

O/0108/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF REGISTRATION NUMBER UK00004019297
IN THE NAME OF FATE DATING APP LTD
FOR THE TRADE MARK:

Fate

AND AN APPLICATION FOR A DECLARATION OF INVALIDITY THERETO
UNDER NUMBER 507413
BY FATE DATE LIMITED

AND

IN THE MATTER OF REGISTRATION NUMBER UK00003392099
IN THE NAME OF FATE DATE LIMITED
FOR THE TRADE MARKS:

FATE DATE

AND

Fatedate

(AS A SERIES OF TWO)

AND AN APPLICATION FOR REVOCATION THERETO
UNDER NUMBER 507630
BY RAKESH NAIDU

BACKGROUND AND PLEADINGS

The invalidity

1. Trade mark registration number UK00004019297, for the trade mark “**Fate**” (hereafter “the Fate mark”), stands registered in the name of Fate Dating App Ltd (hereafter “Fate”).¹ The application for registration was filed on 27 February 2024 and the trade mark was registered on 24 May 2024 in respect of the following goods and services:

Class 9: Downloadable mobile application software for facilitating online dating services through artificial intelligence and machine learning; software for processing and analysing conversational data to enhance personal connectivity and matchmaking.

Class 38: Telecommunication services; providing access to platforms and portals on the Internet for social networking; chat room services for social networking.

Class 42: Software as a service (SaaS) featuring software for social networking; platform as a service (PaaS) featuring computer software platforms for social networking.

Class 45: Internet-based dating services; social introduction and networking services.

2. On 7 June 2024, Fatedate Limited (hereafter “Fatedate”) filed an application for a declaration of invalidity of the Fate mark, in its entirety. The application is based upon sections 5(2)(b) and 5(3), under the provisions of section 47(2), of the Trade Marks Act 1994 (“the Act”).

3. Under sections 5(2)(b) and 5(3), Fatedate relies upon the following trade marks (collectively, “the Fatedate marks”):

¹ The trade mark application was filed in the name of Fate Dating Limited, but a change of name was recorded on the register on 3 December 2024 following the filing of a Form TM21A on 28 November 2024.

i) UK trade mark number 3392099 (“the Fatedate word mark”)

Filing date: 15 April 2019

Registration date: 26 July 2019

Specification relied upon: *Internet based dating, matchmaking and personal introduction services* in Class 45.

Representation: **FATEDATE/Fatedate** (series of two)

ii) UK trade mark number 3597583 (“the Fatedate figurative mark”)

Filing date: 18 February 2021

Registration date: 25 June 2021

Specification relied upon: *Social software; Telecommunications software* in Class 9, *Tv entertainment services* in Class 41 and *Dating services; Internet based dating, matchmaking and personal introduction services* in Class 45.

Representation:



4. Given their dates of filing and registration, the Fatedate marks qualify as earlier marks under section 6(1)(a) of the Act but were not, at the filing date of the Fate mark, subject to the use provisions at sections 47 (2A) – (2F) of the Act. For the purposes of the invalidity proceedings, Fatedate may rely upon all the goods and services for which its marks are registered without proving use.

5. Under section 5(2)(b), Fatedate claims that there is a likelihood of confusion between the Fate mark and the Fatedate marks, on the basis that the marks are similar and the goods/services are similar.

6. Fatedate claims that there is a higher likelihood of confusion by virtue of both parties operating in the same industry and targeting similar demographics. Assessing the likelihood of confusion is notional, based upon the marks and specifications that have been rendered by the parties for the purpose of registration. Therefore, whilst these comments are noted, unless these claimed differences are obvious from the specifications (or unless the terms to be compared are sufficiently broad to cover goods/services relating to the same sector), this is not something I can take into account in my comparison.

7. Fatedate further claims that the Fate mark offends against section 5(2)(b) as it is similar to a mark (with the same representation as the Fatedate figurative mark, shown at paragraph 3(ii) above) which qualifies as an earlier mark under section 6(1)(c) of the Act, being a well-known trade mark in the UK as defined in section 56(1) of the Act (hereafter “the well-known Fatedate mark”). Fatedate claims that the goods and services under the Fate mark are similar to those protected by the well-known Fatedate mark, being:

Class 9: Downloadable mobile application software for facilitating online dating services through artificial intelligence and machine learning; software for processing and analysing conversational data to enhance personal connectivity and matchmaking.

Class 38: Telecommunication services; providing access to platforms and portals on the Internet for social networking; chat room services for social networking.

Class 41: TV entertainment services.

Class 42: Software as a services (SaaS) featuring software for social networking; platform as a service (PaaS) featuring computer software platforms for social networking.

Class 45: Internet-based dating services; social introduction and networking services.

8. Under section 5(3), Fatedate claims to have a reputation for its Fatedate marks in relation to all the goods/services for which they are registered and claims that its reputation and the similarity between the marks would cause the relevant public to perceive a link between the undertakings. Fatedate claims that use of the Fate mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the Fatedate marks.

9. Fate filed a defence and counterstatement denying the entirety of Fatedate's claims and putting them to proof thereof.

The revocation

10. On 2 August 2024, Rakesh Naidu sought revocation of the Fatedate word mark, in its entirety, for non-use under section 46(1)(a) of the Act. The period in respect of which non-use is claimed is 27 July 2019 to 26 July 2024, with an effective date of revocation of 27 July 2024.

11. Fatedate filed a defence and counterstatement, denying Rakesh Naidu's claims in full.

Consolidation

12. On 24 October 2024, the parties were notified in writing that the above invalidity and revocation proceedings would be consolidated, in accordance with Rule 62(1)(g) of the Trade Marks Rules 2008.

Representation

13. Fate/Rakesh Naidu are represented by Dynham Ltd;² Fatedate is unrepresented.

Evidence and submissions

² Rakesh Naidu is the director of Fate and, on 11 November 2024, Dynham Ltd confirmed to the Tribunal that the two parties would be jointly and severally liable for costs in the consolidated proceedings.

14. Fatedate filed evidence in these proceedings by way of four witness statements in the name of Liam Gibson:

- i) The witness statement dated 4 October 2024 (“LG WS1”) with seven exhibits (“WS1 LG1-LG7”);
- ii) The amended witness statement dated 7 August 2024³ (“LG WS2”) with 24 exhibits (“WS2 LG1-LG24”);
- iii) The witness statement dated 20 January 2025 (“LG WS3”) with seven exhibits (“WS3 LG25-LG31”);
- iv) The witness statement dated 11 August 2025 (“LG WS4”) with one exhibit (“WS4 LG32”).

15. Mr Gibson is the founder of Fatedate and made the witness statements from his personal knowledge.

16. Fate/Rakesh Naidu filed evidence in these proceedings by way of one witness statement in the name of Rakesh Naidu, dated 20 January 2025 (“RN WS”). As explained above Mr Naidu is the director of Fate, and his witness statement was accompanied by 11 exhibits (“RN1-RN11”).

17. Fatedate filed written submissions in lieu of attending a hearing. No other submissions were filed in these proceedings, save for the parties’ respective statements of grounds and counterstatements.

18. I have considered the entirety of the papers filed in these proceedings and will refer to them, where necessary, throughout this decision.

The hearing

19. A hearing took place before me on 24 September 2025. Fate/Rakesh Naidu were represented by Aaron Wood, instructed by Dynham Ltd, who filed a skeleton argument

³ But filed with the Tribunal on 16 October 2024.

prior to the hearing. Fatedate chose not to attend the hearing but filed written submissions in lieu.

DECISION

Relevance of EU law

20. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

The revocation

21. Though its outcome has no impact on the invalidity proceedings (because the revocation date sought is later than the relevant date in the invalidity and so Fatedate can rely on its word mark regardless), I will deal with the revocation first.

Statutory provisions

22. The relevant provisions of section 46 of the Act are as follows:

“(1) The registration of a trade mark may be revoked on any of the following grounds –

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) [...]

[...]

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as in referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) [...]

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from –

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existing at an earlier date, that date.”

23. Section 100 of the Act is also relevant, which reads:

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

Relevant case law

24. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic

sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].”

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

“22. The burden lies on the registered proprietor to prove use. [...] However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the

tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

26. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13, Mr Geoffrey Hobbs KC as the Appointed Person stated that:

“21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

‘[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.’

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can

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

27. What I take from this case law is that there is no requirement to produce any specific form of evidence, but that I must consider what the evidence as a whole shows me and whether on this basis I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the mark.

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

- i) The scale and frequency of the use shown;
- ii) The nature of the use shown;
- iii) The services for which use has been shown;
- iv) The nature of those services and the market(s) for them; and
- v) The geographical extent of the use shown.

Assessment of the evidence

29. I remind myself that for the purposes of these proceedings the relevant period in which Fatedate must demonstrate genuine use of its Fatedate word mark is 27 July 2019 to 26 July 2024. The relevant services are *Internet based dating, matchmaking and personal introduction services* in Class 45.

30. The majority of Fatedate’s evidence is not useful for demonstrating proof of use of its Fatedate word mark. There are multiple issues with the evidence: I will set these out under separate headings. However, I have carefully considered the evidence in its

entirety and, later in this section, will refer to the evidence that is relevant and make the appropriate assessments of the evidence overall.

i) Evidence neither related to, nor featuring, the Fatedate mark

There are multiple pages of evidence that do not feature, or relate to, the Fatedate mark (or a variant of such) and do not appear to be an attempt to demonstrate genuine use. These include details of a complaint made at Companies House,⁴ the rebranding of third parties,⁵ details of complaints to the IPO,⁶ references to both the present and unrelated Tribunal proceedings as well as unrelated trade mark registrations,⁷ communication between Fatedate and social media platforms regarding the removal of other parties' content,⁸ details taken from Companies House and job posts on LinkedIn intended to show growth of Fatedate,⁹ and engagement with a TikTok video which does not feature the Fatedate mark.¹⁰ None of this evidence demonstrates use of the Fatedate mark, either in relation to any particular services, or at all.

ii) Undated evidence

A large proportion of the evidence is undated. Where it is not dated, nor explained in the witness statements as pertaining to a particular date, it is not open to me to assume it is dated within the relevant period. This includes some social media evidence,¹¹ promotional flyers,¹² screenshots of Fatedate's website and app,¹³ an example partnership agreement (which is also blank and not supported in the statements with details of any partnerships),¹⁴ a photograph of venue branding,¹⁵ photographs of clothing and pens featuring a variant of the Fatedate word mark,¹⁶ and a screenshot of a 'Linktree' account in

⁴ WS1 LG1 and WS2 LG12.

⁵ WS1 LG2, LG3 and LG4; WS2 LG18 and LG23; WS3 LG29 and LG30.

⁶ WS1 LG5 and WS2 LG14.

⁷ WS1 LG6; WS2 LG9, LG10 and LG13; WS3 LG28.

⁸ WS3 LG25 and LG26.

⁹ WS2 LG7.

¹⁰ WS2 LG8.

¹¹ WS2 LG2.

¹² WS2 LG3.

¹³ WS2 LG4, LG6 and LG9.

¹⁴ WS2 LG6.

¹⁵ WS2 LG11.

¹⁶ WS2 LG21.

the name of 'fatedate'.¹⁷ Undated evidence is not capable, without further explanation, of demonstrating use in the relevant period. Even if I were to infer that some of the undated evidence was accurate at the time the evidence was collated, i.e. the dates of the witness statements, that still falls after the end of the relevant period. Accordingly, this evidence does not assist in demonstrating genuine use.

iii) Internal documents

Much of the remaining evidence comprises internal documents, including a letter from Fatedate's accountant for "research and development",¹⁸ communication regarding investment approval,¹⁹ a letter relating to a government-backed start-up loan,²⁰ bank and credit card accounts and statements,²¹ and a payment receipt from Google for business email accounts.²² Whilst this evidence may indicate an active business, use of a mark must relate to goods or services which are being marketed (or about to be marketed) and as the case law at paragraph 24 sets out, internal use does not suffice for this purpose.²³

31. Having set out the main issues with the evidence, I will now proceed to consider the remaining evidence. The evidence that contains the Fatedate word mark, as well as being dated within the relevant period, can be summarised as:

- i) A screenshot of an article on the website 'globaldatinginsights.com', dated 3 May 2023, referring to a podcast featuring Mr Gibson and mentioning 'FateDate'.²⁴ It is not clear whether the article or the podcast had an audience in the UK.

¹⁷ WS2 LG24.

¹⁸ WS2 LG15.

¹⁹ WS2 LG16.

²⁰ WS2 LG17.

²¹ WS2 LG19.

²² WS2 LG20.

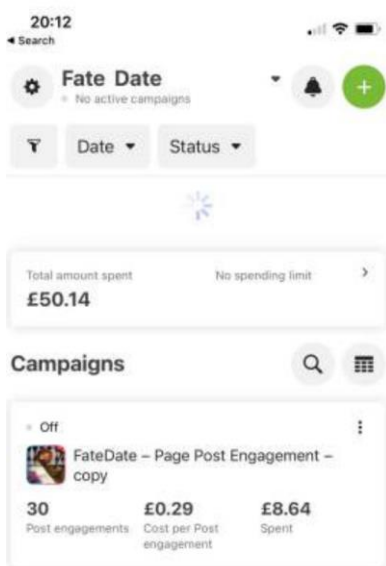
²³ *Ansul* at [37]; *Verein* at [14].

²⁴ WS1 LG7 and WS2 LG5.

- ii) A screenshot of the Apple app store, which shows the 'FateDate' app with 74 ratings.²⁵ Mr Gibson states that this app has been live on the app store since 2021. This does not tell me how many people have downloaded or have used the app throughout the relevant period.

- iii) Evidence of a 'FateDate' X (formerly Twitter) account showing: (i) the account joined the social media platform in November 2020 and had, at the (unknown) date this evidence was compiled, 383 followers; and (ii) one post (with one reply) in June 2022 and one post in June 2024.²⁶

- iv) A screenshot purporting to demonstrate £50.14 in paid advertisements, described by Mr Gibson as proof of running paid ads in commerce, in June 2022.²⁷ There are no other details of what the ads contained or where they were shown. The evidence is shown below:



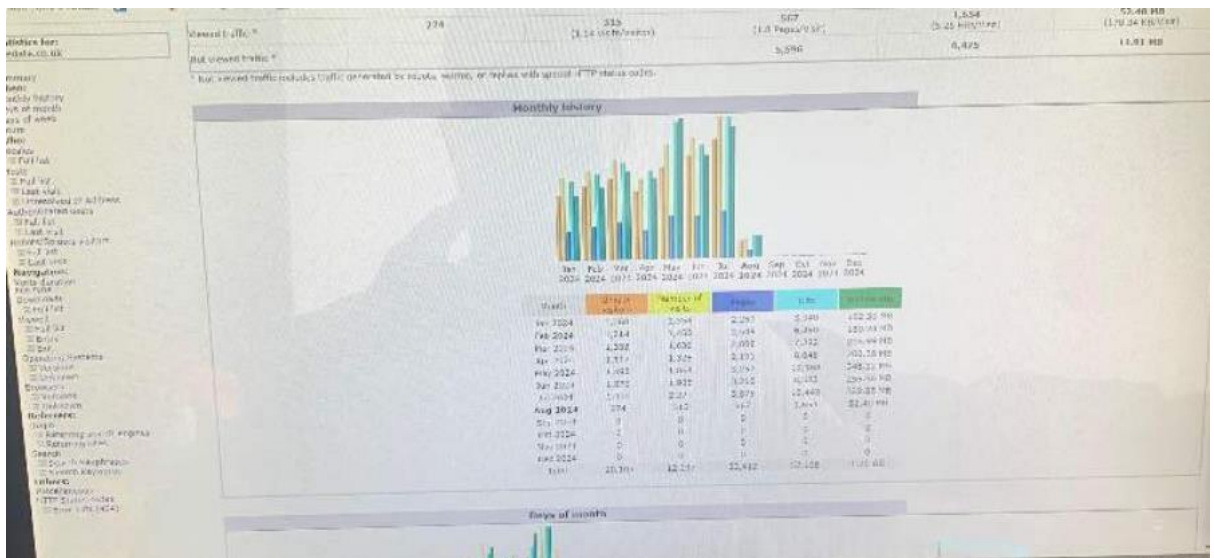
- v) Website analytics reportedly showing traffic and engagement on the Fatedate website. The data is included in an image that appears to be a photograph of a computer screen and the content is largely illegible. Mr Gibson described the evidence as showing over 10,000 unique visitors “this year” (though I do not know which period of time this refers to). Further, since webpages have global

²⁵ WS2 LG1.

²⁶ WS2 LG2.

²⁷ WS2 LG3.

traffic, and no breakdown of the figures is provided, I have no way of knowing whether these page views were by visitors in the UK, or elsewhere. The evidence is shown below:²⁸



vi) A photograph of two individuals wearing hoodies branded with a figurative variant of the Fatedate word mark, contained within a Facebook post, dated 28 June 2022.²⁹ I do not know where the photograph was taken, who shared the photograph on Facebook, nor who or how many viewed the post. Further, this appears to be use for merchandise rather than in relation to the services at issue.

vii) An article on 'UKT NEWS', dated 16 March 2023 and titled "STARTUP SHOWCASE: FATEDATE – REVAMPING ONLINE DATING FOR A SAFER AND SEAMLESS EXPERIENCE".³⁰ The content of the article refers to Fatedate being a UK-based start-up in the online dating industry, a multi-billion-dollar industry. The article referring to dollars suggests it is a non-UK article, though there is no evidence to determine this either way.

viii) Evidence of analytics from an (unknown) app store which appears to show that the Fatedate app received 69.9k impressions between 18 March 2021 and 9

²⁸ WS2 LG4.
²⁹ WS2 LG22.
³⁰ WS3 LG27.

February 2025.³¹ As I understand it, though I have no evidence on the point, impressions refer to the number of times an app is viewed in the app store. Accordingly, this evidence does not tell me the number of downloads or users of the app during the relevant period. Neither is it clear whether the impressions refer to UK use, or global use.

32. Having set out the evidence and discussed the various issues thereof, the majority of the evidence does not show use by way of real commercial exploitation of the mark on the market for the relevant services.³² I say this because most of the evidence is either undated, unrelated to the Fatedate word mark, or comprises internal documents. What remains is eight pieces of evidence which, albeit indicate that a business exists, are not sufficiently solid to build a clear picture of the extent of the use of the Fatedate mark during the relevant period. There are no download figures or user figures for the app, no details of the amount spent on marketing (save for approximately £50 on unknown ads) and no turnover figures. Whilst Mr Gibson has referred to partnerships with third parties, there are no details identifying any of the partners and no evidence of press coverage or press releases discussing such partnerships.

33. Whilst minimal use of a trade mark may qualify as genuine use, I must be satisfied that such use is justified in the sector concerned,³³ whilst forming a view as to what the evidence shows and what it does not show.³⁴ All the evidence tells me is that a business (and a related app) exists. I cannot determine the scale, frequency or territorial extent of the use and I am not satisfied that the minimal evidence of use provided is justified in the context of internet dating services.³⁵ Whilst it is not strictly necessary to file any particular kind of documentation, it is for the owner of the mark at issue to file its best evidence up front and to provide sufficiently solid evidence which, in this case, has not been done.³⁶ The material provided is wholly inconclusive and I cannot make a determination that there has been genuine use of the Fatedate word mark during the relevant period.

³¹ WS3 LG31.

³² See paragraph 106 (5) of *easyGroup Ltd*.

³³ See paragraph 106 (7) of *easyGroup Ltd*.

³⁴ See paragraph 22 of *Dosenbach*.

³⁵ See paragraph 106 (6) of *easyGroup Ltd*.

³⁶ See paragraph 22 of *Awareness*. See also *Guccio Gucci SPA v Gerry Weber International AG*, BL O/424/14.

Revocation conclusion

34. Fate's application for revocation of Fatedate's word mark on the ground of non-use succeeds under section 46(1)(a). Consequently, the trade mark is revoked in full, with an effective revocation date of 27 July 2024.

The invalidity

35. I shall now deal with the application for invalidation of the Fate mark. Whilst one of the earlier marks relied upon by Fatedate, the Fatedate word mark, has been revoked as of 27 July 2024, it was an earlier mark at the time of filing of the Fate mark, 27 February 2024, and so it can be relied upon in the invalidity proceedings.

Well-known mark

36. I will deal first with Fatedate's claim to a well-known mark under section 56(1) of the Act. Section 56(1) relates to trade marks which are entitled to protection under Article 6bis of the Paris Convention³⁷ as well-known trade marks in the UK.

37. The approach to assessing whether a trade mark is well-known in the sense used in Article 6bis of the Paris Convention was set out by Arnold J (as he then was) in *Hotel Cipriana Srl v Cipriani (Grosvenor Street) Ltd*.³⁸ He said that the protection of well-known marks is an exceptional type of protection, the requirement therefore likely imposing a relative high standard.³⁹ At paragraph 59, Arnold J states:

"59. In September 1999 the Assembly of the Paris Union for the Protection of Intellectual Property and the General Assembly of the World Intellectual Property Organisation (WIPO) adopted a Joint Recommendation concerning Provision on the Protection of Well— Known Marks. Art.2 of the Joint Recommendation provides:

³⁷ The Paris Convention for the Protection of Industrial Property.

³⁸ Referring also to *Le Mans Autoparts Ltd's Trade Mark Application*, BL O/012/05.

³⁹ See paragraph 33.

(a) In determining whether a mark is a well—known mark, the competent authority shall take into account any circumstances from which it may be inferred that the mark is well known.

(b) In particular, the competent authority shall consider information submitted to it with respect to factors from which it may be inferred that the mark is, or is not, well known, including, but not limited to, information concerning the following:

(1) the degree of knowledge or recognition of the mark in the relevant sector of the public;

(2) the duration, extent and geographical area of any use of the mark;

(3) the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;

(4) the duration and geographical area of any registration, and/or any applications for registration, of the mark, to the extent that they reflect use or recognition of the mark;

(5) the record of successful enforcement of rights in the mark, in particular, the extent to which the mark was recognized as well known by competent authorities;

(6) the value associated with the mark.

(c) The above factors, which are guidelines to assist the competent authority to determine whether the mark is a well— known mark, are not pre—conditions for reaching the determination. Rather, the determination in each case will depend upon the particular circumstances of that case. In some cases all of the factors may be relevant. In other cases some of the factors may be relevant. In

still other cases none of the factors may be relevant, and the decision may be based on additional factors that are not listed in subparagraph (b), above. Such additional factors may be relevant, alone, or in combination with one or more of the factor listed in subparagraph (b), above.

(a) Relevant sectors of the public shall include, but shall not necessarily be limited to:

(i) actual and/or potential consumers of the type of goods and/or services to which the mark applies;

(ii) persons involved in channels of distribution of the type of goods and/or services to which the mark applies;

(iii) business circles dealing with the type of goods and/or services to which the mark applies.”

38. I can deal with this ground fairly swiftly. Though it has no impact on my findings (for reasons that will become apparent), I remind myself that under section 56(1) Fatedate relies on its well-known mark for a wider set of goods/services for which its earlier Fatedate marks are registered as trade marks in the UK.

39. Having set out the entirety of Fatedate’s evidence earlier in this decision, and making an assessment of genuine use thereof, to my mind, it is clear that the evidence does not satisfy the criteria set out in *Hotel Cipriani*. Having in mind the criticisms of the evidence that I made in the revocation, I am unable to determine: the degree of knowledge or recognition of the mark in the relevant sector of the public; the duration, extent and geographical area of any use or promotion of the mark; the record of successful enforcement of rights in the mark (the extent to which the mark was recognised as well-known); or the value associated with the mark.

40. Overall, I do not find that Fatedate has a mark that is entitled to protection as a well-known mark under the Paris Convention. I will proceed to determine the section 5(2)(b) ground based only on the Fatedate marks registered in the UK.

Section 5(2)(b)

41. Sections 5(2)(b) and 5A of the Act state:

“5(2) A trade mark shall not be registered if because –

[...]

(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.

5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

Relevant law

42. The following principles are gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P.

The principles

(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 be dominated by one or more of its components;

(f) however, it is also 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 great 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;

(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.

Comparison of goods and services

43. The competing goods and services are shown in the table below:

Fate's contested specification	Fatedate's earlier specifications
<p><i>Class 9: Downloadable mobile application software for facilitating online dating services through artificial intelligence and machine learning; software for processing and analysing conversational data to enhance personal connectivity and matchmaking.</i></p> <p><i>Class 38: Telecommunication services; providing access to platforms and portals on the Internet for social networking; chat room services for social networking.</i></p> <p><i>Class 42: Software as a service (SaaS) featuring software for social networking; platform as a service (PaaS) featuring</i></p>	<p><u>Fatedate word mark</u></p> <p><i>Class 45: Internet based dating, matchmaking and personal introduction services.</i></p> <p><u>Fatedate figurative mark</u></p> <p><i>Class 9: Social software; Telecommunications software.</i></p> <p><i>Class 41: Tv entertainment services.</i></p> <p><i>Class 45: Dating services; Internet based dating, matchmaking and personal introduction services.</i></p>

<i>computer software platforms for social networking.</i>	
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Class 45: <i>Internet-based dating services; social introduction and networking services.</i>	
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44. It is settled case law that I must make my comparison of the goods and services on the basis of all relevant factors. These include the nature of the goods and services, their purpose, their users and method of use, the trade channels through which they reach the market, and whether they are in competition with each other or are complementary: see *Canon*, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281. As the General Court said in *Boston Scientific Ltd v OHIM*,⁴⁰ goods and services are complementary when:

“...there is close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”

Class 9

Downloadable mobile application software for facilitating online dating services through artificial intelligence and machine learning

45. This term was discussed at the hearing and Mr Wood sought to differentiate dating apps from software for ‘facilitating’ dating services. I see very little difference between the two. The ordinary meaning of ‘facilitate’ is to make something possible or easier. These goods are mobile apps for making online dating possible or easier (by using artificial intelligence). I consider there to be some similarity with *internet based dating...services* in Class 45 of both of Fatedate’s earlier specifications. Whilst the

⁴⁰ Case T-325/06.

nature and method of use differs between goods and services, I find there to be a complementary relationship between these terms: consumers would expect the provider of online dating services to also provide software in the way of a mobile app in order to access its online dating services. To this extent, users and trade channels will overlap and there is a shared end purpose of providing those users with the ability to date online. I find a medium degree of similarity between the parties' goods and services discussed in this paragraph.

Software for processing and analysing conversational data to enhance personal connectivity and matchmaking

46. The nature, use and purpose of the above software is fairly self-explanatory from the wording of the term: the software analyses conversations in order to provide the user with a personalised/enhanced ability to build connections and initiate relationships. Such goods have similarities to terms in both of Fatedate's earlier specifications. The first comparison I will make is between the above goods and *...matchmaking and personal introduction services* which appears in both Fatedate specifications. By virtue of these terms being goods versus services, they have a different nature and method of use. Neither do I consider them to be in competition or complementary. However, end users of the above software are likely to overlap with users of matchmaking and personal introduction services. The goods and services also have a shared end purpose of providing such users with the opportunity to build connections/relationships. I find the present goods and services to be similar to a low degree.

47. I will also compare Fate's software goods listed above to *social software* in Class 9 of the Fatedate figurative mark's specification. Whilst the definition of *social software* is not immediately obvious, it is not so unclear that I cannot interpret it.⁴¹ In my view, it is reasonable to interpret *social software* as referring to software that facilitates social interaction/collaboration amongst its users. Whilst Fate's software goods have a more specific use – to process and analyse conversational data – than those of Fatedate, both parties' software goods have a shared overall purpose, being social interaction.

⁴¹ See *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36 at Lord Kitchin's paragraph 365.

The users of the goods may overlap, with both using each type of software for the purpose of building personal connections. However, I do not consider the goods to be in competition or to be complementary in line with the relevant case law. Overall, I find a medium degree of similarity between these goods.

Class 38

Telecommunication services

48. I will compare Fate's *telecommunication services* to Fatedate's *telecommunications software* in its figurative mark's specification. *Telecommunications software* is a term that Mr Wood, at the hearing, suggested should be disregarded on account of its scope being "completely unclear". Whilst it was not immediately clear to me what *telecommunications software* includes, on reflection, it would encompass a wide range of applications that enable telecommunication services to operate. Accordingly, the use of Fatedate's software is necessary to enable proper communication via Fate's services; consumers will believe the same undertaking is responsible for both, resulting in a complementary relationship. It follows that the users will overlap, however, the nature and method of use of the goods differs to the services. Overall, I find a medium degree of similarity.

49. For completeness, I will compare Fate's *telecommunication services* to Fatedate's word mark specification: *internet based dating, matchmaking and personal introduction services*. The mere fact that telecommunication services may be used for Fatedate's services does not, in itself, create similarity. The nature and purpose of the services differs, as do the respective trade channels. Even if users overlapped by way of using the services simultaneously, consumers will not assume the responsibility for telecommunication services and online dating etc. lies with the same undertaking; there is no complementarity, neither are the services in competition. I find no meaningful similarity between these services.

Providing access to platforms and portals on the Internet for social networking

50. Platforms and portals for social networking are digital environments that facilitate interactions online. The purpose of providing access to such digital environments is therefore to facilitate social networking amongst users. There is a broad overlap in purpose with *internet based dating, matchmaking and personal introduction services* in both of Fatedate's specifications. Whilst social networking refers more broadly to interacting with others to create or build relationships, to my mind, internet dating, matchmaking and personal introduction are not too far removed from social networking on the basis that the interactions with others are specifically for the purpose of romantic relationships. The primary function of the services differs, though, on account of these services not providing social networking but providing access to the environments that facilitate social networking, and so firstly, any overlap in user is at a very general level and secondly, the services are not in competition or complementary to one another. The nature of the services and trade channels overlap to a degree. Overall, I find there to be a low degree of similarity between the services.

Chat room services for social networking

51. The comparison of these services to Fatedate's *internet based dating, matchmaking and personal introduction services* is not materially different to my comparison in the previous paragraph. Chat room services provide platforms for engaging in discussions and interactions online. For the same reasons I gave in the previous paragraph, I find these services similar to a low degree.

Class 42

Software as a service (SaaS) featuring software for social networking

52. Software as a service (SaaS) is a provision which hosts applications and makes them available over the internet, the users of which typically access the applications by using a web browser. Fate's SaaS specifically relates to social networking software. As such, I find similarity between this term and Fatedate's *social software* in its figurative mark's specification. Although the nature of the goods and services is not the same, they have a similar purpose and use and target the same users. They are also in competition as the relevant public might choose between using Fatedate's

software or accessing the same type of software through Fate's services. The goods and services are similar to a medium degree.

53. To cover Fatedate's word mark specification, I will also compare Fate's SaaS term to Fatedate's *internet based dating, matchmaking and personal introduction services*. Similar to my finding at paragraph 50, internet dating, matchmaking and personal introduction are close in nature to social networking and so there is a broad overlap in the purpose of the parties' services, but this is at a very general and therefore so is any overlap in the user of the respective services. The nature of the services and trade channels overlap to a degree, but they are not in competition and not complementary to one another. Overall, I find there to be a low degree of similarity between the services.

Platform as a service (PaaS) featuring computer software platforms for social networking.

54. These services differ from the SaaS term discussed in the previous paragraph; SaaS is for end users requiring ready-to-use software whereas PaaS is for developers or IT professional creating applications. The above PaaS services are a type of cloud computing services that provides a platform for social networking. The service provider hosts the servers, network, software, databases and development tools by way of a cloud access to which the user pays for, typically on a subscription basis. When comparing these services either to Fatedate's *social software* in its figurative mark's specification or Fatedate's *internet based dating, matchmaking and personal introduction services* in both its specifications, I find no meaningful overlap in the relevant factors. I say this because Fatedate's aforementioned goods and services are aimed at individuals who wish to interact with others to create or build relationships either socially or romantically. On the other hand, the users of Fate's PaaS services are likely to be business seeking IT assistance in creating and hosting a social networking platform. It is for this reason that the nature, purpose, users and trade channels of the goods and services discussed in this paragraph differ. Neither are they in competition or complementary. Fate's PaaS services are dissimilar to Fatedate's *social software* and *internet based dating, matchmaking and personal introduction services* and I consider none of Fatedate's remaining terms to be any closer.

Class 45

Internet-based dating services

55. These services are identical to Fatedate's *internet based dating*, which appears in both its specifications.

Social introduction and networking services

56. I will compare these services to Fatedate's *Internet based dating, matchmaking and personal introduction services* in both its earlier specifications. Mr Wood addressed me on this comparison at the hearing; in his submission, these services are different on the basis they have distinct purposes: dating versus networking being wholly different. *Networking* in Fate's term suggests a professional nature to the services, and *dating, matchmaking* in Fatedate's term suggests a romantic nature. However, this is not the extent of the terms. *Social introduction* services are broad in nature and simply involve the service provider facilitating connections between individuals through social events and opportunities. To my mind, there is little difference between social introduction (in Fate's term) and personal introduction (in Fatedate's term). In any case, there is no reason why those social introductions would completely exclude romantic introductions, like those facilitated by Fatedate's services, resulting in an overlap in nature, purpose and user. Whilst specifications for services should be confined to the core meanings of those services as opposed to being given a wide construction covering a vast range of activities,⁴² when considering the terms as wholes, there is a degree of overlap in the ordinary meaning of them. I find a medium degree of similarity between the services referred to in this paragraph.

57. In accordance with *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, if there is no similarity between goods/services, there is no likelihood of confusion to be considered. Consequently, the 5(2)(b) ground of invalidation has failed in relation to the following services:

⁴² *Avnet Incorporated v Isoact Limited* [1998] F.S.R. 16.

Class 42: *Platform as a service (PaaS) featuring computer software platforms for social networking.*

The average consumer and the purchasing act

58. As the case law earlier in my decision indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods/services. I must then determine the manner in which the goods/services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

59. The relevant goods and services are those for which I have found similarity, the average consumer of which will comprise either members of the general public or businesses. For either group of consumers, the frequency at which the goods and service are purchased, and their cost is likely to vary. However, overall, I am of the view that they are neither overly frequent nor infrequent purchases. The purchasing act will be neither overly considered nor merely casual. For the software in Class 9, the features, suitability for the users' needs and compatibility with their devices will be factors that are considered. For the services, the consumer will consider each of use and functionality. In light of the above, I find that a medium level of attention will be paid during the purchasing process, by the general public and businesses.

60. The goods and services will be selected predominantly visually, after viewing information mainly on the internet or in retail establishments, on displays, or in

catalogues. However, word of mouth recommendations and discussions with sales assistants may play a part in the selection and so I do not discount aural considerations.

Comparison of marks

61. It is clear from *Sabel* that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo*, that:

“...it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relevant weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

62. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the trade marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

63. The trade marks to be compared are as follows:

Fate’s mark	Fatedate’s earlier marks
FATE	<p data-bbox="807 1789 1161 1825"><u>The Fatedate word mark</u></p> <p data-bbox="807 1845 1318 1881">FATEDATE/Fatedate (series of two)</p> <p data-bbox="807 1957 1222 1993"><u>The Fatedate figurative mark</u></p>



Overall impression

64. The Fate mark comprises the one word 'FATE', the overall impression of which resides in that word.

65. The Fatedate word mark comprises the text 'FATEDATE', with one mark in the series presented in upper case and the other in sentence case, though this has no material impact on the comparison since registration of a word mark covers use in any standard case. The overall impression of the mark resides in 'FATEDATE'. However, as I will come to discuss, FATEDATE is not one word that has its own meaning. Rather, it will be seen as the two ordinary words 'FATE' and 'DATE' conjoined. Neither word is particularly distinctive for the goods/services, though FATE is marginally more distinctive than DATE because some of the services relate to dating for which DATE is descriptive.

66. The Fatedate figurative mark is a composite word and device mark. The left-hand side of the mark is a calendar device in dark blue and white. The calendar has grey spiral binding at the top and the two stylised words 'Fate' (in pink) and 'Date' (in light blue) just below the binding on a dark blue background. The dates on the calendar are represented by either blue square devices or red heart-shaped devices, on a white background. To the right of the calendar device is a textual component comprising the same 'Fate Date' text as appears on the calendar, the only differences being (i) the addition of a red full stop between the two words and (ii) the dark blue background following the outline of the text. The overall impression of the mark resides in the combination of these elements. However, the most dominant element is the text, on

the basis it features twice in the mark, the stylisation holding slightly less weight than the words themselves. The calendar device is almost as dominant, given its size in the mark, though it is less distinctive on the basis it reinforces the meaning of the word 'date'.

Visual comparison

FATE v FATEDATE/Fatedate

67. The entirety of the Fate mark is present, as the first four letters, in the Fatedate word mark, creating the visual similarity. The addition of the letters 'DATE' creates the visual difference. I find a medium degree of visual similarity between the marks.



FATE v

68. Again, the entirety of the Fate mark is present (twice) in the Fatedate figurative mark, though not in the stylised font. None of the remaining components in the Fatedate figurative mark appear in the Fate mark, creating significant visual differences. I find the marks visually similar to a low degree.

Aural comparison

FATE v FATEDATE/Fatedate

69. The Fate mark will be pronounced in the ordinary way, as one syllable. The Fatedate word mark will be pronounced as two syllables, which rhyme: the ordinary words 'FATE' and 'DATE'. I find the marks aurally similar to a medium degree.



FATE v

70. Despite 'Fate Date' appearing twice in the Fatedate figurative mark, it is unlikely consumers will articulate this twice. Accordingly, the comparison in the previous paragraph, between the Fate mark and the Fatedate word mark, applies equally here. I find the marks aurally similar to a medium degree.

Conceptual comparison

FATE v FATEDATE/Fatedate

71. The concept of the Fate mark is that of the ordinary meaning of that word: a person or thing's 'fate' being what happens to them, often used to describe something that happens beyond anyone's control. In the context of the majority of Fate's goods and services – those related to social/personal interaction and dating, for example – 'fate' is likely to be seen as a concept that suggests individuals are meant to be together. For the remaining services (telecommunication services), the concept will be the ordinary meaning of 'fate'.

72. The concept of FATEDATE is a combination of the individual meanings of the words 'fate' and 'date', since they do not combine to form a separate, unitary meaning. The immediate concept is most likely to be something related to a date, being a social or romantic engagement, with the intention of finding someone you are meant to be with. The combination of 'fate' and 'date' means this is the only likely concept associated with the mark, regardless of the goods and services.

73. Overall, I find the Fate mark and the Fatedate word mark to be conceptually similar to a high degree in the context of all the goods and services save for

telecommunication services, for which there is a medium degree of conceptual similarity (given the lack of a link to dating or social/personal interactions).



FATE v

74. The comparison between these marks is almost identical to the comparison in the previous paragraph. The device of the calendar only reinforces the concept of a 'date', being a social or romantic engagement. As such, I find a high degree (or medium degree for telecommunication services) of conceptual similarity between the Fate mark and the Fatedate figurative mark.

Distinctive character of the Fatedate marks

75. In *Lloyd Schuhfabrik Meyer* the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in *Joined Cases C-108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested

by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

76. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods/services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

77. Whilst Fatedate filed evidence of use of its word mark, which I summarised earlier in my decision, for the reasons set out in those paragraphs, the evidence was not sufficient for demonstrating genuine use and it is not sufficient for a finding of enhanced distinctive character: there is no evidence as to the market share held by the mark, nor is the evidence sufficient for me to be satisfied that use of the mark has been intensive, geographically widespread or longstanding, and the only evidence of promotional spend is £50 in relation to unknown advertisements. This evidence is lacking in regard to both the word mark and the figurative mark and so the finding of no enhanced distinctive character applies to both FATEDATE marks.

78. I will now consider the inherent position of the marks. As explained in the conceptual comparison, FATEDATE will be seen as a reference to a social or romantic engagement, with the intention of finding someone you are meant to be with, as a combination of the ordinary meanings of ‘FATE’ and ‘DATE’. For the services relied upon in Class 45, the mark is highly allusive, though not directly descriptive given the amalgamation of two words which do not combine to form a distinct meaning. I consider the Fatedate word mark to be inherently distinctive to a low degree. The Fatedate figurative mark features additional components which slightly increase the distinctiveness, including the overall stylisation, duplicate text and the calendar device, the latter simply reinforcing the message conveyed by the word ‘DATE’. I find the Fatedate figurative mark to be inherently distinctive to between a low and medium degree.

Likelihood of confusion

79. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods/services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods/services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the Fatedate marks, the average consumer for the goods/services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparison between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

80. I have found the Fate mark and the Fatedate marks to be visually similar to either a medium degree (the Fatedate word mark) or a low degree (the Fatedate figurative mark), aurally similar to a medium degree and conceptually similar to either a medium degree (for telecommunication services) or a high degree (for all other goods/services). I have found the Fatedate word mark to have a low degree, and the Fatedate figurative mark to have a low to medium degree, of inherent distinctiveness. I have found the similarity of the goods/services to vary from low to identical. I have identified the average consumer as either a member of the general public or a business, who will pay a medium degree of attention to a predominantly visual purchase (though I do not discount an aural aspect).

The Fatedate word mark

81. When considering whether there is a likelihood of confusion, I bear in mind *L.A. Sugar Limited v By Back Beat Inc*, in which Iain Purvis KC said.⁴³

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (“26 RED TESCO” would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as “LITE”, “EXPRESS”, “WORLDWIDE”, “MINI”, etc.).

⁴³ BL O/375/10.

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (“FAT FACE” to “BRAT FACE” for example).”

82. I have borne in mind that the examples given by Mr Purvis are not exhaustive. Rather, they were intended to be illustrative of the general approach.⁴⁴

83. The shared element ‘FATE’ is low in distinctive character and so I remind myself of various relevant cases. The first is *Kurt Geiger v A-List Corporate Limited*,⁴⁵ in which Mr Iain Purvis KC said that “if distinctiveness is provided by an aspect of the mark which has no counterpart in the mark alleged to be confusingly similar, then the distinctiveness will not increase the likelihood of confusion at all”. The second is *Whyte and Mackay Ltd v Origin Wine UK Ltd and Another*,⁴⁶ in which Arnold J (as he then was) said “if the only similarity between the respective marks is a common elements which has low distinctiveness, that points against there being a likelihood of confusion”.⁴⁷ The third is *L’Oreal SA v OHIM*,⁴⁸ in which the CJEU considered the likelihood of confusion where marks have a low level of distinctiveness.⁴⁹

84. I bear these cases in mind, however, the comments of Emma Himsworth KC in *Face2FaceHR Partners Limited v Peninsula Business Services Limited*⁵⁰ are particularly helpful. Miss Himsworth summarised the correct approach when assessing the likelihood of confusion where the only common element between the marks in issue has no or low distinctiveness as follows:

“(1) The distinctiveness of the mark as a whole must be assessed, taking into account that a minimum degree of distinctiveness must be acknowledged.

(2) The distinctiveness of each of the components of both marks must be assessed with priority being given to the coinciding elements.

⁴⁴ See *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17 at paragraphs [81] to [82].

⁴⁵ BL O/075/13.

⁴⁶ [2015] EWHC 1271 (Ch).

⁴⁷ At paragraph [44].

⁴⁸ [2006] ECR I-57.

⁴⁹ The relevant paragraph being [45].

⁵⁰ BL O/0368/23.

(3) The focus of the assessment of the likelihood of confusion should be on the impact of the non-coinciding components on the overall impression of the mark.

(4) Account must be taken of the similarities/differences in the non-coinciding elements of the marks.

(5) A coincidence of an element with a low level of distinctiveness will not usually lead to a likelihood of confusion.

(6) There may be a finding of a likelihood of confusion if (a) the non-coinciding elements of the mark are of lower (or equally low) degree of distinctiveness or are of insignificant visual impact and the overall impression is similar; or (b) the overall impression of the marks is highly similar or identical.”

85. Approaching the case before me in this manner, I take the view that there is a likelihood of confusion between the marks, for the following reasons. The non-coinciding component is the word ‘DATE’. As explained earlier in my decision, this element is descriptive or allusive of the majority of the goods and services. Further, it is slightly lower in distinctive character than the word ‘FATE’. The overall impression of the marks, and the concept conveyed by each, is highly similar (except in relation to telecommunication services). I therefore consider this case to fall within points (6)(a) and (b) above, i.e. “there may be a finding of a likelihood of confusion if (a) the non-coinciding elements of the mark are of lower (or equally low) degree of distinctive character [and] (b) the overall impression of the marks is highly similar...” The low (or lack of) distinctiveness of the non-coinciding component persuades me that the average consumer could be directly confused. In addition, or in case I am wrong and the additional component is noticed, it is not sufficient to dispel any confusion as to origin.⁵¹ Consumers will see the addition or omission of the word ‘DATE’ as merely related to goods or services for which a date for a social or romantic engagement is agreed. This finding extends to the following goods and services on the basis that (i) I

⁵¹ Similarly to the findings of Phillip Johnson, sitting as the Appointed Person in BL O/0331/23.

found them to be similar or identical to the services of the Fatedate word mark and (ii) it is these for which 'DATE' is descriptive/allusive and may be misremembered:

Class 9: Downloadable mobile application software for facilitating online dating services through artificial intelligence and machine learning; software for processing and analysing conversational data to enhance personal connectivity and matchmaking.

Class 38: Providing access to platforms and portals on the Internet for social networking; chat room services for social networking.

Class 42: Software as a service (SaaS) featuring software for social networking.

Class 45: Internet-based dating services; social introduction and networking services.

86. In coming to my decision on indirect confusion, I have considered the comments of Mr Wood at the hearing (foreshadowed in the skeleton argument) that it is not appropriate for me to find indirect confusion when no proper basis has been pleaded. I was referred to *Phones 4U Ltd v EE Ltd & Ors* [2025] EWCA Civ 869 (11 July 2025) in support of the submission that I am constrained by the pleaded case and that any basis for indirect confusion other than those set out by Mr Purvis must have been pleaded by Fatedate. I do not think this is a relevant point in the case before me. By virtue of relying on section 5(2)(b) and claiming a likelihood of confusion, Fatedate has pleaded indirect confusion. To my mind, I have not had to go beyond the pleaded case to find indirect confusion on any specific basis.

87. The finding of a likelihood of confusion with the Fatedate word mark cannot extend to *Telecommunication services* Class 38 on the basis I found no similarity between these services and the services of the Fatedate word mark.

The Fatedate figurative mark

88. I do not consider this mark puts Fatedate in a better position than its Fatedate word mark. Its only advantage over the Fatedate word mark is the similarity I found between

telecommunication services in the Fate mark and *telecommunications software* in the Fatedate figurative mark, however, I will return to this shortly. For completeness, I will briefly address the likelihood of confusion with this mark. On account of the low visual similarity between these marks, and the predominantly visual purchase, as well as my finding that the calendar device in the Fatedate figurative mark is almost as dominant (though not as distinctive), I do not consider it likely that consumers will misremember one mark for the other. There is no likelihood of direct confusion.

89. In terms of indirect confusion, the position is similar to the Fatedate word mark. Consumers will see the addition of the word 'DATE' on goods and services for which it is descriptive or allusive as a logical addition, thus considering the undertakings responsible to be linked. The stylistic/presentation differences, including the calendar device which I explained is low in distinctiveness by reinforcing the message portrayed by the descriptive/allusive word 'DATE' will be seen as logical with a brand varying their mark. This finding applies to the same goods and services as my finding for the Fatedate word mark.

90. I do not consider there to be a likelihood of direct or indirect confusion in relation to *telecommunication services* in Class 38 of Fate's mark on the basis that 'DATE' is neither descriptive nor allusive for those services and is unlikely to be misremembered or seen as a logical addition to the word 'FATE'.

Conclusion

91. The section 5(2)(b) ground of invalidation has succeeded in relation to the following goods and services:

Class 9: Downloadable mobile application software for facilitating online dating services through artificial intelligence and machine learning; software for processing and analysing conversational data to enhance personal connectivity and matchmaking.

Class 38: Providing access to platforms and portals on the Internet for social networking; chat room services for social networking.

Class 42: *Software as a service (SaaS) featuring software for social networking.*

Class 45: *Internet-based dating services; social introduction and networking services.*

92. The section 5(2)(b) ground of invalidation has failed in relation to the following services:

Class 38: *Telecommunication services.*

Class 42: *Platform as a service (PaaS) featuring computer software platforms for social networking.*

Section 5(3)

93. Section 5(3) states:

“5(3) A trade mark which –

is identical with or similar to an earlier trade mark, 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.”

94. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, *General Motors*, Case 252/07, *Intel*, Case C-408/01, *Adidas-Salomon*, Case C-487/07, *L'Oréal v Bellure* and Case C-323/09, *Marks and Spencer v Interflora* and Case C383/12P, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows.

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public; *General Motors, paragraph 26*.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind; *Adidas Saloman, paragraph 29* and *Intel, paragraph 63*.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness; *Intel, paragraph 42*

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future; *Intel, paragraph 68*; whether this is the case must also be assessed globally, taking account of all relevant factors; *Intel, paragraph 79*.

(f) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark, and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the earlier mark is registered, or a serious risk that this will happen in future; *Intel, paragraphs 76 and 77* and *Environmental Manufacturing, paragraph 34*.

(g) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character; *Intel, paragraph 74*.

(h) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such

a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark; *L'Oréal v Bellure NV*, paragraph 40.

(i) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark 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 of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oréal v Bellure*).

95. The conditions of section 5(3) are cumulative. First, the marks at issue must be identical or similar. Secondly, Fatedate must satisfy me that the earlier marks have achieved a level of knowledge/reputation amongst a significant part of the relevant public. Thirdly, it must be established that the level of reputation and the similarities between the marks will cause the public to make a link between them, in the sense of the earlier marks being brought to mind by the contested mark. Fourthly, assuming that the first three conditions have been met, section 5(3) requires that one or more of the three types of damage claimed will occur. It is unnecessary for the purposes of section 5(3) that the goods/services be similar, although the relative distance between them is one of the factors which must be assessed in deciding whether the public will make a link between the marks.

96. I can deal with this ground fairly swiftly. I have set out the Fatedate's claim under this ground at paragraph 8, above. I recall that I found Fatedate's evidence insufficient for a finding of genuine use of the Fatedate word mark, insufficient for its claim to a well-known mark, and insufficient to establish that the distinctive character of its Fatedate marks had been enhanced through use. The factors that were relevant in

those assessments are also the ones that I must consider when deciding whether the Fatedate marks have a reputation and so the criticisms of Fatedate's evidence apply equally here. The evidence is simply not sufficient for me to make such a finding.

97. The section 5(3) ground of opposition is dismissed.

FINDINGS

98. I will now summarise the entirety of my findings in this decision.

- i) Trade mark number UK00003392099, in the name of Fatedate Limited, is revoked in full for non-use as of 27 July 2024.
- ii) Trade mark number UK00004019297, in the name of Fate Dating App Limited, is invalidated for the following goods and services:

Class 9: Downloadable mobile application software for facilitating online dating services through artificial intelligence and machine learning; software for processing and analysing conversational data to enhance personal connectivity and matchmaking.

Class 38: Providing access to platforms and portals on the Internet for social networking; chat room services for social networking.

Class 42: Software as a service (SaaS) featuring software for social networking.

Class 45: Internet-based dating services; social introduction and networking services.

- iii) Trade mark number UK00004019297, in the name of Fate Dating App Limited, remains registered for the following services:

Class 38: Telecommunication services.

Class 42: *Platform as a service (PaaS) featuring computer software platforms for social networking.*

COSTS

99. Each party has achieved a roughly equal measure of success in these consolidated proceedings. As such, I order each party to bear its own costs.

Dated this 11th day of February 2026

MRS E FISHER
For the Registrar