

O/0245/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION UK00916933368

IN THE NAME OF CRAS VENTURES DWC-LLC

AND

APPLICATION 505501 BY COLLYER BRISTOW

TO REVOKE THE AFORESAID REGISTRATION

Background and Pleadings

1. UK00916933368 ('the Contested Mark') stands registered in the name of CRAS Ventures DWC-LLC, the Registered Proprietor ('the RP'). The details of the registration are as follows:

RealityOS

Filing date: 30 June 2017

Entry in Register: 26 October 2017

This is a comparable mark pursuant to Article 54 of the Withdrawal Agreement,¹ based on EUTM 016933368, which was registered prior to the withdrawal of the UK from the European Union.

Registered for the following:

Class 9:

Computer software; Computer games software; Operating system software; Computer programs [downloadable software]; Virtual reality software; Computer software to enhance the audio-visual capabilities of multimedia applications, namely, for the integration of text, audio, graphics, still images and moving pictures; Electronic publications, downloadable; Virtual reality hardware; Computer hardware.

Class 41:

Education services relating to computer software; Electronic publications (not downloadable); Special effects animation services for film and video; Providing on-line video games; Providing information on-line relating to computer games and computer enhancements for games; Games services provided on-line from a computer network.

Class 42:

Design and development of operating system software; Research relating to the development of computer hardware; Research relating to the development of computer programs and software; Development and maintenance of computer

¹ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

software; Design and development of computer game software and virtual reality software.

2. On 27 October 2022, Collyer Bristow, the Cancellation Applicant ('the CA') applied to revoke the Contested Mark in accordance with section 46(1)(a) of the Trade Marks Act 1994 ('the Act'). The revocation action was filed without notice.² Revocation is sought in respect of the specification in its entirety. The CA alleges that the RP has not put the Contested Mark to genuine use within the five-year period following the date of completion of the registration process, i.e. 27 October 2017 to 26 October 2022 ('the Relevant Period'). The earliest possible date from which the Contested Mark may be revoked is the day following the end of the aforementioned five-year period, i.e. 27 October 2022.
3. The RP filed a Defence and Counterstatement in which it denies the claim against it in its entirety. The RP states that it has made genuine use of the Contested Mark within the relevant five-year period, in respect of its entire registered specification.³ Concessions have subsequently been made by the RP, which are addressed at [24].
4. The CA represents itself. The RP is represented by Dentons UK and Middle East LLP. Both parties filed evidence; and both parties requested a hearing. For both parties, confidentiality orders are in place for certain evidential material. Where material protected by the aforesaid orders has been referred to in my decision, this has been redacted.

EVIDENCE

The RP's evidence

² No revocation notification date was provided at [6] of the Form TM26(N) Application to revoke a registration or protected international trade mark (UK) for reasons of non-use.

³ RP's Counterstatement, [5] and [6].

5. There are two Witness Statements from Cevat Yerli, managing director of the RP company since its incorporation in 2021.⁴ Mr Yerli's First Witness Statement ('Yerli 1'), dated 5 June 2023, is accompanied by 26 exhibits: CY1 to CY26. Mr Yerli's Second Witness Statement ('Yerli 2'), by way of the RP's evidence in reply, is dated 19 March 2024 and accompanied by a further exhibit: CY27. The following material is confidential: exhibits CY6, CY11, CY16, CY17, CY19, CY22, CY23, CY24 and CY27; and paragraph [6] of Yerli 2.
6. The Witness Statement of Bruce Director, a translator of German into English at Transperfect Legal Solutions, dated 5 July 2023, confirms that the German to English translations of parts of the RP's evidence are believed to be accurate.
7. The Witness Statement of Constantin Rehaag, dated 18 March 2024, has been provided in response to the CA's confidential evidence (noted below at [9]). There are four exhibits: CR1 to CR4.

The CA's evidence

8. The CA's evidence in reply comes from Patrick Wheeler, partner at the CA. Mr Wheeler's Witness Statement is dated 18 January 2024, and is accompanied by five exhibits: PW1 – PW5.
9. Accompanying Mr Wheeler's Witness Statement is a 'Confidential Annex' ('the PW Annex') with three exhibits: PW6 – PW8.
10. I confirm that I have read all of the evidence, to which I will refer to the extent that it is relevant.

THE HEARING

11. Both parties attended the hearing. Ms Amanda Michaels, of Counsel, Hogarth Chambers, attended for the CA. Mr Daniel Selmi, of Counsel, Three New Square,

⁴ Yerli 1, [1].

attended for the RP. Both Counsel filed Skeleton Arguments in advance of the hearing.

12. The following decision has been made after careful consideration of the case papers and oral submissions.

RELEVANCE OF EU LAW

13. 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 relevant legislation

14. Section 46 of the Act states:

'46. - (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;

(c) [...]

(d) [...]

(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 existed at an earlier date, that date.’

15. Given that the Contested Mark is a comparable mark, the following provisions of Schedule 2A, Part 1 of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 are relevant:

‘8.—(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the “five-year period”) has expired before IP completion day—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union.

(3) Where IP completion day falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM ; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union.’

16. Section 100 of the Act provides that:

‘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.’

The relevant case law

17. 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 Court of Justice of the European Union ('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 Bundervsvereinigung 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].’

18. Proven use of a mark which fails to establish that ‘the commercial exploitation of the mark is real’ because the use would not be ‘viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark’ is, therefore, not genuine use.

19. When considering the matter of genuine use of a comparable EU trade mark prior to and including IP Completion Day (31 December 2020), use in the EU remains relevant.⁵ In this regard, I bear in mind the guidance laid down by the CJEU in the case of *Leno Merken BV v Hagelkruis Beheer BV*.⁶

A note on the Relevant Period and section 46(3) of the Act

20. The revocation action was lodged on the day following the end of the Relevant Period, i.e. 27 October 2022.

21. I remind myself of the proviso at section 46(3) of the Act, according to which: should use of the Contested Mark commence within the three months prior to the filing of

⁵ Kerly’s Law of Trade Marks and Trade Names, 17th Ed., [12-073].

⁶ Case C-149/11, at [36], [50] and [55].

the revocation action, then such use is to be disregarded, unless preparations for the commencement began before the RP became aware of the impending action.⁷

22. As already noted, the revocation action was instituted without notice. Therefore, should any use be shown to have taken place during the three months preceding the filing of the action, such use may be taken into account.

Relevant territories

23. The relevant territories for assessing genuine use are as follows:

i. For the portion of the Relevant Period predating IP Completion Day,⁸ (i.e. 27 October 2017 to 31 December 2020), the relevant territory is the EU (which will necessarily include the UK, then an EU Member State).

ii. For the portion of the Relevant Period post-dating IP Completion Day (i.e. 1 January 2021 to 26 October 2022) only UK use may be taken into account.

Concessions and the scope of the revocation action

Deletions

24. The RP had proposed a 'fair specification' based on its evidence,⁹ in which it was conceded that it had not provided evidence of use of the Contested Mark for the following terms:

Class 9: *Electronic publications, downloadable.*

Class 41: *Electronic publications, (not downloadable).*

Limitations

25. Further, during the hearing, Mr Selmi submitted that, whereas the originally proposed fair specification indicated that '*Computer Software*' was no longer

⁷ Kerly's Law of Trade Marks and Trade Names, 17th Ed., [12-095].

⁸ 31 December 2020.

⁹ RP's Skeleton Argument, Annex 2.

pursued, it was now the RP's case that it no longer claimed genuine use in respect of the full breadth of the aforesaid class 9 term; instead, the RP proposed *Computer software relating to virtual reality and augmented reality*. I note that the proposed specification¹⁰ also contains limitations for the 'computer game' term (Class 9), and the 'education' term (Class 41). For clarity, I set out the RP's proposed fair specification as follows. The deletions are struck through and the limitations are underlined:

Class 9:

Computer software relating to virtual reality and augmented reality; Computer games software; Operating system software; Computer game, virtual reality programs [downloadable game, virtual reality and augmented reality software]; Virtual reality software; Computer software to enhance the audio-visual capabilities of multimedia applications, namely, for the integration of text, audio, graphics, still images and moving pictures; ~~Electronic publications, downloadable~~; Virtual reality hardware. Computer hardware.

Class 41:

Education services relating to computer game, virtual reality and augmented reality software; ~~Electronic publications (not downloadable)~~; Special effects animation services for film and video; Providing on-line video games; Providing information on-line relating to computer games and computer enhancements for games; Game services provided on-line from a computer network.

Class 42:

Design and development of operating system software; Research relating to the development of computer hardware; Research relating to the development of computer programs and software for games, virtual reality and augmented reality; Development and maintenance of computer software for games, virtual reality and augmented reality; Design and development of computer game software and virtual reality software.

The RP's evidence of use

¹⁰ RP's Skeleton Argument, Annex 2.

A general comment on the RP's evidence

26. At the start of the hearing, I requested that Mr Selmi structure his submissions by way of addressing each of the contested terms and identifying the specific parts of the evidence that support genuine use of the Contested Mark for the respective terms.

27. Mr Selmi prefaced his oral submissions by stating that the RP would not be relying on all of the exhibits filed, and that it was accepted that not all were relevant and that not all demonstrated use. I, therefore, invited him to clarify which exhibits would be dispensed with. Mr Selmi declined to enumerate the 'redundant' exhibits, albeit he indicated that he would direct me to the specific examples which the RP claims demonstrate genuine use. Mr Selmi submitted that the evidence to which he proposed to direct me was the foundation of the RP's case and the 'high water mark', such that, should the case fail on that footing, then the unmentioned material would unlikely improve the RP's position.

28. In the light of Mr Selmi's indication above, at [27], the aspects of the RP's evidence that deserve particular focus are addressed in the following paragraphs.

29. Mr Selmi's starting point was to seek to explain the nature of the RP's offering, frequently referred to in its evidence as the 'Technology'. He submitted that 'RealityOS' stands for 'Reality Operating System', whose aim, according to Mr Yerli's narrative, is to create a realistic metaverse, called 'The Internet of Life', where users interact in the virtual world as real people rather than anonymous avatars.¹¹ Mr Yerli has stated that the Contested Mark is used as part of the RealityOS project ('RealityOS') developed by an organisation called the 'TMRW Foundation', and its affiliate companies.¹² Mr Selmi directed me to Exhibit CY9, which comprises Wayback prints¹³ dated 29 March 2022 from the website of the

¹¹ Yerli 1, [14]-[16]; Exhibit CY9.

¹² Yerli 1, [9].

¹³ Archived web-pages from the archiving service 'The Wayback Machine'.

TMRW Foundation ('the TMRW website'). It is appropriate to reproduce the homepage:



30. Mr Selmi referred to this as an example of use of the Contested Mark, submitting that the presence of the 'trade mark symbol' thereby demonstrated the RP's assertion of its trade mark rights. I have noted four mentions of the Contested Mark in this exhibit, each appearing to denote something (whatever that may be) that 'powers' 'The Internet of Life'. Mr Selmi recited the following text from the exhibit:

'Our Company

Founded in 2017, The TMRW Foundation is a forward-thinking portfolio of 3D simulations, virtual and augmented reality, and AI-powered products with over 250 patents in its portfolio.'

'Our Vision:

The Internet of Life™ is our vision for the Metaverse: Participating and creating collectively, accessing places and real people without traveling. Powered by RealityOS®, it will push the world's potential, break down boundaries and unlock the unlimited potential of human interaction.

31. I note the following positive statements about use of the Contested Mark from Yerli 1:

(a) Mr Yerli has stated that the Contested Mark is ‘used in connection with educating the public about the TMRW Foundation’s vision for the future of digital communication and The Internet of Life’.¹⁴

(b) Mr Yerli has stated that the Contested Mark is used ‘in connection with software, hardware and services in the field of augmented and virtual reality, enhancing audio-visual capabilities of multimedia applications, online gaming and delivering special effects’.¹⁵ The Technology is said to ‘operate as a software layer’ to provide: ‘a virtual abstraction of reality through virtualisation technologies’; and ‘digital “augmentation” of the physical world’.¹⁶

(c) The Contested Mark is said to have been used ‘in connection with computer operating systems, including the integration of hardware and software’.¹⁷ Mr Yerli has stated that the Technology has the following capabilities:¹⁸

- It is ‘designed to manage interactions between people, machines and purely virtual elements, through the [...] virtual world system [i.e. The Internet of Life]’.
- ‘[the Technology] leverages 3D computing principles, distributing computing tasks “cloud-to-edge”, minimising latency and optimising use of computing resources’.
- ‘The Technology can power a variety of devices, for example wearable devices, mobile devices, cameras or other visual imagery devices’.
- ‘The Technology can be used in a very wide range of applications, for example the remote management of operations of a manufacturing plant, in

¹⁴ Yerli 1, [16].

¹⁵ Yerli 1, [18].

¹⁶ As above.

¹⁷ Yerli 1, [19].

¹⁸ As above.

entertainment, 3D communications, virtual visits, remote work, education, and the medical field’.

32. Mr Yerli has stated that ‘RealityOS is designed to be the foundation for future technologies that are currently still in their infancy, including the Internet of Things, 5G, virtual and augmented reality and the metaverse’.¹⁹ He goes on to explain that ‘the use of RealityOS on the market to date is therefore just the beginning of the usage that is planned’.²⁰

33. The RP has placed much reliance on evidence of the Contested Mark being used specifically in connection with ‘ROOM’, which is described as a ‘technology platform’ in the sense of being a foundation upon which applications can be built.²¹

Use of the Contested Mark in relation to ‘ROOM’

34. This part of the RP’s evidence focuses on use of the Contested Mark in conjunction with the mark ‘ROOM’. I note the following positive statements about use of the Contested Mark from the section of Yerli 1 headed ‘*Use of the Mark with the platform Room*’:

(a) Mr Yerli has stated that ‘ROOM powered by RealityOS is a natural 3D communication platform powered by the Technology [...] currently in open beta phase.’²² It is presumed that the word ‘currently’ means as of the date of Yerli 1, i.e. 5 June 2023, which necessarily post-dates the Relevant Period. He proceeds to describe ROOM as a ‘web-based and downloadable application for [the] latest Microsoft Edge and Google Chrome browsers, Windows and Mac Applications, and iOS and Android Applications’.²³ He goes on to say that ‘ROOM powered by RealityOS is built using the RealityOS Technology and RealityOS is marketed extensively in conjunction with ROOM as the technology platform on which Room

¹⁹ Yerli 1, [21].

²⁰ As above.

²¹ Yerli 1, [10], [11], [22] – [27]; Yerli 2, [4].

²² Yerli 1, [22].

²³ As above.

is built.²⁴ Mr Yerli has stated that the Contested Mark is 'used in conjunction with the Room technology in relation to software, hardware and services in the field of augmented and virtual reality, enhancing audio-visual capabilities of multimedia applications, online gaming and delivering special effects'.²⁵

(b) Mr Yerli has stated that 'ROOM powered by RealityOS and RealityOS more broadly' have been used as part of various major events streamed and available to watch worldwide.²⁶ An example is given by way of a 'virtual experience' event on 10 March 2021, hosted by 'the Fondation Jacques Rougerie', titled 'Bold Dreams of Building a Harmonious Resilient Future', which was facilitated by 'ROOM powered by RealityOS and RealityOS' and made available to the public via YouTube.²⁷ A screenshot of a timeline from 2017 to 2021 charting milestones relating to the Technology highlights the event, indicating that it was 'powered by RealityOSTM'.²⁸ The screenshot is undated, although it was self-evidently published at some point after 2021. I am unable to determine its origin or target territory, although it is likely from the TMRW website and, self-evidently, aimed at speakers of English. A further screenshot of a webpage with a post, dated 5 March 2021, publicising the event has been provided.²⁹ The Contested Mark is not shown in this latter screenshot, nor is there any reference to it. It is not possible to determine whether the Contested Mark was visible to anyone attending/viewing the event, and, if so, whether any attendees were based in the UK.

(c) Mr Yerli has stated that 'ROOM powered by RealityOS' entered the open beta phase and was available to the public for the first time' in September 2021, on a free trial basis.³⁰ He goes on to state that '[s]ince the beta [phase] launched, we have reached over 16,500 uses worldwide and are seeing sustained monthly growth', including numerous UK users'.³¹ This statement is supported by CONFIDENTIAL exhibit CY16, [...] REDACTED [...].

²⁴ Yerli 1, [22].

²⁵ As above.

²⁶ Yerli 1, [24].

²⁷ As above.

²⁸ Exhibit CY7.

²⁹ Exhibit CY14.

³⁰ Yerli 1, [26] – [27].

³¹ Yerli 1, [27].

In this connection, the following figures have been extracted from the document and referred to in Yerli 1, whose narrative is not subject to confidentiality:

Total number of users who visited the website:	21,184
Of which were from a European IP address:	14,185
Of which were from a UK IP address:	339
Total number of 'sessions':	37,763
Of which were from European users:	20,997
Of which were from UK users:	1,067

It would have been useful to have a breakdown of the figures to show the following:

- (i) the distribution of the figures over the Relevant Period;
- (ii) the number of users/sessions from EU Member States (not all European countries are Member States) for the period predating IP Completion Day, and a breakdown by Member State;
- (iii) the number of users from the UK for the period post-dating IP Completion Day;
- (iv) the number of users/sessions for the period from September 2021, being the date when 'ROOM powered by RealityOS' was first available to the public. It is presumed that a proportion of these figures must, therefore, relate to use by users who are not members of the public.

35. Mr Selmi directed me to Wayback prints, dated 5 April 2022, of pages from the 'ROOM' website.³² He drew my attention to the text on the home page 'Here is where real people love to meet. Try out the beta now.' I note there is a button 'Sign up for free'. Mr Selmi directed me to the text headed 'This is ROOM', which states

³² Exhibit CY13.

that 'ROOM is part of the Internet of Life, the metaverse of meeting places where you can create, collaborate or just talk. ROOM transports you to this virtual space as a cut-out video stream – with no need for VR equipment or glasses – and delivers a spatially immersive meeting experience no other platform offers'. Mr Selmi submitted that the following, found at the footer of the website, in small text, is an example of use of the Contested Mark, again with the 'trade mark symbol' present:



36. Mr Selmi argued that there is no requirement that a trade mark must be used with any particular prominence and that Ms Michaels' observation that the mark was in tiny, barely visible text does not prevent it from being an instance of trade mark use.

37. I accept that the instances of 'ROOM powered by RealityOS®' demonstrate instances of the Contested Mark being intended to be seen as a trade mark, and the evidence appears to show that, whatever the TMRW Foundation does, relates, in some way, to the digital realm. However, it is not clear from this material what precisely is being offered under the Contested Mark. I, therefore, invited Mr Selmi to further explain what the Technology is in terms of the goods/services being held out as available.

The matter of what the RP's goods/services are

38. Mr Selmi's submissions on this can be summarised as follows:

- RealityOS (i.e. the Technology) is the foundation for The Internet of Life (i.e. a novel metaverse). Mr Selmi directed me to the following text from a Wayback print of a page from the TMRW website, dated 1 October 2022, under the section ‘Vision’ which refers to the Technology as a ‘technical base’:³³

‘The TMRW Foundation is creating The Internet of Life™, a vision for Web3 that will augment reality with 3D communication in ways never seen before. It will also augment the digital space with realism, true identity, interaction and democratization of location that benefits society as a whole. The technical base The TMRW Foundation has created for this endeavour is called RealityOS™.’

- It was submitted that the Technology is the technical base for future technologies that are currently still in their infancies, examples being the Internet of Things, 5G, virtual and augmented reality. Mr Selmi emphasised that this was an important point because the Technology is an entirely novel thing, arguing that it was, therefore, wrong to compare the nature and scale of the Technology with, for example, downloadable computer software, or even with the metaverse generally, because the RP is operating in ‘a niche within a niche’.
- Mr Selmi further submitted that the RP’s Technology was multi-faceted and comprised a number of things. For example, ‘ROOM’ could be categorised, to some extent, as Software as a Service, but there are lots of facets to the Technology. He argued that it would be unfair to deprive the RP of, for example, the following terms given that the RP is trying to ‘gamify’ the metaverse: *computer game software* or *Computer game virtual reality and augmented reality programs*. He submitted that the RP’s offering was an example of a technology that spans lots of different uses and classes and that the evidence demonstrates genuine use for a number of goods and services.

39. Paragraph 6 of Yerli 2, which, as noted, is covered by the confidentiality order, provides more granular detail as to what the technology is and how it operates. Without making any oral reference to the content of this confidential paragraph, Mr

³³ Exhibit CY10.

Selmi directed me to read it silently. I summarise the narrative in the following paragraph.

40. [REDACTED]

41. [REDACTED]

42. Mr Yerli has explained that, 'during the open beta phase, ROOM powered by RealityOS is available for the public to try on a free trial basis'.³⁴ He goes on to say that the 'commercialisation plan' is to build a user base by initially offering the service for free, after which users can subscribe to a 'recurring monthly subscription on a reduced "founders" rate'.³⁵ Mr Yerli has stated that, since the beta phase was launched, over 16,000 users have been reached worldwide, including numerous UK users who have signed up to the monthly subscription.³⁶

43. Mr Selmi directed me to the confidential exhibit CY17, described as 'sample founders invoices and order [sic] for access to the ROOM powered by RealityOS from the UK'.³⁷ [REDACTED].

[Table summarising invoices REDACTED]

44. [REDACTED]

45. I asked Mr Selmi whether the aforementioned invoices were in respect of the goods/services for which the RP claims that the Contested Mark has been used. He clarified that they were not, but that they related to the ROOM technology. He indicated that they had been adduced to provide more detail on the nature of the RealityOS Technology.

³⁴ Yerli 1, [27].

³⁵ As above.

³⁶ Yerli 1, [27].

³⁷ As above.

46. Aside from the material to which Mr Selmi has specifically referred me, I note Mr Yerli's statement that 'Our group has invested over €17,000,000 in RealityOS, and the technologies based on RealityOS, to-date'.³⁸ I have extracted the most pertinent sums from the evidence as follows:

Year:	Research and Development (EURO)	Marketing/PR/Events (EURO)
2020	1.2M on RealityOS	410K
2021	4.65M on RealityOS and ROOM based on RealityOS	1.45M
2022	3.7M RealityOS and ROOM based on RealityOS	2.4M

A breakdown of the figures by country/EU Member State would have been helpful. Sales figures attributable to goods/services under the Contested Mark, showing the breakdown by EU Member State and the UK, would have been more helpful still; and the expectation is that such information would unlikely be unduly difficult for the RP to obtain.

Sufficient Use

47. For use to be genuine, it must have been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods/services at issue in the EU between 27 October 2017 to 31 December 2020, and in the UK between 1 January 2021 and 26 October 2022.

48. In making my 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 goods and services for which use has been shown; (iv) the nature of those goods and services, and the market(s) for them; and (v) the geographical extent of the use shown. I also bear in mind the comments of the General Court (GC) in *New*

³⁸ Yerli 1, [9].

Yorker SHK Jeans GmbH KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Case T-415/09:

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

49. In his oral submissions, Mr Selmi indicated that he would identify which parts and/or aspects of the evidence to which he had referred me showed use for which contested terms. He proceeded to deal with class 9 first, followed by a brief overarching submission to the effect that the evidence to which he had already referred me also substantiated genuine use for the services in classes 41 and 42. It is appropriate to preface my findings on genuine use with a note on the relevance of the Nice Classification system (‘the Nice System’), which is a matter of disagreement between the parties

The relevance of the Nice System

50. Mr Selmi has argued that the CA is wrong to create a ‘bright line’ division between the Class 9 goods and the Class 41 and 42 services in the instant case on the basis that they are classified differently.³⁹ His argument is that use in respect of a particular good/service can establish genuine use of goods and services that are

³⁹ RP’s Skeleton Argument, [9].

within, and outside, of their class. To support this argument, he cites the following dicta from Henry Carr J in *Pathway IP Sarl v Easygroup Ltd*:⁴⁰

'79. I have reached the provisional view, in in the light of the respondent's arguments, that it is appropriate to use class number as an aid to interpretation of the specification where the words used in the specification lack clarity and precision. This applies to granted registrations as well as to applications, and therefore applies in the context of infringement actions and revocation claims. My reasons for reaching this conclusion are set out below.

80. Of course, in many cases, it will be unnecessary to use the class number in this way, as the words chosen in the specification will be sufficiently clear and precise. Indeed, in the present case, I consider that the disputed phrase "provision of office facilities" is sufficiently clear and precise, so that its ordinary and natural meaning can be ascertained without reference to the class number.'

[my underline added]

51. With respect, I do not find the link between Mr Selmi's argument and the above dicta to be entirely clear. One of the main strands of Mr Selmi's argument, noted at [38], is the fact that the RP's offering is multi-faceted and, therefore, spans several terms and/or classes. The passage cited by Mr Selmi, to my mind, merely observes that when interpreting an unclear term within a specification, the class heading can be used as an aid to interpretation of that term. Furthermore, Mr Carr subsequently notes that the Court of Appeal has held that cases concerning unclear terms within a specification are not the only kind of case where class number can usefully be taken into account by the Registrar.⁴¹ I cannot see how the aforesaid dictum can be taken to indicate that it is wrong to try to ascertain whether the RP's offering is a good or a service.

⁴⁰ [2018] EWHC 3608 (Ch).

⁴¹ *Pathway IP Sarl v Easygroup Ltd* [2018] EWHC 3608 (Ch), [56].

52. Ms Michaels submitted that it was entirely correct to seek to create a ‘bright line’ between the class 9 goods and the services and, in this connection, helpfully directed me to several further dicta from Mr Carr’s judgment in the aforementioned case:⁴²

‘93. In the light of the *IP Translator* case and its subsequent codification by amendments to the Trade Mark Regulation (EU) 2017/1001 and Trade Mark Directive (EU) 2015/2436, the respondent’s case is that class numbers cannot be ignored, as they can play a significant role in designating goods and services with clarity and precision and in ensuring certainty for economic operators when viewing the Register. The respondent does not contend that the class numbers will always be necessary to achieve clarity and precision in the specification, as in many cases the words chosen will be sufficiently clear and precise. In such cases, the scope of the specification will be clear from the ordinary and natural meaning of the words chosen. In those cases, the class number is merely confirmatory and does not change the meaning of the terms used.

94. However, because in some instances the words chosen may be vague or could refer to goods or services in numerous classes, the class may be used as an aid to interpret what the words mean with the overall objective of legal certainty of the specification of goods and services. For example, the word “valves” which was considered in the *Altecnic* case can refer to goods which may be included in 11 different classes of the Nice Classification, as Laddie J observed at first instance. This was referred to by the hearing officer in the *Omega 1* case, in a passage cited with approval by Arnold J at [72] of his judgment (*supra*). The hearing officer explained valves in Classes 7, 10, 11 and 15 are all very different creatures, a valve for a pump, a valve for a heart, a valve for a radiator, a valve for a trumpet. In such a case the lack of specificity of the description means that the class into which the goods have been placed defines the nature of the goods. Mr Malynicz also noted that valves could be registered in Class 9 for the purposes of electrical guitar amplifiers, or as valves for vehicle tyres in Class 12 or as valves for use in baby bottles in Class 10.

⁴² *Pathway IP Sarl v Easygroup Ltd* [2018] EWHC 3608 (Ch).

Without the additional information provided by the class number, a specification for “valves” would not satisfy the requirement of clarity and precision.

95. This could potentially mean that a registered trade mark could be asserted against a competitor in an infringement case in relation to goods that were distant from the proprietor’s real area of activity. It also may negatively impact on the proprietor. A trade mark may be descriptive for one sort of valve (e.g. the trade mark Baby Flow for valves in Class 10) but not for another sort of valve (e.g. Baby Flow for valves in Class 11). Ignoring, in such cases, the class in which the trade mark is registered, which is clearly visible on the Register, is, in my view incompatible with the *IP Translator* case, and incompatible with the principle of legal certainty.

96. In the context of revocation applications based on no genuine use, where a specification otherwise lacks clarity and precision, it may be of considerable importance to be able to refer to the class in which the goods or services are registered. It may be unfair to the proprietor not to refer to the class, if it enables clarity and precision to be established. If it is not possible to ascertain with clarity and precision the scope of the specification, then it is very difficult to see how the proprietor can prove use of goods or services within that specification. It may be unfair to the opponent not to refer to the class, if such reference makes clear that the goods or services relied on as having been used by the proprietor are not goods or services properly to be regarded as within the scope of the specification.’

[My underline added]

53. Whilst much of the above section of Mr Carr’s judgment addresses the class headings in the context of *unclear terms within a registered specification* (which is not a live issue in the instant case), the division of goods and services by reference to the class headings is implicit in his reasoning. Furthermore, the final sentence at paragraph [96] of the judgment, to my mind, is pertinent to the instant case because it considers the potential unfairness to the ‘Opponent’ – which I take to refer to the Cancellation Applicant in a revocation action – in *not* looking to the

class headings when determining whether instances of use evidenced fall within any of the registered terms. I, therefore, agree with Ms Michaels' approach.

54. I refer back to Mr Selmi's 'niche within a niche' argument as to the novelty of the RP's offering and his suggestion that it would, therefore, be wrong to compare the RP's offering to, e.g. 'computer software'.⁴³ Whilst I have no reason to doubt the RP's claim that its technology is complicated and new, it is an inescapable fact that I am obliged to consider the matter of genuine use, and, accordingly, to frame a fair specification, based on the specification for which the Contested Mark stands registered. Given that the registered specification includes a number of 'software' goods, I am compelled to consider whether the evidence shows use of the Contested Mark for such goods.

55. Mr Selmi's emphasis on the novelty of the RP's Technology was repeated at various points during the hearing. In his closing submissions, he developed the 'novelty' point to argue that the relevant market in which the RP operates in respect of the Contested Mark is not the 'metaverse' market at large, but a niche-within-a-niche market which is confined to a 'reality-based' metaverse. The difficulty with this sort of argument is that, generally speaking, it is not clear when a novel product/service is such that it is appropriate to be considered in a market all of its own.

Class 9

56. Mr Selmi submitted that, essentially, the evidential material to support genuine use in respect of the class 9 goods was limited to: Mr Yerli's narrative evidence, which, Mr Selmi argues, demonstrates that the Contested Mark has been used in relation to hardware, computer software, virtual reality etc; together with the invoice evidence⁴⁴ and confidential narrative from Yerli 2⁴⁵ which explains, at a more granular level, how the technology operates. Whilst Mr Selmi made specific mention of the registered terms *Computer games software* and *Operating system*

⁴³ Paragraph [38] of this decision, second bullet point.

⁴⁴ Confidential exhibit CY17.

⁴⁵ Yerli 2, [6].

software, I understood his submissions to be directed to all of the class 9 goods in issue. Mr Selmi made no specific reference to any other of the contested Class 9 goods.

57. *Computer games software*:

Mr Selmi submitted that use of the Contested Mark for *computer games software*, as a good, 'is implicit in The Internet of Life and RealityOS'. He argued that Mr Yerli's narrative evidence, according to which the technology is designed to give users access to a 'gamified' virtual space where users interact as themselves (as opposed to avatars), substantiates the RP's claim of genuine use in respect of the aforesaid good.

58. *Operating system software*:

Mr Selmi further submitted that genuine use in respect of *operating system software* was substantiated by Mr Yerli's narrative evidence. He recited the passage according to which the Contested Mark has been used 'in connection with computer operating systems, including the integration of hardware and software'.⁴⁶ Mr Selmi also emphasised the following from Mr Yerli's narrative account:

- The fact that the technology is also designed to manage interactions between people, machines and purely virtual elements through the virtual world system.
- The fact that the technology leverages 3D computing principles distributing computing tasks, minimising latency and optimising use of computing resources.
- The fact that the technology can power a variety of different devices, for example: wearable devices, mobile devices, cameras or other visual imagery devices.

59. I asked Mr Selmi whether the consumer was purchasing *operating system software* as a good or whether it was the case that the RP was merely using *operating system software* in order to hold out for sale some other product or service. Mr

⁴⁶ Yerli 1, [16].

Selmi submitted that 'RealityOS' referred to the technology, which includes operating software, such that when the consumer purchases ROOM, there are some downloadable components, but, behind that, there is the operating system that is allowing the whole technology to work.

60. Mr Selmi's explanation prompted me to observe that a vast number of goods and services in the digital realm/accessed electronically must presumably involve some sort of operating system software. I gave the example of a consumer of banking services withdrawing cash from an ATM, which must involve some sort of operating system behind the scenes, though it would not entail engaging the service 'using an operating system'. It could not be said that 'use of operating system software' was the service being coveted by the user of the ATM. Aside from the fact that my example concerns a service rather than a good, I invited Mr Selmi to elaborate on why the RP's case might be different, and to explain why the evidence establishes use in respect of *operating system software*, as a good, being held out to third parties.

61. Mr Selmi referred me back to Mr Yerli's narrative according to which the Contested Mark is used in connection with software, hardware and services (noted above at ([34(a)]) and submitted that this shows that the RealityOS Technology comprises a bundle of software, hardware and services. He also referred me to the list of patents in respect of the technology and enumerated the following: 'game engine on a chip'; 'presence camera'; 'merged reality system and method'; 'virtual presence merged reality system and method'; '5G sensor system and method for attaching applications and interactions to static objects'.⁴⁷ Mr Selmi accepted that this material did not show use of the Contested Mark, but he argued that the list of patents comprised the technology and, on that basis, the technology is being used in relation to those goods. The problem with Mr Selmi's argument is that to say that the Contested Mark is used in connection with software/hardware/services, does not necessarily entail the Contested Mark guaranteeing the origin of the aforesaid software/hardware services.

⁴⁷ Exhibit CY9.

62. Mr Selmi argued that the invoices (addressed above at [43] – [44]) were relevant to the extent that they provided more detail on the nature of the Technology.

Classes 41 and 42

63. Mr Selmi's submissions in respect of the terms in classes 41 and 42 were brief. In summary, he submitted that the material to which he had directed me also demonstrated use of the Contested Mark in respect of these services.

64. Of particular note is Mr Selmi's reply to Ms Michaels' argument that, if it is relevant at all to use of the Contested Mark, the RP's evidence shows that ROOM is a browser-based conferencing Software as a Service.⁴⁸ Mr Selmi emphasised his earlier point that the RealityOS technology is complicated and involves an array of hardware, software and services, which he argues has been shown by Mr Yerli's narrative evidence. He submitted that the RP had filed the application for the Contested mark for the broad array of goods and services because that reflected the breadth of the technology. For example, if the RP had filed for class 41 Software as a Service alone, it would not reflect the other facets of the technology. It would not reflect the game virtual reality, augmented reality software, providing online video games. Mr Selmi argued, therefore, that it was, and is, appropriate to have a broad specification in this case and that there is no good reason for trying to categorise the technology in, for example, Class 9 or Class 41 or Class 42 in isolation. Mr Selmi argued that just because the use might be in relation to Software as a Service does not mean that it does not also substantiate Class 42 *Research relating to the development of computer programs for games, virtual reality, augmented reality*. He argued that, in this case, the technology spans both.

65. I asked Mr Selmi whether the 'research service' to which he referred was a service being offered to third parties or whether it was just part of the RP's own research and development that they needed in order to bring their product or service, whatever that might be, to market.

⁴⁸ CA's Skeleton Argument, [16.3.3].

66. Mr Selmi replied that his understanding, based on Mr Yerli's evidence, was that it was part of the service that was being offered, though it would not necessarily be offered to end consumers, but, perhaps, certain developers. He suggested that developers were being offered different parts of the technology.

67. Ms Michaels' principal criticisms of the sufficiency of the RP's evidence can be summarised as follows:

- Much of the CA's evidence is prospective in that it is couched in terms of future plans for the RP's technology, rather than providing concrete examples of use of the Contested Mark, in respect of the RP's registered terms, in identifiable relevant territories, within the Relevant Period.
- Evidence upon which the CA relies heavily relates to use of the trade mark 'ROOM', rather than the Contested Mark 'RealityOS'.
- Without calling into question the integrity of the narrative evidence, it is insufficient by reason of being vague; with the accompanying documentary material providing little further assistance.

68. I consider Ms Michael's criticisms to be justified, for reasons that I will now explain.

69. No revenue figures have been provided. I acknowledge that the RP's commercial strategy was to build a market by initially providing the technology for free. However, I agree with Ms Michaels' submission that, in such a case, the expectation is that the RP would be able to provide figures or some other material to demonstrate what had been achieved by way of the take-up of the RP's technology. I have no reason to doubt Mr Yerli's narrative evidence (noted at [34(c)]) that, since the beta phase of ROOM was launched (i.e. September 2021), 16,000 users 'have been reached worldwide, including numerous UK users who have signed up to the monthly subscription'. However, without refining this figure to show the proportion of users in relevant territories, both pre- and post-IP Completion Day, it has little probative value.

70. The figures provided in respect of the RP's expenditure on research and development (R&D) and promotional activities (noted above at [46]) are significant. However, those figures cover only the latter two-year portion of the Relevant Period. As to the expenditure on R&D, without further detail on how the R&D work relates to use of the Contested Mark for the goods/services at stake, it is of very little assistance.

71. More importantly, it is not possible to determine the territories to which the marketing efforts were directed. Unhelpfully, these figures have not been supplemented with material to demonstrate the following: what the marketing events were; their frequency; their reach; the extent to which the promotional efforts translated into sales of/subscriptions to the RP's technology. My view is that, given the notable sums expended, it would not have been unduly burdensome for the RP to have provided some concrete evidence of particular events/activities directed to prospective consumers in identifiable relevant territories.

72. I find that the strongest evidence of use of the Contested Mark being used as a trade mark can be seen in the Wayback prints from the TMRW and ROOM websites, all from 2022 (noted at [29] and [34]). Appearances of the Contested Mark are scant, and each appearance is in the context of 'RealityOS' being responsible for 'something' that powers ROOM, i.e. 'ROOM powered by RealityOS'. I accept Mr Selmi's submission that the presence of the 'trade mark symbol' in superscript to the Contested Mark will likely lead consumers to presume that 'RealityOS' is a trade mark. However, my view is that the average consumer would be unable to determine what the goods or services under the mark *are*, other than 'something that powers ROOM'. Furthermore, I find that the Contested Mark used in this way gives the impression that the 'something' under the Contested Mark is for the benefit of *the RP as provider of the services under ROOM*, rather than *consumers* of the services under the ROOM mark. I find that these instances of the Contested Mark would be seen as denoting goods or services which are used by the RP in making ROOM available to the relevant public. In the example dated 5 April 2022, it is explicitly stated that the RealityOS technology has been created by the TMRW Foundation in order to power ROOM. Given that the TMRW

Foundation is also the provider of ROOM, this appears to demonstrate that the Technology is for the creator's own benefit. An argument along these lines was advanced by Ms Michaels, and she made a helpful analogy with a computer bearing the mark of the computer manufacturer as well as the mark of the manufacturer of the branded chip as a component part (e.g. the well-known brand 'Intel'). I, therefore, agree with Ms Michaels' submission that this example of the Contested Mark being used, does not constitute relevant use for the instant case.

73. It is for the reasons set out in paragraph [72] above that the confidential evidence by way of a scant number of invoices for subscriptions to ROOM (noted at [43]) does little to assist the RP's case. Furthermore, Mr Selmi accepted that the invoices (which, in reality, are order summaries and corresponding receipts) were not in respect of goods/services held out under the Contested Mark but, instead, intended to provide more granular detail on the nature of the RealityOS 'Technology'.

74. The RP's evidence is punctuated with various statements about the RP's ambitions and intentions for the technology that has been created and the anticipated direction of development. However, statements in terms of 'potentials' do not amount to evidence of definite historical instances of use of the Contested Mark. For example, Mr Yerli's confidential narrative details what the RealityOS is designed to do. Whilst it may be the case that the technology, as a matter of fact, has the various capabilities stated, this does not necessarily correlate with use of the Contested Mark.

Conclusions on genuine use

75. For the reasons set out above (at [69] - [74]) I find that the totality of evidence available to me does not succeed in demonstrating genuine use of the Contested Mark.

76. Furthermore, my view is that even if the Contested Mark had been put to genuine use for the RP's technology, I have been unable to determine with sufficient clarity and precision what the RP's technology really is. Mr Selmi has, at several points, endeavoured to explain what the RP's goods/services are. I refer back to his

submission that it would be ‘unfair’ to compare the technology to, *inter alia*, ‘computer software’, by virtue of its multi-faceted nature. I consider that each of Mr Selmi’s descriptions of the technology suggests that its ‘components’/aspects/functionalities are so closely interconnected and interdependent that the ‘technology’, which appears to be one ‘thing’, cannot be readily conceived of in terms of standalone goods and services. I therefore find that, even if the evidence *had* demonstrated use of the Contested Mark that was genuine in terms of *quantum*, the matter of what the technology is is so unclear from the evidence that I am unable to determine whether (and, if so, the extent to which) it is covered by the registered specification.

Outcome

77. The revocation action has succeeded in full. Subject to a successful appeal, registration UK00916933368 is to be revoked from the earliest possible revocation date, i.e. 27 October 2022.

COSTS

78. The CA is the successful party and is entitled, therefore, to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016, calculated as follows:

Official filing fee for Form TM26(N)	£200
Preparation of Form TM26(N)	£200
Preparing evidence and considering and commenting on the other side’s evidence	£700
Preparation for and attendance at a hearing	£700
Total	£1,800

79. I, therefore, order CRAS Ventures DWC-LLC to pay the sum of £1,800 to Collyer Bristow. The above sum should be paid within twenty-one days of the expiry of the

appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 23rd day of March 2026

N. R. Morris

For the Registrar,

the Comptroller-General