

O/0417/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. WO0000001840022

DESIGNATING THE UK

BY AKER SOLUTIONS AS

ENTR

IN CLASSES 35, 37, 40, 42 AND 45

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 455392

BY DIGITONIC LTD

AND

IN THE MATTER OF UK TRADE MARK REGISTRATION NO. UK00003234942

IN THE NAME OF DIGITONIC LTD

FOR THE TRADE MARK:

ENTR

IN CLASSES 16, 25, 36, 37, 38, 42 AND 45

AND

THE APPLICATION FOR REVOCATION THEREOF

UNDER NO. 509028

BY AKER SOLUTIONS AS

BACKGROUND AND PLEADINGS

1. This decision involves cross-proceedings wherein Aker Solutions AS (“AS”) and Digitonic Limited (“DL”) brought actions against one another. I will summarise the relevant proceedings below, beginning with DL’s opposition on the basis that it was brought first.

DL’s opposition

2. International trade mark 1840022 (“the IR”) consists of the sign “**ENTR**” as shown on the cover page of this decision. The holder is AS and the IR is registered with effect from 26 September 2024. With effect from the same date, AS designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol to the Madrid Agreement. The mark also claims priority from 27 March 2024. AS seeks protection for the IR in relation to services contained in Annex 1 to this decision.

3. The request to protect the IR was published on 18 April 2025. On 16 July 2025, DL partially opposed the protection of the IR in the UK based upon sections 5(1) and 5(2)(a), and fully opposed protection of the IR based upon section 5(4)(a) of the Trade Marks Act 1994 (“the Act”).

4. Under sections 5(1) and 5(2)(a), DL relies upon the following trade mark:

ENTR

UK registration no. UK00003234942

Filing date 2 June 2017; Registration date 25 August 2017.

Relying upon some of its goods and services, for which it is registered, namely:

Class 16 Printed technical manuals; instructional and teaching materials (other than apparatus).

Class 42 SaaS; software development, programming and implementation; Hosting services and software as a service and rental of software;

Design and development of computer software; Design of computer machine and computer software for commercial analysis and reporting; Software engineering; Software design; Software installation; Software creation; Software authoring; Software research; Software design for others; Programming of educational software; Computer software programming services; Image processing software design; Design of virtual reality software; Writing and updating computer software; Custom design of software packages; Development of virtual reality software; Design of computer game software; Development of computer software application solutions; Development of software for digital signal processing; Development of software for audio and video operators; Design of software for multimedia data storing and recalling; Advisory services relating to computer software used for graphics; Design of computer programs and software relating to aircraft; Services for the design of electronic data processing software; Development of software solutions for internet providers and internet users; Advisory services relating to man-machine interfaces for computer software; Leasing of computer software for reading a data stream; Providing temporary use of non-downloadable computer software for tracking freight over computer networks, intranets and the internet; Rental of computer software, Rental of software for data processing; Services for the design of electronic data processing software; Software engineering services for data processing programs; Updating of software for data processing.¹

Class 45 Professional legal research in relation to the recording, transmission, processing, controlling, management or analysis of data, and products and services related thereto; preparation of legal reports in relation to the recording, transmission, processing, controlling, management or analysis of data, and products and services related thereto; Licensing of computer software [legal services].

¹ In its Form TM7, DL listed “software related services, covered by the registration in class 42” as being relied upon within the opposition. Therefore, based on this, I have only listed the terms which explicitly mention/use the word “software” in class 42.

5. Under sections 5(1) and 5(2)(a), DL opposes some of AS' services, which are contained in Annex 2 to this decision. DL claims that the parties' marks are "plainly visually, aurally and conceptually identical" and the goods and services are "directly identical or identical via the inclusiveness principle, or they are simply highly similar".

6. Under section 5(4)(a), DL relies upon their **ENTR** sign which they claim to have used throughout the UK since at least 2 June 2017 for "IT/software, data, technical instruction materials, and services related thereto". DL claims that use of the IR would be contrary to the law of passing off.

7. AS filed a counterstatement denying the claims made and subjecting DL's mark to proof of use.

AS' revocation application

8. On 13 June 2025, AS sought revocation of DL's above UK00003234942 mark on the grounds of non-use under sections 46(1)(a) and 46(1)(b) of the Act.

9. Under section 46(1)(a) of the Act, AS claims non-use in the five-year period following the date on which the mark was registered, i.e. 26 August 2017 to 25 August 2022, claiming an effective date of revocation of 26 August 2022.

10. Under section 46(1)(b), AS claims non-use of the mark for the periods of 13 June 2020 to 12 June 2025, claiming an effective date of revocation of 13 June 2025, and 26 March 2019 to 25 March 2024, claiming an effective date of revocation of 26 March 2024.

11. Revocation under both 46(1)(a) and (b) is sought for all of DL's goods and services, set out in Annex 3 to this decision.

12. On 14 August 2025, DL filed a counterstatement defending its registration in its entirety by ticking "all goods and services" under question 7 of the Form. However, within its counterstatement, in question 8, DL only lists its goods and services in classes 16, 42 and 45 as having been used throughout the relevant periods.

13. On 18 September 2025, the Tribunal wrote to the parties informing them of the consolidation of the revocation action no. 509028 and opposition no. 455392.

14. DL is represented by Cloch Solicitors and AS is represented by Zacco UK Ltd. DL filed evidence in chief. Neither party requested a hearing but AS filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

RELEVANCE OF EU LAW

15. 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.

EVIDENCE

16. DL's evidence consists of the witness statement of Mr Iain Wilcox dated 18 November 2025. Mr Wilcox is the Managing Director of Technology at DL, and his statement is accompanied by 2 exhibits (A-IW-1 and A-IW-2).

17. Whilst I do not propose to summarise it here, I have taken all of the parties' evidence and submissions into consideration in reaching my decision and will refer to them where necessary below.

MY APPROACH TO THESE PROCEEDINGS

18. AS' revocation action could have an impact on the opposition proceedings, in that the level of success (if any) will determine whether DL will be able to rely upon its mark for its section 5(1) and 5(2)(a) opposition against AS. If DL's mark is successfully revoked to before 27 March 2024, the mark will no longer be operative and valid on the IR's priority date, and therefore DL's opposition based on sections 5(1) and 5(2)(a) will fall away. I will therefore consider the revocation action first.

AS' revocation

19. 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”.

20. 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.**” (My emphasis)

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

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v*

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

22. I remind myself that the relevant periods within which use of DL's mark has been challenged is:

1. 26 August 2017 to 25 August 2022
2. 13 June 2020 to 12 June 2025
3. 26 March 2019 to 25 March 2024

23. I note that these periods overlap, meaning that the same evidence will apply to all three. On this basis I will deal with the periods as a collective.

24. I also bear in mind that in DL's counterstatement, there was reference to "*issues associated with the pandemic*". I consider that it is likely invoking a defence of "proper reasons for non-use" during the above periods. On this basis, I note that in the judgement of *Armin Häupl v Lidl Stiftung & Co. KG*, Case C-246/05 the Court of Justice of the European Union ("CJEU") held that:

52. In particular, as correctly stated by the Advocate General in [79] of his Opinion, it does not suffice that "bureaucratic obstacles", such as those pleaded in the main proceedings, are beyond the control the trade mark proprietor, since those obstacles must, moreover, have a direct relationship with the mark, so much so that its use depends on the successful completion of the administrative action concerned.

53. It must be pointed out, however, that the obstacle concerned need not necessarily make the use of the trade mark impossible in order to be regarded as having a sufficiently direct relationship with the trade mark, since that may also be the case where it makes its use unreasonable. If an obstacle is such as to jeopardise seriously the appropriate use of the mark, its proprietor cannot reasonably be required to use it nonetheless. Thus, for example, the proprietor of a trade mark cannot reasonably be required to sell its goods in the sales outlets of its competitors. In such cases, it does not appear reasonable to require the proprietor of a trade mark to change its corporate strategy in order to make the use of that mark nonetheless possible.

54. It follows that only obstacles having a sufficiently direct relationship with a trade mark making its use impossible or unreasonable, and which arise independently of the will of the proprietor of that mark, may be described as “proper reasons for non-use” of that mark. It must be assessed on a case-by-case basis whether a change in the strategy of the undertaking to circumvent the obstacle under consideration would make the use of that mark unreasonable. It is the task of the national court or tribunal, before which the dispute in the main proceedings is brought and which alone is in a position to establish the relevant facts, to apply that assessment in the context of the present action.

55. Having regard to the foregoing considerations, the answer to the second Proper question referred for a preliminary ruling must be that Art.12(1) of the Directive must be interpreted as meaning that obstacles having a direct relationship with a trade mark which make its use impossible or unreasonable and which are independent of the will of the proprietor of that mark constitute “proper reasons for non-use” of the mark. It is for the national court or tribunal to assess the facts in the main proceedings in the light of that guidance.

DL's evidence

25. At paragraph 1 of Mr Wilcox's witness statement, he says that:

“[DL] is a multiple award-winning multi-million-pound turnover business focussing on information technology and software technology. [DL] has raised private equity investment to grow and develop the core information technology business and also the company's new innovative software products. [DL] works typically business to business and therefore might not have an obvious public footprint. That said, its IP rich business is such that [DL] ranked highly in the Metis Partners IPI00, the UK's intellectual property league table.”

26. Mr Wilcox also confirms that in 2017, DL developed “a couple of new products”, and the “name chosen for one was ENTR”.

27. DL's evidence consists of 2 exhibits, the first being what Mr Wilcox describes as "an example of printed matter created in autumn 2017 and distributed and used in connection with" DL's "ENTR product / services". **Exhibit A-IW-1** contains a 9 page "Entr" brochure, the information of which is not particularly clear on conveying what "Entr" is. However, I note that on page 4 of the brochure it describes "Entr" as a *consent-based on-location analytics product*. In his statement, Mr Wilcox also confirms that "the exhibit advertises and markets ENTR *software and technology*".

28. **Exhibit A-IW-2** contains a 36 page "framework services agreement" between DL and RLH Limited.² This agreement was clearly signed between the parties on 30 September 2019, and Mr Wilcox draws my attention to clause 2.2 which shows that "the rendering of services was for an initial two years (i.e. until 30 September 2020), albeit the services extended beyond that". At paragraph 7 of his statement, Mr Wilcox highlights that the "contract cuts across all time periods requested by [AS]", and that section 1.1 gives the following definitions for both "Entr Platform" and "Entr Services":

"Entr Platform means the Wi-Fi analytics platform comprising of a captive portal, authentication service and any associated systems, network connections and interfacing capabilities, duly licensed or otherwise legally authorised to be used and operated by the Supplier or by suppliers or partners of the Supplier.

Entr Services means the services provided via the Entr Platform as set out in Schedule 1B."

29. Annex 1 to Schedule 1B lists the "Entr Service Order" which includes the following:

"A Captive Portal deployed location analytics Platform integrating towards Cisco Meraki WiFi access points
Permission & consent gathering using agreed parameters and consent statements.

² I have not referred to the full name of the company as they are not a party to the proceedings.

Processing of consented MAC addresses and other end user inputted information to create visit identification, location and duration.

API integration options (reporting).

A secure monitoring dashboard.

Event triggering based upon Customer-defined categories/ logic.

Free account management and BAU support.

All as further described in Schedule 1B and <https://www.digitonic.co.uk/services>"

30. At the end of paragraph 7 of his witness statement, Mr Wilcox states that "it goes without saying that the national law firms negotiating the contract itself were also aware of the branded ENTR goods and services being ordered and delivered under the contract".

31. Lastly, I bear in mind that in DL's counterstatement, there was reference to "*issues associated with the pandemic*". This has been only very slightly elaborated upon in paragraph 7 of Mr Wilcox's statement, which states that:

"It is true that while [DL] had good faith intentions for wide use of its ENTR mark in time, due to the pandemic use did not dilate as planned and expansion has been paused. However, it is certainly not true that the ENTR mark was not used or not used within the said period above."

Assessment of the evidence

32. As far as the form of the mark is concerned, I am satisfied that DL's UK mark is used as registered within the printed matter contained in **exhibit A-IW-1**.

33. I will now consider whether the evidence shows that the earlier mark has been genuinely used throughout the 3 relevant periods. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.³ As indicated in the

³ *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

case law cited above, use does not need to be quantitatively significant in order to be genuine. The assessment must take into account a number of factors in order to ascertain whether there has been real commercial exploitation of the mark which can be regarded 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”.

34. As noted above, the onus is on DL to provide sufficiently solid evidence to counter the application that the mark has not been used within the 3 relevant periods set out in paragraph 22 above. In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander Q.C. as the Appointed Person stated that:

“22. The burden lies on the registered proprietor to prove use... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

35. The case law summarised in the passage from *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.

36. I note that there are significant deficiencies with DL's above evidence, which has been highlighted by AS in their written submissions in lieu. I note the following criticisms provided by AS:

- a) "There is no evidence of any awards, multi-million pound turnover, or any evidence of services provided" by DL.
- b) "There is no evidence that [DL] has raised private equity investment, whether submitted confidentially or not, and there is no evidence of third parties actively using its "new and innovative" software products."
- c) "There is no evidence supporting documents to show that [DL] is an IP rich business, further there is no evidence of its appearance in any league tables let alone intellectual property league tables."
- d) The evidence provided in **exhibit A-IW-1** may constitute as "printed matter", however, it does not show "evidence of use in relation to any of the goods and services as there are no metrics to support publication and distribution during the relevant period. This serves purely as a brochure for promoting a software service in class 42, but even then, there is no evidence of the sale of that software to third parties."
- e) **Exhibit AIW-1** "does not support the registration in class 16" as "promotional literature distributed in order to promote the sale of something else is not genuine use and is purely ancillary to whatever product or service is being sold."

- f) “There is a complete absence of sales figures, and any examples of how the mark has been used outwardly” and “there are no figures relating to how many times the software was downloaded or any examples of use.”
- g) **Exhibit A-IW-2** contains a contract which expired in September 2020, “which leaves nearly five years entirely unsupported by documentary evidence.”
- h) The "Framework Agreement" contained in **exhibit A-IW-2** “is, by its legal nature, an umbrella document that sets the terms for potential future transactions. It does not, in itself, constitute evidence of actual sales or the provision of services.”
- i) The contract contained in **exhibit A-IW-2** shows DL granting a licence for a client to access its own platform. “This is a commercial transaction and does not constitute a "legal service". Class 45 is reserved for entities that provide licensing management or legal drafting for others. A proprietor cannot maintain a registration for legal services simply by signing their own commercial contracts. Simply because law firms were involved in negotiating the contract itself, [...] that does not mean a legal service has been provided by [DL].”
- j) In regard to the non-use defence, “Mr. Wilcox's choice of the word "dilate" (paragraph 7), meaning to expand or grow, is an inferred admission that use was not prevented, but merely that commercial growth was slower than [DL] desired. Established case law clarifies that "commercial difficulties" or a "change in strategy" are a normal part of doing business and do not justify a total suspension of use.”
- k) DL “provides no evidence of UK commercial activity for the nearly three years leading up to the March 2020 lockdowns. A pandemic cannot be used to retrospectively excuse a pre-existing lack of use or a failure to make serious preparations before the obstacle arose.”
- l) “[DL’s] claim [of non-use] is further undermined by the commercial reality of their own sector. Since [DL’s] core claim relates to "software licensing" and

"consultancy", these are services that were uniquely capable of being delivered remotely during the pandemic. [DL] has failed to identify any specific UK government restriction that made the licensing of their proprietary software impossible."

37. I also bear in mind that AS has made comments in regard to *Sky v SkyKick* and DL's "bad faith specification". In particular, they highlight that DL's registration covers an "enormously wide-ranging list of goods and services across eight classes" and that following *SkyKick UK Ltd v Sky Ltd*, "such broad specifications are subject to heightened scrutiny regarding the proprietor's commercial rationale at the time of filing". However, I note that AS has not brought proceedings against DL on the basis of bad faith (that being section 3(6)), and therefore, I find that these submissions are irrelevant. Nevertheless, I agree with all of the remaining comments made by AS listed in paragraph 36 above.

38. DL has filed limited evidence in support of showing that it has used its mark for all of its goods and services. It is clear that there is no evidence before me to support the statements made in paragraph 1 of Mr Wilcox's statement (which I have quoted in paragraph 25 above). I agree that the printed matter contained in **exhibit A-IW-1** does not show use for any of DL's class 16 goods. I note that this evidence is simply described as "printed matter" distributed and used in connection with ENTR products. It is therefore reasonable to infer from this description that **exhibit A-IW-1** contains promotional material used to advertise ENTR software goods and services (rather than DL producing printed matter for third parties to buy). Consequently, this evidence could be used to show how DL promoted its software goods and services, however, I bear in mind that there is no supporting evidence (narrative or exhibited) to say how many people in the UK received such advertising material. The contents of the printed matter as well is limited on the basis that it does not provide, for example, the price of the software goods and services. While Mr Wilcox confirms that the printed matter was "created in autumn 2017", he does not confirm if it was distributed continuously throughout all 3 relevant periods. Therefore, this evidence is extremely limited.

39. While the contract exhibited in **exhibit A-IW-2** does indeed provide some explanation as to what DL's ENTR goods and services are, the contract without any

supporting evidence showing how RLH Limited used the software goods and services makes it redundant. The contract simply confirms that DL had one licensee potentially using its goods and services during only one of the relevant periods, but I do not know the extent to which they were being used. I have also not been provided with any sales figures generated from the use of these goods and services by RLH Limited. I therefore find that, again, this evidence is extremely limited.

40. I also bear in mind that in regard to the non-use defence, Mr Wilcox does not provide any further explanation or supporting evidence to show how the pandemic affected his business, or how long it was affected for. I therefore find that DL has not provided enough evidence or clarity as to how the pandemic genuinely prevented DL from producing its goods and services and using its mark.

41. Where proof of use is required, typically parties would be expected to provide evidence of turnover figures (and a breakdown of them via the types of goods and services provided) and invoices showing the sale of particular goods or services to customers geographically spread across the UK. I would also expect to see marketing figures and multiple examples of advertising in the UK. Apart from the one example of potential advertising via the 2017 printed matter exhibited in **A-IW-1**, I have not been provided with any of this evidence.

42. The above is all plainly information which should have been available and relatively easy to provide. However, it is not necessarily fatal to the assertion of genuine use that there is no such evidence, if other material filed by DL 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.

43. Moreover, when a party has to establish use of multiple goods and services, like DL, I would expect a significant amount of evidence to be filed showing use of all the terms contained in classes 16, 25, 36, 37, 38, 42 and 45. At the end of Mr Wilcox's statement, he claims that for all the reasons set out in his statement, DL has "made genuine use of the ENTR mark in the UK during the relevant periods for at least technical manuals and instructional and teaching materials, software related goods and services, and legal services, namely software licensing and research and reports

related thereto". Firstly, I note that these goods and services would only be contained in classes 16, 42 and 45. Secondly, I find that there is no evidence of technical manuals and instructional and teaching materials before me. If the evidence in **exhibit A-IW-1** is in fact a technical manual, it was not described as such by Mr Wilcox. While **exhibits A-IW-1** and **A-IW-2** make reference to ENTR software, again, I have no supporting evidence in the form of turnover or invoices in regard to these goods. While the contract in **exhibit A-IW-2** shows that DL licenced its goods to one company in 2017, this would not be enough on its own to show use as I have no evidence of how RLH Limited actually used the software. Lastly, DL has provided no evidence to show that they have provided legal services to third parties during the three relevant periods.

44. Therefore, taking the evidence as a whole into account, I consider that the evidence fails to show real commercial exploitation of the ENTR mark to create or maintain a share of the UK market for any of DL's registered goods and services within the three relevant periods. I also find that without anything sufficiently solid before me, I am not willing to accept the COVID-19 pandemic and its effects on DL is a proper reason for non-use in the present case, and this argument is, consequently, dismissed. The revocation is therefore successful in its entirety.

45. For the sake of completeness, as highlighted in paragraph 12 above, while DL's counterstatement may have defended all of its goods and services as per question 7, only classes 16, 42 and 45 were listed within question 8. As noted above, at the end of Mr Wilcox's statement, I find that again it only appeared to defended use for its class 16, 42 and 45 goods and services. I therefore find that DL did not adequately defend its registration for classes 25, 36, 37 and 38.

CONCLUSION

The Revocation

46. The application for revocation on the grounds of non-use therefore succeeds under sections 46(1)(a) and 46(1)(b). DL's UK00003234942 registration will be revoked in respect of all goods and services for which it is registered. The effective date (and earliest date) of revocation is **26 August 2022**.

The Opposition

47. The priority date of AS' IR is 27 March 2024. This date is 579 days after the date from which DL's UK00003234942 registration is revoked. Therefore, DL's mark cannot be relied upon as it no longer exists on the register from 26 August 2022.

48. DL no longer has an earlier mark to rely upon in the section 5(1) and 5(2)(a) proceedings, and as such, these grounds of opposition fall away.

49. However, as noted above, DL also relies upon section 5(4)(a), and its unregistered right (that being the **ENTR** sign), to oppose AS' IR. On this basis, I must consider the section 5(4)(a) claim.

DL's opposition under Section 5(4)(a)

50. Section 5(4)(a) of the Act states as follows:

“5(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection (4A) is met,

aa)...

b) ...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark”.

51. Subsection (4A) of section 5 of the Act states:

“(4A) The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of

application for registration of the trade mark or date of the priority claimed for that application.”

52. I can deal with this ground relatively swiftly.

53. The section 5(4)(a) ground requires the opponent to have filed evidence to establish that it had a goodwill in its **ENTR** sign at the relevant date, that being 27 March 2024. The evidence filed in regard to this claim is the same evidence filed in defence of the revocation action, summarised at paragraphs 25 to 31 above. Based on this limited evidence, DL failed to establish use of its earlier registered mark.

54. I bear in mind that the law of passing off does not protect a goodwill of trivial extent.⁴ In *Smart Planet Technologies, Inc. v Rajinda Sharma* (BL O/304/20), Mr Thomas Mitcheson QC, as the Appointed Person, reviewed the following authorities about the establishment of goodwill for the purposes of passing-off: *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2015] UKSC 31, paragraph 52, *Reckitt & Colman Product v Borden* [1990] RPC 341, HL and *Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd* [1980] R.P.C. 31. After reviewing these authorities Mr Mitcheson concluded that:

“... a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon.”

55. Goodwill arises as a result of trading activities, and whilst Mr Wilcox states that DL is a “multi-million-pound turnover business”, I have not been provided with any evidence to support this.

56. DL has not provided any turnover figures made from the sale of its goods and services up until the relevant date. I also bear in mind that under section 5(4)(a), DL is relying on a range of different goods and services, and I have not been provided

⁴ *Hart v Relentless Records* [2002] EWHC 1984 (Ch)

with any breakdown in terms of the turnover made from its software, data, technical instruction materials, and services related thereto. There is no invoice evidence to show that it made sales geographically spread across the UK. There are also significant deficiencies with DL's exhibited evidence, as summarised in paragraphs 36 to 43 above.

57. Therefore, taking all of the above into account and considering the position as at the relevant date, I find that DL's evidence falls short of proving the existence of any protectable level of goodwill in their business. The section 5(4)(a) claim therefore fails at the first hurdle.

58. The opposition based upon section 5(4)(a) of the Act is dismissed.

CONCLUSION

AS' revocation

59. As noted in paragraph 46 above, the revocation action was successful and therefore DL's UK00003234942 registration will be revoked in respect of all goods and services for which it is registered, the effective date of revocation being **26 August 2022**.

DL's opposition

60. The opposition action under sections 5(1), 5(2)(a) and 5(4)(a) was unsuccessful, and therefore AS' request for protection of **WO0000001840022** in the UK may be granted.

COSTS

61. AS has been successful in both defending DL's opposition and in its own revocation proceedings against DL's mark, and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the

circumstances, I award AS the sum of **£1,000** as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Preparing the application for revocation and considering the Counterstatement	£250
Considering the Notice of opposition and preparing a counterstatement	£200
Filing written submissions in lieu	£350
Official Fee for the revocation	£200
Total	£1,000

62. I therefore order Digitonic Limited to pay Aker Solutions AS the sum of £1,000. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 14th day of May 2026

L FAYTER
For the Registrar

ANNEX 1

Class 35

Procurement of contracts regarding energy supply produced from offshore power plants, business management and administration services; business advice and advisory services; collection of data, including collection of big data; data entry and data processing; data compilation for others; updating and maintenance of data in computer databases; business project management services for construction, arrangement and design projects related to hydrogen plants and carbon capture plants; business consultancy within low-carbon projects; business management within oil and gas projects; business management of projects within the transmission of electricity; compilation of information in computer databases; business administration and management of projects in energy and renewable energy, namely wind power; consulting and advisory services related to the above services; business advisory services and collection of business information on energy consumption; business advisory services and energy consumption tracking and monitoring services for others; preparation of business and commercial reports and information on environmental, social and business ethics initiatives (esg); administration of environmental, social and business ethics programs (esg); benchmarking (evaluation of business organization practices) in relation to environmental, social and business ethical conditions (esg); business management and administration services in relation to environmental, social and business ethics (esg); procurement of contracts regarding energy supply; purchases and services for others [purchase of goods and services for other businesses]; management of commercial affairs related to the purchase, sale and delivery of energy advisory services and advisory services related to the above services; procurement services in the nature of purchasing power and energy supply and transmission.

Class 37

Construction of power infrastructure; installation, construction, maintenance, assembly, service and repair of power plants on land and at sea; consulting, advisory and information services related to offshore power plant installations; consultancy and information services relating to construction; installation, maintenance and repair of stations and facilities for handling co2, namely power plants with carbon capture,

biopower, gas power on land and at sea; construction and maintenance of carbon capture facilities; installation, construction, maintenance, assembly, service and repair of offshore wind turbines, offshore wind power plants, offshore and onshore transformer stations; maintenance and repair services for machinery used for underwater exploration; installation, maintenance and repair services for pipelines and equipment used in the energy production industry; consulting and advisory services related to the above services.

Class 40

Generation of power; production of energy at power plants; production of electrical power from renewable sources; production of H₂, blue hydrogen, green hydrogen, biofuel, synthetic fuel, sustainable aviation fuel, green steel; treatment of materials from emissions; consulting and advisory services related to the above services; consulting and advisory services related to the treatment and handling of Co₂; production of energy; offshore wind power generation; offshore wind power generation for others; electricity production from offshore wind farms; power, electricity and power generation; gas production; processing of hydrocarbons; treatment of industrial waste to sequester carbon; generation of electrical power using carbon sequestration; industrial waste treatment for carbon capture and storage; treatment of dry gas and natural gas condensate; gasification of organic materials.

Class 42

Engineering design services, namely concept and feasibility studies and preparation of basis for design, front end engineering design (feed), full engineering services; construction project management services in the field of power and energy supply and transmission; consultancy within engineering; off-site construction project management; project management (design); engineering services, design, feasibility and concept studies in power and energy supply and transmission; scientific services and engineering services, namely consultancy services with respect to the design, implementation and installation of and aquaculture irrigation systems; scientific services and engineering services for carrying out underwater operations; design and development of software used in power and energy supply; design and development of software used within the offshore industry; design and development of software used in renewable energy production; design and development of software used in

power generation and transmission; consultancy related to technological services within power and energy supply and transmission; scientific and technological services and research including carbon capture and storage; information and advice related to research in carbon capture and storage and related technologies; design services for power plants and production facilities; consultancy services related to technical and scientific analysis of ammonia, sustainable aviation fuel and biofuel; industrial analysis and research within renewable energy sources; design and development of machinery and machine tools in the energy industry; consultancy related to technical and scientific analysis of offshore wind turbines and offshore wind power projects; technical advice related to wind turbines and product development of power plants and transformer stations; technical planning and consultancy within offshore wind turbines and wind power projects that carry out such projects; industrial analysis and research services; advisory services related to the use of energy; research and development within methanol, energy and renewable energy sources; provision of technical advice in relation to the production of methanol; advisory and consulting services related to energy efficiency; scientific and industrial research; development and implementation of industrial processes intended to reduce the levels of carbon dioxide in the atmosphere; technical advice related to renewable energy; design and development of underwater equipment, namely underwater structures and other underwater equipment related to the development and production of underwater equipment; carry out technical project studies; engineering services; design and development and updating and maintenance of computer programs; consulting and advisory services related to the generation and processing of Co₂; consultancy, consultancy services, scientific and technological services and research and design relating thereto and information services relating to all the above services; consultant, advisory and information services related to offshore wind turbine installations; consulting, advisory and information services related to aquaculture; scientific and technological services and related research and design within the energy and power industry; consulting and advisory services related to the above services; development of environmentally friendly forms of energy and power management systems.

Class 45

Legal due diligence services.

ANNEX 2

Class 35

Business advice and advisory services; collection of data, including collection of big data; data entry and data processing; data compilation for others; updating and maintenance of data in computer databases; business management of projects within the transmission of electricity; compilation of information in computer databases.

Class 42

Design and development of software used in power and energy supply; design and development of software used within the offshore industry; design and development of software used in renewable energy production; design and development of software used in power generation and transmission; design and development and updating and maintenance of computer programs.

Class 45

Legal due diligence services.

ANNEX 3

Class 16

Paper; cardboard; goods made from paper and cardboard namely, stickers, labels, brochures, flyers, journals; printed matter; photographs; stationery; books; notes, diagrams, plans, drawings and pamphlets; printed manuals; printed technical manuals, technical bulletins and technical advisories; document files and printed forms; manuscript books; pocket memorandum books; activity books; ledger books; log books; guide books; note books; writing or drawing books; instructional and teaching materials; instructional and teaching materials (other than apparatus; parts and fittings for all the aforesaid goods.

Class 25

Clothing; footwear; headgear; parts and fittings for all the aforesaid goods.

Class 36

Credit and debit card validation services; financial services; financial services provided via the Internet; issuing of tokens of value in relation to bonus and loyalty schemes; provision of financial information; including such services provided online from a computer network and/or via a computer database or the Internet and/or extranets.

Class 37

Maintenance of data processors, recorders, transmitters, processors, controllers, managers and analysers, and products related thereto; Installation of wireless telecommunications for the purposes of relaying data; Maintenance and repair of hardware for data processing apparatus; Maintenance of data processing terminals; Re-calibration of data processing apparatus; provision of consultancy, information and advisory services relating to the aforesaid, including such services provided online from a computer network and/or via a computer database or the Internet and/or extranets.

Class 38

Short message services; multimedia messaging ; communications by means of mobile phones; communications by mobile phones; communications services by mobile

phone; television broadcasting services for mobile phones; telecommunications by computer terminals, via telematics, satellites, radios, telegraphs, telephones; telecommunications consultancy services relating to the telecommunication data (including the telecommunication of recorded, transmitted, processed, controlled, managed and/or analysed data related thereto); telecommunications information relating to the transmission of telecommunication data (including the recorded, transmitted, processed, controlled, managed and/or analysed data); news agency services for the telecommunication of data information; news agency services, namely the telecommunication of information for data providers or consumers by telephone, computer, facsimile, emails, courier or via computer networks and global communication networks; electronic information services relating to the telecommunication of data (including the telecommunication of recorded, transmitted, processed, controlled, managed and/or analysed data); information, advisory and consultancy services relating to all the foregoing; telecommunications services; chat room services; portal services; e-mail services; providing user access to the internet; transmission of interactive entertainment software; providing user access to computer programmes in data networks; arranging and leasing access time to computer databases; electrical data transmission over a global remote data processing network, including the internet; transmission of data through the use of electronic image processing by telephone link; transmission of information and data via wireless or cable networks; wireless communication services; wireless communications services; wireless digital messaging services; wireless electronic transmission of images; wireless electronic transmission of informations; wireless electronic transmission of data; wireless electronic transmission of voice signals; wireless transfer of data via the internet; wireless transfer of data via digital mobile telephony; wireless transfer of data via wireless application protocols.

Class 42

SaaS; PaaS; aPaaS; IaaS; MLaaS; Creating and maintaining websites for mobile phones; software development, programming and implementation; Hosting services and software as a service and rental of software; Design and development of computer hardware and software; Design of computer machine and computer software for commercial analysis and reporting; Design services relating to computer hardware and to computer programmes; Software engineering; Software design; Software

installation; Software creation; Software authoring; Software research; Software design for others; Programming of educational software; Computer software programming services; Image processing software design; Design of virtual reality software; Writing and updating computer software; Custom design of software packages; Development of virtual reality software; Design of computer game software; Development of computer software application solutions; Development of software for digital signal processing; Development of software for audio and video operators; Design of software for multimedia data storing and recalling; Advisory services relating to computer software used for graphics; Design of computer programs and software relating to aircraft; Services for the design of electronic data processing software; Development of software solutions for internet providers and internet users; Advisory services relating to man-machine interfaces for computer software; Development and creation of computer programmes for data processing; Analytical services relating to computer programmes; Leasing of computer software for reading a data stream; Providing temporary use of non-downloadable computer software for tracking freight over computer networks, intranets and the internet; Design and development of wireless data transmission apparatus, instruments and equipment; Design and development of wireless data transmission apparatus; Compilation of data-processing programs; Computer programming for data processing; Computer programming for data processing and communication systems; Creation of computer programmes for data processing; Design and development of systems for data input, output, processing, display and storage; Design and development of data processing systems; Design services for data processing systems; Design services relating to data processing test tools; Design services relating to data processing tools; Designing of data processing programmes; Designing of data processing systems; Development and creation of computer programmes for data processing; Development of data processing programs by order of third parties; Development of programmes for data processing; Development of systems for the processing of data; Engineering consultancy relating to data-processing; Engineering services relating to data processing; Engineering services relating to data processing technology; Engineering services relating to automatic data processing; Evaluation of performance of data-processing against bench-mark references; Hiring out data processing equipment; Installation and actualisation of programs for data processing; Leasing of data processing systems; Preparation of computer programs for data processing;

Preparation of data processing programmes; Programming of data processing equipment; Programming of data processing programs; Rental of computer software, data processing equipment and computer peripheral devices; Rental of computers for data processing; Rental of data processing equipment; Rental of data processing equipment and computers; Rental of data processing programs; Rental of data processing apparatus and computers; Rental of data processing apparatus; Rental of software for data processing; Rental services relating to data processing equipment and computers; Research in the field of data processing technology; Research relating to data processing; Services for the design of electronic data processing software; Software engineering services for data processing programs; Technical advisory services relating to data processing; Testing of electronic data processing systems; Time sharing services for data processing apparatus; Updating of software for data processing; Writing of data processing programs; Writing of programs for data processing; Analytic laboratory services; Analytic services relating to computers; Analytical and testing services for autonomous vehicles; Analytical laboratory services; Analytical services relating to computers; Analytical services relating to the determination of events; Analytical services relating to autonomous driving of vehicles; Analytical services relating to computer programmes; Analytical services utilizing radar; Calibration services relating to analytical apparatus; Autonomous driving analytical examinations; Laboratory services for analytical testing; provision of consultancy, information and advisory services relating to the aforesaid, including such services provided online from a computer network and/or via a computer database or the Internet and/or extranets.

Class 45

Data validation; monitoring and inspection services in relation to mobile phones; identity validation services; establishment, maintenance and management of domain name registrations/protection; preparation of reports; consultancy services relating to the recording, transmission, processing, controlling, management or analysis of data; professional legal research in relation to the recording, transmission, processing, controlling, management or analysis of data, and products and services related thereto; preparation of legal reports in relation to the recording, transmission, processing, controlling, management or analysis of data, and products and services related thereto; computer software licensing; Licensing of software; Licensing of

computer software; Licensing of computer software [legal services]; Computer software (Licensing of -) [legal services]; Licensing of wireless communication system; provision of consultancy, information and advisory services relating to the aforesaid, including such services provided online from a computer network and/or via a computer database or the Internet and/or extranets.