

O/0226/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NO. UK00002311146

IN THE NAME OF

LA PETITE MAISON RESTAURANT LIMITED

IN RESPECT OF THE FOLLOWING TRADE MARK:

LA PETITE MAISON

IN CLASS 43

AND

AN APPLICATION FOR THE REVOCATION THEREOF

UNDER NUMBER CA000507738

BY

S.A.R.L. VANLO

BACKGROUND AND PLEADINGS

1. The trade mark shown on the cover page of this decision ("***the Contested Mark***") stands registered in the name of LA PETITE MAISON RESTAURANT LIMITED ("***the Proprietor***"). The details of the mark are as follows:

UK Registration no. UK00002311146

LA PETITE MAISON

Filing date: 20 September 2002

Registration date: 28 February 2003

Registered for the following services:

Class 43: Restaurant, bar and catering services.

2. On 28 August 2024, S.a.r.l. Vanlo ("***the Applicant***") sought revocation of the mark, in its entirety, for non-use under section 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 ("***the Act***"). The periods in respect of which non-use is claimed are:

Section 46(1)(a):

- 01 March 2003 - 29 February 2008 ("***the first relevant period***") with effective date of revocation 01 March 2008.

Section 46(1)(b):

- 30 May 2019 - 29 May 2024 ("***the second relevant period***") with effective date of revocation 30 May 2024.
- 28 August 2019 - 27 August 2024 ("***the third relevant period***") with effective date of revocation 28 August 2024.

3. The Proprietor filed a counterstatement denying the claims made by the Applicant.
4. The Applicant is represented by Wynne-Jones IP Limited. The Proprietor is represented by Wedlake Bell LLP.

RELEVANCE OF EU LAW

5. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied on in these proceedings are derived from an EU Directive. This is why these proceedings continue to make reference to the trade mark case-law of EU courts.

EVIDENCE AND SUBMISSIONS

6. The Proprietor filed evidence in the form of the witness statement of Nicholas Budzynski, dated 13 March 2025, and its corresponding twelve exhibits (labelled “NB1 – NB12”). Nicholas Budzynski is the Chief Operating Officer of LPMH, which Mr Budzynski submits is a company associated with La Petite Maison Restaurant Limited.
7. The Proprietor also filed written submissions, dated 13 March 2025.
8. The Applicant filed evidence in the form of the witness statement of Liam Peters, dated 15 May 2025, and its corresponding five exhibits (labelled “LP01-LP05”). Liam Peters is a Partner and Trade Mark Attorney of Wynne-Jones IP Limited, the Applicant’s representative.
9. The Applicant also filed written submissions, dated 15 May 2025.
10. The Proprietor filed evidence in reply, in the form of the witness statement of Emilia Petrossian, dated 21 July 2025, and its corresponding five exhibits (labelled “EP1 to EP5”). Emilia Petrossian is a Trade Mark Attorney employed by Wedlake Bell LLP, the Proprietor’s representative.
11. The Proprietor also filed written submissions in reply, dated 21 July 2025.
12. All the witnesses are duly authorised to provide evidence on behalf of the respective parties.
13. Neither party requested a hearing and only the Applicant filed written submissions in lieu.

14. I confirm that I have taken all filed documents into account. I will not summarise all the evidence and submissions here, but I will summarise and/or refer to them to the extent that I deem necessary.

PRELIMINARY MATTERS

The relevant period to consider

15. I bear in mind that, given the proviso at section 46(3) of the Act, if the Proprietor can establish genuine use in the most recent period (i.e., 28 August 2019 – 27 August 2024), the registration will not be revoked for the earlier relevant periods. In this regard, I note that there is some discussion between the parties as to whether the Proprietor's evidence of use which relates to the last three months of the most recent relevant period can be taken into account (as it is 3 months prior to the date on which the revocation action was filed).¹ The Applicant contends that use during that period should be discounted due to the wording of section 46(3), which I set out in full below (my emphasis):

“The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is 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.

16. The Applicant seeks to rely upon the reference to use within the three-month period ending with the date of the application being disregarded. However, as the underlined wording above shows, this only comes into play if the commencement or resumption of use takes place *after* the end of the five-year period. The

¹ There is a misunderstanding as to when the revocation action was filed, with the Proprietor using the date of the final form of TM26(N) filed by the applicant in October 2024. However, the date on which the revocation action was filed is the date on which the first version of the form was filed, being 28 August 2019.

proprietor's use in the 3 months leading up to the application for revocation in this case fall *during* the relevant period. As such, the proviso at section 46(3) in that regard does not bite. This is also confirmed in *Philosophy Inc. v Ferretti Studio Srl* [2002] EWCA Civ 921 at [8] it is stated that (my emphasis):

“The proviso which affects only the case where a commencement or resumption of use has occurred outside the five-year period, the proviso avoiding the undesirable consequence of a proprietor, once he learns of the likelihood of an application for revocation perhaps through the intending applicant opening negotiations, promptly starting use of the trade mark. In my judgment it is inappropriate to give the statutory language the narrow textual analysis adopted by Mr Edenborough. I would construe the proviso to section 46(3) as requiring that what Mr Edenborough has called the grace period cannot exceed three months. It must commence after the expiry of the five-year period but must end with the application for revocation.”

17. Insofar as the Applicant alleges that the Proprietor's resumption of use, which it alleges took place after it filed a notice of threatened opposition in relation to other proceedings before this Tribunal, was purely to maintain the registration, such conduct is covered by the relevant case law which makes it clear that token/sham use which is done merely to preserve the registration does not qualify as genuine use. I will have that case law in my mind when I consider the Proprietor's evidence.

Evidence in reply by the Proprietor

18. The Applicant submits that exhibit EP2 should be disregarded as it is additional evidence rather than evidence in reply.² However, I note the Applicant criticised the Proprietor's sales revenue table provided in exhibit NB3 stating that it is unclear whether these figures refer to the relevant periods.³ Therefore, in reply to such criticism, the Proprietor provided a more detailed table in exhibit EP2, breaking down the revenues figures by month for these years. It follows that exhibit EP2 is acceptable evidence in reply filed within the usual course of the evidence rounds

² Applicant's submissions in lieu dated 21 August 2025, at [12] – [17].

³ Applicant's written submissions dated 19 May 2025, at [31].

addressing a challenge made by the Applicant. Thus, I will take it into consideration.

Surrender and revocation of class 29

19. On 6 March 2025, the Proprietor filed a Form TM23 and surrendered all the goods in class 29 for which the Contested Mark was registered. However, the earliest possible date of revocation in these proceedings is 1 March 2008, which is prior to the date of surrender. As such, the revocation action in relation to class 29 still needs to be determined. In this regard, I note that the Proprietor accepts that “*there has been no use of the Registration in relation to the goods in class 29*”.⁴ This is further supported by Mr Budzynski, who confirms that the revocation proceedings are not resisted in relation to the class 29 goods. These are clear admissions of non-use and, as such, I do not need to consider the matter any further. The contested mark will be revoked in relation to the class 29 goods with effect from 1 March 2008.

Alleged hearsay evidence

20. The Applicant submits that part of the Proprietor’s evidence (i.e., the 2016 – 2020 financial figures in exhibit NB3, the 2016 – 2020 marketing expenditure figures in exhibit NB5 and paragraph 11 of Nicolas Budzynski’s witness statement) is hearsay evidence and it should be considered devoid of any probative value.⁵

21. In its written submissions filed during the evidence rounds, the Applicant noted that Mr Budzynski has been the Chief Operating Officer (COO) of “LPM Holding Limited” (“*LPMH*”), the Proprietor’s holding company, since 2024 and that he has been authorised to represent the Proprietor since June 2023. Thus, the Applicant contends that the evidence that predates Mr Budzynski’s involvement with the Proprietor is second-hand evidence and that “*it would have been reasonable for the Proprietor to obtain a witness statement from the former owner of the business*”.⁶ The Applicant also argues that some of the statements made by Mr

⁴ Proprietor’s written submissions dated 13 March 2025, at [4].

⁵ Applicant’s written submissions dated 19 May 2025, at [9] – [17].

⁶ Applicant’s written submissions dated 19 May 2025, at [14] – [15].

Budzynski are not being made contemporaneously with the events set out in the evidence.⁷

22. The Proprietor filed evidence in response to this. Mr Budzynski reports, in his witness statement, that he has been the COO of LPMH, the parent company (holding) of Azur Limited (“**Azur**”) and of the Proprietor⁸ since 2024 and that he has been a Director and CEO of Azur (the Proprietor’s sister company) since 2021.⁹ Given Mr Budzynski’s roles, the Proprietor argues that he is in the best position to provide evidence for the matters at hand taking into account that he has direct access to all financial and marketing figures and company history in relation to the Contested Mark and the business of Azur Limited, including the operation of the UK restaurant business conducted under the Contested Mark.¹⁰ Furthermore, it is argued that Mr Budzynski is “well aware” of the full history and the financial and confidential information relevant to the business of “LA PETITE MAISON”.¹¹

23. I find that, although part of the evidence predates Mr Budzynski’s involvement in the Proprietor’s business, he nonetheless occupies a central position within that business, and the evidence he has provided is relevant and should not be afforded reduced weight merely because his involvement began in 2021. I reach this conclusion particularly given that most of the alleged hearsay evidence consists of numerical material (such as invoices, receipts, and revenue or marketing figures). I do not consider such evidence to be any less compelling solely on the basis of the individual presenting it. In this regard, I note the Applicant’s contention that Ms Emilia Petrossian’s witness statement and exhibit EP2 should similarly be treated as hearsay on the basis that the evidence ought to have been supplied by Mr Budzynski instead. The same reasoning applies. The evidence contained in exhibit EP2 (a breakdown of sales figures for 2019–2024) is purely documentary and should not be attributed diminished probative value merely because it was not provided by Mr Budzynski.

Use of the Contested Mark with the Proprietor’s consent

⁷ Idem at [16].

⁸ Exhibit NB1.

⁹ Exhibit EP1.

¹⁰ Proprietor’s written submissions dated 17 June 2025, at [28].

¹¹ Idem at [29].

24. The Applicant states that the evidence shows that the Contested Mark was registered and originally owned by Arjun Waney before he transferred it to the Proprietor on 21 December 2021.¹² The Applicant directs me to section 46(1) of the Act, and it argues that none of the evidence shows use of the mark by Arjun Waney as the registered proprietor, but only by Azur and it states that the Proprietor did not file any agreements demonstrating that Arjun Waney had consented to the use of the Contested Mark by Azur.¹³
25. The Proprietor counter argues that the evidence shows use of the Contested Mark made with the Proprietor's consent in that Mr Waney was the founder, major shareholder and director of Azur and, hence, it can readily be inferred that Azur used the Contested Mark with his consent.¹⁴ I agree with the Proprietor. From the evidence and the Proprietor's submissions, it is reasonable to infer that the evidence amounts to use with the Proprietor's consent and, therefore, relevant for my assessment.

The impact of Corona virus (Covid-19) pandemic as proper reason for non-use

26. Mr Budzynski reports that "*the restaurant in London operated from 2007 until 2 March 2020 under the brand LA PETITE MAISON. It was unable to operate for a time during 2020 because of the Covid pandemic*".¹⁵ The Applicant contends that the impact of the Covid-19 pandemic for a few months of the relevant periods does not amount to a proper reason for non-use.¹⁶ Whilst the hospitality industry did encounter difficulties during the lockdowns of 2020 and 2021, and travel was restricted during those periods, these measures affected only a few months of each year. The lockdowns themselves occurred from Spring to early Summer 2020 and from December 2020 to mid-May 2021. Although the Covid-19 pandemic might have constituted an obstacle preventing the Proprietor and its affiliates from conducting their business, no evidence has been provided regarding its actual impact, such as, for example, any financial loss suffered during this time. In any case, even if I were to accept that the Covid-19 pandemic constitutes a proper

¹² Mr Budzynski's witness statement at [16] and exhibit NB2.

¹³ Applicant's written submissions at [34] – [37].

¹⁴ Proprietor's written submissions in reply dated 21 July 2025, at [50] and exhibit EP3, pages 11 – 13.

¹⁵ Nicolas Budzynski's witness statement at [13].

¹⁶ Applicant's written submissions dated 19 May 2025, at [38].

reason for non-use, there are still portions of the second and third relevant period for which evidence of use is missing. Nonetheless, although I do not find, in the case at hand, that the effects of the Covid-19 pandemic constitute proper reasons for non-use, I will bear them in mind during my assessment.

DECISION

Statutory provisions

27. 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) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

[...]

(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 is 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.”

28. 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

29. 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 Bunderversammlung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno 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].”

30. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. *Case T-78/19 Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33].

31. What I take from the relevant case law is also 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.¹⁷

Summary of the evidence

32. As noted above, use during the most recent relevant period (i.e., 28 August 2019 - 27 August 2024) can avoid the mark being revoked in the earlier relevant periods as per section 46(3) of the Act. With that in mind, I will begin by summarising the evidence which relates to that period only, returning to the earlier periods only if it is necessary to do so.

33. Mr Budzynski reports that the Proprietor was incorporated in the UAE in 2009 and that Azur is one of the Proprietor’s sister companies.¹⁸ Mr Budzynski also states that Azur opened the restaurant “LA PETITE MAISON” in London (Mayfair) in 2007 and that it operated until 2 March 2020 under the name “LA PETITE MAISON”.¹⁹ Following a change in ownership, between part of 2020 and May 2024 the restaurant operated under the name “LPM Restaurant & Bar”. From May 2024, the restaurant was rebranded to “LPM/ LA PETITE MAISON”.²⁰

¹⁷ *Awareness Limited v Plymouth City Council*, Case BL O/236/13; *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13.

¹⁸ Mr Budzynski’s witness statement dated 13 March 2025, at [8] and [9].

¹⁹ Mr Budzynski’s witness statement at [11] and [13].

²⁰ Mr Budzynski’s witness statement at [14].

34. **Exhibit NB3** shows the total sales figures for the restaurant “LA PETITE MAISON” in London for 2019/2020 were £2,931,502 broken down in “Food Revenue” (£1,787,895) and “Beverage Revenue” (£1,143,607). The total sales figures between May – July 2024 were £2,931,502 broken down as indicated in the table below:

	May 2024	June 2024	July 2024
Food Revenue	522,484	546,315	599,358
Beverage Revenue	88,433	90,219	97,808
Wine Revenue	202,921	220,844	216,491
Total Revenue	£813,838	£857,378	£913,657

35. As already mentioned at paragraph [18] above, in **Exhibit EP2** Ms Petrossian provides a table breaking down the revenue figures by month for the years 2019, 2020 and 2024 as reported below. Ms Petrossian clarifies that between January and June 2020 the restaurant could not operate due to the Covid restrictions. No further clarification is provided regarding the other missing data in the table:

	2019	2020	2024
January			
February			
March			
April			
May	£546,822.55		£813,838
June	£508,186.16	£31,977.98	£857,378
July	£516,996.73	£244,477.22	£913,657
August	£571,039.37	£483,718.39	£781,691
September	£503,180.81		
October	£488,501.19		
November	£682,646.90		
December	£496,999.90		

TOTAL	£4,314,373.61	£760,173.59	£2,584,873 (May to July 2024) / £3,366,564 (May to August 2024)
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36. **Exhibit NB3** also contains samples of till receipts from the London restaurant “LA PETITE MAISON” dated November/December 2019 and May 2024. The exhibit also contains a selection of 11 supplier invoices to the London restaurant dated between April 2019 and February 2020²¹ relating to the monthly supply of gas, delivery food services, call charges, crates rental and the rental of sanitary instruments/appliances as well as the purchase of operating supplies (e.g., napkins, sauce bottles, cloths, detergent for dishes, sponges, gloves, aprons, chef jackets, pepper/salt mills). The exhibit also features two invoices, dated 30 July 2024, for some groceries. The value of all the invoices in the exhibit, apart from one valued £17.95, is redacted. **Exhibit NB3** also features four invoices showing the purchase of a total of 240 bottles of wine between 28 and 31 May 2024. The invoices’ value is redacted.

Reviews and third-party mentions

37. **Exhibit NB4** features screenshots from TripAdvisor and Instagram containing positive reviews of the Proprietor’s restaurant. One extract shows two screenshots, dated April 2019, of “LA PETITE MAISON” wine menu and a bottle of water with the mark “LA PETITE MAISON”. The other extract features one screenshot of a wine carte. The bottom left corner of the wine carte seems to display the mark “LA PETITE MAISON” although it is not clearly legible from the image. The evidence is dated 2024 and Mr Budzynski states that the evidence dated 2024 is from the period May to July.²² For the avoidance of doubt, I note that even if I had found Mr Budzynski’s evidence prior to his tenure as COO to be hearsay evidence, this narrative evidence would be unaffected by that finding as it relates to the period after he took up that position. **Exhibit NB6** features extracts from a review titled “best restaurants on Oxford Street”, date 20 November 2019, listing “LA PETITE

²¹ Mr Budzynski’s witness statement at [23].

²² Idem at [24].

MAISON” among other high-end restaurants in London.²³ The exhibit also features a screenshot, dated 23 November 2019, listing “LA PETITE MAISON” among the world’s 50 best resultants. The article refers to “LA PETITE MAISON” defining it a “worldwide brand” and reporting that the “LA PETITE MAISON”’s sous chef had previously worked at London restaurants Sketch and Zuma.²⁴ The evidence also contains a review of the Proprietor’s restaurant by Luxsphere Magazine, dated 18 September 2020, offering a positive review of the place.²⁵

38. **Exhibit NB7** contains extracts from TripAdvisor showing two positive customer reviews dated respectively March and December 2019 as well as two positive reviews for June and July 2024.

Awards and accolades

39. Mr Budzynski reports that in 2019, “LA PETITE MAISON” was awarded a “Silver Award” by Square Meal. **Exhibit NB7** features an article, dated 1 August 2019, from “Square Meal” where it is stated that the Square Meal “Silver Award” is the second-highest award given to excellent restaurants and bars that they constantly recommend as being among the best in the area.²⁶ The exhibit also features an article from Luxsphere Magazine, dated 18 May 2024 listing, again, “LA PETITE MAISON” among the “23 best restaurants in Mayfair”.²⁷ To this regard, Mr Budzynski states that the Luxsphere Magazine evidence shows that “LA PETITE MAISON” has maintained its position among the “23 best restaurants in Mayfair” at least between 2020 and (May) 2024 notwithstanding the fact that the restaurant operated for at time under the “LPM” brand.²⁸

Marketing expenditure

40. **Exhibit NB5** shows that in 2019/2020 and between May - July 2024 the Proprietor spent, respectively, a total of £12,222.86 and £17,996 for cultural and digital marketing.

²³ Exhibit NB6, page 88.

²⁴ Exhibit NB6, page 92.

²⁵ Exhibit NB6, page 96.

²⁶ Exhibit BN7, page 109.

²⁷ Exhibit NB7, page 120.

²⁸ Mr Budzynski’s witness statement at [32].

The Proprietor's websites

41. The Proprietor has operated a website for the restaurant "LA PETITE MAISON" since 2007 initially as "www.lpmlondon.co.uk" and in 2018 it moved to the domain name "www.lpmrestaurants.com".²⁹ **Exhibit NB9** shows a few screenshots from the "lpmlondon" and "lpmrestaurants" websites dated respectively November 2019 and May 2024 showing various instances where the mark "LA PETITE MAISON" is used on these websites. Mr Budzynski indicates that **Exhibit NB10** shows the traffic for the website "www.lpmlondon.co.uk" between 2017 – 2020 and the traffic for "www.lpmrestaurants.com" between May – July 2024. From what I can derive from the evidence, it appears that between January 2019 and January 2020 "lpmlondon.co.uk" had around 10,000 visits per month throughout the whole period.³⁰ With regard to "www.lpmrestaurants.com", Mr Budzynski indicates that, as the evidence shows, the website registered 48,000 active users between May and July 2024.³¹

42. The evidence concludes with some extracts, dated between 16 July 2024 and 2 August 2024, from the Proprietor's email correspondence as well as screenshots of a few Instagram posts showing that, during the period where the restaurant was being operated as "LPM", the name "LA PETITE MAISON", was in use on the restaurant's awnings, door, window and menu.³²

43. This concludes my summary of the evidence.

Form of the mark

44. In the evidence the word-only registered mark "LA PETITE MAISON" is mostly used in plain font as a word mark (either all capitalised or in lower letters). Irrespective of the mark's capitalisation,³³ these are clearly uses of the mark as registered.

45. Additionally, I note that, in various instances the Contested Mark is represented in a more cursive style with each initial capitalised ("La Petite Maison") and with the

²⁹ Mr Budzynski's witness statement at [33] – [35].

³⁰ Exhibit BN10, page 145.

³¹ Mr Budzynski's witness statement at [36] and exhibit NB10, page 148.

³² Exhibit NB12.

³³ *LA Superquimica v EUIPO*, Case T-24/17, [39].

word “Maison” underlined in a stylised fashion. This stylisation of the mark is adapted featuring the words either in white on a circular red background (Figure 1) or in red on a white (or neutral) background (Figure 2 and Figure 3). I note that the red circle around the mark in Figure 2 is not part of the mark’s stylisation, but it was added by the Proprietor to highlight the presence of the mark in the evidence.



Figure 1




Figure 2



Figure 3

46. As the Contested Mark is registered as a word mark, it may be used in any form, in any colour or font type.³⁴ I find that use of the Contested Mark in its different stylisations amounts to use of the mark as registered because the verbal component of the mark "LA PETITE MAISON" remains clearly visible in the mark and the level of stylisation in the variant forms does not alter the distinctive character of the mark and it constitutes fair and notional use of the registered mark.³⁵

47. The Proprietor also submits that since May 2024, the Contested Mark has been

used also in combination with the figurative mark "" representing the stylisation of the letters "LPM" (Figure 4 and Figure 5):³⁶

³⁴ Case T-24/17, *La Superquimica v EUIPO* [39].

³⁵ *Dreamersclub Ltd v KTS Group Ltd*, BL O/091/19.

³⁶ Proprietor's written submissions dated 13 March 2025 at [27].



Figure 4



Figure 5

48. With regard to these uses of the mark, while the use of “LPM” by itself would not amount to genuine use of the Contested Mark, I consider that the use of the stylised “LPM” along with “LA PETITE MAISON”, does not prevent the element “LA PETITE MAISON” from being viewed independently to indicate the origin of the services.³⁷ Therefore, I find that “LA PETITE MAISON”, even when showed in combination with the stylised logo “LPM”, remains an acceptable use of the Contested Mark.

Assessment of the evidence

³⁷ As per *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12.

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

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

50. The Applicant provided various criticisms of the evidence submitted by the Proprietor. According to the case law cited above (*Dosenbach*) I must consider what the evidence, as a whole, shows rather than focusing on each individual piece of evidence. However, I have taken the Applicant's submissions into consideration in my assessment and I will refer to them when appropriate.

51. I remind myself that the relevant period under consideration is 28 August 2019 - 27 August 2024.

52. As a preliminary matter, I note that Mr Buzynski states that the restaurant's awning and signage was changed to resume use of "LA PETITE MAISON" on 17 July 2024.³⁸ The Applicant argues that, prior to that date, the primary branding used was the stylised "LPM", and therefore any use between May and mid-July 2024 should not count as use of the Contested Mark. While I accept that the exterior signage may only have been updated in mid-July 2024, the Proprietor also indicates that "LPM" was used in combination with "LA PETITE MAISON" during this period. The evidence does not show instances where "LPM" is used individually to identify the Proprietor; the evidence dated after 10 May 2024 shows either "LA PETITE MAISON" used in combination with the stylised "LPM" such as, for example, the till receipts and the drinks menu,³⁹ (being acceptable uses as

³⁸ Mr Buzynski's witness statement at [26].

³⁹ Exhibit NB3, pages 62 - 63 and exhibit NB4 page 76.

already found above) or “LA PETITE MAISON” appears individually such as, for example, on the invoices or on the Proprietor’s website in May 2024.⁴⁰ Accordingly, I cannot disregard the May/mid-July 2024 evidence on the basis advanced by the Applicant.

53. Turning to the assessment of the Proprietor’s evidence, I acknowledge that the evidence presents some challenges for the Proprietor in proving genuine use, such as its restricted geographical scope and exclusive focus on a single restaurant in London. Nevertheless, the evidence shows that the restaurant “LA PETITE MAISON” recorded sales of around £3.5 million between August/December 2019 and 2020 and over £2.5 million between May and July 2024. While I appreciate the Applicant’s submission that these figures are modest in the context of the wider UK restaurant market, I consider that revenues of £3.5 million between August/December 2019 and 2020 and approximately £2.5 million over a three-month period in 2024 is far from token (especially considering that in 2020 the Proprietor operated for only three months) and it is sufficiently substantial to demonstrate use of the mark. Furthermore, I remind myself that the assessment of genuine use is not simply about sales figures, and I must consider them alongside other evidence of use.⁴¹

54. Accordingly, the evidence includes advertising expenditure exceeding £12 million in 2019/2020 and over £17,000 between May and July 2024. I appreciate that the figures relating to 2019 are not broken down by month, hence, I am unable to determine which figures are dated after August 2019. Thus, I recognise that only a portion of the figures for 2019 refers to the relevant period. I have born this in mind in my assessment. “LA PETITE MAISON” received positive reviews on TripAdvisor and Instagram, and third-party online sources list it among the best restaurants near Oxford Street (alongside other high-end establishments), as one of the world’s 50 best restaurants, and among the “23 best restaurants in Mayfair”. In 2019, it was awarded the “Silver Award” by Square Meal for being consistently recommended as one of the best restaurants in its area. Although the evidence is dated outside of the relevant period (1 August 2019), this is only of a few days, and I find it to be relevant for my assessment. The Proprietor’s website

⁴⁰ Exhibit LP04, page 13.

⁴¹ Case T-467/20 *Industria de Diseño Textil, SA (Inditex) v EUIPO*, EU:T:2021:842.

("lpmlondon.co.uk") attracted around 10,000 monthly visits in 2019/2020, while the newer website ("lpmrestaurants.com") registered 48,000 active users between May and July 2024.

55. The evidence further shows that the restaurant was operational in 2019, early 2020, and May - July 2024, as demonstrated by samples of till receipts, indicating an average meal value of around £400 in 2019 and almost £600 in May 2024, and invoices relating to standard restaurant supplies. The Applicant contends that supplier invoices addressed to the Proprietor are irrelevant and do not show use of the Contested Mark. While I accept that these invoices do not directly evidence the provision of the Proprietor's services, they nonetheless demonstrate that the restaurant was functioning and therefore form part of the overall assessment of genuine use of the Contested Mark.

56. The Applicant contends that the Proprietor has only shown use in the periods 30 May 2019 - March 2020, 28 August 2019 - March 2020, and May - July 2024, and therefore argues that use has not been continuous during the relevant period. While I acknowledge the limitations in the evidence, I also remind myself that use does not have to be continuous.⁴² In my view, the evidence relating to the period August/December 2019/2020 and May - July 2024 is sufficient to demonstrate real commercial exploitation of the mark in relation to the relevant services.

57. For the sake of completeness, I appreciate the Proprietor operates from a single restaurant in London. However, in assessing the evidence, I bear in mind that the evidence concerns a high-end restaurant placed in one of the most exclusive areas of one of the most renowned cities in the world (London). Therefore, although territorially limited, I find the geographical location where the Contested Mark was used to be sufficiently relevant to contribute to show genuine use.

58. Following from the above considerations, although I recognise the evidence presents gaps taking the evidence as a whole, on balance, I consider that it sufficiently establishes that "LA PETITE MAISON" has been put to genuine use in the UK for restaurant services in the third relevant period.

Fair specification

⁴² *TVR Automotive Ltd v OHIM* (T-398/13).

59. Having found use of the Contested Mark, I must determine a fair specification upon which the Proprietor is entitled to rely, bearing in mind the use that has been demonstrated.

60. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors*, [2017] EWCA Civ 1834, Kitchin LJ (as he then was) set out the approach to be followed when considering partial revocation of a trade mark. The same approach is relevant when framing a fair specification. He said:

“244. As I described in *Maier v Asos*, the approach to be adopted is relatively straightforward (although I readily acknowledge that it may on occasion be difficult to apply) and it is in my view consistent with the earlier decisions of the Court of Appeal to which I referred at paragraph [63]. On reflection, I think it can be expressed more clearly as follows.

245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other categories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. [...] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered.”

61. This approach was endorsed by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36:

“261. [...] First, there can be no doubt that an application to register a mark in respect of a broad category of goods or services may be made partly in bad faith in so far as the broad description includes distinct sub-categories of goods or services in relation to which the applicant never had any intention to use the mark, whether conditionally or otherwise. In my view, that emerges clearly from the decision of the CJEU in this case. The approach to be adopted in such a case was explored and explained by the Court of Appeal in *Merck KGaA v Merck Sharp & Dohme Corp* [2017] EWCA Civ 1834; [2018] ETMR 10, at paras 241-2491 and, so far as I am aware, that approach has proved workable and appropriate and has stood the test of time, save that it must now be seen in light of the more recent guidance given by the CJEU in, for example: *Ferrari SpA v DU* (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021] Bus LR 106, at paras 3653. There the CJEU explained, at para 40, that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently is their purpose and intended use.”

62. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

63. The contested specification consists of “*Restaurant, bar and catering services*” in class 43. The evidence clearly shows that the Proprietor operates a restaurant under the name of “LA PETITE MAISON”, hence, providing restaurant services. For example, the revenues relate, and the till receipts attest to, the provision of food and beverages (including wine), the third-party mentions and reviews refer to the Proprietor’s services as being a restaurant (more specifically, a French cuisine restaurant).
64. Turning to the Proprietor’s “*bar services*”, such services generally consist of the provision of beverages (alcoholic and non-alcoholic) in establishments (e.g., a restaurant) and they may include the serving of specialty drinks made by bartenders. From the till receipts I see that the Proprietor provides a range of alcoholic specialty drinks (e.g., Aperol Spritz, mojito, martini) and non-alcoholic drinks such as coffee (e.g., espresso, macchiato, americano). Therefore, from such evidence I can derive that the mark has been used also in relation to bar services.
65. Regarding “*catering services*”, these are generally the provision of food and beverages at private events, and they are usually tailored to the client’s needs. The evidence shows use of the mark for a restaurant in London (including bar services); however, I cannot see from the evidence that the Proprietor also provided food and drinks to clients for specific tailored events. Therefore, I do not find the evidence shows use of the mark for catering services.
66. For the sake of completeness, from the evidence it appears that the Proprietor is specialised in French cuisine. Whilst I appreciate that the Proprietor’s restaurant services may be categorised as exclusively relating to French cuisine, I remind myself that “it is not the task of the court to describe the use made by the trade

mark proprietor in the narrowest possible terms”.⁴³ Accordingly, and following from the above considerations, I find that a fair specification for the Contested Mark in class 43 would be:

Class 43 “*Restaurant and bar services*”

FINAL REMARKS

67. For the avoidance of doubt, I have reviewed the evidence relating to the first and second relevant periods, and the use shown is consistent with that described in the third relevant period (i.e. it relates to a single restaurant in London). Consequently, I would not have found genuine use in relation to any broader range of services for the first and second relevant periods.

OUTCOME

68. The application for revocation on the grounds of non-use under section 46(1)(a) and section 46(1)(b) partially succeeds for all the goods in class 29 and for part of class 43. As a result, the Contested Mark is, subject to any successful appeal, hereby revoked for the entire class 29 and for “*catering services*” in class 43. The effective date of revocation is 1 March 2008. The Contested Mark remains registered for the remaining “*Restaurant and bar services*” in class 43.

COSTS

69. I find the parties obtained a similar degree of success. Therefore, each party should bear its own costs.

Dated this 17th day of March 2026

Andrea Rossi

For the Registrar

⁴³ *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch) at [47].