

**O/650/21**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF THE UK DESIGNATION OF INTERNATIONAL**

**REGISTRATION NO. 1548428**

**IN THE NAME OF Zhejiang Xinyi Shengao Mechanical**

**Transmission Co., Ltd**

**FOR THE TRADE MARK:**

**HARBOR**

**IN CLASS 20**

**AND**

**IN THE MATTER OF OPPOSITION THERETO**

**UNDER NO. OP600001679**

**BY Rinkit Ltd**

## BACKGROUND AND PLEADINGS

1. On 27 July 2020, International Registration (“IR”) no. 1548428 was registered for the word mark **HARBOR**, based on US Trade Mark No. 88789447 with a priority date of 07 February 2020. With effect from the same date, Zhejiang Xinyi Shengao Mechanical Transmission Co., Ltd (“the holder”) designated the United Kingdom for protection of the mark in respect of the following goods:

Class 20: *Height adjustable furniture frames.*

2. The designation was accepted and published for opposition purposes on 22 January 2021.

3. The designation is opposed by Rinkit Ltd (“the opponent”). The opposition was filed on 12 April 2021 under the fast track opposition procedure and is based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition is directed against all of the goods in the designation. The opponent relies upon its UK trade mark registration number 2642342, for the mark **Harbour Housewares**, which has a filing date of 15 November 2012 and for which the registration procedure was completed on 29 March 2013.

4. The earlier mark is registered in classes 6, 8, 9, 11, 16, 18, 19, 20 and 21, and the opposition relies upon the following goods in Class 20 only, namely:

Class 20 *Furniture, namely desks<sup>1</sup>*

5. The opponent submits that protection of the holder’s UK designation would create confusion with its customers, who would potentially assume that the products were in some way related.

6. The holder filed a counterstatement denying the claims. It submits that the respective goods are clearly dissimilar, and that the opponent’s mark identifies the goods as houseware items, whereas the holder’s goods are an unusual type of

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<sup>1</sup> See Q1 of Form TM7F.

furniture that is not normally used in a residential setting, being furniture frames which are incorporated into other furniture items normally used in office, educational or health care environments. It states that the respective trade marks are sufficiently different from a visual, oral and conceptual perspective and that when the global appreciation test is applied to the respective trade marks, there is no likelihood of confusion. Further, it submits that the evidence filed by the opponent in relation to Proof of Use has failed to demonstrate genuine use of its trade mark and consequently, the opposition should be dismissed. It submits that the designation should be allowed to proceed, and that an award of costs should be made in favour of the holder.

7. Rule 6 of the Trade Marks (Fast Track Opposition)(Amendment) Rules 2013, S.I. 2013 No. 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008, but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”

8. The net effect of these changes is to require parties to seek leave in order to file evidence in fast track oppositions. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written arguments will be taken. This applies with the exception of proof of use evidence, applicable in instances where the earlier mark relied upon was over five years old at the relevant date, namely the filing date or priority date of the application or International registration.

9. As the earlier mark became registered more than 5 years before the application of the holder's mark, the opponent made a statement of use, and states that the mark has been used throughout the UK. As required, it has filed proof of use evidence with the Form TM7F.

10. In an official letter dated 09 July 2021, in accordance with Tribunal Practice Notice 2/2013, the parties were allowed until 23 July 2021 to seek leave to file evidence and/or request a hearing and until 06 August 2021 to provide written submissions.

11. Aside from the opponent's proof of use evidence, neither party sought leave to file evidence nor to file written submissions, and neither party requested a hearing, therefore this decision is taken following a careful perusal of the papers.

12. In these proceedings, the holder is represented by FRKelly and the opponent is unrepresented.

## **EVIDENCE SUMMARY**

13. As mentioned above, the opponent filed evidence of use with its Form TM7F, as is required during fast track opposition proceedings. The evidence consists of 14 exhibits, labelled Exhibit 1 – Exhibit 14 respectively. The exhibits are further referenced within Document Reference no. 1.

14. In addition to the exhibits, the following figures have been provided in respect of UK sales under the mark for the years 2016 to 2020:<sup>2</sup>

<b>Year</b>	<b>Total sales for all goods</b>	<b>Total Sales for furniture (desks)</b>
2016	£3,382,822.38	£170,013.79
2017	£4,447,390.15	£174,225.51
2018	£7,361,019.25	£224,533.47
2019	£9,389,775.86	£202,855.72
2020	£14,696,083.01	£874,696.74

The opponent states that the average sales price for the Class 20 furniture (desks) items sold under the Harbour Housewares brand is £45, however, it further states that prices change up and down depending on season and availability.

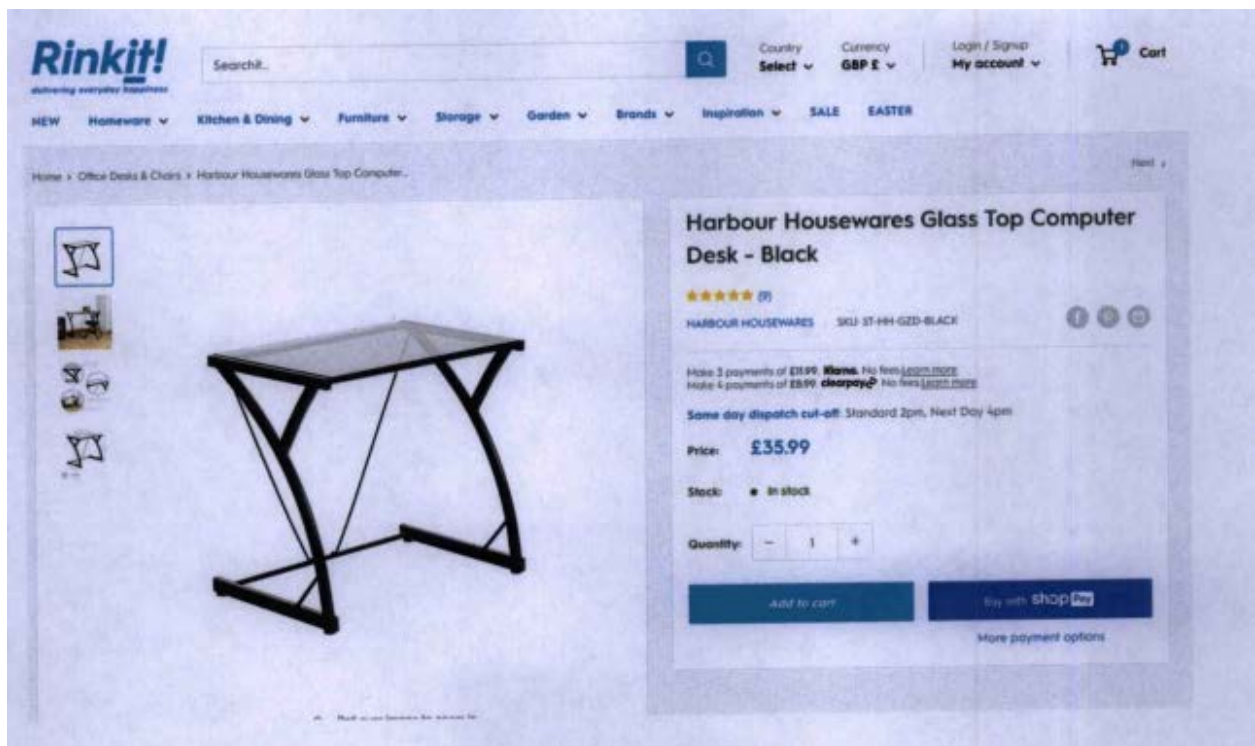
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<sup>2</sup> See Q7 of Form TM7F.

15. The following figures in relation to total UK advertising spend in relation to the Harbour Housewares brand have been provided for the years 2019-2021 (inc.):<sup>3</sup>

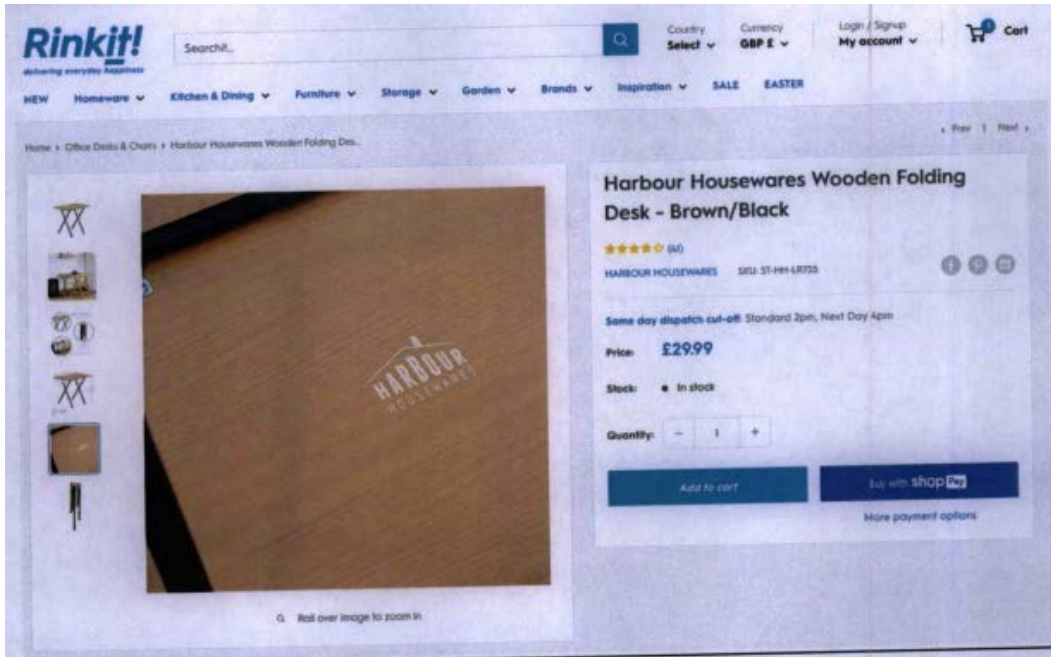
FY19 - £73,803      FY20 - £123,026      FY2021 - £418,341

16. Exhibit 1 – Exhibit 6 consist of screenshots from the webpages of “Rinkit!”. Each exhibit shows a different style desk available to order online under the Harbour Housewares brand, including, *inter alia*, the Harbour Housewares Compact Computer Desk and the Harbour Housewares Industrial Office Desk. The mark itself precedes the description of each desk, which are priced in pounds sterling. The various desks shown in the exhibits have price points ranging from £29.99 to £73.99. None of the exhibits are dated.



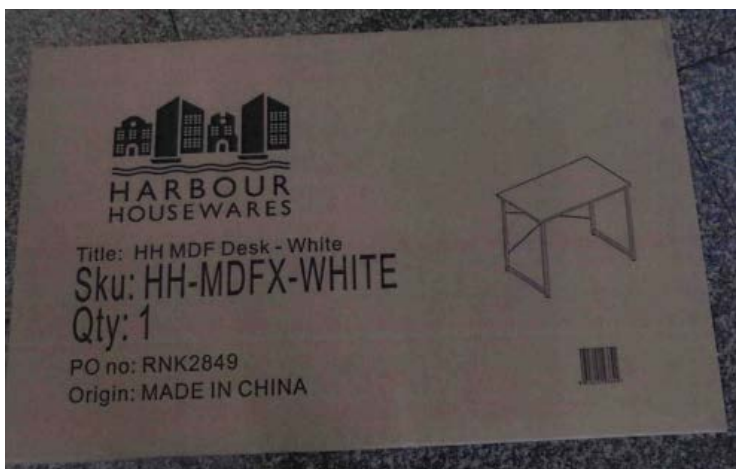
17. Exhibit 7 is a screenshot from the webpages of “Rinkit!” which shows a close up of the brand in a figurative form displayed on the goods themselves:

<sup>3</sup> See Q8 of Form TM7F.



As in the previous exhibits, alongside the photograph of the relevant item, the mark itself precedes the description of the desk, being the Harbour Housewares Wooden Folding Desk, which is priced at £29.99. The exhibit is undated.

18. Exhibit 8 comprises a photograph of the packaging used on the goods. The mark is shown on the box as the words "HARBOUR HOUSEWARES" with a figurative element located directly above the words. The packaging also includes an illustration of the applicable desk, the bar code, and the product's Sku code. The exhibit is undated:



19. In Document Reference no. 1, Exhibit 9 is described as showing the recent re-branding development carried out in 2020. The exhibit consists of 5 pages from what

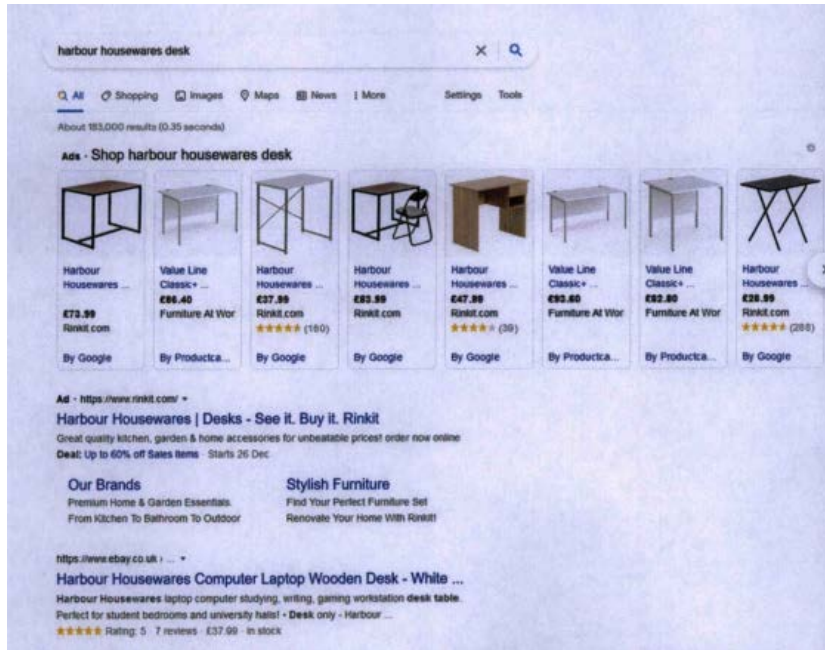
appears to be a promotional brochure. The first (cover) page (numbered 7/48 in the evidence) consists of a blue coloured page displayed in landscape. The word “Rinkit!” is written in white in the top left corner, and the words “Harbour Housewares”, which is written in a much smaller font, also in white, appear below it, but located further down the page. Page 2 of the exhibit consists of a photograph of a kitchen with the words “SAIL LOFT LIVING, SIMPLE AND FUNCTIONAL – BUT WITH STYLE!” just right of centre at the top of the page. On the bottom left-hand side of the page, the mark is presented in combination with other matter, with the words “HARBOUR HOUSEWARES” written in a larger and bolder font to the previous strapline, with the words situated directly below a device element, as shown below. The same composite sign is shown on the subsequent three pages. Page 3 further describes the Harbour Housewares range as being for “every space in your home, outdoors as well as indoors”. However, no specific products are mentioned. Page 4 states that the Harbour Housewares range is across a vast variety of furniture, storage and other home essentials. Page 5 is headed “Harbour Housewares master brand mark”, with examples of the words and device element in various colour combinations:



20. Exhibits 10 and 11 show results from the search engine Google for the search terms “harbor housewares” and “harbour housewares desk”, respectively. The results for both searches link to the rinkit.com website, as well as showing links to, *inter alia*,



the Amazon UK and Ebay UK websites which serve to demonstrate that the Harbour Housewares products are also available to order from other suppliers. Neither exhibit is dated.



21. Exhibit 12 comprises 34 pages showing the products available under the Harbour Housewares brand, with the date each product was first listed next to the description. The items are dated from 14/03/2013 through to 16/03/2021. The products themselves range from desk chairs to toilet brushes, with the first mention of any type of desk being on 06/01/2015 (see page number 14/48 of the evidence filed under Document reference no. 1), while the wooden office desk with drawer (see Exhibit 2) and the compact computer desk (see Exhibit 6) were not listed until 4/9/2020 (page 43/48) and 25/02/2021 (page 46/48), respectively :

ST-HH-W5432 x 3	Harbour Housewares 3pc Wooden Floating Shelves Set - Wooden Wall Mounted Storage	02/09/2020
ST-HH-BRS115 x 1	Harbour Housewares Soft Close Toilet Seat - Wooden with Chrome Hinges - Grooved WI	02/09/2020
ST-HH-CT112 x 1	Harbour Housewares Artificial Realistic Potted Christmas Tree - Indoor Outdoor - Black F	02/09/2020
ST-HH-CT112 x 2	Harbour Housewares Set of 2 Artificial Realistic Potted Christmas Trees - Indoor Outdoo	02/09/2020
ST-HH-MDFX285 x 1	Harbour Housewares Wooden Office Desk With Drawers - Computer Workstation Study	04/09/2020
ST-HH-MDFX285 + FC104 x 1	Harbour Housewares Wooden Office Desk With Padded Folding Chair - Computer Work:	04/09/2020
ST-HH-MDFX285 + FC101 x 1	Harbour Housewares Wooden Office Desk With Padded Folding Chair - Computer Work:	04/09/2020



ST-HH-DTS202445 x 1	Harbour Housewares Compact Computer Desk - Compact Modern Style Space Saving Kit	25/02/2021
ST-HH-DTS202443 x 1	Harbour Housewares 2 Seater Compact Dining Set - Compact Modern Style Space Saving	25/02/2021
ST-HH-DTS SET 01	Harbour Housewares Compact Office Desk & Chair Set - Compact Modern Style Space S	25/02/2021
ST-HH-DTS202444 x 1	Harbour Housewares 2 Seater Breakfast Bar Set - Compact Modern Style Space Saving K	25/02/2021
ST-HH-LR734 + FC104 x 1	Harbour Housewares 2 Piece Folding Desk and Chair Set - Small Modern Home Office W	11/03/2021
ST-HH-LR734 + FC101 x 1	Harbour Housewares 2 Piece Folding Desk and Chair Set - Small Modern Home Office W	11/03/2021
ST-HH-LR733 + FC101 x 1	Harbour Housewares 2 Piece Folding Desk and Chair Set - Small Modern Home Office W	11/03/2021

22. Exhibit 13 is a copy of an email from Rob Lowe, the Managing Director of Rinkit!, to Frederick Burkhart of Gardner, Linn, Burkhart & Ondersma LLP, being the WIPO representative on the contested IR. In it, Mr Lowe asks to discuss his concerns regarding the designation prior to raising an objection. The email is dated 26 February 2021.

23. Exhibit 14 appears to be a copy of a page from Amazon UK advertising for sale a Harbour Housewares Folding Computer Desk, priced at £38.99. In Document Reference no. 1, the opponent highlights that the desk has received a score of 4.3 out of 5, with 1,104 reviews. The exhibit is undated, although there is reference to delivery between April 14 -15, it does not specify in which year.



## DECISION

24. Although the UK has left the European Union, 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 Act relied on in these proceedings are derived from an EU Directive. Therefore, this decision contains references to the trade mark case-law of the European courts.

## **Proof of Use**

25. Section 6A of the Act is as follows:

(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) 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.”

26. Section 100 of the Act states that:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it”.

27. The relevant period during which genuine use must be shown is the five years ending with the priority date of the contested designation, which was 07 February 2020. The relevant period is 08 February 2015 to 07 February 2020. As the opponent's mark is a UKTM, the territory in which use must be shown is the UK.

28. The case law on genuine use was summarised by Arnold J (as he then was) in *Walton International Limited v Verweij Fashion BV* [2018] EWHC 1608 (Ch):

“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 Bunderversammlung 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].”

### *Use of the mark*

29. In Document Reference no. 1, the opponent states that the trade mark is used on a wide range of products, which as of 01/04/2021 totalled 803 items, which are advertised across 1534 active product adverts on multiple sales platforms online. It further states that this includes 6 desks in various colour choices, giving 14 available desk options, all of which are branded physically on both the product and packaging and sold under the Harbour Housewares mark, as demonstrated in Exhibits 1 - 8. While the mark is registered in classes 6, 8, 11, 16, 18, 19, 20 and 21, the opponent has made it clear at Q1 of the amended form TM7F, dated 30/04/2021, that for the purposes of this opposition, it is only concerned with furniture, namely desks.

30. Where there is no use of the mark in respect of the goods as registered, it follows there has been no genuine use of the mark. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, Mr Geoffrey Hobbs Q.C. as the Appointed Person stated that:

“ 22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not ‘show’ (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use.”

31. The evidence filed by way of the exhibits demonstrates some commercial use of the mark in relation to desks. There is further evidence of trade mark use on furniture in general in exhibits 9, 10 and 12. I must consider whether, or the extent to which, the evidence shows genuine use of the earlier mark in relation to those goods on which the opponent relies under Section 5(2)(b).

#### *Genuine use*

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

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



33. In its counterstatement, the holder submits that the sales and advertising figures provided by the opponent are not supported by back-up evidence, and that the majority of the exhibits are undated and therefore should be deemed inadmissible. It submits that the opponent has failed to demonstrate genuine use of its trade mark and consequently, the opposition should be dismissed.

34. In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander Q.C. as the Appointed Person stated that:

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

35. As outlined in the evidence summary, the opponent has filed a number of exhibits, alongside Document reference no. 1, intended to show proof of use. However, as highlighted by the holder, a good proportion of the evidence is undated, with only Exhibit 12 showing the date that each particular product within the Harbour Housewares range was listed.

36. What can be said is that the mark has been used on 6 different types of desk, as clearly shown in Exhibits 1 – 6, which were available to purchase through the Rinkit! website, with Exhibits 10 and 11 also showing other stockists such as Amazon UK and Ebay UK, and where prices are displayed, they are shown in pounds sterling.

The only documentary evidence that the desks were actually available during the relevant period is the list in Exhibit 12, which shows that 2 of the 6 desks mentioned were not listed until after the end of the relevant period.<sup>4</sup> This does not show how – or even if – the mark was used in trade between 08 February 2015 and 07 February 2020.

37. The opponent has provided UK sales figures for desks. These are relatively small, but I bear in mind that use of the mark need not always be quantitatively significant for it to be deemed genuine.<sup>5</sup>

38. The opponent has also provided the advertising spend for the Harbour Housewares brand for the FY 2019 - 2021 inclusive. As the relevant period is 08 February 2015 to 07 February 2020, it is only the figures for the first year that are pertinent. Further, there is no breakdown to show what percentage of the advertising expenditure relates directly to desks. Exhibit 9 demonstrates the promotion of the brand in relation to furniture, and while the exhibit itself is undated, mention is made of it in Document Reference no. 1., which states that re-branding was carried out in 2020. As the relevant period ended on 07 February 2020, it is unclear whether the rebranding fell within the prescribed timeframe, and no other evidence relating to promotional activities for the Harbour Housewares brand has been provided.

39. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself. It is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof: see *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T- 415/09, paragraph 53.

40. Case law does not specify particular types of documentation that must be adduced in evidence. When considering the evidence, I am entitled “to be sceptical of a case of use if, notwithstanding the ease with which it could have been

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<sup>4</sup> See paragraph 21 of this decision.

<sup>5</sup> See point (7) of the summary of the law in paragraph 115 of *Walton*, cited above in paragraph 28.

convincingly demonstrated, the material actually provided is inconclusive”: (see *PLYMOUTH LIFE CENTRE*, BL O/236/13, paragraph 22).

41. I have considered the evidence as a whole. Aside from the table showing sales figures for desks during the relevant period, it should not have been difficult for the opponent to provide documentary evidence, such as invoices for the sale of goods bearing the Harbour Housewares mark in the UK, or brochures or images from the relevant period. The opponent has not shown how the mark was used in trade during that time. Accordingly, it is my view that the evidence provided is insufficient to allow me to find that there has been genuine use on any of the goods on which the opponent relies within the relevant period and within the relevant territory of the UK.

42. Consequently, the earlier mark cannot be relied upon in these proceedings and so the opposition under Section 5(2)(b) fails.

## **Conclusion**

43. The opposition has failed. Subject to any successful appeal, the IR may be designated for protection in the UK.

## **Costs**

44. The holder has been successful, and is therefore entitled to a contribution towards its costs. Awards of costs in fast track opposition proceedings are governed by Tribunal Practice Notice (“TPN”) 2 of 2015. Applying the guidance in that TPN, I award Zhejiang Xinyi Shengao Mechanical Transmission Co., Ltd the sum of £200, which is calculated as follows:

Considering the notice of opposition and filing a counterstatement:	£200
<b>Total:</b>	<b>£200</b>

45. I therefore order Rinkit Ltd to pay Zhejiang Xinyi Shengao Mechanical Transmission Co., Ltd the sum of £200. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

**Dated this 7<sup>th</sup> day of September 2021**

**Suzanne Hitchings  
For the Registrar,  
the Comptroller-General**