is insufficiently solid to adequately demonstrate that there has been genuine use of the mark in relation to the retail services upon which the opponent relies.

Conclusion

33. The opponent has failed to establish genuine use of its earlier mark within the relevant period. The opposition falls at the first hurdle and is dismissed accordingly. Subject to appeal, the application will proceed to registration.

Costs

34. The applicant has been successful and is entitled to a contribution towards its costs in line with the scale set out in Tribunal Practice Notice 2/2016. However, I bear in mind the applicant's submissions in lieu of a hearing amount to just over five pages, some of which are a repeat of the counterstatement and witness statement. Accordingly, the amount awarded for preparing these submissions is below the scale minima. In the circumstances I award the applicant the sum of £900, calculated as follows:

Considering the Notice of Opposition and preparing a counterstatement	£200
Preparing evidence and considering the other side's evidence	£500
Preparing submissions in lieu of a hearing	£200
Total	£900

35. I therefore order Gentug Tekstil Ürünleri Sanayi Ve Ticaret Anonim Sirketi to pay Bunzl Retail & Healthcare Supplies Limited, the sum of £900. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 17th day of August 2022

**Sam Congreve
For the Registrar**

Annex

Applicant's services

Class 35 Wholesale services, retail services and online retail services connected with the sale of dental supplies, namely , toothbrushes, swabs, toothpaste, denture cups, denture accessories; wholesale services, retail services and online retail services connected with the sale of medical supplies, namely, gloves, syringes, needles, cannulae, apparatus for blood collection, IV administration sets, IV dressing, tourniquets, apparatus for safe use of sharp medical objects (sharps safety), receptacles for the safe disposal of sharp medical objects (sharps disposal), preinjection swabs, haemorrhoid injection sets, blood testing kits, urine analysis kits, pregnancy testing kits, drugs and alcohol test kits, infectious diseases tests kits, specimen containers, pessaries, pessary shelves, ultrasound equipment, proctoscopes, sigmoidoscopes, percussors, wound cleaners, cotton wool and applicators, transparent dressings, cloth dressings, hydrocolloid dressings, burns dressings, foam dressings, other dressings and applicators, dressing fixations, tapes, bandages, bandage applicators, gynaecology instruments, speculums, blood pressure measuring equipment, thermometers, ECG machines, ECG accessories, pulse oximeters, vital signs monitors, stethoscopes, otoscopes, ophthalmoscopes, otolaryngology equipment, respiratory diagnostic equipment, vision screening equipment, dopplers, doppler stands and accessories, diagnostics accessories, dermatoscopes, curettes, biopsy punches, UV lights and magnifiers, couches, chairs, stools, screens, trolleys, bins, medical lighting, controlled drug cabinets, pharmacy fridges, medical bags, minor operations kits, dressing kits, suture kits, electrosurgery kits, cryosurgery equipment, vasectomy equipment, absorbable sutures, non-absorbable sutures, skin staples, skin strips, tissue adhesive, first response kits, tubing, suction, emergency respiratory equipment, defibrillators, resuscitation equipment, evacuation equipment, forceps, sponge holders, scissors, surgical blades, needle holders, probes, skin hooks, podiatry, surgical spoons, swabs, theatre apparel, gowns, sterile fields, sterile drapes, first aid kits, first aid equipment, plasters, signage, pain assessment charts; wholesale services, retail services and online retail services connected with the sale of continence

management supplies, namely disposable inserts, disposable pants, pads, air freshener, odour neutralisers, bins for the disposal of sanitary products and waste, spill kits, bio hazard bags, washable briefs and pants, washable net supports, disposable bed protectors, washable bed protectors, continence bedding, washable seat protectors, wet wipes, dry wipes, maceratable wipes, continence skincare; wholesale services, retail services and online retail services connected with the sale of janitorial supplies, namely, mops, brooms, brushes, buckets & wringers, mops & broom handles, vacuum cleaners, laundry trolleys, lockers and cupboards, refuse sacks, bins, laundry bags, sanitising wipes, surface wipes, auto-dose laundry detergent, laundry detergents, stain removers, whiteners, washroom cleaners, cream cleaners, toilet cleaners, bleach, dishwashing machine agents, auto-dose dishwashing agents, washing up laundry, degreasers and sanitisers, oven cleaners, kitchen cleaning utensils, multipurpose cleaners, hard surface cleaners, glass cleaners, polish, air fresheners, disinfectants, hard floor cleaners, floor stain removers, hand towels, toilet tissue, couch rolls, centrefeed rolls, facial tissues, tableware, paper dispensers, cloths and dusters, towels, health and safety kits; wholesale services, retail services and online retail services connected with the sale of infection control products, namely, hand cleaners, hand sanitisers, hand cleaner dispensers, disposable aprons, medical masks, headwear, eyewear, overshoes, surface wipes, sanitising wipes, bleach, disinfectants, indicator tape for labelling items after sanitization, indicator tape dispensers, disinfectant dispensers and stands, sterile water, preoperative surgical scrubs brushes, preoperative skin disinfectant; wholesale services, retail services and online retail services connected with the sale of patient care products, namely, tissue, facial tissues, soap, oral care, personal grooming, denture cups, toiletries, patient washing gloves, patient shampooing accessories, bed bath wipes, wash creams, wash foams, wash mousses, cutlery, crockery, beverage containers, beakers, beakers with handles, beaker lids, drinking straws, jugs, cups, drinking cups, paper napkins, disposable napkins, table linen, paper tableware, bibs, netting mats for padding and improving grip on seats, walking trollies, stools, non-slip surface mats, apparatus for measuring and weighing, kitchenware, food preparation utensils and accessories, playing cards, games and playthings, compact discs, arts and crafts equipment, books, patient information bands, impact absorbing padding designed to prevent injury, razors, nail brushes, shaving agents, bed pan liners, urine bottles, female urinals,

bowls, receptacles, commodes, measuring jugs, commodes, jugs, cups, pill dispensers, medicine pots, commode pots, fracture pans, gallipots, kidney dishes, bowls, measuring beakers, female urinals, jugs, slipper pans, male urinal, vial opening devices, instrument trays, spoons; wholesale services, retail services and online retail services connected with the sale of moving and handling products, namely, wheelchairs, walkers, handling belts, transfer aids, hoists, slings, bathing slings, bath hoists; wholesale services, retail services and online retail services connected with the sale of pressure care products, including, nursing beds, dynamic mattresses, static mattresses, dynamic cushions, static cushions, pressure relieving devices, pads, alarms; wholesale services, retail services and online retail services connected with the sale of bathroom and toilet products, namely, bathing assistance equipment, handrails, towels, commodes, toilet frames, toileting aids, bath and shower seating; wholesale services, retail services and online retail services connected with the sale of bedroom products, namely, divan beds, headboards, cotside buffers, bedrails, overbed tables, bedside cabinets, bedroom dressers, wardrobes, chest of drawers, bedroom mirrors, bedroom accessories, bedroom packages, duvet and blankets, pillows, bed sheets, chairs, stools; wholesale services, retail services and online retail services connected with the sale of clothing, including, tunics, tabards, shirts; wholesale services, retail services and online retail services connected with the sale of skincare preparations, height adjustable kitchen furniture, chopping boards, aluminium foil, hair nets; information, advisory and consultancy services relating to the aforesaid services.