Neutral Citation Number: [2026] EWHC 659 (Ch)

CLAIM No. IL-2024-000121

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY (ChD)

Ian Karet OBE sitting as a Judge of the Chancery Division

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 19 March 2026

Between:

C. & J. CLARK INTERNATIONAL LIMITED

Claimant

- and -

(1) TREK BICYCLE CORPORATION
(2) TREK BICYCLE CORPORATION LIMITED **Defendants**

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Mr. Jonathan Hill (instructed by Squire Patton Boggs (UK) LLP) for the Claimant
Mr. Michael Hicks (instructed by Ashfords LLP) for the Defendants

Hearing dates: 24, 25, 26 and 28 November 2025
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Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Ian Karet:

Introduction

1. This is my judgment following the trial of an action concerning use of the sign TREK on shoes. The Claimant ("Clarks") is a substantial shoemaker based in Street, Somerset. For over 50 years it has sold the DESERT TREK shoe, and it has branded various other shoes as TREK. The First Defendant ("TBC") is a US corporation which has for almost 50 years sold bicycles and related products under the sign TREK. The Second Defendant ("TBCL" and together with TBC "Trek") is a subsidiary of TBC.

2. The dispute arises out of a trade mark co-existence agreement between Clarks, C & J Clarks Limited and TBC made on 11 April 2001 to address uses of the mark TREK (the "Agreement"). By the close of the trial the parties had identified the following issues:

    i) Clarks claim that Trek has in breach of the Agreement sold cycling shoes and insoles marked TREK and has infringed Clarks' registered trade marks under sections 10(1), 10(2) and 10(3) of the Trade Marks Act 1994 ("TMA"). TBC denies infringement and say that Clarks consented to the uses complained of.

    ii) TBC claims that Clarks has in breach of the Agreement sold shoes marked TREK which are "adapted for… participating in sports or fitness", a phrase that features in the Agreement.

    iii) Clarks claims that certain UK registered trade marks owned by TBC are invalid under section 47 TMA.

    iv) Trek claims that Clarks' two UK registered trade marks for TREK should be partially revoked for non-use under section 46 TMA.

    v) Clarks claims that Trek is in breach of the Agreement by bringing an opposition to a trade mark application in China.

    vi) Clarks claims that Trek is in breach of the Agreement as a result of sales by Lidl.

The Witnesses

3. Clarks relied on the evidence of eight witnesses. Trek cross-examined three of them.

4. Paul Wakefield, Clarks' Chief Legal Officer, a Director and Company Secretary, gave evidence about Trek's allegations of waiver and estoppel arising from a meeting in 2018. Clarks served a hearsay notice in respect of his evidence as he was abroad during the trial.

5. Benjamin Flamsteed, Senior Finace Manager (Product Finance) for Clarks since 2019, gave evidence of Clarks' sales of TREK shoes. He was not cross-examined.

6. James Frapwell, Global Head of Clarks Originals and Energy Marketing, gave evidence of the history of the TREK brand and the marketing of Clarks' products. He was not cross-examined.

7. Matteo Bellantani, Head of Product Design for Clarks Originals since 2019 and also Creative Director since 2023, gave evidence on Clarks' use of TREK and whether its products are adapted for participating in sports or fitness. He was not cross-examined.

8. Sebastian Edwards is Business Manager (Clarks Men's). He has held that role since 2021, and he has held various roles at Clarks since the late 1990s. He has also worked elsewhere in that time. He gave evidence on Clarks' use of TREK, potential collaborations with TBC and whether Clarks' products are adapted for participating in sports or fitness. He was clearly aware of the wording of the Agreement and the matters in dispute. His answers were carefully aligned with Clarks' position.

9. Thomas White, Senior Vice President and General Counsel for C. & J. Clark America, oversees Clarks' global IP portfolio. He gave evidence of Clarks' IP practices and dealings and negotiations with TBC. His evidence was clear.

10. Rosemary McKissock was in 2018 in charge of the Brand Strategy team at Clarks. She gave evidence of Clarks' dealings with TBC. She no longer works at Clarks and her evidence was the subject of a hearsay notice.

11. Paolo Beconcini is a consultant at Squire Patton Boggs and handles trade mark matters in China for European and US clients. He gave evidence remotely, and he was a clear witness.

12. Trek relied on the evidence of four witnesses. Clarks cross-examined three of them.

13. Andy Pliszka is Vice-President of Product at TBC. He gave evidence of TBC's dealings with Clarks in 2018 that gave rise to Trek's arguments of waiver and estoppel. Mr Pliszka gave careful answers that appeared intended to support Trek's position. On the question of what happened at the key meeting with Clarks in 2018 his evidence developed during the case. In cross-examination he gave a credible description of the final position at the meeting. This was different from the position that Trek had taken before, and I discuss that further below. His answers on other matters were somewhat guarded.

14. Eric Huston is senior legal counsel at TBC. He has responsibility for trade mark issues. He gave evidence on that and on the Lidl-Trek arrangements. That issue became part of the case shortly before trial and was addressed both in evidence and argument in less detail than it would have been had the parties had a greater opportunity to develop their cases. Mr Huston was another witness who gave careful answers.

15. David Brezina is an attorney at Ladas & Parry who handled trade mark issues for TBC before the Agreement was made. He gave evidence of a dispute between Clarks and TBC and various opinions including the trade mark treatment of cycling products. He did not attend trial, and Trek served a hearsay notice in respect of his evidence.

16. Mary Merz is outside counsel for TBC and worked with them on the Chinese Opposition. She appeared defensive throughout with a view to protecting the views and advice she had given on TBC's position.

17. I should at this point note that an individual who played a key part in the discussions between Clarks and TBC in 2018 was not a witness. Jason Beckley was Clarks' Brand Manager at the October 2018 meeting with Mr Plizka at which Trek says Clarks agreed that TBC could use TREK on shoes and waived its rights under the Agreement. Mr Beckley left Clarks in November 2018. Trek attempted to contact him in connection with this dispute, but he did not give evidence for either side. I do not draw any inferences from Mr Beckley's absence. Each side had a full opportunity to present its case.

18. There was no expert evidence.

Approach to evidence

19. I bear in mind that in a case where the relevant matters occurred some years ago and where issues arose over a number of years contemporaneous documents will play an important role. That has been explained in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) at [15]-[23], *Blue v Ashley* [2017] EWHC 1928 (Comm) at [65]-[70] and *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ 1413 at [48]-[49]. The documents stand as evidence in themselves and provide the platform for testing the logicality, implausibility, consistency and detail of the witness evidence.

20. I also note the decision of Robert Goff LJ in *Armagas Ltd v. Mundogas SA (The Ocean Frost)* [1985] 1 Lloyd's CRep 1 on the assessment of factual witnesses and how to take into account the demeanour of the witnesses. That was discussed by Leggatt LJ in *R (on the application of SS (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 1391 at [36]-[41]. Demeanour is not in itself a reliable guide to whether a witness is telling the truth.

The Agreement - history

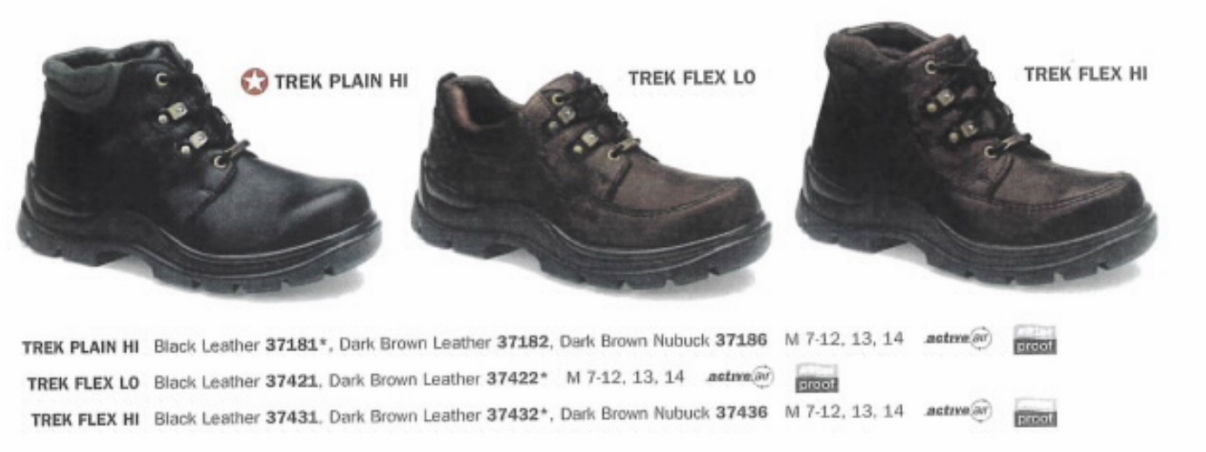
21. The Agreement was made to resolve a number of trade mark issues between the parties. First, Clarks had opposed an application by TBC to register TREK as a Community Trade Mark ("CTM") for bicycling apparel, including ankle length socks. Second, TBC had opposed an application by Clarks to register DESERT TREK as a CTM. Third, the USPTO had raised an issue on an application by TBC to register TREK for bicycling apparel, including ankle length socks, based on Clarks' registration for TREK for "casual footwear of leather, suede or synthetic materials".

There had also been a dispute between the parties in New Zealand which had resulted in a co-existence agreement which has not been located and which played no part in the case.

22. At the date the Agreement was made Clarks sold TREK shoes. Examples of the shoes which Clarks sold around that time are found in Clarks' US catalogues for Spring 1999 and Fall 2001.

23. The 1999 models are shown below and are described as "Men's Outdoor" shoes. The description appears appropriate.

24. The 2001 Fall catalogue is dated after the Agreement, but the parties agreed that it suitably illustrated the type of shoes which Clarks offered under the TREK brand at the time the Agreement was made. The appearance of these shoes is consistent with the earlier examples. Those in the upper row below could also be described as "outdoor" shoes. They are rugged in appearance and of a solid construction.



25. The outdoor shoes are all leather or nubuck shoes, boots and sandals. The "Desert Trek" is a casual shoe in leather or suede with a distinctive seam down the middle. The other shoes and sandals have a distinctly rugged appearance consistent with walking and hiking.

26. At this time TBC was trying to register a US trade mark for: "Bicycling apparel namely, bicycling jerseys; form fitting and reinforced seat elastic shorts; ankle length socks; wind resistant jackets with enhanced visibility fabric, extra sleeve length, high collar and extended length back panel; vests with enhanced visibility fabric, high collar and extended length back panel."

27. Clarks had a US registration in stylised form for "casual footwear of leather, suede or synthetic materials".

28. TBC was known for its bicycles and clothing. At that time Lance Armstrong rode "Trek" bicycles. He wore Nike shoes, and TBC distributed Nike shoes as part of its range. Trek had also sold shoes under the brands "Bontrager" and "Velocis". Possibly because of the Armstrong connection at that time Clarks was not interested in selling TREK cycle shoes.

29. The Agreement is relatively short. It provides:

“Whereas TBC is the owner of the trade mark TREK and has used it for a variety of clothing products adapted for wear when cycling, such as hats, shorts and jerseys.

AND WHEREAS TBC is the proprietor of certain trade mark registrations for sports clothing and other clothing adapted for wear when cycling.

AND WHEREAS CLARKS are the owners of the trade mark TREK and have used it in relation to footwear.

AND WHEREAS CLARKS are the proprietors severally of certain trade mark registrations consisting of or containing the word TREK for footwear, clothing, headgear and parts of footwear.

AND WHEREAS the parties hereto are not in direct competition insofar as their respective products are concerned under their respective trade marks, and that no confusion is presently known to exist with respect to either party's use.

AND WHEREAS TBC has, for many years, sold sports clothing and other clothing adapted for wear when cycling, commemorating cycling events or participating in sports or fitness, including, but not limited to, shorts, jerseys, jackets, hats, anoraks, gloves, sweat shirts, sweat pants, warm-up suits, tights, wind resistant jackets and pants and raingear.

AND WHEREAS the parties hereto recognize the differences in their respective and likely to continue channels of distribution have contributed to the absence of confusion with respect to either party's use.

AND WHEREAS it is the purpose of this agreement to preserve the above-described status quo in which there has been no known consumer confusion.

NOW THEREFORE, in consideration of the foregoing, the parties hereto agree as follows.

1. TBC will object neither to the use nor future application by CLARKS to register the word TREK or any trade mark containing the word TREK in relation to footwear, clothing, headgear and parts of footwear so long as CLARKS refrain from using TREK on any such goods adapted for wear when cycling, commemorating cycling events or participating in sports or fitness.

2. TBC will not attack, challenge or otherwise interfere with any CLARKS registration consisting of or containing the word TREK valid and in force at the date hereof, and, further, will not attack, challenge or otherwise interfere with any such CLARKS registration secured hereafter which reflects the terms of Clause 1 hereof.

3. CLARKS agree not to use the word TREK on any goods adapted for wear when cycling, commemorating cycling events or participating in sports or fitness.

4. CLARKS will object neither to the use nor to the future or pending application by TBC to register the word TREK in relation to clothing products adapted for wear when cycling, commemorating cycling events or participating in sports or fitness, including shorts, jerseys, jackets, hats, anoraks, gloves, sweat shirts, sweat pants, warm-up suits, tights, wind resistant jackets and pants and raingear.

5. CLARKS will not attack, challenge or otherwise interfere with any TBC registration for TREK valid and in force at the date hereof, and, further, will not attack, challenge or otherwise interfere with any TBC registration for TREK secured hereafter in relation to goods described in Clause 4 hereof.

6. TBC agree to use the mark TREK only in relation to clothing products for wear when cycling, commemorating cycling events or participating in sports or fitness, including shorts, jerseys, jackets, hats, anoraks, gloves, sweat shirts, sweat pants, warm-up suits, tights, wind resistant jackets and pants and raingear, but not including footwear.

7. TBC will if requested by CLARKS and at the cost of CLARKS provide written consent to the registration by CLARKS of a mark consisting of or containing the word TREK for the goods described in Clause 1 hereof.

8. CLARKS will if requested by TBC and at the cost of TBC provide written consent to the registration by TBC of TREK for the goods described in Clause 4 hereof.

9. In the event that by reason of the prior registration by one of the parties hereto of its TREK trade mark as herein described the other party is not permitted by the competent administrative jurisdiction to register its trade mark as defined herein, the party whose trade mark is so registered shall take no steps to impede, hinder, or otherwise prevent the use by the other party of the other party's trade mark in that jurisdiction, so long as the use made by the later party is within the terms of the Agreement.

10. The parties hereto agree to withdraw any current opposition filed against any of the parties' TREK applications [within two weeks of] promptly after the last signature on the Agreement.

11. This Agreement is intended to have effect throughout the world.

12. This Agreement shall be governed by the laws of England and Wales.

13. This Agreement constitutes the entire agreement and understanding of the parties and it shall not have effect beyond its scope, for example, insofar as the parties' freedom to use and register TREK in relation to goods and services falling

outside class 25 is concerned, although it is in no way intended to authorize Clarks to expand into goods and services relating to goods in class 12 or 28.

14. This Agreement shall be made to bind and shall inure to the benefit of the respective affiliates, licencees, assigns and successors in business of the parties hereto."

The law on construction

30. The principles of contractual interpretation are set out in *Wood v Capita Insurance Services Ltd* [2017] UKSC 24 at [10]-[15] and *Sara & Hossein Holdings Ltd v Blacks Outdoor Retail Ltd* [2023] UKSC 2 at [29]. As the court said in *Blacks Outdoor*, the contract must be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean. The court must consider the contract as a whole and, depending on the nature, formality and quality of its drafting, give more or less weight to elements of the wider context in reaching its view as to its objective meaning. Interpretation is a unitary exercise which involves an iterative process by which each suggested interpretation is checked against the provisions of the contract and its implications and consequences are investigated.

The Agreement - discussion

31. The Agreement is worldwide in scope and made without limit in time. It is limited to goods in class 25. The parties were advised by outside counsel and it was made to resolve a number of live trade mark registration issues. As the final recital records, the purpose of the Agreement was to preserve the status quo in which there was no confusion between the parties' goods.

32. There are a number of issues between the parties as to the meaning and effect of the Agreement.

33. The first issue is what the parties agreed not to do. The obligations are set out in groups. Clauses 1 - 3 relate to Clarks' use of TREK and trade marks; Clauses 4 – 6 relate to TBC's activities.

34. By Clause 6 TBC agreed to use the mark TREK "only in relation to clothing products for wear when cycling, commemorating cycling events or participating in sports or fitness, including shorts, jerseys, jackets, hats, anoraks, gloves, sweat shirts, sweat pants, warm-up suits, tights, wind resistant jackets and pants and raingear, but not including footwear."

35. TBC says that the words "not including footwear" are not a positive prohibition on the sale of shoes. That is because "footwear" cannot mean *anything* that is worn on the foot. That is because the matters being settled included an application by TBC for "ankle length socks", so that socks marked TREK were permitted items for TBC.

Further, TBC was selling Nike branded shoes as part of the TBC offering. TBC adds that it would have been simple to draft a prohibition on TBC selling shoes and that Clause 6 is not such a clause.

36. TBC further says that if, contrary to that submission, Clause 6 is a restriction on the sale of shoes, then it applies to casual shoes, which are not of the kind of goods listed in Clause 6, and not to cycling shoes, which are more like bicycle equipment than clothing or shoes. TBC includes in its description of cycling shoes both cleated shoes which have a rigid sole and attach to the pedal and also mountain biking shoes that have a more flexible sole and do not attach to a pedal but which have grooves or slots that can match projections on the pedal.

37. I do not accept TBC's submissions, for the following reasons. First, the purpose of the Agreement was to preserve the status quo in which Clarks sold certain footwear marked TREK and TBC sold TREK cycling goods and clothing (but not TREK branded footwear). As a result of that division there was no confusion and that was the status quo which the parties agreed to preserve. Each side agreed to keep away from types of footwear. A range of dictionary definitions shows that the word "footwear" means outer coverings for feet. The Oxford English Dictionary and Cambridge Dictionary both use the term "outer", and Merriam Webster and Collins both give shoes and boots as an example of footwear. Second, the absence of a direct restriction in the Agreement is, in this context, not surprising. The wording of Clause 6 builds on the recital of what TBC was doing under the TREK brand at the time. Third, the Agreement does not distinguish between types of shoes, and the evidence showed that mountain bike shoes are often advertised as suitable for general or casual wear.

38. The second issue is the meaning of the phrase in Clause 3 "adapted for wear when cycling, commemorating cycling events or participating in sports or fitness". The parties agreed that in this context "adapted for" means "suitable for" rather than requiring an existing item to have been changed or altered in some way. This is supported by various dictionary definitions, particularly Merriam Webster, which the parties agreed was a suitable reference work.

39. Clarks further submits that this requires functional features that make the shoes "specifically suitable for one or more of those purposes". This requires there to be some characteristic of the goods that has been changed, or is suited for, a particular use, purpose or situation beyond some general purpose. If this is intended to require a specific functional feature that makes a shoe suitable for a particular sport (such as football or running) then I do not agree. The phrase "sports or fitness" is general in nature, and it was agreed in context of preserving the status quo in which Clarks sold the types of TREK shoes illustrated above. They were rugged outdoor shoes suitable for walking. They would not in 2001 have been described as "sports" shoes. At that time trainers were common.

40. In this context, “adapted for” means “suitable for”, and there is no requirement that shoes be suited for any particular defined sport. "Sports or fitness" is a general phrase intended to capture a wide range of activities. “Sports or fitness” here applied to shoes is a category of shoes that neither party was selling in 2001 and which they agreed to avoid. It was clearly not intended that Clarks would stop selling the TREK shoes that it already had on the market, and the phrase was not intended to apply to casual shoes of the types that Clarks sold.

41. Factors that may be relevant in assessing whether shoes are "adapted" in this context include any written description or specification, for example internally or in a design document; their appearance; the materials from which they are made; and the description given to consumers as to the nature and purpose of the shoes.

42. The third issue is the meaning of the phrase “so long as” in Clause 1. Clarks submits that this wording is for the avoidance of doubt and only means that TBC can object to use by Clarks which goes beyond the use permitted by Clause 3. It has no bearing on applications by Clarks to register marks. TBC says first that the words “so long as…” mean that TBC can complain if and to the extent Clarks use or apply to register a mark outside the permitted scope. That appears to be without any limit in time, so that it does not matter if Clarks remedies the situation after a complaint is made and moves back into compliance. Alternatively, TBC submits that “so long as” is a “temporal” condition and that if Clarks breaches Clause 3 then the restriction in Clause 1 does not apply. In this context, the words “so long as” mean “for as long as”. If Clarks is in breach of Clause 3 then during that time, TBC is not bound by the clause. TBC do not address what happens if Clarks moves back into compliance.

43. In my view the phrase should be given its natural meaning. If Clarks is in breach, then TBC may object for the relevant period, i.e. so long as, that continues. The Agreement does not create a once and for all trigger which allows TBC to act under Clause 1 even after Clarks has moved to comply with the Agreement.

44. The fourth issue is whether Clause 2 imports the “so long as” wording from Clause 1. In my view it does not. The clause refers to “any… Clarks registration secured hereafter which reflects the terms of Clause 1…”. The "reflection" in this case is of the type of registration for the goods which are permitted in Clause 1. The clause does not require the "so long as" wording, and neither side suggested that it needed to be addressed as an implied term. It would have been possible to word this clearly if that had been the intention.

45. The fifth issue is the effect of Clause 14. Clarks submits that this clause makes the Agreement binding on the acts of affiliates and licensees. TBC submits that Clause 6 does not impose a contractual obligation on TBC beyond the plain wording of the clause. That means that as the Agreement expressly creates an obligation only on TBC it only affects acts by TBC. Other persons are not party to the Agreement and are not bound by it.

46. In my view this clause is intended to make each party responsible and thus liable for the acts of its affiliates and licensees. It is "made to bind" them. It does that not by making other persons parties to the Agreement, but by making the parties liable for the acts of those persons. If it were not so, then each party could easily avoid the restrictions by doing business through affiliates or licensees. That does require the Agreement to be read so that the named parties include the further parties set out in Clause 14.

47. The sixth issue is whether TBC is permitted to counterclaim for invalidity of Clarks trade marks or whether Clause 2 bars that. In my view TBC may counterclaim. The restriction in Clause 2 prevents TBC from attacking "any CLARKS registration consisting of or containing the word TREK valid and in force". TBC may on the plain wording counterclaim that a mark is invalid.

Events after the Agreement was made

48. Following the Agreement, TBC secured its US trade mark registration and sold socks branded TREK.

49. There was then a period of about 15 years in which little happened between the parties. Trek sold cycling shoes under the “Bontrager” brand.

50. In 2016 TBC was considering use of the TREK mark on cycling shoes. It was also concerned that in its view Clarks was not policing the TREK mark effectively. Discussions between Ms Merz and Trek’s UK IP advisors Oakleigh concluded that the Agreement was quite restrictive and that TBC would need to agree with Clarks changes to allow it to sell TREK shoes.

51. Oakleigh contacted Squire Patton Boggs (“SPB”), Clarks’ UK trade mark attorneys, in August 2016 to open a discussion on that. In September 2016 Oakleigh proposed that the Agreement be amended so that Trek could use TREK for cycling shoes. In October 2016 SPB responded that Clarks did not agree as footwear was their primary business and that Clarks had a line of "athleisure" footwear. Clarks were interested to meet to discuss opportunities to work together.

52. Trek considered whether it might take action against Clarks’ registered marks to spur them into a further agreement. Mr White’s evidence is that in August 2017 Trek also offered to make a payment for a licence; it appears that this was £10,000 or $10,000 - it is not clear which currency was discussed.

53. In August 2017 and February 2018 Trek filed various UK and EU trade mark applications for TREK and logos including the mark which included "footwear" in the scope of goods.

54. TBC and Clarks were also in contact directly. In April 2017 Ms McKissock emailed Mr Pliszka about the possibility of a collaboration. It appears that Mr Beckley was

keen on them. Matters progressed slowly. There were calls between the parties in April and October 2017, and the parties agreed to meet in June 2018.

55. A meeting took place at TBC's offices in Wisconsin on 15 June 2018. Mr Beckley and Ms McKissock attended for Clarks and Mr Pliszka, Mr Bauman and others for Trek. Clarks prepared a slide deck suggesting collaboration on casual and cycling shoes.

56. On 25 October 2018 the parties met again at Clarks' offices in Street. TBC says that this was the meeting at which Clarks agreed to the uses now alleged to be breaches of the Agreement. TBC said that Mr Beckley was keen to do a deal with them on a collaboration. Mr Edwards gave the impression that he did not think that Mr Beckley was a team player and that it was possible he may have said things that were not all agreed in advance at Clarks. Mr Beckley, of course, did not give evidence.

57. Mr Beckley and Ms McKissock attended for Clarks. Mr Pliszka and Mr Bauman attended the meeting for TBC. Mr Pliszka's evidence was that while there were various discussions about collaboration, he also raised the question of TBC's use of the TREK mark on its own. Mr Pliszka said that at the end of the day he, Mr Bauman and Mr Beckley were in a conference room and that he raised the issue then. Ms McKissock was not there. Mr Pliszka said that Mr Beckley told him that Clarks did not see TBC's use of TREK on cycling footwear as a conflict. Mr Pliszka said the participants moved to a different space and he raised the issue again. Mr Beckley confirmed that it would not be a problem, and he then presented the TBC team with an original last of a Desert Trek shoe as symbol of their agreement. Mr Pliszka said that he understood from Mr Beckley that there was no need to put anything in writing.

58. TBC said that the shoe last was an unusual and valuable item and that it was a significant thing for Mr Beckley to give to TBC.

59. Clarks took issue with Mr Pliszka's evidence, noting that it was different both from Trek's first explanation of the position and their pleaded case. It was also out of line with the stance that Clarks had taken in the earlier discussions, that they would not allow TBC to sell shoes, and there was no commercial reason for Clarks to change its position. The Clarks legal team had not given permission to Mr Beckley to make that agreement. Ms McKissock's evidence was that she was at all of the meetings, and she did not recall any agreement. Clarks also disputed that the shoe last was of any significant or particular value.

60. At trial Mr Pliszka was cross-examined in detail about the events. He said that he raised the question of the trade mark with Mr Beckley and that; "He [Mr Beckley] said I checked and that shouldn't be a concern. We don't see a conflict, something to that effect".

61. I accept that Ms McKissock was not present at that moment and that Mr Beckley did not have permission from the Clarks legal team to make an agreement on this matter.

It is not clear whether TBC might have thought he had authority, but, as I explain below, that does not matter.

62. In my view Mr Pliszka's evidence did not show that Mr Beckley agreed that TBC could make use of the TREK mark on shoes. As Mr Pliszka put it in cross-examination, Mr Beckley said that it should not be a problem. That did not amount to consent. It was conditional. Mr Beckley did give Mr Pliszka a shoe last, but that did not indicate a binding agreement that TBC could use TREK on shoes. Lasts were considered valuable items, but the gift does not change the analysis.

63. The events on both sides following the meeting are also in line with a conclusion that no consent was given at the meeting. Ms McKissock followed up by email on 30 October 2018 saying that she had "taken an action to pick up the conversation on a proposal for a legal agreement". That does not mention any agreement that had been made or consent given. Mr Pliszka said that he discussed the matter with Mr Huston on his return to TBC, and that Mr Pliszka said that the agreement did not need to be put in writing because Mr Beckley had said that it was not necessary. TBC did not write to record an agreement. That would be in line with an understanding that there was not an agreement or that TBC preferred not to inquire.

64. Mr Beckley left Clarks shortly after this and no collaboration took place between the parties. There was nothing to suggest his leaving was related to matters with TBC.

65. Early in 2021 Mr Pliszka contacted Ms McKissock to inquire if Clarks were interested to talk further about a collaboration.

66. Late in 2023 TBC filed an opposition against a Chinese trade mark of Clarks. That included an allegation that the Clarks' application had been filed in bad faith. The opposition did not mention the Agreement. It appears that TBC intended to use the opposition to get Clarks' attention and encourage some further agreement, and that TBC intended their Chinese attorney to contact Clarks' Chinese attorney to pursue communications. However, TBC's Chinese attorney did not make contact and SPB found out about the opposition with only a short time left to respond. Mr Beconcini and Ms Merz then discussed the matter. TBC suggested a further agreement on shoes; SPB did not agree that. TBC then dropped the opposition. None of these steps appears to have been taken on the basis that the parties had amended the Agreement in 2018. Clarks also point out that TBC did not at this point raise an argument that Clarks were in breach of the Agreement.

67. In March 2024 Clarks sent a letter before action alleging breaches by TBC. TBC raised allegations of breaches by Clarks. Clarks denies these on the basis that the relevant shoes are athleisure products.

Clarks' claim of breaches of the Agreement by Trek – cycling shoes

TREK cycling shoes and insoles

68. Clarks claims that Trek have used TREK in relation to cycling shoes and insoles branded “Trek RSL Road Cycling Shoes”, “Trek Velocis Road Cycling Shoes” and “Trek RSL Knit Road Cycling Shoes”. The insoles are branded “Trek Biodynamic High Arch Cycling Shoes”. These reflect TBC's decision to phase out the shoes brands “Bontrager” and “Velocis” it had used previously.

69. Trek accepts that it is selling these shoes for cycling on the basis that they are “specialist cycling shoes” and that it is permitted to do so. The TREK shoes and insoles were introduced in January 2024. Examples shown in the magazine Cycling News are set out below. Clarks relies on various models of these items and further examples are included in the Particulars of Claim.

70. Trek submits that it had consent to these acts. I have found that Clarks did not consent to these acts – no agreement was reached on this in October 2018. It follows from the construction of Clause 6 of the Agreement set out above that the advertisement and sales of the shoes and insoles are breaches of the Agreement.

Lidl Trek shoes

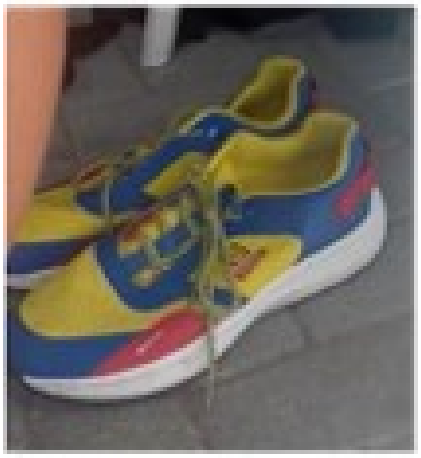
71. Clarks also claim breaches in respect of sales by the German supermarket chain Lidl of “Lidl Trek” shoes of the racing team of that name. This claim arose late in the proceedings. By order of 17 October 2025, very shortly before trial, Deputy Master Linwood gave permission for Clarks to amend their claim to include further allegations of breach in respect of these shoes.

72. This claim covers leather trainers, slippers and team sneakers. TBC denies that it has put them on the market anywhere, but it accepts that Lidl advertised them on its website in the UK in July 2025 and that some trainers and slippers were sold as part of a Tour de France promotion. There may have been sales in the UK. TBC says that the sneakers were provided to members of the Team and denies that they were sold. Members of the racing team have worn the sneakers as part of the team uniform. Lidl also advertised the shoes in France and the Netherlands.

73. TBC accepts that it approved the design of at least some products similar to the leather trainers and slippers and did not object to Lidl producing them. TBC submits that it did not require Lidl to sell such items and that it received no revenue as a result of sales.

74. Clarks alleges that TBC is jointly liable for infringing acts carried out by Lidl or the Team.

75. Drawings of the trainers and photographs of the slippers and sneakers appear below. The Team brand is shown as a rectangle containing the Lidl and Trek signs.



76. The background to this claim is as follows. Lidl and Trek sponsor a professional cycling team "Lidl-Trek". The team is run by a separate Belgian company called Trek Factory Racing BVBA ("TFR" or "Team"). TFR was a wholly owned subsidiary of TBC until 24 October 2025 when Lidl took control. The Team has a UCI licence which allows it to compete at the top level of international cycle racing including in the Tour de France.

77. TBC's sponsorship agreements with TFR for the years 2024 to 2026 are dated 14 October 2023, 18 October 2023, 25 September 2024 and 7 October 2025. They are governed by Wisconsin law. They do not permit TFR to sub-license or put on the market goods under the TREK mark. TBC and TFR are independent contractors with respect to each other. Neither has authority to bind the other. And the agreements do not imply a partnership or joint venture. Mr Chad Brown, who is the CFO of TBC and an officer of TFR, signed the agreements for both parties.

78. Lidl's sponsorship agreement was made on 12 May 2023. It is governed by German law. It provides Lidl with certain sponsorship rights. In August 2024 two Lidl companies and TFR made an agreement which refers to the Lidl sponsorship

agreement. The Team logos may be applied to products which include “bath slip on” and “sneaker”. No designs are specified.

79. TBC accepts that the trainers and slippers were sold by Lidl as part of a promotion around the time of the 2025 Tour de France.

80. In September 2024 Mr Pliszka approved a list of Team-branded merchandise which included both sneakers and slippers. Mr Pliszka said that he was only giving his approval to how the logo looked and not the merchandise itself. I do not accept that as previously he had declined to approve some types of goods.

81. TBC says that Clause 6 is a restriction on TREK alone and not on any other party. As the use complained of was by Lidl and not by TBC that cannot be a breach of Clause 6. I have, however, concluded that by Clause 14 of the Agreement the parties have agreed to be bound by the actions of their affiliates and licensees.

82. TBC says further that the Team brand is not the mark TREK covered by clause 6 of the Agreement. Clause 1 uses a broader term: "the word TREK or any trade mark containing the word TREK", and clause 2 similarly uses: "consisting of or containing the word TREK". I do not accept that clause 6 is limited to the word TREK alone and would not cover a logo. The Team logo is a composite of the sponsors brands and use of that logo is use of TREK.

83. Clause 6 covers the types of shoes shown here and Clause 14 covers the actions of licensees and affiliates. I accept that the evidence relating to the Team shoes has been assembled in a short time since the amendment of the claim in October 2025 and that the relative volumes of the products concerned may be small. However, Lidl is a licensee under the Agreement and it has used the mark TREK in a manner that is restricted by clause 6. That breach is by Clause 14 the responsibility of TBC.

Trek’s claim of breaches of the Agreement by Clarks

84. Trek claims that Clarks has in breach of Clause 3 of the Agreement sold under the TREK brand shoes "adapted… for participating in sports or fitness". Trek provided an Annex to its closing skeleton argument setting out 13 types of shoes as examples, with descriptions taken from Clarks' own data. This is said to be a representative example only, because the range of shoes Clarks offers changes regularly. Clarks' written closing addressed those shoes. Various examples of shoes are also included in the pleadings; some were introduced at trial and collected in the parties' closing written arguments. I do not understand either side to take a point that any shoe on which they made submissions should be excluded from consideration.

85. Clarks' disclosure included an Excel spreadsheet dated June 2025 that shows various TREK shoes, boots and sandals included in seasons from 2016 to 2025. Shoes styled "Trek" alone or including "Trek" as part of the name (e.g. "ATL Trek Wave" and "ATL Trek Run") are listed under a column "Categoryname". That column includes

entries listed "Originals", "Casual Clarks", "Boots", "Sandals", "Sport" and "Sport Clarks".

86. A column in the spreadsheet headed "Consumer" includes "Relaxed Casual", "Casual Style", "Dress Casual", "Sport Active", "Sports Active", "Sports Style" and "Sports Performance".

87. Clarks thus recorded internally that it sold what it described in its internal use as sports shoes and catered for consumers for sports shoes.

88. Mr Edwards noted that shoes were often not given a name at the start of a project, and he referred in his statement to a brief for "Women's ATL" from AW22. This starts with a "Market Insight":

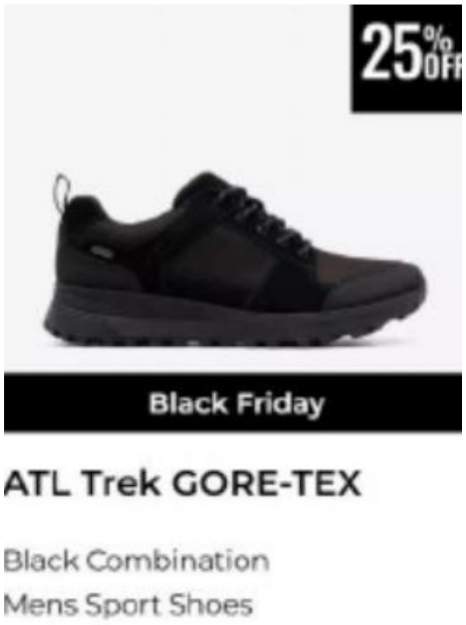
> "The outdoor category continues to grow globally with consumer mindset shifts following COVID pandemic and consumer being more active and spending more time outdoors. Building on the successful launch of Men's ATL, we want to capitalise on the women's opportunity, starting with a sports active approach."

89. The brief refers to a "need for functional and protective sneakers" as consumers were "taking their workouts outside across seasons". One page is entitled "The tough terrain runner" and describes the shoes as for "running, training, fitness, outdoors, athleisure, all-day active". The brief includes shoes by Veja, Nike, Sorel, adidas and New Balance similar in style to those sold by Clarks under the TREK brand. The female models included in pictures from other brands are wearing leggings, which are associated with sport and fitness. These shoes are intended to be multipurpose shoes that include "fitness". The reference to all day wear does not limit them to walking, as Clarks suggests.

90. I set out representative examples of the shoes below. The information provided to me about the various models of shoes is not consistent from model to model. For example, only some of it was taken from a Clarks website, and the materials used in manufacture are specified only in some cases. I bear in mind the factors that I set out in paragraph 41 above as relevant in assessing whether shoes are "adapted" in this context.

91. The first is the Wave Trek shoe that appears to have been marketed around 2016. It was described as part of an "outdoor collection" and, like earlier versions shown above, was offered in leather or nubuck.

92. The second is the ATL Trek Gore-Tex as shown on the Clarks website. This model is described on the Clarks website as "Mens Sport Shoes" and has a suede and nylon upper.



Mr Edwards says that this shoe was designed for walking. The description on the Clarks website indicates that it is "perfect for exploring the great outdoors".

93. The third is the Motion Trek LT. The shoes are described on the Clarks website as "Mens Sport Shoes".

MOTION TREK LT NAVY KNIT

Navy Knit

Mens Sport Shoes

£60.00

MOTION TREK LT BLACK KNIT

Black Knit

Mens Sport Shoes

£60.00

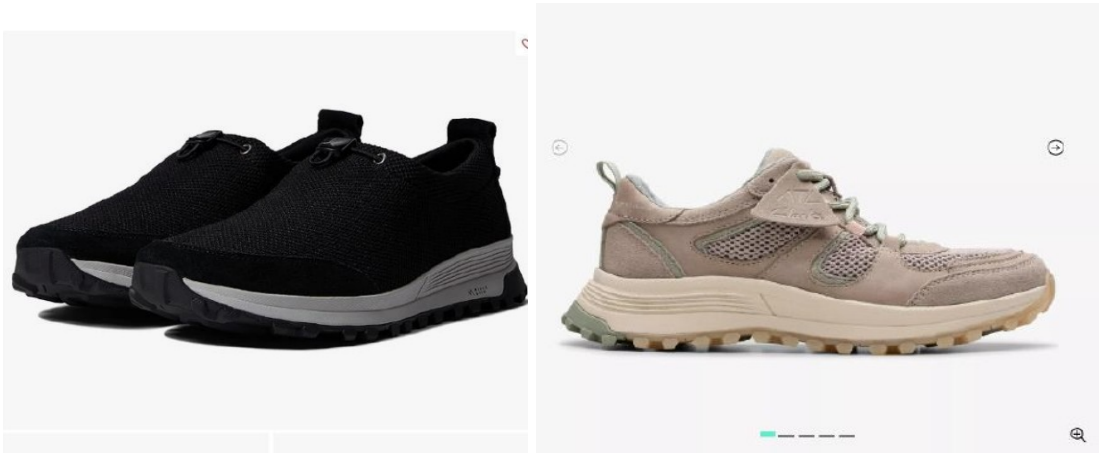
Thes shoes have a knitted fabric upper. Mr Edwards explained his view that there is a difference between a "lifestyle 'sports' shoe" and one that is "actually adapted for active sports". He said that while this shoe might be marketed as a "trainer" it has no "adaptations" for use in active sports. In cross-examination he described this as a "leisure shoe" and said that it is "classified as a sports shoe because anything of that ilk, you know, a sporty design, is classified as a sports shoe".

94. Mr Edwards' evidence was based on his understanding that "adapted" meant that shoes had specific adaptations for one or more sports or carrying out an activity specifically for fitness and not a general fitness activity. These adaptations would, he said, have to be specified in the design brief for the product. While he accepted that shoes may have a sporty design, they were designed for leisure. Clarks, in his view, is not a sport brand. In my view a shoe with a “sporty design” sold by Clarks as a “sports” shoe is intended to be seen by consumers to be and in fact to be suitable for sports or fitness use.

95. The fourth is the ATL Trek Free Waterproof. Two models are shown below.

96. The blue model is described on a Clarks US website page as "Womens Sport Clarks". The other model is described on an Amazon page as a "Sneaker". It has a substantial wedge sole typical of trainers.

97. The fifth is the ATL Trek Vibe. The right-hand model is waterproof.

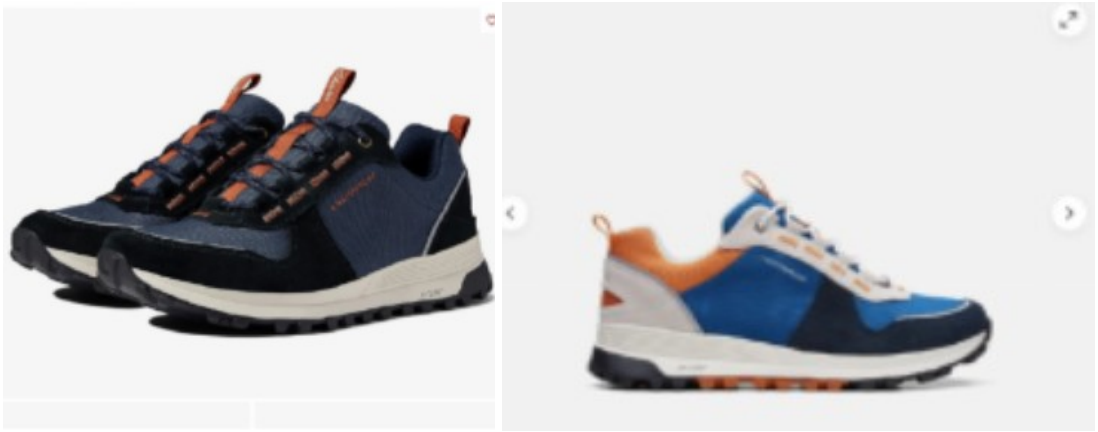


The left-hand model has a "breathable stretch upper". The right-hand model is waterproof and is described on the Clarks website as a "resilient trainer" which is "Cut out for pebbled beaches, winding country paths and city streets".

98. The sixth is the ATL Trek Run.

Clarks says that this shoe is for casual walking and not running, and on the Clarks website the shoes are worn by a model wearing jeans who would not be running. Clarks has no explanation for the use of "Run" in the name. Given the close relationship between walking and running as activities, the choice of name is striking.

99. The seventh is the ATL Trek Walk. The version on the left has a "chic design" and "durable construction with lightweight materials". The version on the right is shown on eBay where is it is described as "Waterproof White Active Sport Sneaker Shoes".



100. Other models addressed by the parties include the ATL Trek Knit, ATL Trek Path, ATL Trek Sky (a leather boot), the ATL Trek Walk, the ATL Trek Wally and the ATL Trek Khan.

101. Trek did not adduce physical examples of shoes in evidence; a small number were shown to Mr Edwards; and the design briefs for the shoes were not put to him.

102. TBC submits that all these shoes have a "trainer" design, in which the heel is higher than the toe. The shoes have relatively light uppers and cushioned soles (sometimes using EVA). Some have removeable sole, grippy soles, pronounced heels, padded collars and make use of Gore-Tex. For Clarks Mr Edwards agreed that these features were part of the ATL Trek product range.

103. Trek also relied on Clarks' names for the shoes. As I have said, some are described internally using the terms "Sport", "Sport Active" "Sport Clarks" and on the Clarks website as sports shoes. Clarks response to that is that the mark TREK stands for walking and that these shoes are everyday walking or leisure shoes. They also use the description "athleisure" and say that none is "adapted" within the meaning Clarks gives it.

104. Clarks says that its internal descriptions of the shoes, which Mr Edwards calls "naming conventions", are not relevant and that Clarks is not a sports shoe company. Clarks submitted that in this context the term the use of "Sport" should be understood in the way that a "Range Rover Sport" evokes an idea and not a true function. I reject the analogy. Cars and shoes are sold in different ways. If a manufacturer had agreed not to sell "sports" cars and then marked and sold a model as "sports" car it would be hard-pressed to explain why that was not a breach.

105. In my view, the documents are significant. The AW22 document I have described above calls for shoes that can be used for a variety of purposes including fitness. The TREK shoes that Clarks was selling at the time of the Agreement are very different in appearance from those it has sold recently under that brand. The development of the shoe market since the Agreement was made has led to shoes that serve more than one purpose. The TREK shoes sold at the time of the Agreement are clearly outdoor shoes

and boots. I prefer the contemporaneous documentary evidence to Mr Edwards' explanations, and I do not accept the limited meaning he gives to the word "adapted".

106. Considering the factors that I have set out at paragraph [41] above I come to the following conclusions on these shoes.

107. The 2016 Wave Trek shoe appears to be an update of earlier versions of the shoe sold when the Agreement was made. It is not a breach of the Agreement.

108. The more recent shoes have been developed beyond an outdoor shoe. The AW22 design document shows Clarks' drive to develop multifunctional shoes and wish to broaden the appeal of the TREK shoe. The Agreement was clearly not intended to stop Clarks doing what it had done up to the date it was made. Its purpose was to create a space in which neither party would operate so as to avoid confusion between them.

109. I accept that some models may be used for walking and a wider range of sports and fitness activities. Considering the various factors that are relevant I find that the following shoes illustrated above are breaches of the Agreement; (i) Motion Trek LT; (ii) ATL Trek Free Waterproof; (iii) ATL Trek Run; and (iv) the ATL Trek Vibe. These shoes are all adapted for sports or fitness within the terms of the Agreement. They have the appearance of sports/fitness shoes. They are all made to a "trainer" design and are of materials suitable for and commonly used in sports and fitness shoes. Clarks described these shoes internally as "Sports" and sold them to consumers as sports (and not walking) shoes. They are all suitable for use in fitness activities as that term is generally understood and may be used for sports. Breach does not require that they are designed for use in specific, named sports such as football or tennis.

110. As a particular example, Clarks will have selected the name ATL Trek Run for a reason. It would be odd to give that name to a shoe intended exclusively for walking.

111. Based on the materials before me, which I have noted were limited, TBC has not provided sufficient evidence to show that the following are breaches:

i) ATL Trek GoreTex. Clarks describes these shoes as suitable for sports, but the evidence presented to me is not clear enough that they are not merely an updated walking shoe which has been included in Clarks' "Sports" category. They seem to be very similar in appearance and a development of the Wave Trek design. On balance, I do not find that these are a breach.

ii) ATL Trek Walk. These shoes have in the photographs all the appearance of a general sports shoes, but the name "Walk" indicates that Clarks intended them to be walking shoes.

iii) ATL Trek Knit. The information provided about this shoe is taken from a third party website and is not sufficient to establish a breach.

iv) ATL Trek Path GoreTex. The information about this shoe is limited to two pictures. Coupled with the name "Path", which connotes walking, the evidence is not sufficient to establish infringement.

v) ATL Trek Sky and ATL Trek Mid Brown. These are boots which appear to be for walking.

vi) ATL Trek Khan. This is an all-terrain Leisure trainer made for walking.

vii) ATL Trek Wally. This is a leisure shoe.

112. Clarks included in its written submission a picture of the ATL Trek Sea which appears to be a walking sandal similar to the sandals made at the time of the Agreement.

Clarks' claim of breaches of the Agreement by Trek – Chinese Opposition

113. Clarks submits that by filing the Chinese opposition, TBC was in breach of Clause 1 of the Agreement. Filing such an opposition would be a breach "for so long as CLARKS refrain from using TREK on any such goods adapted for wear when … participating in sports or fitness". I have found that Clarks has used the mark on shoes for sports or fitness in breach of the Agreement, so that the restriction on TBC in Clause 1 did not apply at that time. Based on the AW22 document, it appears that Clarks was in breach in 2023 when the Chinese opposition was filed. Accordingly, there was no breach in respect of the Chinese opposition.

Restraint of trade

114. Trek raises restraint of trade as a defence to Clarks' claims under the Agreement. It submits that if the Agreement is interpreted as preventing TBC from selling specialist cycling shoes under the TREK brand then that is unenforceable because it excludes them from a commercially important sector of the market. At the date of the Agreement Clarks sold shoes under the TREK brand that were entirely different and non- competing.

115. Settlement agreements are common in trade mark matters. Kerly's Law of Trade Marks, 17th Ed notes that in the case of a settlement agreement containing terms agreed by proper negotiation between commercial parties there is a threshold requirement to be satisfied before the restraint of trade doctrine applies. The presumption is that restraints are reasonable. The presumption may be rebutted e.g. by showing that there were serious questions whether the genuine use of the marks in issue at the time the Agreement was made.

116. In *Quantum Actuarial LLP v Quantum Advisory Ltd* [2021] EWCA Civ 227 Carr LJ summarised the approach to the doctrine. As part of her review, she noted that restraining provisions which are of a sort which have become accepted and normal currency for commercial relations will generally fall outside the doctrine.

117. In this case, Trek submits that if the Agreement prevents TBC from raising non-use attacks then that is a restraint. Further, the shoes which Trek wants to sell are so different from the Clarks shoes that there is a restraint.

118. I do not accept these arguments. I have held that TBC may challenge validity under the Agreement. Trek has without complaint sold cycling shoes under the Bontrager and Velocis brands. It therefore has access to this market. The range of Clarks shoes sold at the time of the Agreement were sufficiently broad to establish an interest for both sides to agree a space between them that neither side would enter.

Trek's claims of invalidity of Clark's registered trade marks

119. I turn to the question of registered trade marks. Clarks' claims of infringement will depend on the scope of the marks, and it is convenient first to consider TBCs counter-claims against them.

120. Trek claims that the Clarks TREK mark should be partially revoked. I have held that TBC is not restricted by the Agreement from making that argument.

121. The registered trade marks in issue are TREK, UK0000626881A, registered in Class 25 for "Boots, shoes and slippers" and TREK UK00001502864, registered for "Footwear boots shoes and slippers: inner socks; all included in Class 25".

Partial revocation

122. The law genuine on use was summarised by Arnold LJ in *easyGroup Ltd v Nuclei Ltd* [2023] EWCA Civ 1247.

123. Arnold LJ considered partial revocation in *easyGroup Limited v easyfundraising Limited & Ors* [2025] EWCA Civ 1000, 25 July 2025 at [27] – [36]. He took the following principles from *Merck KGaA v Merck Sharp and Dohme Corp* [2017] EWCA Civ 1834. First, if the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories. Second, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. Care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way. Third, these issues are to be considered from the viewpoint of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

124. In *Ferrari SpA v DU* (C- 720/18 and C-721/18) [EU:C:2020:854], at [36] – [53] the CJEU explained that the essential criterion to apply for the purposes of identifying a

coherent subcategory of goods or services capable of being viewed independently is their "purpose and intended use".

125. In *easyfundraising* Arnold LJ explained at [80] – [81] that it is not sufficient that different goods may be aimed at different publics or sold in different shops or that different goods or services belong to different market segments. The ultimate question is "whether a consumer who wishes to purchase a product or service falling within the category of goods or services covered by the trade mark in question will associate all the goods or services belonging to that category with that mark".

126. In that case Arnold LJ took into account as part of the analysis the Nice Classification of goods. TBC submits that the Nice Classification explanatory memorandum for Class 25 shows that the class does not include clothing that is essential for the practice of certain sports, such as baseball gloves, boxing gloves or ice skates (the last of which are registered in Class 28). Class 25 does, however, include football boots (250075), ski boots (250145) and gymnastic shoes (250085). As a result, TBC submits that even if Clarks has used TREK on shoes for sports or fitness that should still lead to a partial revocation for cycling shoes, which like football boots, have different purposes and uses. Cycling shoes are more akin to ice skates and ski boots which are not intended for normal walking or running.

127. I disagree with that, for the following reasons. First, I have found that Clarks has used TREK in relation to shoes suitable for sports and fitness. Those are types of goods which do not fall in specific categories in the explanation in the Nice Classification. It has also used the mark on a wide range of shoes for men, women and children. Second, the term "cycling shoes" is not as narrow as TBC suggests. It covers both rigid-soled shoes that clip to pedals and shoes used for mountain biking with more flexible soles that interact with bike pedals without clipping to them. The latter are also sold as suitable for casual use. There is no single category in the Nice Classification into which all cycling shoes will fit.

128. I note that Clarks and TBC did discuss collaboration on cycling shoes, so that idea is clearly one that both sides entertained seriously. Given the range of Clarks' shoes, there is reason for a consumer to associate shoes sold under TREK with Clarks, and that includes cycling shoes. The claim for partial revocation thus fails.

Clarks' claim of trade mark infringement

129. Clarks claims that:

i) TBC has infringed Clarks' registered trade marks by the sale of TREK cycle shoes and insoles under sections 10(1), 10(2) and 10(3) TMA.

ii) TBC and TBCL are jointly liable for each other's infringements.

iii) TBC is jointly liable for infringing acts by Lidl.

130. TBC accepts that it has used an identical sign in relation to "specialist cycling shoes" and insoles since 2012 by advertisements targeted at and sold in the UK and packaging bearing the mark TREK. It also accepts that if there is infringement in the UK then TBC and TBCL are both liable.

131. TBC denies infringement on the basis that there was consent and on the basis that its claim to partial revocation reduces the scope of protection of the marks so that there is no infringement. TBC also says that it has made honest concurrent use of the Mark in relation to "specialist cycling shoes"

132. It follows from my findings above that TBC's defence of consent fails. Clarks did not consent to the activities complained of.

133. I have, further, rejected TBC's claim to partial revocation as set out above.

Infringement – TREK mark on cycling shoes

134. I turn to the claim of infringement under sections 10(1), s.10(2) and s.10(3) in the light of my findings on consent and partial revocation.

135. Section 10(1) provides that:

> "A person infringes a registered trade mark if he uses in the course of trade a sign which is identical with the trade mark in relation to goods or services which are identical with those for which it is registered."

136. In *easyGroup Ltd v Nuclei Ltd* Arnold LJ set out at [48] six conditions for establishing infringement under s10(1):

> "(i) there must be use of a sign by a third party within the relevant territory; (ii) the use must be in the course of trade; (iii) it must be without the consent of the proprietor of the trade mark; (iv) it must be of a sign which is identical to the trade mark; (v) it must be in relation to goods or services which are identical to those for which the trade mark is registered; and (vi) it must affect, or be liable to affect, one of the functions of the trade mark".

137. TBC accepts that (i), (ii) and (iv) are satisfied in this case. In respect of (iii), I have rejected TBC's argument that there was consent.

138. In respect of condition (v), TBC accepts that cycling shoes fall within the scope of shoes and footwear in class 25. It denies that insoles are identical, and I accept that.

139. So far as condition (vi) is concerned, the trade mark proprietor benefits from a rebuttable presumption of likelihood of confusion in a section 10(1) - see *Match Group LLC v Muzmatch Ltd* [2023] EWCA Civ 454, *per* Arnold LJ at [116]. TBC submits that there is no likelihood of confusion in this case having regard to the reputation attaching to the famous and long-standing TREK brand in relation to cycling. I do not accept that. While some consumers with a particular knowledge of

cycling might understand that there were two suppliers in the market using TREK, in my view the average consumer would not.

140. Related to this, TBC also submits that there is honest concurrent use of the marks which negatives infringement; see Arnold LJ in *Muzmatch* at [102]. That requires the defendant to show there is no adverse effect on any function of the trade mark, for example where consumers know that the defendant's goods are not related to the claimant's.

141. I thus do not accept TBC's submissions on condition (vi). While some consumers with a particular knowledge of cycling might understand that there were two suppliers in the market using TREK, the average consumer would not.

142. Accordingly I find that there has been infringement under section 10(1) by advertisement and sales of shoes marked TREK.

143. Section 10(2)(a) provides so far as relevant that:

> "(1) A person infringes a registered trade mark if he uses in the course of trade a sign where because—
> (a) the sign is identical with the trade mark and is used in relation to goods or services similar to those for which the trade mark is registered, or
> (b) …
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the trade mark."

144. In *Muzmatch* at [26] Arnold LJ explained the six conditions that needed to be satisfied for there to be infringement under section 10(2):

> "(i) there must be use of a sign by a third party within the relevant territory; (ii) the use must be in the course of trade; (iii) it must be without the consent of the proprietor of the trade mark; (iv) it must be of a sign which is at least similar to the trade mark; (v) it must be in relation to goods or services which are at least similar to those for which the trade mark is registered; and (vi) it must give rise to a likelihood of confusion on the part of the public"

145. Trek accepts that conditions (i), (ii), and (iv) are met. In respect of condition (iii), I have rejected TBC's argument that there was consent, and condition (iii) is met.

146. As to (v), given that TBC's claim for partial revocation has failed, its cycling shoes are similar. In my view insoles, which are parts of shoes and sold for use with them are also similar.

147. As to condition (vi), the principles on likelihood of confusion are set out in *easyfundraising*:

"[21] The manner in which the requirement of a likelihood of confusion in what are now Article 10(2) of Directive 2015/2426 and Article 9(2) of Regulation 2017/1001, and the corresponding provisions concerning relative grounds of objection to registration in the Directive and the Regulation, should be interpreted and applied had been considered by the Court of Justice of the European Union in a large number of decisions by 31 December 2020. In order to try to ensure consistency of decision making, a standard summary of the principles established by these authorities, expressed in terms referable to the registration context, has been adopted in this jurisdiction. The current version of this summary is as follows:

"(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier

trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion."

[22] The same principles are applicable when considering infringement, but it is necessary for this purpose to consider the actual use of the sign complained of in the context in which the sign has been used: see *Specsavers International Healthcare Ltd v Asda Stores Ltd* [2012] EWCA Civ 24… at [87] (Kitchin LJ)."

148. Applying these principles in this case, I find that there is a likelihood of confusion. The sign is identical and, upon a global appreciation, the average consumer is likely to be confused both in the case of shoes (which are identical goods) and insoles (which are highly similar goods, being parts of shoes). Clarks has made long and extensive use of TREK in the UK on a range of shoes including, as I have found, shoes suitable for sports or fitness. The average consumer is likely to think that the shoes come from economically linked undertakings. TBC accepts that the absence of evidence of actual confusion is not decisive. Further, I do not think that consumers are so educated about the TREK mark to understand that in considering cycling equipment that must come from Trek. I discuss this further below.

149. I find that there has been infringement under section 10(2) by advertisement and sales of shoes and insoles marked TREK.

150. Section 10(3) TMA provides:

"(3) A person infringes a registered trade mark if he uses in the course of trade, in relation to goods or services, a sign which—

(a) is identical with or similar to the trade mark, …
where the trade mark has a reputation in the United Kingdom and the use of the sign, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark."

151. Section 10(3A) TMA provides:

> "Subsection (3) applies irrespective of whether the goods and services in relation to which the sign is used are identical with, similar to or not similar to those for which the trade mark is registered".

152. In *Thatchers Cider Company v Aldi Stores* [2025] EWCA Civ 5 Arnold LJ explained at [38] that there are nine conditions for infringement under section 10(3):

> "(i) the trade mark must have a reputation in the UK; (ii) there must be use of a sign by a third party within the UK; (iii) the use must be in the course of trade; (iv) it must be without the consent of the proprietor of the trade mark; (v) it must be of a sign which is identical or similar to the trade mark; (vi) it must be in relation to goods or services; (vii) it must give rise to a "link" between the sign and the trade mark in the mind of the average consumer; (viii) it must give rise to one of three types of injury, that is to say, (a) unfair advantage being taken of the distinctive character or repute of the trade mark, (b) detriment to the distinctive character of the trade mark (often referred to as "dilution") or (c) detriment to the repute of the trade mark (often referred to as "tarnishment"); and (ix) it must be without due cause."

153. Conditions (i) – (vi) are met in this case. In *Thatchers* Arnold LJ explained that the question of a link for the purposes of (vii) must be appreciated globally having regard to all the circumstances of the case. The fact that a sign would call the trade mark to mind for the average consumer, who is reasonably well-informed, observant and circumspect, is tantamount to the existence of such a link.

154. TBC submits that specialist cycling shoes and insoles are in such a different category from casual or sports and fitness shoes, and that TBC is so well known for its own products that there is no likelihood of a link. I disagree. I have found that Clarks has sold shoes suitable for sport or fitness, and it uses the description 'Sports' on its website. In my view the average consumer is likely to make the required link for the purposes of condition (vii).

155. The three types of injury in condition (viii) will not be assumed. While evidence of actual detriment is not required, a conclusion of injury must be based on an analysis of the probabilities, the normal practice in the relevant commercial sector and the other circumstances of the case - see C-383/12 *Environmental Manufacturing LLP v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2013:741].

156. In *Thatchers* Arnold LJ explained unfair advantage at [42] – [49]. Advantage is taken unfairly by the third party of the distinctive character or the repute of the mark where that party seeks to ride on the coat-tails of the mark with a reputation in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor. If the defendant intends to take advantage of the reputation of the trade mark that is more likely be unfair; but intent is not required.

157. In my view TBC has not taken unfair advantage in this case. It has sought to develop its own existing mark to broaden the range of its existing products. That is not riding on Clarks' coat-tails.

158. Similarly, the use of TREK on cycling shoes does not cause a detriment to the distinctive character of the Clarks' trade mark or to its repute. There has not been a change in economic behaviour, nor does that appear likely. TBC's use of TREK is integrated into cycling products. That use is not intended to and does not result in damage to the Clarks mark.

159. If a claimant has established condition (viii) then a defendant may yet show due cause. I have found that condition (viii) is not satisfied I do not need to address due cause (condition (xi)) . There is no infringement under section 10(3).

Statutory acquiescence

160. TBC also relies on a defence of statutory acquiescence under section 48 TMA. That provides:

> "(1) Where the proprietor of an earlier trade mark or other earlier right has acquiesced for a continuous period of five years in the use of a registered trade mark in the United Kingdom, being aware of that use, there shall cease to be any entitlement on the basis of that earlier trade mark or other right—
>
> (a) to apply for a declaration that the registration of the later trade mark is invalid, or
>
> (b) to oppose the use of the later trade mark in relation to the goods or services in relation to which it has been so used,
>
> unless the registration of the later trade mark was applied for in bad faith."
>
> (2) Where subsection (1) applies, the proprietor of the later trade mark is not entitled to oppose the use of the earlier trade mark or, as the case may be, the exploitation of the earlier right, notwithstanding that the earlier trade mark or right may no longer be invoked against his later trade mark."

161. TBC relies on its uses of the mark to infer that Clarks will before the meeting in October 2018 have seen references on the TBC website to TBC's promotion of

cycling shoes. Clarks denies actual awareness of use. However, there is no evidence that in 2018 there were website materials showing that TBC used TREK rather than its '"Bontrager" mark on shoes. There is no reason to conclude that Clarks was notified of TBC trade mark registrations that showed an intent to use TREK on shoes. There were no relevant documents in the disclosure, and the evidence does not suggest that Clarks was aware of this. It did not seek to raise the Agreement with TBC and the discussion of a possible collaboration did not proceed on the basis that TBC was already using the mark.

162. It follows that TBC has not proved this defence.

Concurrent use

163. In their written submissions, Trek relies in a separate section on an argument that honest concurrent use defeats claims to trade mark infringement. It says that where a claimant has established a *prima facie* case of infringement, that may be negatived if the defendant can show that by reason of honest concurrent use there is no adverse effect on any of the functions of the claimant's trade mark. That may be the case where relevant consumers understand that the defendant's goods are not related to the claimant's goods or trade mark – see *Muzmatch* at [106], [108], [120] and [121].

164. Trek submits that by reason of TBC's widespread and longstanding use of TREK in relation to cycling goods the public have been sufficiently educated so that TREK in this context is taken to mean TBC and not Clarks.

165. As Clarks points out, honest concurrent use is not a defence in itself but may be relied upon as a factor in the infringement analysis – see *Muzmatch* at [115]. It follows that there is no separate issue to be considered here. The use on shoes complained of is relatively recent, starting in 2024 and so not longstanding, and it is in breach of the Agreement. TBC's use here is not sufficient for TBC to establish the point.

Infringement – TREK mark on Team items

166. I have already found that TBC is liable for breach of Clause 14 of the Agreement as a result of Lidl's acts as a licensee. The Agreement is worldwide in operation and that finding did not require particular consideration of acts in the UK. The claim under the TMA is necessarily limited to the UK.

167. Clarks alleges that TBC is jointly liable for the acts of Lidl in the UK that infringe the Clarks trade marks. Clarks asserts that TBC approved the Team products for sale through Lidl supermarkets, which TBC must have known were in the UK amongst other places. TBC thus intended that there be sales in the UK which would be more than merely promotional use.

168. Clarks submits that TBC approved at least some of the Team footwear for production and that it was inevitable that it would be sold in Lidl's stores in the UK. Lidl was a licensee of TBC. TBC would not have given Lidl approval for the shoes if it did not

intend those sales to happen. Clarks relies on emails that are said to show this. The first is an internal TBC email dated 2 July 2024 that notes that Lidl is the producer of lifestyle clothing and will be selling that in its stores. The second is an email from TBC to Lidl dated 3 June 2024 specifying the languages needed for product labelling, which include English. The third is an email dated 9 April 2025 from Lidl to TBC which confirms a list of countries for sale of merchandise and notes that "not every market will sell every item, some may only sell one".

169. TBC denies joint liability and submits that no-one at TBC gave any particular thought to the fact that Lidl might sell shoes in the UK, even though they were part of the list of items that TBC approved.

170. The law on joint liability has been clarified by Lord Leggatt in *Lifestyle Equities v Ahmed* [2024] UKSC 17 at [135] - [137]. In summary, a person may be liable as an accessory to tortious liability on two bases. The first is where a person knowingly procures another to carry out the tort. The second is where a person assists another to commit a tort pursuant to a common design.

171. The evidence in this case does not establish joint liability on the basis that TBC procured Lidl to carry out the tort of trade mark infringement. TBC did not procure Lidl to carry out the acts complained of in the UK. It gave permission for the use of the brand on a range of merchandise without agreement as to what would be sold where.

172. The emails also do not support a common design between TBC and Lidl to put the Team products on the market in the UK, as is required for infringement in this case. The emails do not show an agreement to sell shoes in the UK. While that was a possibility it was not clear that Lidl had an intention to sell shoes in the UK, as the April 2025 email makes clear. TBC do not appear to have considered the sale of shoes in the UK. The use of English on product labels is not decisive. Clarks has not established that there was a common design in this case.

173. Clarks also alleges that TBC put the Team footwear onto the market because it approved them for production and release in the market in Europe. That makes the marketing TBC's "own commercial communication" under *L'Oreal v eBay* C-324/09 [102]-[103] [EU:C:2025:593]. I disagree. The April 2025 email indicates that Lidl was a licensee making its own choices about where to market the goods. Here, the focus must be on the UK and TBC did not for these purposes direct communication here.

174. It follows that I do not need to consider the further issue whether use of the Team logo would amount to an infringement under section 10 TMA. If I had to decide that then I would hold that there was no infringement under section 10(1). TMA. The Team logo is not identical to the mark TREK because of the added matter forming part of the logo – see Laddie J in *Compass Publishing BV v Compass Logistics Ltd*

[2004] EWHC 520 (Ch) at [19]-[21] applying *Reed Executive Plc v Reed Business Information Ltd* [2004] EWCA Civ 159.

175. I would, however, find that there was infringement under section 10(2). All of the elements of the test set out in *Muzmatch* (see [142] above) are met in this case. TBC contested only condition (vi). In my view the average consumer would be likely to assume a commercial connection between Lidl and Clarks for these purposes. TBC submits that the use of the Team logo would be seen as a badge of allegiance in the manner discussed in *Arsenal Football Club v Reed* [2003] EWCA Civ 696. That requires that the use does not designate any origin of the goods, and I do not accept that is the case here. The Team logo was applied to goods sold in Lidl. Many consumers would think they were branded to indicate where they were from.

176. I would not find infringement under section 10(3). TBC has not here attempted to take from Clarks; it has tried to build its own brand.

Clarks' revocation claim

177. Clarks seeks declarations of invalidity under section 47 TMA of the following TBC trade marks:

i) UK00003387772 filed on 14 August 2017 for the logo shown below and registered for goods and services in classes 3, 4, 6, 9, 12, 18, 21, 25, 35, 38 and 41 including "footwear, … adapted for wear when cycling, commemorating cycling events or participating in sports and fitness activities" in Class 25.

ii) UK00003410287 filed on 4 August 2017 for the mark TREK registered for goods and services in classes 3, 4, 6, 9, 11, 12, 18, 21, 25, 28, 35, 37, 38, 41 and 43 including "footwear, … adapted for wear when cycling, commemorating cycling events or participating in sport and fitness activities" in Class 25.

iii) UK00003410885 filed on 14 August 2017 for the logo shown at i) above registered for Goods and services in classes 3, 4, 6, 9, 12, 18, 21, 25, 35, 38 and 41 including "footwear … adapted for wear when cycling, commemorating cycling events or participating in sport and fitness activities" in Class 25.

iv) UK00917844176 filed on 22 February 2018 for the logo 

registered for goods in classes 12, 18 and 25 including "footwear" in Class 25.

v) UK00917087016 filed on 9 August 2017 for the mark TREK registered for goods in classes 9, 11, 18, 25, 28, 35, 38, 41 and 43 including "footwear … adapted for wear when cycling, commemorating cycling events" in Class 25.

178. I call these marks the "Trek Trade Marks". Clarks also made a claim on respect of UK00903157815 filed on 7 May 2003 for TREK registered for goods in classes 9, 11, 12, 18 and 25. Paragraph 23a(v) of the PoC wrongly states that this mark is registered in respect of footwear, and I do not consider this mark further.

179. Clarks alleges that the Trek Trade Marks are invalid so far as they cover "any types of footwear" on the grounds in sections 5(1), 5(2) and 5(3) TMA so far as the word marks are concerned, in sections 5(2) and 5(3) so far as the logo marks are concerned and under section 3(6) so far as all the registrations are concerned.

180. Section 47 TMA provides:

> (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration).
>
> …
>
> (2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground—
>
> (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain,…
>
> (2A)... The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless—
>
> (a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,
>
> (b) the registration procedure for the earlier trade mark was not completed before that date, or
>
> (c) the use conditions are met.
>
> (2B) The use conditions are met if—
>
> (a) the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with their consent in relation to the goods or services for which it is registered—
>
> (i) within the period of 5 years ending with the date of application for the declaration, and
>
> (ii) within the period of 5 years ending with the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application where, at that date,

the five year period within which the earlier trade mark should have been put to genuine use as provided in section 46(1)(a) has expired,

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

181. Section 5 TMA provides:

> (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.
>
> (3) A trade mark which—
>
> (a) is identical with or similar to an earlier trade mark, and
>
> (b). . . .
>
> shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom ... and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

182. These provisions are similar to sections 10(1), 10(2) and 10(3) TMA.

183. TBC responds that:

i) UK00903157815 is not registered in respect of footwear. Clarks accepts that, and this registration will not be considered further.

ii) The Clarks trade marks are liable to be subject to partial revocation for non-use. I have rejected that argument above. I have found that Clarks has made use of TREK on shoes suitable for sports and fitness as well as on casual shoes.

iii) So far as relevant goods that are the subject of Clarks' trade marks are concerned, the "use conditions" of subsections 47(2A) and 47(2B) have not

been met. It follows from my findings that Clarks has met the use conditions, and this argument fails.

iv) The marks were not applied for in bad faith.

v) The invalidity challenge to UK00917087016 is precluded on the ground of statutory acquiescence under section 48.

184. TBC accepts that if Clarks has in breach of the Agreement used TREK for footwear adapted for wear when participating in sports or fitness activities then for the mark UK00003410287 there will be identity under section 5(1). As I have found that is the case, the TBC mark will be invalid for "footwear". I have found that there should be no partial revocation of the Clarks' mark and it retains the scope of its registration.

185. TBC accepts that there will be partial identity of goods in respect of which Clarks has satisfied the use conditions so that UK00003387772 and UK00003410885 should be limited so that "shoes adapted for running or hiking" should be excluded from the specification of goods. For UK00917844176, TBC submits that the degree of stylisation is sufficient to avoid confusion.

186. In my view the UK00003387772 and UK00003410885 marks are moderately similar to the Clarks mark, given that there is some stylisation and a logo used by TBC. The goods to which the marks are applied are highly similar. As a result, there is a risk of confusion and the marks will be invalid for footwear under section 5(2). UK00917844176 is somewhat less similar than UK00003387772 but given the similarity of the goods there is a risk of confusion. That mark too is invalid for footwear.

187. My conclusions on section 5(3) follow my conclusions on section 10(3) that is that there is no injury to Clarks by use of the mark.

Bad faith

188. Clarks also submits that the TBC trade marks should be cancelled for "footwear" because TBC applied for them in bad faith. TBC had agreed not to use TREK on footwear and the declarations of intent to use made in the applications were inconsistent with the Agreement.

189. TBC submits that making the applications was not contrary to the Agreement and that TBC's use was not in breach. TBC had an intention to use and did so. TBC also had a commercial rationale to file applications as it was concerned that Clarks was not doing so.

190. Section 3(6) TMA provides that:

> "A trade mark shall not be registered if or to the extent that the application is made in bad faith."

191. The law on bad faith has been discussed by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors* [2024] UKSC 36 at [153] – [155]. Lord Kitchin there explained that circumstances which may justify a finding of bad faith have tended to fall into to one of two categories. The first is where the application was made with the intention of undermining the rights of third parties and not engaging fairly in competition. The second is where the application was made with the intention of obtaining an exclusive right for purposes other than those falling within the function of a trade mark.

192. I accept that the Agreement does not contain a restriction on TBC filing TREK marks for footwear. A UK trade mark application must include a list, or statement, of all goods and services (the specification) for which an applicant uses or intends to use the trade mark. That is not a promise to use the mark, and there does not need to be use of the mark applied for at the time of the application. In this case, TBC could, therefore, file applications with truthful statement of intent on the basis that they thought would resolve the position under the Agreement. TBC did want to use the marks under the applications within the scope of protection sought.

193. The applications on their own do not undermine Clarks' trade mark registrations, and the Agreement itself contemplates that both parties may have marks that could be seen to overlap. Clarks is able to attack the registrations as invalid; the Agreement does not prevent that.

194. The applications in this case do not fit easily within the two classes identified by Lord Kitchin. Clarks' objection here is essentially that TBC was adding further weight to its efforts to be able to sell TREK cycling shoes. The filing was made to further that aim. It appears that the remedy for Clarks in the case an application was filed was to object in the way that they have. I conclude that the marks were not filed in bad faith for the purpose of section 3(6).

Conclusions

195. My conclusions are as follows:

i) TBC has breached the Agreement and has infringed Clarks' registered trade marks under sections 10(1) and 10(2) TMA by selling cycling shoes and insoles marked TREK.

ii) TBCL is jointly liable for infringement of the registered trade marks.

iii) Clarks has breached the Agreement by selling shoes marked TREK which are "adapted for… participating in sports or fitness".

iv) The Trek Trade Marks are invalid under section 47 TMA insofar as they cover "footwear".

v) TBC's claim that Clarks' two UK registered trade marks for the mark TREK should be partially revoked for non-use under section 46 TMA fails.

vi) TBC was not in breach of the Agreement by bringing an opposition to a trade mark application in China.

vii) TBC was in breach of the Agreement by reason of sales by Lidl, as TBC's licensee, of shoes that bear the Lidl-Trek Team branding.

viii) Clarks' claim for trade mark infringement in respect of the Team goods fails.

196. The parties should seek to agree an order following judgment. I will hear counsel on any matters of disagreement.