BL O/0310/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NO. 903474178

IN THE NAME OF APPLE INC.

IN RESPECT OF THE FOLLOWING TRADE MARK

podspeakers

IN CLASS 9

AND

AN APPLICATION FOR REVOCATION THEREOF

UNDER NUMBER 508375

BY BRICK VAULT LIMITED

BACKGROUND AND PLEADINGS

1. The UK trade mark ("UKTM") shown on the front page of this decision (UKTM: 903474178[1]) ("the contested mark") stands registered in the name of Apple Inc. ("the registered proprietor"). It was filed on 30 October 2003 and completed its registration process on 27 July 2005. The mark stands registered for the following goods:

Class 9 Loudspeakers.

2. On 29 January 2025, Brick Vault Limited ("the cancellation applicant") applied to revoke the contested mark in accordance with sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 ("the Act"). Revocation is sought in respect of the specification in its entirety. The periods in respect of which non-use is claimed are 28 July 2005 to 27 July 2010, with an effective date of revocation of **28 July 2010** under section 46(1)(a) ("the first relevant period"), and 28 July 2010 to 27 July 2015 with an effective date of revocation of **28 July 2015** ("the second relevant period") under section 46(1)(b).

3. The registered proprietor filed a defence and counterstatement in which it denies the claims against it in their entirety. The registered proprietor states that it has made genuine use of the contested mark, for the goods covered by the registration, within the relevant periods.

4. The registered proprietor is represented by Hogan Lovells International LLP and the cancellation applicant is represented by Panoramix Limited. Only the registered proprietor filed evidence in these proceedings. No hearing was requested, however both parties filed written submissions in lieu of a hearing.

[1] On 1 January 2021, the UK left the EU after the expiry of the transition period. Under Article 54 of the Withdrawal Agreement, the Registry created comparable UK trade marks for all rights holders with an existing EU trade mark ("EUTM"). As a result of the proprietor having an EUTM protected as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable trade mark shown here is now recorded on the UK trade mark register, and has the same legal status as if it had been applied for and registered under UK law, and retains its original EUTM filing date

EVIDENCE AND SUBMISSIONS

5. The registered proprietor filed evidence in chief in the form of a witness statement of Brent Hovendahl, dated 18 July 2025, accompanied by exhibits BH1 – BH18. Mr Hovendahl is the Managing Director of Scandyna A/S, formerly named Podspeakers A/S.

6. The registered proprietor filed written submissions in lieu of a hearing dated 22 September 2025.

7. The cancellation applicant filed written submissions in lieu of a hearing (labelled 'observations') dated 21 October 2025.

8. I have given due consideration to all of the documents filed by both parties but will only refer to the evidence/submissions as appropriate to the extent that is necessary in my decision.

DECISION

9. 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 in referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

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

(4) […]

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

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

> (a) the date of the application for revocation, or
>
> (b) if the registrar or court is satisfied that the grounds for revocation existing at an earlier date, that date."

10. As the mark is a comparable mark, paragraph 8 of part 1, schedule 2A is relevant. It reads:

> “8. Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)
>
> (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”.

11. Section 100 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.”

12. 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.

GENERAL PRINCIPLES

13. 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 C40/01 *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].

14. 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), sitting as the Appointed Person stated that:

> "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."

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

EVIDENCE OF USE

Relevant Periods

16. The cancellation applicant has applied to revoke the contested mark in accordance with sections 46(1)(a) and 46(1)(b) of the Act, as set out in paragraph 2. However, section 46(3) of the Act states:

> "(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."

17. The applicant has requested evidence of use for the above relevant periods; however, the registered proprietor states that they can provide evidence of use after the expiry of the five-year period (the second relevant period), but within the period of three months before the making of the application in order to maintain the registration. This is because of the impact of section 46(3) of the Act (as above) which states that the registration of a trade mark shall not be revoked if genuine use is resumed or commenced prior to a period of three months before the date of the application for revocation. Therefore, so long as the registered proprietor can show use after the relevant period claimed (even if not within the actual period set out by the applicant), but prior to 3 months before the date of the application for revocation, the contested

mark will survive revocation based on the later use. Given the wording of section 46(3) and the possibility of resumption of use, I shall consider whether the evidence shows use in the period prior to the three months before the application for revocation was filed.

18. As the contested mark is a comparable mark, the registered proprietor can rely upon use of the mark in the EU prior to IP Completion Day, namely, 31 December 2020[2].

The Registered proprietor's Evidence

19. I note the following from the witness evidence of Mr Hovendahl:

a. Scandyna A/S, for whom Mr Hovendahl is a Managing Director, has either directly or indirectly produced audio equipment since 1965, including HiFi loudspeakers, FM/AM receivers, radios and turntables.

b. The Registration was assigned from PSH 2019 ApS to Apple Inc. on 31 May 2022. I note that Mr Hovendahl is currently a board member of PSH 2019 ApS, which is the legal owner and parent company of Scandyna. During the relevant periods, Scandyna were the registered owners of "podspeakers" prior to their sale to Apple Inc. in May 2022.

c. Scandyna sell "podspeakers" branded loudspeakers to UK distributors including Cradel AV LTD, Exertis Unlimited Ltd, Stoneaudio UK Ltd, Citylights Magazine, and its main UK distributor, HiFi Cinema Ltd[3].

d. Mr Hovendahl has provided a selection of invoices dated between 9 April 2019 and 14 January 2022[4]. I note the following:

    i. The invoices are in Euros. In total, these invoices amount to €12,274.49 of sales.

[2] paragraphs 7 and 8 of Part 1 Schedule 2A of the Act.
[3] Witness statement of Mr Hovendahl, para 8
[4] Exhibit BH1

ii. 27 invoices have been provided, and all of the invoices display "podspeakers" in the header. I note that the invoices relate to a range of products, all of which appear to be different types of speakers or accessories, and these are sold to the UK distributors outlined above. There is repeat custom.

e. 76 units of "podspeakers" branded loudspeakers were sold to UK distributors, alongside accessories which were branded with the mark either on the products themselves and/or their packaging, and third-party spare parts. This amounted to €11,680.09 of sales to UK distributors. A print-out has been provided which details invoice numbers, dates of sale and the total spent from 2020 to 2022. I note that 8 sales were made in 2020, 12 in 2021 and 1 in 2022[5].

f. Scandyna also sold directly to individual customers in the UK during the relevant periods. I have before me a selection of invoices dated between 29 November 2019 and 28 June 2021[6]. I note the following:

   a. The invoices are in Euros. In total, these invoices amount to €12,521.76 of sales.
   b. 51 invoices have been provided, and all of the invoices display "podspeakers" in the header. I note that the invoices relate to a range of products, all of which appear to be different types of speakers or accessories, and these are sold to the UK distributors outlined above.

g. 39 units of "podspeakers" branded loudspeakers were sold directly to UK customers via Scandyna's own website, alongside accessories. This amounted to €10,361.76 of sales to UK customers. A print-out has been provided which details invoice numbers, dates of sale and the total spent from 2020 to 2021. I note that 43 sales were made in 2020 and 2 in 2021[7].

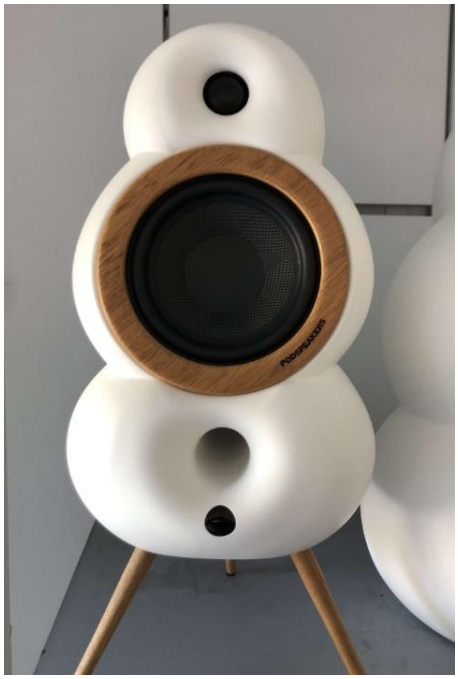
[5] Exhibit BH2
[6] Exhibit BH3
[7] Exhibit BH4

h. Mr Hovendahl has provided evidence of the product being advertised for purchase across a number of webstores including the following[8]:

    a. HiFi Cinema Webstore (https://webstore.hificinema.co.uk). A screenshot has been provided from the 'Wayback Machine' which shows that products featuring the mark were advertised on the website on a selection of dates between 15 August 2020 and 6 December 2022;
    b. "Scandyna Wireless Bluetooth Small Podspeakers" are available to purchase on Amazon.co.uk. The screenshot states that the product was first available to purchase on 14 February 2013;
    c. A further listing on Amazon.co.uk for for "Scandyna Micro PodSpeakers", shows that this product was first available to purchase on 9 April 2013.

i. Mr Hovendahl has provided photographs of the Podspeakers MicroPod SE MK2, the Podspeakers MiniPod MK4 and packaging for Podspeakers products, all of which show the Mark in either word or stylised form[9]. The photographs are undated; however, Mr Hovendahl confirms that these photos accurately represent products and packaging that were sold in the UK in 2020, 2021 and 2022. An example of which is as follows:

[8] Exhibits BH6-BH9
[9] Exhibit BH10



j. Mr Hovendahl states that:

> "Scandyna also purchased Google Adwords during the period 26 February 2020 and 31 December 2022. Google Adwords (now rebranded as Google Ads) is a digital advertising platform which allows businesses to display advertisements on Google's search engine results pages, partner websites and other Google owned platforms such as YouTube. Such ads can take the form of text ads, image or banner ads and video ads, and appear when users search for specific keywords allowing for targeted advertising to consumers"[10].

Evidence is provided from Google Ads that the term "podspeakers" is owned by Scandyna.com and it shows that it had received 67 interactions and a 3.42% interaction rate[11].

k. Screenshots have been provided from the "podspeakers" website, www.podspeakers.com, via the 'Wayback Machine'. These are dated between 7 August 2020 and 2 December 2021. The mark is displayed across the screenshots and Mr Havendahl states:

[10] Witness statement of Mr Hovendahl para 17
[11] Exhibit BH11

"Pages 6 to 7 of Exhibit BH13 are our 'Where to Buy' page dated 25 October 2020. The page clearly lists out distributors by jurisdiction, and makes clear that as at the date of the screenshot, Podspeakers loudspeakers were available for sale to customers in the UK via the Website, <www.hificinema.co.uk>, <www.stoneaudio.co.uk> or www.cradel.co.uk. From 2021, the Website redirected UK consumers to HiFi Cinema to purchase Podspeakers loudspeakers, as seen on the 'Where to Buy page' dated 13 June 2021

…

As seen on page 5 of Exhibit BH13, our 'Shipping and Payment' page dated 25 October 2020 (accessed via Wayback Machine) made clear that Podspeakers A/S shipped to all countries in the EU (which, until 31 December 2020, included the UK)."[12].

l. Mr Havendahl has provided invoices from Meta to Podspeakers A/S from 2022 which relate to advertising spend on Meta platforms (such as Facebook and Instagram). Mr Havendahl states that they no longer have records or examples of the specific advertisements, however he confirms that these would have shown products sold in the relevant periods by reference to the mark, and would have been targeted at consumers in both EU and non-EU countries, including the UK. I note that the invoices are dated between 18 March 2022 and 26 April 2022 and therefore fall post-IP Completion Day. There are 8 invoices and these amount to 46,490.33 DKK[13]. The impressions range from 2 to 157,002, however I am unable to ascertain from the evidence which advertisements would have been targeted at UK customers.

m. Mr Havendahl states that during the relevant periods, Scandyna sold "podspeakers" to various distributors across the EU and directly to consumers in the EU (including within Germany, Denmark, France, and the Netherlands). 50 sample invoices dated between 03 January 2020 to 22 December 2020 have

[12] Witness statement of Mr Hovendahl paras 20 and 21
[13] Exhibit BH12

been provided[14] which amount to €46,878.47. This is use which can be relied upon as it is prior to IP Completion Day.

n. Several screenshots from YouTube videos have been provided which show Podspeakers being unboxed / reviewed. The videos are dated between 12 January 2018 and 4 May 2020 and show the product and packaging which bears the "podspeakers" mark[15].

FORM OF THE MARK IN USE

20. Before I move on to assess the sufficiency of the evidence, I shall begin by addressing the way in which the contested mark has been displayed in relation to the relevant goods in evidence.

21. In *Colloseum Holdings AG v Levi Strauss & Co.,* Case C-12/12, which concerned the use of one mark with, or as part of, another mark, the Court of Justice of the European Union ("CJEU") found that:

> "31. It is true that the 'use' through which a sign acquires a distinctive character under Article 7(3) of Regulation No 40/94 relates to the period before its registration as a trade mark, whereas 'genuine use', within the meaning of Article 15(1) of that regulation, relates to a five-year period following registration and, accordingly, 'use' within the meaning of Article 7(3) for the purpose of registration may not be relied on as such to establish 'use' within the meaning of Article 15(1) for the purpose of preserving the rights of the proprietor of the registered trade mark.
>
> 32. Nevertheless, as is apparent from paragraphs 27 to 30 of the judgment in *Nestlé*, the 'use' of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.

[14] Exhibit BH14
[15] Exhibits BH16 – BH18

33. As the German and United Kingdom Governments pointed out at the hearing before the Court, the criterion of use, which continues to be fundamental, cannot be assessed in the light of different considerations according to whether the issue to be decided is whether use is capable of giving rise to rights relating to a mark or of ensuring that such rights are preserved. If it is possible to acquire trade mark protection for a sign through a specific use made of the sign, that same form of use must also be capable of ensuring that such protection is preserved.

34. Therefore, the requirements that apply to verification of the genuine use of a mark, within the meaning of Article 15(1) of Regulation No 40/94, are analogous to those concerning the acquisition by a sign of distinctive character through use for the purpose of its registration, within the meaning of Article 7(3) of the regulation.

35 Nevertheless, as pointed out by the German Government, the United Kingdom Government and the European Commission, a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term 'genuine use' within the meaning of Article 15(1)." (emphasis added)

22. The contested mark is a word only mark presented in lower case. Given that normal and fair use of the registration will cover use in any standard typeface or font, where the mark is used in capitals or title case, this is use of the mark as registered and is use upon which the registered proprietor may rely. The mark is also shown as follows throughout the evidence:

THE iCONIC
PODSPEAKERS

PODSPEAKERS

23. The above variation is a figurative mark in which the word “podspeakers” is presented in bold upper case. Both variations also include a black and white image of a podspeaker to the right-hand side of the word. I consider that the image reinforces the product. In the top version of the mark, above the word “podspeakers” there are the additional words ‘THE ICONIC’. This will be understood as an indicator that the product is very well-known or popular. I consider that the word “podspeakers” remains the dominant element of the figurative mark, and that this figurative form is therefore an acceptable variation of the mark and is use upon which the registered proprietor can rely.

GENUINE USE

Assessment of Evidence

24. With regard to the evidence of use submitted, I must now consider if it sufficiently demonstrates genuine use, whilst reminding myself that use does not have to be quantitively significant to be genuine. The burden is on the registered proprietor to prove that it has used its mark within the relevant periods. Therefore, it was the registered proprietor’s responsibility to provide proof that the mark was used within the UK and/or the EU prior to IP Completion Day during the relevant periods.

25. Whether the evidence is sufficient for this purpose will depend on whether it demonstrates that there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the UK and/or the EU prior to IP Completion Day during the relevant five-year period. In making this assessment, I am required to consider all relevant factors, including:

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

26. The evidence before me does have its limitations. There are no details in relation to the size of the relevant market or the share of that market held by goods bearing the registered proprietor's mark, and neither do I have information of the registered proprietor's spend on marketing activities, aside from some very limited information relating to Google Ads. There is extremely limited evidence of use within the relevant periods, in the way of screenshots showing that the product was available to purchase on Amazon from 2013. However, the registered proprietor has provided evidence of use within both the EU before IP Completion Day, and the UK after the second relevant period and prior to the application being made. The cancellation applicant submits that the registered proprietor's marks should be revoked due to non-use.

27. The registered proprietor has provided a selection of invoices relating to sales between 2019 and 2022. These invoices amount to €93,716.57 in total. The registered proprietor has not provided their total turnover figures for the goods. The registered proprietor submits that the above figures relate to sales within Germany, Denmark, France, and the Netherlands (all of which are territories within the EU) prior to IP Completion Day, as well as the UK, and that the invoices provided represent a sample of those available.

28. The registered proprietor has provided evidence of the mark on sale and being used as part of their marketing strategy via advertising on Meta and Google Ads. I have before me 8 invoices dated between 18 March 2022 and 26 April 2022, which amount to 46,490.33 DKK relating to Meta advertisements. As noted above, I have no evidence as to what proportion of these Meta advertisements would be targeted at UK consumers, however, I accept that some of them would have been. I also have evidence of Scandyna using Google Adwords (now rebranded as Google Ads) to promote "podspeakers" during the period 26 February 2020 and 31 December 2022, which shows that "podspeakers" had received 67 interactions and a 3.42% interaction rate. I have no context of this percentage interaction rate; however, I note that 67 interactions seems low.

29. The registered proprietor's evidence indicates that it has traded in goods bearing the "podspeakers" mark in both its figurative form and its word only mark, and that goods were first available to purchase in April 2013. Despite the fact that I do not have much in the way of marketing information before me, and there is little evidence of

use within the relevant periods, I am of the view that the evidence of use between 2019 and 2022, when taken as a whole (and particularly considering continuity of use, amount of sales and geographical spread), is sufficient to show genuine use of the marks, both in the UK and the EU (prior to IP Completion Day) after the revocation periods claimed by the applicant. This is sufficient to satisfy the requirements of section 46(3) of the Act in order to maintain the registration.

FAIR SPECIFICATION

30. I must now consider whether, or the extent to which, the evidence shows use of the marks at issue in relation to the goods relied upon. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*,[16] 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."

31. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal set out the proper approach to partial revocation, 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

[16] BL O/345/10

relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.

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."

32. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch) at [47], the late Carr J pointed out that it is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do; for example, in *Pan World Brands v Tripp Ltd (Extreme Trade Mark)* [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally.

33. I note that the mark is registered in respect of *loudspeakers* in class 9. It is clear from the evidence that 'Podspeakers' products are different types of audio speakers. I therefore consider that the registered proprietor has shown use for the term *loudspeakers* in class 9 and this can therefore remain as registered.

CONCLUSION

34. This application was brought under section 46(1)(a) and (b) of the Act; however, I am satisfied that the registered proprietor has provided evidence sufficient to maintain the registration for those aforementioned goods in accordance with the provisions of section 46(3) of the Act. Subject to any successful appeal, UKTM: 903474178 will remain registered for the goods in its specification.

COSTS

32. As the proprietor has been successful, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Note 1/2023. In the circumstances, I award the registered proprietor the sum of £1,000 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a counterstatement & considering the other side's statement:	£250
Preparing evidence:	£750
Total	**£1,000**

35. I therefore order Brick Vault Limited to pay Apple Inc. the sum of £1,000. 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 10th day of April 2026

LA Bailey

For the Registrar,

The Comptroller-General