

O/189/23

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK00003729323

BY SHANGHAI GREEN POWER TECHNOLOGY CO.,LTD.

TO REGISTER THE FOLLOWING MARK:



IN CLASS 9

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. OP000432014

BY GP GLOBAL MARKETING CORPORATION

Background and pleadings

1. On 6 December 2021, Shanghai Green Power Technology Co.,Ltd. (“the applicant”) applied to register the trade mark shown below and the application was published for opposition purposes on 24 December 2021.



2. The registration is sought for the following goods:

Class 9 Accumulators [batteries];Electrical adapters; Battery cases; Battery charge devices; Electrical cells and batteries; Tyre-pressure measurers; Voltage stabilizing power supply; Lithium batteries; Electric batteries; Solar cells; Electric charging cables; Solar panels for production of electricity; Lithium ion batteries; Battery testers; Electronic control gears [ECGs] for LED lamps and light fixtures; Solar-powered battery chargers; Crystalline silicon solar cells; Ultracapacitors for energy storage; Electric storage batteries; Battery packs; Inverters; Inverters used in solar power generation; LED light engines; Photovoltaic inverters; Inverters for power supply; Project management software; Electronic power supplies.

3. GP Global Marketing Corporation (“the opponent”) opposes the trade mark on the basis of sections 5(1), 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is reliant upon the marks shown below.
4. UK00001471571 (“the opponent’s figurative mark”), filed on 24 July 1991, registered on 29 November 1996.



5. In respect of the opponent's figurative mark, the opposition is based on section 5(2)(b), is directed against all of the applicant's goods, and relies upon the following goods:

Class 9 Electric batteries; rechargeable batteries; battery packs; battery eliminators; battery chargers; battery checkers; all included in Class 9.

6. UK00907211337 ("the opponent's word mark"), filed on 4 September 2008, registered on 14 May 2009.

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7. In respect of the opponent's word mark, the section 5(1) opposition is directed against the following of the applicant's goods: "Accumulators [batteries]; Solar-powered battery chargers; Electric storage batteries; Battery packs."

8. The section 5(1) opposition is reliant upon the following goods:

Class 9 Batteries; rechargeable batteries; battery chargers.

9. In respect of the opponent's word mark, the section 5(2)(a) and 5(2)(b) oppositions are directed against all of the applicant's goods and are reliant upon the following goods:

Class 9 Batteries; rechargeable batteries; battery chargers; data processing equipment and computers; computer peripheral

devices; computer software (recorded); computer storage devices; television apparatus; projection screens; audio apparatus; visual apparatus; cinematographic cameras; computer controlled panels for audio and visual apparatus; electronic advertising display media; car audio apparatus, amplifiers, speakers, wireless remote controls, wired remote controls, wireless microphones, decoders, audio receivers used in cars; electrical and electronic components; electrical switchgear; wires and cables for electrical and electronic equipment, electronic wiring parts and fittings; switches, sockets, plugs, switchboards, circuit breakers, relays, earth leakage detection devices, residual current devices; non-metallic conduits and fittings therefor for housing electrical cable and/or wiring; telephone apparatus and instruments; telephone plugs and sockets; electronic power control devices; electronic alarms; electronic security devices; parts and fittings for all the aforesaid goods.

10. The opponent's Form TM7 was received by the Registry on 18 March 2022.
11. The applicant filed a Form TM8 and a detailed counterstatement which was received by the Registry on 7 June 2022. The applicant denied the opponent's claims and requested proof of use of the two earlier marks.
12. The opponent filed evidence of use, described below.
13. The opponent filed written submissions in lieu of a hearing, whereas the applicant did not file written submissions.
14. The applicant is represented by Isabelle Bertaux and the opponent is represented by Withers & Rogers LLP.

Evidence

15. Having been put to proof of use, the opponent filed a witness statement from Tse Ching Yee Stella, the Assistant General Manager, Corporate Affairs and Administration of the opponent. It is signed and dated 8 August 2022.
16. Tse Ching Yee Stella's witness statement is accompanied by four exhibits, Exhibits TCYS01 to TCYS04.

DECISION

17. Although the UK has left the EU, section 6(3)(a) of the European (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. This is why this decision continues to make reference to the trade mark case-law of EU courts.
18. Sections 5(1) to 5(2)(b) of the Act read as follows:
 - "5(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.
 - (2) A trade mark shall not be registered if because—
 - (a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or
 - (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

19. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

“(1) In this Act an “earlier trade mark” means—

(a) a registered trade mark, international trade mark (UK) a European Union trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

20. Given their filing dates, the trade marks upon which the opponent relies qualify as earlier trade marks as defined above.

Proof of use

21. I note that the earlier marks had been registered for more than five years at the filing date of the application and therefore the proof of use provisions apply. As stated above, the applicant has requested proof of use.

22. The proof of use provisions are set out in section 6A of the Act, the relevant parts of which state:

“(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.

(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 Union.

(5A) [...]

(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.”

23. 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.”

24. Pursuant to section 6A of the Act, the relevant period for assessing whether there has been genuine use of the earlier marks is the five-year period ending with the applicant’s filing date i.e. 7 December 2016 to 6 December 2021. The opponent’s word mark is a “comparable mark” – a mark derived from an EU trade mark as part of the transitional arrangements that were put in place as a result of the UK leaving the European Union. Tribunal Practice Notice 2 of 2020 explains that “where all or part of the relevant five-year period for genuine use under sections 6A, 46(1)(a) or (b), or 47 falls before IP Completion Day [31 December 2020], evidence of use of the corresponding EUTM in the EU in that part of the relevant period before IP Completion Day will be taken into account in determining whether there has been genuine use of the comparable trade mark. For that part of the relevant

period, for the purposes of the genuine use assessment, the EU will be taken to include the UK.”

25. 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].”

26. As the opposing mark is derived from an EUTM, the comments of the Court of Justice of the European Union (“CJEU”) in *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, are relevant. The court noted that:

“36. It should, however, be observed that [...] the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase ‘in the Community’ is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.”

And:

“50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial

protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as ‘genuine use’, it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national trade mark.”

And:

“55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77)”.

At paragraphs 57 and 58, the court held that:

“Article 15(1) of Regulation No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to ‘genuine use in the Community’ within the meaning of that provision.

A Community trade mark is put to ‘genuine use’ within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market

share within the European Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the main proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the mark concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity.”

27. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited*, [2016] EWHC 52, Arnold J. reviewed the case law since the *Leno* case and concluded as follows:

“228. Since the decision of the Court of Justice in *Leno* there have been a number of decisions of OHIM Boards of Appeal, the General Court and national courts with respect to the question of the geographical extent of the use required for genuine use in the Community. It does not seem to me that a clear picture has yet emerged as to how the broad principles laid down in *Leno* are to be applied. It is sufficient for present purposes to refer by way of illustration to two cases which I am aware have attracted comment.

229. In Case T-278/13 *Now Wireless Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs)* the General Court upheld at [47] the finding of the Board of Appeal that there had been genuine use of the contested mark in relation to the services in issue in London and the Thames Valley. On that basis, the General Court dismissed the applicant’s challenge to the Board of Appeal’s conclusion that there had been genuine use of the mark in the Community. At first blush, this appears to be a decision to the effect that use in rather less than the whole of one Member State is sufficient to constitute genuine use in the Community. On closer examination, however, it appears that the applicant’s argument was not that use within London and the Thames Valley was not sufficient to constitute genuine use in the Community, but rather that the Board of Appeal was wrong to find that the mark had been used in those areas, and that it should have found that he

mark had only been used in parts of London: see [42] and [54]-[58]. This stance may have been due to the fact that the applicant was based in Guilford, and thus a finding which still left open the possibility of conversion of the community trade mark to a national trade mark may not have sufficed for its purposes.

230. In *The Sofa Workshop Ltd v Sofaworks Ltd* [2015] EWHC 1773 (IPEC), [2015] ETMR 37 at [25] His Honour Judge Hacon interpreted *Leno* as establishing that “genuine use in the Community will in general require use in more than one Member State” but “an exception to that general requirement arises where the market for the relevant goods or services is restricted to the territory of a single Member State.” On this basis, he went on to hold at [33]-[40] that extensive use of the trade mark in the UK, and one sale in Denmark, was not sufficient to amount to genuine use in the Community. As I understand it, this decision is presently under appeal and it would therefore be inappropriate for me to comment on the merits of the decision. All I will say is that, while I find the thrust of Judge Hacon’s analysis of *Leno* persuasive, I would not myself express the applicable principles in terms of a general rule and an exception to that general rule. Rather, I would prefer to say that the assessment is a multi-factorial one which includes the geographical extent of the use.”

28. The General Court (“GC”) restated its interpretation of *Leno Marken* in Case T-398/13, *TVR Automotive Ltd v OHIM* (see paragraph 57 of the judgment). This case concerned national (rather than local) use of what was then known as a Community trade mark (now a European Union trade mark).

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

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

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

31. In respect of the use of the marks, these can be seen in the evidence in their figurative form (the solid black, bold, conjoined letters “GP”) and their word form (the letters “GP”).

32. 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.¹

33. In their witness statement, Tse Ching Yee Stella describes how:

“The Opponent is one of the world's largest suppliers of batteries and battery-related products. It has been active in this sector since 1964. The Opponent produces over five million batteries annually and is the number one battery brand in Hong Kong. The Opponent's production facilities are in China, Vietnam and Malaysia, supported by marketing and trading offices spanning across Asia, Europe and North America. The Opponent currently employs about 5,200 people worldwide and occupies a total floor area of approximately 307,800 square metres.

¹ *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

The Registrations are used within the Opponent's company and trading name and have been used in connection with the Opponent's products since 1964.”

34. The above statement is quite general. While it provides background information about the opponent’s company, it does not provide any precise information about the use of its marks on the relevant products during the relevant period. The reference to its European trading offices does not say whether any of these offices were opened during the relevant period. While the opponent says that its marks have been in use since 1964, it does not say whether any of this usage took place in the UK during the relevant period or, in respect of its word mark, in the EU during the relevant period up to IP Completion Day.
35. This is a particularly important point given that the opponent’s figurative mark is a UK mark and so the relevant territory for proof of use is the UK, while the opponent’s word mark is a comparable mark, in relation to which the relevant territory for proof of use is the EU up to IP Completion Day and the UK after that date.
36. Exhibit TCYS01 consists of English language pages from the .com website of the opponent’s parent company. This exhibit corroborates what Tse Ching Yee Stella’s statement says about the opponent’s ownership structure. There is also a reference to GP being number one for battery sales, but this is for Hong Kong, not the UK or the EU.
37. Exhibit TCYS02 consists of extracts from uk.gpbatteries.com, showing various battery-related products. The website describes its “Destination / Region” as “United Kingdom” and a number of pages of the printout are headed: “UK Leading Battery Brand | Buy Online | GP Batteries UK”. However, the website extracts date from 3 August 2022 and the copyright statement is 2022, both these dates being after the relevant period.

38. While some of the pages are headed “Our Story | GP Batteries UK” and the company talks of being “Battery Experts for Over 50 Years” and being “Battery experts since 1964”, there is no direct evidence confirming that this expertise was built up and deployed in the UK up to and during the relevant period as opposed to that expertise being acquired elsewhere in the world. There is nothing to show that the opponent’s battery-related products were on the market during the relevant period in the relevant territory.

39. Exhibit TCYS03 is two images advertising the opponent’s battery chargers in Sweden – a photograph and an advertisement on a bus shelter. Neither image is dated, but the witness statement confirms that they date from “2021”.

40. Paragraph 9 of Tse Ching Yee Stella’s witness statement is very important in this regard:

“There is now produced and shown to me **Exhibit TCYS03** consisting of images of the Opponent's advertising from within the European Union (Sweden). I am advised by my trade mark attorneys that as UK Trade Mark Registration No. UK00907211337 GP is a "comparable" UK trade mark registration, which has EU Trade Mark Registration No. 07211337 as its "parent", then use of the GP within the EU during 6 December 2016 and 5 December 2021 is sufficient for the proof of use requirements in this matter. These adverts date from 2021”.

41. However, the opponent has clearly misunderstood the relevant of evidence of use in the EU for the purposes of demonstrating genuine use of a comparable mark. Use in the EU is only relevant for the purposes of demonstrating use of a comparable mark for any part of the relevant period which falls prior to IP Completion Day. As the images in question are confirmed as dating from 2021, they fall after IP Completion Day. Consequently, this use within the EU does not assist the opponent in demonstrating proof of use of the comparable mark.

42. Exhibit TCYS04 consists of 4 invoices, as follows:

Invoice Date	Destination	Amount
20 August 2021	Sweden	37,888.20 USD
14 April 2021	Spain	9,091.52 USD
17 December 2021	Netherlands	139,505.58 USD
15 September 2021	Czech Republic	72,549.02 USD

43. None of these invoices show use in the UK. While they do show use in the EU, all the invoice dates, which match the “Shipped on or about” dates, are after IP Completion Day. As explained above, the relevant territories for assessing use of the comparable mark are a) the EU from 7 December 2016 to 31 December 2020 and b) the UK from 1 January 2021 to 6 December 2021. As these invoices are all dated 2021, they do not assist the opponent in showing use of the comparable mark because use in the EU after IP Completion Day is not relevant.

44. The opponent has provided no information as to turnover, market share or marketing expenditure in the UK and/or the EU.

45. While there is a claim on the opponent’s UK website that it has a “UK leading battery brand” and that it has 50 years’ worth of battery expertise, there is nothing specific within the evidence to corroborate this claim. The claim does not come from a third party or independent website and I can give very little weight to it in the absence of any corroborating turnover figures, marketing expenditure, relevant invoices, or indication of market share.

46. The opponent has not demonstrated genuine use of its marks within the relevant territory for the relevant period, which, as I have said, would have been a) the UK for the opponent’s figurative mark (in relation to which there is no specific evidence about use in the UK in terms of turnover, marketing expenditure, advertising, or invoices) and b) the EU up to 31 December 2020 and in the UK for the period 1 January 2021 to 6 December 2021 for the opponent’s word mark (in relation to which, although there is some

evidence of use in the EU, it is dated after 31 December 2020 and so it does not assist the opponent in showing genuine use of the comparable mark. This is because genuine use of comparable marks after 31 December 2020 must be shown in the UK, not the EU.).

47. As per section 100 of the Act, the onus is on the opponent to show what use has been made of the marks. Overall, taking the evidence as a whole into account, I do not consider the opponent to have established use of the marks to the extent that there has been real commercial exploitation of the marks in order to maintain or create a share in the market for the goods protected by the marks during the relevant period.

CONCLUSION

48. The opposition has failed. The application will proceed to registration, subject to appeal.

COSTS

49. The applicant has succeeded. In line with Annex A of Tribunal Practice Notice 2 of 2016, I award costs to the applicant as below.

Preparing a statement/considering the other side's statement:	£350
Considering the opponent's evidence:	£500
Total:	£850

50. I order GP Global Marketing Corporation to pay Shanghai Green Power Technology Co., Ltd. the sum of £850. 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 24th day of February 2023

JOHN WILLIAMS

For the Registrar