

O/617/20

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3337325 BY
APHRIA INC.**

TO REGISTER:

MOHAWK

AS A TRADE MARK IN CLASSES 5, 29 & 31

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 416016 BY
GRE GRAND RIVER ENTERPRISES DEUTSCHLAND GMBH**

BACKGROUND AND PLEADINGS

1. Aphria Inc. (“the applicant”) applied to register **MOHAWK** as a trade mark in the United Kingdom on 10 September 2018, claiming partial priority from Canadian trade mark no. 1912932, with a priority date of 1 August 2018. The application was accepted and published on 18 January 2019 in respect of the following goods:¹

Class 5

Cannabis related product, namely, oils; oils derived from cannabis; cannabis and marijuana; cannabis related products, namely oils, salves, concentrated pastes, tinctures, tablets and capsules, each containing cannabis; oils, salves, concentrated pastes, tinctures, tablets and capsules each containing resins and oils derived from cannabis; nutraceuticals for medicinal purposes; nutraceuticals for medicinal purposes containing cannabis; nutraceuticals for medicinal purposes containing derivatives of cannabis, namely resins and oils; topical skin creams, bars and liquid soaps, bath additives, bath herbs, bath oils, body creams, body oils, face and body lotions, face and body milk, face lotion, and skin care preparations each containing derivatives of cannabis; each of the aforementioned products for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid; personal sexual lubricants; transdermal patches containing cannabis; oral sprays containing cannabis; pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings.

Class 29

Preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; milk and milk products; oils and fats for food; oils and resins derived from cannabis, not for medicinal use; cannabis related product, namely oils, oils

¹ The specification initially included certain goods in Class 34, but these were deleted during the course of the proceedings.

derived from cannabis; food products containing cannabis, cannabis resins and cannabis oils, namely butter.

Class 31

Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruit and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; foodstuffs and beverages for animals; malt; live cannabis plants; live marijuana plants; cannabis seeds.

2. On 16 April 2019, the application was opposed by GRE Grand River Enterprises Deutschland GmbH (“the opponent”). The opposition is based on section 5(2)(a) of the Trade Marks Act 1994 (“the Act”) and concerns all the goods of the application.² The opponent is relying on EUTM 8710221 **MOHAWK**, which was applied for on 9 November 2009 and registered on 3 May 2010 for the following goods:

Class 34

Unprocessed tobacco, processed tobacco and tobacco products, included in class 34, in particular cigarettes, cigars, cigarillos, fine cut tobacco, pipe tobacco, chewing tobacco, snuff, cigarettes containing tobacco substitutes, not for medical purposes; smokers’ articles, in particular tobacco tins, cigarette cases, cigarette holders, ashtrays (all the aforesaid goods not of precious metal or coated therewith), cigarette papers, cigarette tubing, cigarette filters, smoking pipes, pocket apparatus for rolling cigarettes, lighters, included in class 34; matches; cigarette cases of precious metal; cases (cigarette -), of precious metal; cigarette holders of precious metal; cigar cases of precious metal and wood; boxes (cigar -), of precious metal; cigar holders of precious metal.

3. This mark qualifies as an earlier mark under section 6(1) of the Act. As the earlier mark completed its registration procedure more than five years before the partial priority date claimed for the contested mark, it is subject to the proof of use provisions

² The opposition was originally based on sections 5(1) and 5(3) as well, but these grounds were withdrawn during the course of the proceedings.

of section 6A of the Act. The opponent states that it has used the earlier mark for the following goods: *Cigarettes, tobacco, tobacco products, cigarette papers, cigarette tubing, cigarette filters, pocket apparatus for rolling cigarettes.*

4. The opponent claims that its mark is highly distinctive, that the contested mark is identical to it and that the goods covered by both marks are identical and similar. As a result, there is a high risk of confusion between the marks.

5. The applicant filed a defence and counterstatement putting the opponent to proof of use of its mark for the goods listed in paragraph 3 above. It admits that the marks are identical but denies that the contested goods are identical or similar to the opponent's goods. It requests that the opponent explain why it makes this claim and denies that there is a likelihood of confusion.

6. Both parties filed evidence. I shall summarise this to the extent that I consider necessary. The opponent and applicant also made written submissions on 22 October 2019 and 27 January 2020 respectively. I shall not summarise these but shall refer to them as and where appropriate in my decision.

7. The matter came to be heard before me on 25 November 2020 by videolink. The opponent was represented by James Setchell of Trade Mark Owners Association Limited and the applicant by Roger Lush of Carpmaels & Ransford LLP.

EVIDENCE

Opponent's evidence in chief

8. The opponent's evidence in chief comes from Mr Bernard Johnston of GRE Grand River Enterprises Deutschland GmbH. He describes himself as "the authorised officer". His witness statement is dated 21 October 2019.

9. Mr Johnston says that the opponent was established by Native Americans in 1992 with the intention of using the tradition and culture of the Mohawk people “to make quality tobacco products at affordable prices”.³

10. He states that the earlier mark has been in continuous use in the EU since 2009 in relation to cigarettes and tobacco. Exhibit BJ1 contains examples of forms required for the movement of tobacco products within the European Economic Area, which includes the EU. They date from 9 November 2015 to 20 December 2018 and show the dispatch of Mohawk-named products to Austria, Spain, Slovenia and the Netherlands.⁴ These forms do not show if or how the mark was used on the products.

11. A set of 16 invoices can be found in Exhibit BJ2. Those that fall within the relevant period are summarised below. For five of these, the customer is based in Tilburg in the Netherlands. The earliest is dated 3 January 2017 and the latest 13 August 2019, which is outside the relevant period. The remaining three Dutch invoices have dates in May 2017, March 2018 and August 2018. The invoices show sales of goods named “Mohawk” of €33,547.20. Some of these goods are clearly tobacco products. The nine other invoices are to a customer in Italy and are dated from 8 October 2013 to 6 October 2015. The figures on the invoice dated 13 January 2014 are unclear, but the rest show sales of goods named “Mohawk” of €4,221.72. The nature of these goods is unclear from the invoices. They are described as “Mohawk Classic Red”, “Mohawk Classic Blue”, “Mohawk Origins Red”, “Mohawk Origins Blue” and “Mohawk Classic Blend”.

12. Exhibit BJ3 contains print-outs from German websites made on 15 October 2019. No translation has been provided but it is clear that the images show packets of cigarettes and tobacco.

13. Mr Johnston states that Exhibit BJ4 contains images of packaging used in the Netherlands. However, none of the four images in the exhibit is dated.

³ Paragraph 6.

⁴ The Exhibit also shows the movement of Mohawk products to Iceland and Norway, which are in the EEA.

The applicant's evidence

14. The applicant's evidence comes from William Steven Hazelwood, an associate and solicitor at Carpmaels & Ransford LLP, the applicant's representative. His witness statement is a vehicle for submitting the following exhibits summarised below.

15. Exhibits WSH1 and WSH2 are print-outs from the Statista website. According to Exhibit WSH1, the market value of tobacco in the UK was €21.1 bn in 2015 and it had increased by 3% by 2019. Retail sales of tobacco were around £12.2 billion in 2017. Exhibit WSH2 says that the price of a packet of 20 Marlboro cigarettes was \$12.09 in August 2019.

16. Exhibits WSH3 and WSH4 are print-outs from YouTube and the Netflix website showing the availability of videos on cooking with cannabis from 2017 and 2018.

The opponent's evidence in reply

17. The opponent's evidence in reply comes from Ms Marie-Christin Lehmann, who was employed as a legal trainee at ZENK Rechtsanwälte, the opponent's German representatives.⁵ Her witness statement is dated 28 July 2020 and is based on research she carried out on 2-4 March 2020. Ms Lehmann states that she was asked to investigate the connection between tobacco and cannabis, including whether they have the same purpose, use, users, and whether they are in competition. Three exhibits contain articles from general sites such as Huffpost and menshealth.com and specialist scientific papers. I shall not summarise them here but will return to them if necessary later in my decision.

Preliminary Issue

18. At the hearing, Mr Lush referred to a recent decision by the Portugal Department of Trade Marks on opposition proceedings between the same parties concerning the same trade marks. He offered to provide the Tribunal with a copy of the translation as,

⁵ Trade Mark Owners Association Limited are representing the opponent before the IPO.

while that decision is not binding on this tribunal, he felt that it was persuasive. I declined this offer as in my view it would not make a material difference to the decision and giving the applicant the opportunity to submit comments on it would increase costs for the parties and delay any decision.

Decision

19. Section 5(2)(a) of the Act is as follows:

“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

...

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

20. The opponent’s mark qualifies as an earlier trade mark under section 6(1)(a) of the Act. However, because it completed its registration process more than five years before the date of application for the contested mark, it is subject to the proof of use provisions of section 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 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.”

21. Section 100 of the Act is also relevant. It 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.

22. 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 law with respect to genuine use.* 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 *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 Bundersvereinigung 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 *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].

23. The relevant period in which use must be shown is 2 August 2013 to 1 August 2018, as far as the opposition concerns the goods covered by the trade mark claimed as priority, and 19 January 2014 to 18 January 2019 for the remaining goods. The specification of the priority mark is reproduced in the Annex to this decision.

24. As the earlier mark is an EUTM, the opponent must show use in the EU. In *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, the CJEU noted that:

“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.”⁶

25. In assessing whether the use shown in the evidence is sufficient to establish that the mark has been genuinely used, I must consider all relevant factors. These include 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 for them; and the geographical extent of the use shown.

26. Mr Setchell submitted that the evidence showed that the opponent had made genuine use of the earlier mark for the following goods:

Unprocessed tobacco, processed tobacco and tobacco products, included in class 34, in particular cigarettes, cigars, cigarillos, fine cut tobacco, pipe tobacco, chewing tobacco, snuff, cigarettes containing tobacco substitutes, not for medical purposes.

⁶ Paragraph 36.

27. Mr Lush for the applicant submitted that the evidence was insufficient to show any use and so the opposition should fail at this first hurdle. His criticisms centred on the low volumes of shipped products; the lack of evidence that the goods had been sold under the mark to the end consumer; the absence of turnover figures; and the lack of evidence of how the mark has been used on the market.

28. I must, however, consider the evidence as a whole. In *New Yorker SHK Jeans GmbH & Co KG v OHIM*, Case T-415/09, the General Court (GC) said:

“In order to examine whether use of an earlier mark is genuine, an overall assessment must be carried out which takes account of all the relevant factors in the particular case. Genuine use of a trade mark, it is true, cannot be proved by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (*COLORIS*, paragraph 24). However, it cannot be ruled out that an accumulation of items of evidence may allow the necessary facts to be established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts (see, to that effect, judgment of the Court of Justice of 17 April 2008 in Case C-108/07, *Ferrero Deutschland v OHIM*, not published in the ECR, paragraph 36).”⁷

29. The case law is clear that there is no *de minimis* level of sales that constitutes genuine use. It is also the case that not every commercial use of a mark is genuine use. I must consider all the relevant factors. What does the evidence show? From the invoices in Exhibit BJ2, I can see that sales of cigarettes and tobacco of €33,547 were made to a company in the Netherlands on four occasions between January 2017 and August 2018. About two-thirds of these were made on the latest date, which falls within the relevant period only for the purposes of the opposition to the goods that are not

⁷ Paragraph 53.

covered by the priority claimed from the Canadian trade mark.⁸ They also show sales of at least €4,221.72 to a company in Italy between October 2013 and October 2016.⁹

30. Exhibit BJ1 shows that shipments were made to Austria, Spain and Slovenia, as well as the Netherlands. These shipments included goods named “Mohawk”.

31. Cigarettes and tobacco were available for sale to customers via a German website as of the date of printing Exhibit BJ3: 15 October 2019. The goods show the mark “MOHAWK”, sometimes on its own and sometimes with the word “ORIGINS” beneath it in smaller letters. Exhibit BJ4 contains larger images of packaging, showing the word “MOHAWK” and health messages in Dutch. As I have already noted, these images are undated.

32. The value of the invoiced goods is, to my mind, relatively small in terms of the EU market for cigarettes and other tobacco products. I note that the opponent did not challenge the applicant’s evidence that just a single part of that market (the UK) was worth €21.1bn in one year (2015).¹⁰ It is highly likely that these invoices are only samples, but the opponent has not provided any information on its figures for sales of goods under the earlier mark. That would be important context for the invoices.

33. I am well aware that quantitative issues are not the only ones that are relevant, and that small levels of sales may constitute genuine use. However, it seems to me that given the likely size of the EU market for cigarettes and tobacco, in the absence of turnover figures, it is difficult for me to find that the sales shown here are sufficient. The shipping documents do not provide much more information, beyond suggesting distribution of the goods in a larger number of EU Member States. It is not clear what proportion of the shipped goods were sold under the earlier mark, or how the mark might have been used on the products bought by the consumer.

⁸ These goods are *Pharmaceuticals, medical and veterinary preparations; sanitary preparations for medical purposes; dietetic food and substances adapted for medical or veterinary use, food for babies; dietary supplements for humans and animals; plasters, materials for dressings* in Class 5; *Preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; milk and milk products; oils and fats for food* in Class 29; and *Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruit and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; foodstuffs and beverages for animals; malt.*

⁹ As noted in paragraph 11, one invoice, dated 13 January 2014, is not wholly legible.

¹⁰ Exhibit WSH1.

34. Exhibit BJ3 does show the mark in use, but as I have already noted these print-outs were made after the relevant period and they have no other date. At the hearing, Mr Setchell submitted that Exhibit BJ3 shed light on what the position during the relevant period had been. However, I consider that he is expecting me to make a large number of suppositions from a small amount of evidence.

35. At this stage, I recall what the Appointed Person (Mr Daniel Alexander QC) said in *PLYMOUTH LIFE CENTRE*, BL O/236/13:

“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.”¹¹

36. It seems to me that the opponent should have been able to provide examples of the mark in use during the relevant period. The Wayback Machine, for instance, is widely used for such purposes. I was also surprised by the absence of figures for sales of products bearing the mark. Again, these should have been easy for the opponent to obtain.

¹¹ Paragraph 22.

37. The assessment of genuine use is a multifactorial assessment. In my view, the quantitative and qualitative evidence is insufficient for me to be able to find that there has been genuine use of the earlier mark, and so the opposition fails.

Final Remarks

38. Even if I had found that there had been genuine use, I do not consider that this would have assisted the opponent. For a claim under section 5(2)(a) to be successful, there must be some degree of similarity between the goods and/or services. The contested goods consist of pharmaceutical and dietetic preparations, foodstuffs and agricultural and horticultural products. They are, in my view, different in physical nature, use and trade channels from the goods the opponent seeks to rely upon. They are neither complementary, nor in competition. At first blush, it might seem that *cannabis and marijuana* in Class 5 are similar in some degree to the opponent's goods, but I recall that, where goods and services may fall within more than one class, it is acceptable to construe that term in the light of the class shown in the specification: see *Pathway IP Sarl (formerly Regus No. 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited)* [2018] EWHC 3608 (Ch). Cannabis and marijuana used for medicinal purposes are, to my mind, dissimilar to the opponent's tobacco products. They have a different purpose and do not share the same trade channels. I do not consider them to be complementary or to compete with each other. The opposition would have failed on these grounds even if I had found that genuine use had been established.

CONCLUSION

39. The opposition has failed and the applied for mark will proceed to registration for the goods in Classes 5, 29 and 31.

COSTS

40. The applicant has succeeded and is entitled to a contribution towards its costs, in line with the scale set out in Tribunal Practice Notice (TPN) 2/2016. In the

circumstances, I award the applicant the sum of **£1300**, which has been calculated as follows:

Preparing a statement and considering the other side's statement: £200

Preparing evidence and considering and commenting on the other side's evidence: £500

Preparing for and attending a hearing: £600

TOTAL: £1300

41. I therefore order GRE Grand River Enterprises Deutschland GmbH to pay Aphria Inc the sum of £1300. 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 10th day of December 2020

**Clare Boucher
For the Registrar,
Comptroller-General**

Annex

Specification for Canadian Application No 1912932

Class 5

Cannabis related products, namely oils, salves, concentrated pastes, tinctures, tablets and capsules, each containing cannabis for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oils, salves, concentrated pastes, tinctures, tablets and capsules each containing resins and oils derived from cannabis for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes, containing cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; nutraceuticals for medicinal purposes, containing derivatives of cannabis, namely resins and oils for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; topical skin creams, bar and liquid soaps, bath additives, bath herbs, bath oils, face and body lotions, face and body milk, face lotion, and skin care preparations each containing derivatives of cannabis, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; personal sexual lubricants; transdermal patches containing cannabis for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement,

for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oral sprays containing cannabis for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy.

Cannabis and marijuana for medicinal purposes, for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; cannabis related product, namely, oils for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy; oils derived from cannabis for medicinal use for the relief of pain, for relaxation, for reducing stress and fatigue, for mood enhancement, for maintaining general health and well-being, for relieving anxiety, for relieving depression, as a sleep aid and for management of opioid addiction and relief of epilepsy.

Class 29

Oils and resins derived from cannabis, for use as comestibles; cannabis related product, namely, oils for use as comestibles; oils derived from cannabis for use as comestibles; food products containing cannabis, cannabis resins and cannabis oils, namely butter.

Class 31

Live cannabis plants; live marijuana plants; Cannabis seeds.

Class 34

Dried marijuana, dried cannabis; derivatives of cannabis, namely resins and oils, for oral vaporizers for smoking; cannabis and marijuana for recreational use; smokers' articles, namely, smoking pipes, pouches for use with marijuana and cannabis, lighters for smokers, oral vaporizers for smokers.

Smokers' articles, namely, grinders for use with cannabis and marijuana.