



Neutral Citation Number: [2020] EWHC 3380 (Pat)

Case No: HP-2019-000028

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

Royal Courts of Justice  
Rolls Building, 7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Date: 10/12/2020

**Before :**

**MR JUSTICE MANN**

**Between :**

- (1) JUUL LABS, INC**  
**(a company incorporated in Delaware USA)**
- (2) JUUL LABS UK HOLDCO LIMITED**
- (3) JUUL LABS UK LIMITED**
- (4) JUUL LABS INTERNATIONAL, INC**  
**(a company incorporated in Delaware USA)**

**Claimants**

**- and -**

**MFP ENTERPRISES LIMITED**  
**(t/a 'Smoke Nation' and others)**

**Defendants**

**Mr Tom Moody-Stuart QC (instructed by Pinsent Masons LLP) for the Claimant**  
**The Defendants were not present and not represented**

Hearing date: Tuesday 24<sup>th</sup> November 2020

**Approved 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.

Mr Justice Mann  
.....

MR JUSTICE MANN

**Mr Justice Mann :**

1. This is an application for judgment in default and for summary judgment in this action based on infringement of trade marks and registered designs, and on passing off. The claimants (whom I shall refer to collectively as “Juul”) are variously the owners of the various IP interests which they deploy in relation to their business of selling vaping equipment. The defendants are said to be infringers and/or guilty of passing off. The claimants have served their Particulars of Claim, which seek declaratory, injunctive and damages relief and the defendants have not acknowledged service or served a Defence. In fact they have not engaged with the proceedings at all.
2. The claim form was issued on 18<sup>th</sup> July 2019 and served on 22<sup>nd</sup> July 2019. On 8<sup>th</sup> March the claimants obtained an order giving them permission to amend the Particulars of Claim to reflect a change of ownership of rights in favour of the fourth claimant and to introduce a new claim based on a further design in which rights are claimed. The amended claim form and Particulars of Claim were served on the defendants on 17<sup>th</sup> March 2020. The present application for default judgment and summary judgment was issued on 21<sup>st</sup> August 2020 and served shortly thereafter. I am satisfied that in procedural terms the claimants are entitled to a default judgment, that is to say they are entitled to such relief as they appear to be entitled to arising from the facts pleaded in their Particulars of Claim, so far as those claims are proper in law (CPR 12.11(1)).
3. In addition to their default judgment the claimants seek summary judgment in respect of their claim to declaratory relief. In order to seek that they need the permission of this court because there has not been an acknowledgment of service – see CPR 24.4(1).
4. Bryan J summarised the principles relevant to the exercise of the court's discretion under CPR 24.4(1) in *European Union v Syria* :

“(1) The purpose of the rule is to ensure that no application for summary judgment is made before a defendant has had an opportunity to participate in the proceedings and to protect a defendant who wishes to challenge the Court's jurisdiction from having to engage on the merits pending such application.

(2) Generally, permission should be granted only where the Court is satisfied that the claim has been validly served and that the Court has jurisdiction to hear it. Once those conditions are met there is generally no reason why the Court should prevent a

claimant with a legitimate claim from seeking summary judgment.

(3) The fact that a summary judgment may be more readily enforced in other jurisdictions than a default judgment is a 'proper reason for seeking permission under CPR 24.4(1) ."

Henshaw J added the following in *DVB Bank SE v Vega Marine Ltd* [2020] EWHC 1494 (Comm):

"I would add, in relation to (3), that it would in my view be sufficient that the claimant has a reasonable belief that a summary judgment may be more readily enforced than a default judgment. There is no justification for the court subjecting any such belief to minute examination, when the permission the claimant is seeking is in reality no more than the opportunity to obtain a reasoned judgment on the merits of its claim".

5. The claimants have advanced as a reason the helpfulness of a reasoned judgment and express declaratory relief on certain trade mark aspects of the claims when it comes to tackling counterfeit goods put on the market via such market places as Amazon and Ebay or dealing with the HM Customs and Excise. Those aspects are whether the use of marks was in accordance with honest practices and taking unfair advantage of the marks. As will appear, I do not consider that this is a case in which it would right to grant a declaration in these circumstances, and at one level that conclusion would mean that I should not grant permission to make the application. However, I consider that the more convenient course is to allow the application for summary judgment to be made because prima facie a decent reason is advanced which has to be dealt with on the merits of the application rather than procedural factors, so that I can consider whether the declaration should be granted as part of a merits and discretion evaluation in relation to the declarations themselves.
6. The claimants are part of a group of companies which sells vaping equipment worldwide. Their system consists of a power source (the Juul device), a charging cradle and individual non-refillable cartridges or pods containing liquid which itself contains nicotine and flavouring. The cartridge is inserted into the charged device, which heats the liquid to steaming point and the user inhales the steam in the same manner as smoke from a cigarette. Proponents of such systems, of which Juul is certainly one, point out that they contain far fewer, if any, of the noxious substances which form a health hazard to smokers of cigarettes.

7. The registered EU trademarks and the EU registered designs which are relied on in this action appear in Annexes 1 and 2 to this judgment respectively. The marks consist of versions of the word Juul and figurative marks depicting a pod and a vaporiser (device). The registered designs are shapes in respect of the vaporiser, pod and variants thereof. Since I do not have to resolve any disputes turning on the form of the marks or the aspects of the designs, I need do no more than set them out there.
8. The first claimant is a US company and the registered proprietor of the EU marks relied on in this action. The second claimant is an English company which was the proprietor of the registered designs when the action started, but which transferred them to the fourth claimant (another US company) at the end of December 2020. The third claimant is an English company which carries out the trade in Juul vaping equipment in the UK and which, if the requirements of the tort are made out, would be the appropriate claimant in respect of the passing off claim. Until 30<sup>th</sup> December 2019 the second claimant was the exclusive licensee of the trade marks in the EU, and since that date the fourth claimant has occupied that position, with the second claimant being the non-exclusive licensee of both the marks and the designs.
9. The defendants are either English companies or English resident individuals, all of whom are said variously to have engaged in offering for sale infringing goods or to have passed off counterfeit goods as and for goods of the claimants. The activities which they have conducted are all online offers for sale, or sales, through a variety of channels of the equivalent of Juul's pods, the pods being both charged with various liquids (not necessarily nicotine-based) and empty (but fillable). Juul itself sells only nicotine-containing pods and does not sell empty refillable pods. Its own pods cannot be refilled. The actual pods are said to infringe the trade marks and the registered design rights. The packaging contains depictions of pods and the claimants' vaporiser which are likewise said to infringe the marks and design rights.

### **Service and formalities**

10. The bundles contained evidence of service of all relevant documents – claim form, Particulars of Claim, amended versions of both and the material supporting the present action. That material, to which I was taken, demonstrated proper service of the documents within the time limits prescribed by the rules. There was a question-mark in relation to two certificates of service of the amended documents, where boxes were not ticked to indicate the status of addresses, but taking that evidence with the rest of the material I am satisfied that proper service was effected of all documents such that the application before me was properly brought on in terms notice and of timing.

## **The registered design claims**

11. The claimants seek only default judgment in relation to these, so it is pertinent to look mainly at the Particulars of Claim. The designs have already been identified in this judgment. The Particulars of Claim plead that the defendants have variously offered for sale on the internet, and sold, pods of various styles (filled and unfilled) which infringe, without the consent of the claimants. They have also offered for sale pods in conjunction with packaging and other advertising designs depicting Juul's vaporisers which similarly are said to infringe. The offers for sale, or some of them, have been confirmed by test purchases, which are also pleaded. It is expressly averred that the allegedly infringing items do not produce on the informed user a different overall impression from the registered designs.
  
12. I am satisfied that the pleading contains unmet allegations which are proper allegations of infringement of the registered designs and which entitle the claimants to the injunctive and financial relief sought, as a matter of default judgment. The precise terms of the injunction will be dealt with separately at a hearing on or after the handing down of this judgment.

## **Passing off**

13. The passing off claim is based two separate elements in the pleading. The first is the registration and public use, in connection with sales of vaping, of the domain name juulnation.co.uk, of which the second claimant is the registrant. #juulnation is also pleaded as used as a hashtag by the defendants on Instagram. There is also pleaded the use of the tagline "The Alternative for Adult Smokers", which is said to have been used by the claimants in promotional materials since July 2018 and to be associated by consumers with the Juul companies and their vaping products. The defendants are pleaded as having used it on packaging which contains pods identical to the pod mark, enhancing the passing off of such products as those of the claimants.
  
14. I am satisfied that the pleading contains proper unmet allegations which amount to allegations of passing off which entitle the claimants to injunctive and financial relief under a default judgment. Again, the precise terms of the injunctive relief will be the subject of separate consideration.

## **The trade mark claims**

15. The registered marks appear above. The offending products in their pleaded form appear in Annex 1 to this judgment. I am satisfied that on the basis of the pleaded case the claimants have made out a claim that their marks have been infringed by offerings and sales which materially reproduce the marks and apply them for the purposes of the offerings and sales, and reproducing them in a three dimensional form. A claim for infringement has been made out in relation to all those marks for the purposes of a default judgment. The claimants are entitled to appropriate injunctive and monetary relief.
16. However, it is in relation to these claims that the claimants wish to go further and obtain summary judgment so as to be able to get declarations and a reasoned judgment on one particular point. I deal with this point in the next section.

## **The summary judgment application**

17. One aspect of the trade mark claim of the claimants is the use of the word mark “Juul” in descriptive phrases which aver the compatibility of pods with Juul devices. For example, on the Smoke Nation website the description of the defendants’ CBD pods containing a cannabis derivative (a point of particular sensitivity even though the derivative is lawful, see below), and their VQ pods contains the words:

“All ours [sic] pods are compatible with Juul Devices.”

On the Smoke Nation eBay store the defendants’ products are listed as:

“Juul Vapor Refill Pods – Compatibles for Juul.”

Other similar statements are made. It is unnecessary to set them out here. Those examples will suffice for present purposes.

18. The claimants are concerned to tackle that sort of use of their mark in compatibility statements not only so far as the defendants are concerned, but also in relation to other alleged infringers. They wish to use these proceedings to generate a clear mechanism

which establishes that the use of their mark in that compatibility context cannot be justified under Article 14 of the Trade Marks Regulation, presumably anticipating that at some point someone will or might take the point.

19. So far as relevant that provision provides:

“1. An EU trade mark shall not entitle the proprietor to prohibit a third party

from using, in the course of trade:

...

(b) signs or indications which are not distinctive or which concern the kind,

quality, quantity, intended purpose, value, geographical origin, the time of

production of goods or of rendering of the service, or other characteristics

of the goods or services

(c) the EU trade mark for the purpose of identifying or referring to goods or

services as those of the proprietor of that trade mark, in particular, where

the use of that trade mark is necessary to indicate the intended purpose of a

product or service, in particular as accessories or spare parts.

2. Paragraph 1 shall only apply where the use made by the third party is

in accordance with honest practices in industrial or commercial matters.”

20. Juul accepts for present purposes that advertising pods as being compatible with Juul devices, without more, would be capable of benefiting from the exemption in Article 14 as falling within (b) and (c) in that provision. Their answer, were the defendants to rely on it (which they do not – they have not sought to defend or respond at all) would be that the use is not “in accordance with honest practices in industrial or commercial matters”. It is said that the use cannot be said to be in accordance with those practices



because the use is associated with, and used to facilitate, conduct which is contrary to regulations, dangerous to health or would otherwise tarnish the reputation of the Juul group and their products. The claimants wish to have a finding in a reasoned judgment of this court which establishes that, not merely for the purposes of this litigation (they do not clearly need it, since they get all the relief they need on the basis that the claim is unopposed and it is not met by a defence under Article 14) but also in order to be able to use the judgment to dissuade others who make similar claims in the future from doing so. A particular target would be internet sales platforms such as Amazon and eBay, and perhaps HM Customs and Excise. The Juul companies would wish to use findings as to the inapplicability of such a defence to persuade such outlets not to allow compatibility assertions in inappropriate circumstances, which turns out to be all circumstances when properly analysed, and presumably to persuade HM Customs and Excise not to allow infringing goods with the offending designation into the country.

21. The reasoning runs thus. The marketing of the defendants' pods with the compatibility assertion has a number of vices said to be damaging to the reputation of Juul. A representative of Juul claims, in a long witness statement, that the Juul companies have a well-established and valuable reputation for the standard of its products; the safety of its products; the desirable feature of its products which are closed system products (ie the pods cannot be refilled); the health benefits of its products when compared with tobacco smoking and their contribution to a reduction in tobacco smoking; the safety of its products (there have been some instances in the United States of health injuries said to be caused by less than pure vaping substances); its proper compliance with regulatory requirements; and its strict adherence to age verification procedures where laid down by various countries (in particular the UK).
  
22. By contrast, the conduct of the defendants is said to include the following disreputable features:
  - (a) The pods have not been the subject of proper notification as required by the Tobacco Related Products Regulations 2016 reg. 31. Reg 35 prohibits supply of pods (and other things) where they have not been the subject of such notification, and Article 48 makes such a supply a criminal offence.
  - (b) Some pods have a nicotine concentration which is above the permitted concentration of nicotine under English legislation. The permitted concentration is 20mg/ml (reg 31 of the 2016 regulations). The defendants sell pods with a stated nicotine strength of 5% (about 59mg/ml). That strength is lawful in the United States, but not in this jurisdiction.
  - (c) The packaging of the pods supplied by Smoke Nation (the trading name under which the defendants operate) does not bear the warnings and information required under reg 37 of the 2016 regulations.

- (d) Smoke Nation offers to supply and supplies pods to consumers in the EEA outside the UK without providing the notification required under reg 47(1)(a) of those regulations.
  - (e) Smoke Nation does not provide any appropriate age verification mechanisms, contrary to the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015.
  - (f) The labelling of the defendants' pods does not comply with regulations.
  - (g) Dealing in pods which contain active ingredients other than nicotine, such as CBD, which the defendants do, is "highly damaging to the reputation of the JUUL system and the marks under which it is sold".
  - (h) Damage to the vaporiser caused by non-Juul pods would not be covered by Juul's warranty, and there is no warning to that effect on or with the defendants' pods.
  - (i) The compatible pods infringe the claimants' designs and marks.
  - (j) The use of the Juul marks does not allow the consumer to perceive without difficulty that the defendants' pods are not connected in the course of trade with the claimants.
23. Those are the features which Juul would rely on as turning what might otherwise be a justifiable reference to Juul compatibility into one which is not in accordance with honest commercial and industrial practices. It relies on *Gillette v LA-Laboratories C-228/03*; [2005] ETMR 67 in which the Court gave some examples of what would be in accordance with honest practices:

“49. Use of the trade mark will not be in accordance with honest practices in industrial and commercial matters if, for example:

—it is done in such a manner as to give the impression that there is a commercial connection between the third party and the trade mark owner;

—it affects the value of the trade mark by taking unfair advantage of its distinctive character or repute;

—it entails the discrediting or denigration of that mark;

—or where the third party presents its product as an imitation or replica of the product bearing the trade mark of which it is not the owner.

The fact that a third party uses a trade mark of which it is not the owner in order to indicate the intended purpose of the

product which it markets, does not necessarily mean that it is presenting it as being of the same quality as, or having equivalent properties to, those of the product bearing the trade mark. Whether there has been such a presentation depends on the facts of the case, and it is for the referring court to determine whether it has taken place by reference to the circumstances.

49. Whether the product marketed by the third party has been presented as being of the same quality as, or having equivalent properties to, the product whose trade mark is being used, is a factor which the referring court must take into consideration when it verifies that such use is made in accordance with honest practices in industrial or commercial matters.”

24. The claimants particularly emphasise the unlawful nature of the activity of the defendants under the regulations set out above. They say that that in particular cannot amount to honest practices for the purposes of Article 14, and draw a parallel with a case in which it was apparently held that non-compliance with statutory provisions governing comparative advertising cannot be regarded as being in accordance with honest practices. The point arose in *O2 v Hutchison* [2007] RPC 16:

“56. Next, such indications are only allowed as a defence where the defendant “uses them in accordance with honest practices in industrial or commercial matters.” A man whose comparative advertisement is not Art.3a compliant cannot be regarded as so acting. True he may not be actually dishonest in the sense of misleading people, but he would be breaking the law in some way, for there is necessarily an enforcement mechanism as required by Art.5 . In that sense his use would not be honest. It means that even a non-misleading but disparaging use would now be caught.

57. I regard this reasoning as so strong as to be acte clair and see no need to refer a question about it.” (per Jacob LJ)

25. Juul also say that the pattern of illegal or undesirable conduct of which the defendants are guilty has a detrimental affect on the reputation of Juul and their marks. I have already described the evidence which is deployed to establish Juul’s reputation in its closed system which controls the substances which can be vaped; its care to have a thorough age verification system in place to protect the under-aged from using their products; their quality control which guarantees the quality and safety of its products.

And it goes on to describe the dangers of not complying with those systems. For example, it makes much of the dangers from CBD-filled pods (which the defendants supply but the claimants do not) containing unspecified dangerous additives; and of the dangers of allowing people to fill their own empty pods, which again the defendants provide and Juul does not.

26. All those matters are said by Juul to combine to mean that the use of the Juul mark in a compatibility statement is not consistent with honest commercial and industrial practices. They wish to have that clearly determined by this court in a judgment and to have the determination given effect to in the form of a series of declarations which take the following form:

“[It is declared that] The use of the [Juul marks] to indicate that the following products or any of them are compatible with or suitable for use with the Claimants JUUL Vapouriser (as defined in the Amended Particulars of Claim) takes unfair advantage of and is detrimental to the repute of the aforementioned trade marks, and is not use in accordance with honest practices in industrial or commercial matters:

(a) Pods that are filled or stated to be filled with a nicotine concentration greater than 20 mg/ml supplied in the United Kingdom contrary to [the 2016 Regulations] ...

(b) Pods supplied in the United Kingdom that have not been notified to the MHRA in accordance with [the Regulations] ...”

And the proposed order goes on to identify each of the other shortcomings which I have described in similarly generally applicable terms.

27. It will be noted that those declarations are not proposed in relation to the activities of the defendants. They are more general in their direction and are pointed at the rest of the world. That is the avowed intention of the claimants. The claimants wish to have them so that they can be turned on to others. Mr Moody-Stuart said quite frankly that they would wish to be able to deploy the declarations that he would have me make, along with a reasoned judgment justifying them, against other third parties whose products are said to demonstrate some or all of the same allegedly offending attributes. They would do so either by dealing with the sellers themselves or by going to the internet outlet providers through whom goods may be sold (or HMRC), and persuading them that what is going on is wrongful. Those declarations would be of

no material use as against these particular defendants. The claimants will have injunctions directed at the misuse of the various rights which will satisfy the needs of the claimants so far as these defendants are concerned.

28. The grant of declarations is discretionary, and is a form of relief which the court guards carefully. Some of the requirements of such a grant were helpfully set out by Marcus Smith J in *Bank of New York Mellon, London Branch v Essar Steel India Ltd* [2018] EWHC 3177 (Ch) (with cross-references by footnote omitted):

“The power to grant declaratory relief is discretionary.... When considering the exercise of the discretion, in broad terms, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are other special reasons why or why not the court should grant the declaration. ... More specifically:

(1) There must, in general, be a real and present dispute between the parties before the court as to the existence or extent of a legal right between them. However, the claimant does not need to have a present cause of action against the defendant... A present dispute over a right or obligation that may only arise if a future contingency occurs may well be suitable for declaratory relief and amount to a real and present dispute....

(2) Each party must, in general, be affected by the court’s determination of the issues concerning the legal right in question...

(3) The fact that the claimant is not a party to the relevant contract in respect of which such a declaration is sought is not fatal to an application for a declaration, provided that the claimant is directly affected by the issue... In such cases, however, the court ought to proceed very cautiously when considering whether to make the declaration sought....

(4) The court will be prepared to give declaratory relief in respect of a “friendly action” or where there is an “academic question”, if all parties so wish, even on “private law” issues. This may be particularly so if the case is a test case or the case may affect a significant number of other cases, and it is in the public interest to decide the point in issue...

(5) The court must be satisfied that all sides of the argument will be fully and properly put. It must, therefore, ensure that all those affected are either before it or will have their arguments put before the court... For this reason, the court ought not to

make declarations without trial... In *Wallersteiner v. Moir* , Buckley LJ said this:

“It has always been my experience and I believe it to be a practice of very long standing, that the court does not make declarations of right either on admissions or in default of pleading. A statement on this subject of respectable antiquity is to be found in *Williams v. Powell* [1894] WN 141, where Kekewich J, whose views on the practice of the Chancery Division have always been regarded with much respect, said that a declaration by the court was a judicial act, and ought not to be made on admissions of the parties or on consent, but only if the court was satisfied by evidence. If declarations ought not to be made on admissions or by consent, *a fortiori* they should not be made in default of defence, and *a fortissimo* , if I may be allowed the expression, not where the declaration is that the defendant in default of defence has acted fraudulently...”

(6) In all cases, assuming that the other tests are satisfied, the court must ask: is this the most effective way of resolving the issues raised? In answering that question, the court must consider the other options of resolving the issue.

29. It is true to say that the court now looks more favourably on granting declarations by consent, or in “friendly” actions, than used to be the case. It may also be appropriate in some cases to grant a declaration on a summary judgment application rather than a trial, provided that the facts are clearly established. However, in all such cases there has to be a good reason for such actions, and in all those cases there is at least some level of activity by both parties which is missing from this application – see the notes in the White Book (2020 Edition) at para 40.20.3. Where one side is absent the court has to approach the above factors with even more care. In his *Bank Mellon* case Marcus Smith J took into account the fact that there, as here, the defendant was not present:

“22(1) This is the trial of a Part 8 claim, where I have found the Defendant to be properly before the court. The Defendant has chosen not to engage with these proceedings, although properly served (as I have found). The consequence is that the Defendant’s contentions regarding the declarations sought by the Claimant will not be heard by the court. That, I fully accept, is not the Claimant’s fault. I also accept that it would be invidious and wrong to allow a defendant’s non-participation to prevent the making of declarations. That is particularly so where, as here, the claim is a Part 8 claim, not turning on substantial disputes of fact. [\[16\]](#)

Nevertheless, where the defendant is absent, even if that absence is not the fault of the claimant and might be said to be the fault of the defendant, it is incumbent on the court to approach the factors set out in paragraph 21 above with great care and with something of a conservative mindset against the

granting of a declaration, bearing in mind the propositions summarised in paragraph 21(5) above.”

30. It is also apparent that, although not listed in his paragraph 21, Marcus Smith J took into account the fact that the declaration would have an effect on a third party:

“22(2)(c)(ii) ... But it seems to me that the possibility of the Insolvency Resolution Professional being affected by declarations made in proceedings to which he is not a party is a factor that points clearly against the making of the declarations.”

31. I respectfully agree with the entirety of the approach of Marcus Smith J and will take the same factors into account in the present case.

32. In my view it would be wrong to grant the declarations sought for the following reasons:

(a) There is no active dispute between the parties. The defendants have not engaged with the proceedings, and while it can be anticipated that the defendants would not agree to the relief being sought against them, they have not raised an actual dispute. Even if one accepts they would be hostile to the claim, they have not raised the Article 14 response to the apparent infringement of the mark, which is what the declarations go to. The court is therefore not invited to determine an actual issue between the parties.

(b) The other side of the Article 14 argument, which the claimants wish me to rule against, has not been put. Mr Moody-Stuart has, quite properly, pointed out a number of points which might be taken against him on the whole application, as is his duty, but the defendants’ side of the Article 14 point has not been argued fully. In this case this is a very important factor. As will appear below, even without argument it seems to me to be quite likely that the claim to at least some of the declarations will fail.

(c) As between the parties, the declarations are academic because they have not raised the point and the claimants have all the relief they need on the default judgment.

(d) The declarations may well have an effect on third parties. That is not a side-effect, as in *Bank Mellon* (see para 22, end); it is the main purpose of the declaration. Marcus Smith J held that the effect on an unrepresented third party was an important factor pointing against the making of the declaration. Again I respectfully agree. I develop this point a little more below.

33. When one analyses what the claimants are seeking in this case it is almost the determination of disputes with unidentified third parties before those disputes are actually raised by anyone, determined by reference to broadly stated facts which may apply in other cases and without reference to other facts which may be applicable. Of course, waving the declaration and a judgment at a third party in the hope of convincing them does not determine disputed matters, and a third party would be free to ignore all that and challenge the position of the claimants if he/she wished to do so. However, there is no doubt that the claimants would wish to suggest that the declaration is in substance binding and pre-determines an Article 14 dispute in the areas covered by it. Otherwise there is no point in it. They would also no doubt press it as a precedent in any litigation which ensued. I do not think it right to place such a weapon in the hands of the claimants when the point has not been argued.
34. I accept, of course, that there are a lot of circumstances in which the result of a particular piece of litigation is intended to have an effect beyond the immediate parties. There are a lot of examples one could give. Examples are the court construing a standard form of trading agreement, or the recent test cases on business insurance liability arising from the Covid-19 pandemic (*FCA v Arch Insurance* [2020] EWHC 2448 (Comm)). Courts frequently decide cases of a public importance going way beyond the interests of the parties. I also accept that if this were a trial, and the Article 14 point arose, was argued and was decided on the basis of the simple material relied by Juul in this case, a decision in Juul's favour on Article 14 points might well be taken as strong guidance, to say the least, in other cases, though I doubt even then if the result would be declarations phrased as those proposed in the present case (if indeed declaratory relief were granted at all). However, those are cases where clearly defined issues are in issue between parties who argue each side, and in many if not most cases the relief will be more case-specific in its framing, and not couched in terms of general factual scenarios such as those proposed in this case.
35. In those circumstances, and for those reasons, I do not consider it appropriate to grant the declarations sought.
36. My decision in relation to some of the proposed declarations is very much fortified by the fact that I consider, even without contrary argument, that under some heads Mr Moody-Stuart does not have a particularly appealing case. Juul seek declarations that selling refillable pods is not in accordance with honest commercial or industrial practices because buyers might fill them with all sorts of undesirable material. I have serious doubts about that argument being successful, though I am not ruling against it. Some buyers may wish to fill pods with material which is different from, cheaper




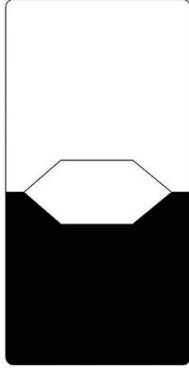
than, more satisfying than and just as safe as Juul's material. There is nothing contrary to honest practices in providing them with the means of doing so even if Juul pride themselves on providing only sealed system pods. The fact that others may fill pods with materials which do not wholly coincide with Juul's aspirations does not seem to me obviously to work to Juul's marks' detriment to an extent which should deprive a seller of an Article 14 defence.


37. I am equally unconvinced by the attempts to have it declared that sales of Juul-compatible pods filled with lawful but non-nicotine products are also contrary to those honest practices. This is so whether the objection is based on the simple fact that they are non-nicotine products (which in the case of the defendants means CBD products) or those products plus a risk of contaminating products (which is part of Juul's case).
38. There also seem to me to be problems about a declaration that selling pods without a warning that the Juul warranty may be avoided is contrary to honest commercial practices for the purposes of Article 14 too.
39. So those are three declarations which I would not grant anyway, not just because Juul is not entitled to declarations in these procedural circumstances, but because they are far from obvious cases and granting declarations without a proper contest would be inappropriate. I can see that Juul has a far stronger case for saying that sales of pods filled with UK-unlawful concentrations of nicotine are not consistent with the relevant honest practices, and the same applies to some of the more obviously unlawful aspects of the sales. Farther than that I would not go.

## **Conclusions**

40. Accordingly, as a matter of discretion I shall not grant the declarations sought. This case simply falls outside the proper scope of declaratory relief as that scope appears from the authorities. It follows, therefore, that I shall grant relief which is appropriate to the default judgment to which the claimants are entitled, but I shall not grant the declaratory relief on the summary judgment application. The precise form of relief which should be granted will be determined on or after the handing down of this judgment.

**ANNEX 1 – THE TRADE MARKS**

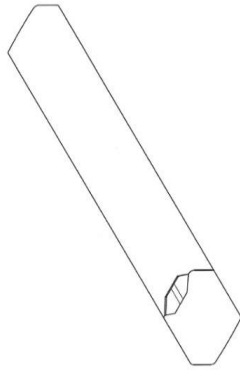
Trade Mark Number	Mark	Class(es)
EU012477791	JUUL	34
EU014944251	 The logo consists of the letters 'JUUL' in a bold, black, sans-serif font. The letters are closely spaced and have a slightly rounded, modern appearance.	11, 34, 35
EU017883607	 A black and white illustration of a JUUL e-cigarette. The device is shown in a vertical orientation, with a white rectangular body and a black base. The JUUL logo is visible on the white part of the device.	9, 11, 34, 35, 37, 42

EU017883609		9, 11, 34, 35, 37, 42
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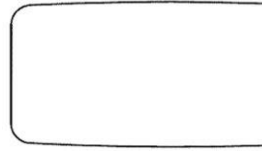
**ANNEX 2 - THE REGISTERED DESIGNS**

<b>EU Registered Design Number</b>	<b>Registered Design</b>
D092570-0001	<p>1.1) Perspective</p> <p>1.2) Top</p> <p>1.3) Left</p> <p>1.4) Back</p> <p>1.5) Right</p> <p>1.6) Front</p> <p>1.7) Bottom</p> <p>2) Front 3) Front</p>

D092570-0002



**1.1) Perspective**



**1.2) Top**



**1.3) Left**



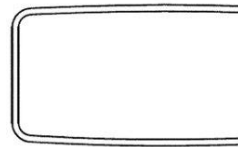
**1.4) Back**



**1.5) Right**



**1.6) Front**



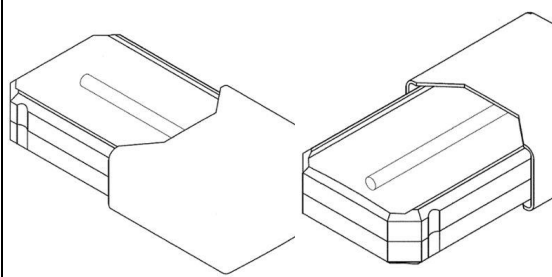
**1.7) Bottom**



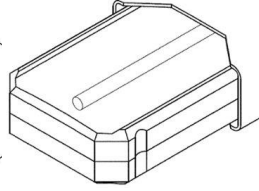
**2) Front**

D092571-0001

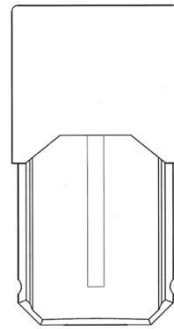
**3) Front**



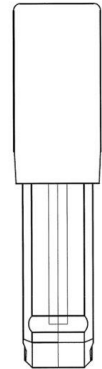
**1.1) Perspective**



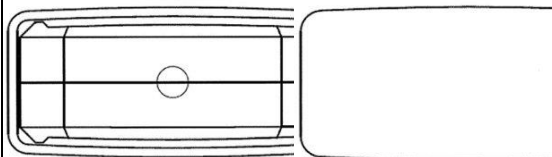
**1.2) Perspective**



**1.3) Front**

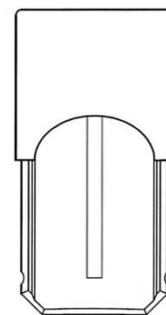


**1.4) Left**

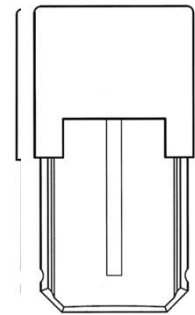


**1.6) Top**

**1.5) Bottom**

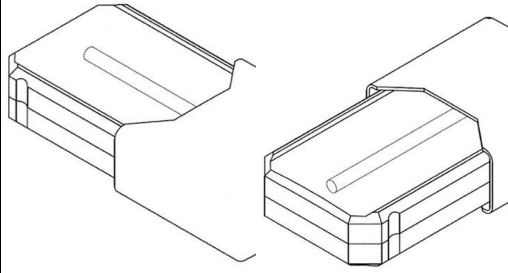


**2) Front**  
**4) Front**



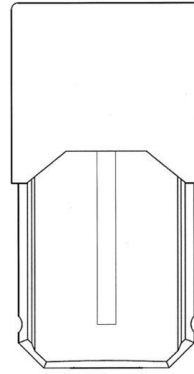
**3) Front**

D092571-0002

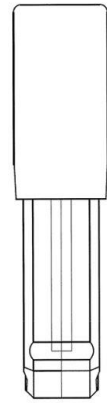


**1.1) Perspective**

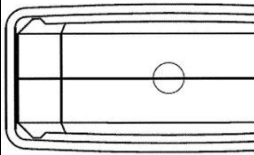
**1.2) Perspective**



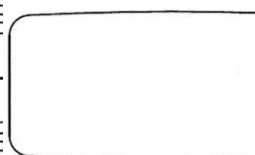
**1.3) Front**



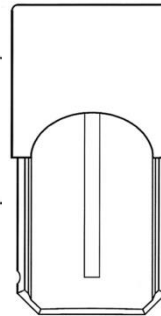
**1.4) Left**



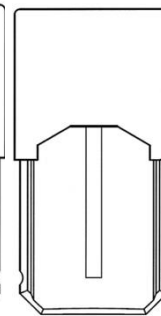
**1.5) Bottom**



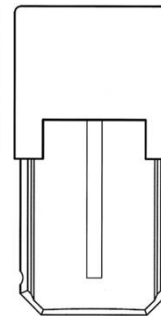
**1.6) Top**



**2) Front**



**3) Front**



**4) Front**

002626416-  
0002

