O/0281/26

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK REGISTRATION NO. UK00003317620
IN THE NAME OF RICKY WONG
FOR THE TRADE MARK:

By Any Means Necessary

IN CLASSES 25, 41 AND 42

AND

APPLICATION NO. CA000507836 FOR REVOCATION
FOR NON-USE
BY BANKOLE AKINWUNMI BRAITHWAITE

Background and pleadings

1. Trade mark number UK00003317620 as shown on the front page of this decision ("the contested mark") stands registered in the name of Ricky Wong ("the proprietor"). The contested mark has a filing date of 13 June 2018 and was registered on 7 September 2018 for the following goods and services:

> Class 25: Clothing, Headwear, Footwear.
>
> Class 41: Audio, video and multimedia production, and photography; Arranging and conducting of entertainment events; Publication of the editorial content of sites accessible via a global computer network.
>
> Class 42: Graphic design; Graphic design services; Graphic illustration design.

2. On 25 September 2024, Bankole Akinwunmi Braithwaite ("the applicant") filed an application to revoke the contested mark on grounds of non-use in accordance with section 46(1)(a) of the Trade Marks Act 1994 ("the Act").[1]

3. Under section 46(1)(a) of the Act, the cancellation applicant claims non-use of all goods and services in the five-year period following the date on which the mark was registered i.e., 8 September 2018 to 7 September 2023, with an effective date of revocation of 8 September 2023.

4. The proprietor filed a counterstatement defending its registration for all the goods and services for which the mark is registered.

5. Both parties are unrepresented.

[1] 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.

6. Both parties filed evidence during the evidence rounds and the applicant also filed submissions. Neither party requested a hearing and neither party filed submissions in lieu of a hearing. This decision is taken following careful consideration of the papers on file.

Evidence

7. The proprietor's evidence consists of the witness statement of Ricky Wong dated 3 April 2025. Mr Wong is the proprietor of the contested mark, and his statement is accompanied by three exhibits, being exhibits B1-B3.

8. The applicant's evidence consists of the witness statement of Bankole Braithwaite dated 18 July 2025. Mr Braithwaite is the cancellation applicant, and his statement is accompanied by one exhibit, being exhibit BB1. As previously mentioned, Mr Braithwaite also filed submissions alongside his evidence.

9. I have given due consideration to all of the relevant documents filed and will refer to the evidence to the extent that it is necessary in my decision.

DECISION

10. Section 46 of the Act states that:

> "(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) …

(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.

[…]

(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."

11. 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

12. 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 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]."

13. In *Awareness Limited v Plymouth City Council,*[2] Mr Daniel Alexander, QC (as he then was), sitting as the Appointed Person, observed that a "tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive".

[2] Case BL O/236/13

14. Furthermore, in *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13, Mr Geoffrey Hobbs QC (as he then was) as the Appointed Person stated that:

> "21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller-General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:
>
> > [24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.
>
> 22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not 'show' (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be

assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

Evidence of Use

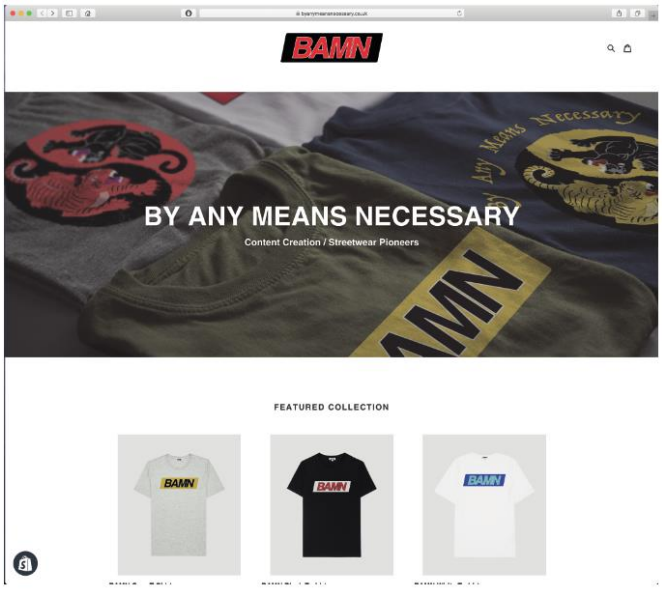
15. Mr Wong states that the contested mark was originally intended to be used by a company he operated, Good Vibes Only Ltd. However, due to the COVID-19 pandemic, the company was unable to continue trading owing to the closure of businesses and lack of funding. Consequently, Good Vibes Only Ltd was voluntarily dissolved which resulted in limited use of the contested mark during the relevant period.[3]

16. After this time, Mr Wong states that he decided to licence the contested mark to a third party. He explains that the licence agreement permitted the third party to use the contested mark while he retained ownership. A copy of the licence agreement is provided in exhibit B1. I note that the licensee is an individual named Omar Stephenson who is identified as the director of a company called Flexthreads. Ltd. The exhibit shows that the agreement was made and entered into as of 1 June 2022 and ended on 1 June 2025. I note that Mr Wong's witness statement is dated 3 April 2025, just under two months before the licence agreement was due to expire. Mr Wong states that he intends to resume substantial use of the contested mark after the agreement concludes.

17. Mr Wong states that he has taken proactive steps to preserve the contested mark. This includes keeping the contested mark registered, maintaining an online presence and preserving marketing materials such as designs, promotional materials and other assets associated with the contested mark. [4]

[3] Paragraph 1 of the witness statement of Ricky Wong.
[4] Paragraph 2 of the witness statement of Ricky Wong.

18. In support of this claim, the proprietor has provided undated images of clothing and accessories displaying the contested mark,[5] and undated images of the proprietor's Instagram page and website.[6] Examples are shown below:



[5] Exhibit B2
[6] Exhibit B3

Applicant's Evidence and Submissions

19. As previously mentioned, the applicant also filed evidence and submissions in response to the proprietor's evidence.

20. The applicant submits that the proprietor has not provided evidence of genuine use. He asserts that there is no evidence of actual sales, transaction or commercial presence under the mark during the relevant period.[7]

21. The applicant also questions the validity of the proprietor's licence agreement with the aforementioned third party because it is typed directly onto an exhibit page and is undated.[8] In this regard, I note that the agreement does state its starting and end date but it does not contain the date of which it was signed by the parties. The applicant also states that the licensee's company is a dormant company and was not actively trading during the relevant period in question. In support of this, the applicant has provided screenshots of the Companies House dormant account records for Flexthreads Ltd for the years 2020 to 2023.[9]

[7] Paragraph 1 of the applicant's submissions.
[8] Paragraph 2 of the applicant's submissions.
[9] Exhibit BB1.

Assessment of genuine use

22. The case law summarised in *easyGroup* quoted above makes it clear that real commercial exploitation of the trade mark must be shown. Even in a case where the use is not sham, i.e. it is not use engineered solely to preserve the trade mark registration, the use must be more than trivial if it is to be considered genuine. An example of this can be seen in *Memory Opticians Ltd's Application*, BL O/528/15, where the Appointed Person, Professor Ruth Annand, upheld the decision to revoke the protection of the mark STRADA on the grounds that it had not been put to genuine use within the requisite 5-year period. There had in fact been sales of goods bearing the mark, but these were very low in volume (circa 40 pairs of spectacles per year) and all the sales were local, from 3 branches of an optician. There was no advertising of the goods under the mark, and the evidence indicated that they were only displayed in-store on occasion. The mark was said to have been applied to the goods via a sticker applied to the arms of a dummy lens. This level of use was held to be insufficient to create or maintain a market under the mark. Consequently, it was not genuine use.

23. Turning to the present case, the burden is on the proprietor to prove that it has used its mark within the relevant period. Although the proprietor has stated that there has been limited use of the trade mark, there is very little information provided alongside the licence agreement, the undated images of clothing goods, and website and social media print-outs.

24. I first note that the proprietor's counterstatement did not state that they wished to rely on a defence of non-use. It was only brought to my attention via the proprietor's witness statement that the COVID-19 pandemic had led to the closure of their business. I accept that the pandemic and lockdowns from March 2020 to July 2021 had an effect on businesses all over the UK, however, the proprietor has not provided any further explanation, or exhibited evidence, as to what the impact was on its business that led to its closure.

25. As regards the licence agreement, use with the proprietor's consent via a licence can amount to genuine use of a mark, however, the proprietor has not provided me with any other evidence to show how the licensee used its mark during the relevant

period. For example, no turnover or advertising figures provided for sales made within the UK during the relevant period have been provided. I also note from the applicant's evidence, it appears that the licensee's company was likely to be dormant between 2020 and 2023.

26. Whilst I note the proprietor's claim that they intend to resume use of the contested mark once the licensing agreement concludes, on 1 June 2025, this falls well after the relevant period. I also remind myself that use of the mark must relate to goods or services which are already marketed, or are about to be marketed, and for which preparations to secure customers are under way, particularly in the form of advertising campaigns. However, the website and social media screenshots from the proprietor are not accompanied by any further supporting information such as the number of users that engaged with their website, promotional material or the geographical spread of the mark and where the proprietor's customers were located.

27. It is not necessarily fatal to the assertion of genuine use that there is no such evidence if other material filed by the proprietor is sufficient to show that there has been a real attempt to exploit the mark in the sector. However, there is no evidence of other activity in this case. Whilst I accept that use of the mark need not always be quantitatively significant for it to be deemed genuine, I am not satisfied that the evidence is sufficient to show that there has been a real attempt to exploit the contested mark in the UK in respect of all of its registered goods and services during the relevant period.

CONCLUSION

28. The revocation is successful in its entirety under section 46(1)(a) of the Act. UK trade mark number UK00003317620 shall be revoked in the UK from the revocation date sought, namely from 8 September 2023.

COSTS

29. The applicant for revocation has been successful and would ordinarily be entitled to a contribution towards its costs. As they are unrepresented, the tribunal

invited the applicant to indicate whether it wished to make a request for an award of costs and, if so, to complete a pro-forma including a breakdown of its actual costs. The applicant failed to return the pro-forma and therefore other than reimbursement for the official fee of £200, I make no further award of costs.

30. I hereby order Ricky Wong to pay Bankole Akinwunmi Braithwaite £200. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 30th day of March 2026

Catrin Williams
For the Registrar