BL O/0527/26

IN THE MATTER OF THE TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF REGISTRATION NO. UK00004019297 IN THE NAME OF FATE DATING APP LTD FOR THE TRADE MARK

Fate

AND AN APPLICATION FOR A DECLARATION OF INVALIDITY THERETO UNDER NO. 507413 BY FATEDATE LIMITED

AND

IN THE MATTER OF REGISTRATION NO. UK00003392099 IN THE NAME OF FATEDATE LIMITED FOR THE TRADE MARKS

FATEDATE

AND

Fatedate

(AS A SERIES OF TWO)

AND AN APPLICATION FOR REVOCATION THERETO UNDER NO. 507630 BY RAKESH NAIDU

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF E. FISHER (O/0108/26) DATED 11 FEBRUARY 2026.

DECISION

Introduction

1. This is an appeal by Fatedate Limited ("**Appellant**") from decision O/0108/26 of Mrs E. Fisher ("**Decision**") concerning the application by Rakesh Naidu ("**Respondent**") for revocation for non-use of the Appellant's registered Trade Mark No. UK00003392099 ("**Registration**").

2. The Registration is for the words **FATEDATE**/**Fatedate** and was filed on 15 April 2019 and published on 26 July 2019. The specification is *Internet based dating, matchmaking and personal introduction services* in class 45.

3. On 2 August 2024, the Respondent sought revocation of the Registration, in its entirety, for non-use under section 46(1)(a) of the Trade Marks Act 1994 ("**the Act**"). The period in respect of which non-use was claimed is 27 July 2019 to 26 July 2024, with an effective date of revocation of 27 July 2024.

4. The revocation action was consolidated with an application by the Appellant for a declaration of invalidity of registered Trade Mark No. UK00004019297 in the name of Fate Dating App Ltd (a company of which the Respondent is a director). There is no appeal against the Hearing Officer's decision in relation to that application for a declaration of invalidity, and I therefore need say no more about it.

5. The Appellant filed a defence and counterstatement denying the claim made. The Appellant filed evidence in the form of four witness statements from its founder, Liam Gibson. At the hearing in the Registry, the Respondent was represented by Aaron Wood, who filed a skeleton argument prior to the hearing. The Appellant chose not to attend the hearing but filed written submissions in lieu.

6. Mrs E. Fisher for the Registrar revoked the Registration in full for non-use as of 27 July 2024. On 12 February 2026 the Appellant filed a Notice to Appeal to the Appointed Person against the Decision under Section 76 of the Trade Marks Act 1994.

The Hearing Officer's decision

7. The Hearing Officer held as follows (in summary, and insofar as is relevant to this appeal):

   a. The majority of the Appellant's evidence was not useful for demonstrating proof of use of the Registration. There were multiple issues with the evidence, which she set out under separate headings. There were only eight pieces of evidence that were not either undated or unrelated to the Registration, or did not comprise internal documents;

   b. Whereas that evidence showed that a business and a related app existed, it was insufficient to allow the Hearing Officer to determine the scale, frequency or territorial extent of the use of the Registration. Nor was the Hearing Officer satisfied that the minimal evidence of use provided was justified in the context of internet dating services;

   c. The material provided was wholly inconclusive and the Hearing Officer could not make a determination that there had been genuine use of the Registration during the relevant period. Accordingly, the Registration was revoked in full from 27 July 2024.

Grounds of Appeal

8. The Appellant's Grounds of Appeal state as follows:

> "The Hearing Officer erred in concluding that the evidence filed did not demonstrate genuine use of the FATEDATE mark in the United Kingdom during the relevant period.
>
> The evidence already submitted demonstrated use directed at UK consumers, including:
>
> - operation of a .co.uk website;
> - a live iOS application available to UK users; and
> - ongoing promotional and marketing activity visible to UK consumers.
>
> The decision appears to have placed significant weight on the presentation of certain analytic as aggregated or global data, whereas the underlying material already included UK-specific activity when considered alongside the evidence as a whole.
>
> The accompanying witness statement and exhibits (LG33-LG36) clarify and confirm the UK-specific nature of evidence that already existed prior to the hearing.

These materials are provided to clarify existing evidence rather than to introduce new factual matter".

9. The Respondent, in its helpful Respondent's Notice, suggested that there appeared to be three ways of understanding the appeal:

    a. That the Hearing Officer made an error of law in concluding that the evidence had to go somewhat beyond merely showing that the mark was "in use";

    b. That the Hearing Officer made an error of principle in considering the various types of evidence individually rather than taking the overall picture; or

    c. That the Hearing Officer's final judgment on whether there was genuine use was "clearly wrong".

10. The Respondent invited the Appellant to clarify which of the above represents its position in this appeal. The Appellant, in its written submission in lieu of a hearing, contended that:

    a. The Hearing officer failed properly to assess the totality of the evidence; and

    b. The conclusion that there was no genuine use was wrong on the evidence as a whole.

11. It conceded that there is no contention that the wrong legal test was applied. It seems to me that (a) and (b) in the paragraph above correspond to (b) and (c) in paragraph 9 above, and that is the basis on which I shall approach this appeal.

12. Neither side requested a hearing, and accordingly I have conducted this appeal on the basis of the Decision, the evidence and submissions before the Hearing Officer, the Grounds of Appeal, the Respondent's Notice and the Appellant's submissions in lieu.

Standard of review

13. The approach to be adopted in an appeal hearing has been laid down a number of times in case law, most recently in *Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc* [2025] UKSC 25 at §§94-95:

> "94. It is perhaps obvious, and certainly an inevitable conclusion drawn from experience, that reasonable minds, and in particular reasonable judicially trained minds, each faithfully applying the relevant law and principles, will come to different conclusions about the answer to these multifactorial questions. While of course the decision of an appellate court trumps that of the court below, the law has imposed structured constraints designed to prevent a free for all in a higher court whenever a party (with the necessary resources) wishes to challenge the first instance decision of the trial judge. The reasons for these constraints are set out in a string of well-known authorities including, in the intellectual property context, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] FSR 29, per Lewison LJ at para 114. The reasons there set out relevantly include the following:
>
> > (i) The trial is not a dress rehearsal. It is the first and last night of the show.
> >
> > (ii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court.

(iii) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.

95. In *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8; [2024] Bus LR 532 this court reviewed those constraints in a trade mark context. After citing from the *Fage* case this court in a joint judgment said, at paras 49- 50:

"49. That does not, however, mean the appeal court is powerless to intervene where the judge has fallen into error in arriving at an evaluative decision such as whether an activity was or was not targeted at a particular territory. It may be possible to establish that the judge was plainly wrong or that there has been a significant error of principle; but the circumstances in which an effective challenge may be mounted to an evaluative decision are not limited to such cases. Many of the important authorities in this area were reviewed by the Court of Appeal in *In re Sprintroom Ltd* [2019] 2 BCLC 617, paras 72–76. There, in a judgment to which all members of the court (McCombe, Leggatt and Rose LJJ) contributed, the court concluded, at para 76, in terms with which we agree, that on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.

50. On the other hand, it is equally clear that, for the decision to be 'wrong' under CPR r 52.21(3), it is not enough to show, without more, that the appellate court might have arrived at a different evaluation.""

14. Further guidance was provided in *Axogen v Aviv* [2022] EWHC 95 (Ch) at §24-25:

“24. Although I was referred to numerous cases on the subject (including *English v Emery Demibold & Struck Ltd* [2002] 1 WLR 2409, *REEF Trade Mark* [2003] RPC 5, *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, *Shanks v Unilever Plc* [2014] RPC 29, *TT Education Ltd v Pie Corbett Consultancy* [2017] RPC 17, *Apple Inc v Arcadia Trading Limited* [2017] EWHC 440 (Ch), *Actavis Group PTC v ICOS Corporation* [2019] UKSC 1671 and *NINEPLUS* O/039/21), the approach of the appeal court to a statutory appeal under section 76(1) of the TMA is uncontroversial. I bear the following principles, relevant to the issues before me, firmly in mind:

i) The appeal is by way of a review, not a rehearing (see *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17) at [52(i)]);

ii) The appeal court will allow an appeal where the decision of the lower court was "wrong" (see CPR 52.11). Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference (*NINEPLUS* O/039/21 at [14]);

iii) The decision of the lower court will be "wrong" if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant matters or taking into account irrelevant matters. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible" (*Actavis Group* at [81]);

iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question (*REEF Trade Mark* [2003] RPC per at [26]). There is a "spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision" (*TT Education* at [52(ii)]), with decisions of primary fact at one end of the spectrum and multi-factorial decisions (of the type which the parties agree were made in this case by the Hearing Officer) being further along the spectrum.

v) In the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education* at [52(iv)], *REEF* at [28] and *Fine & Country* at [50]-[51]).

vi) An error of principle is not confined to an error as to the law but extends to certain types of error in the application of a legal standard to the facts in an evaluation of those facts. The evaluative process is often a matter of degree upon which different judges can legitimately differ and an appellate court ought not to interfere unless it is satisfied that the judge's conclusion is outside the bounds within which reasonable disagreement is possible (*Actavis Group* at [80]).

vii) Another variable to be taken into account will be "the standing and experience of the fact-finding judge or tribunal" (*REEF* at [26], *Actavis Group* at [78]). Expert tribunals are charged with applying the law in the specialised fields and their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts (*Shanks* at [28] citing the warning given by Baroness Hale in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49).

viii) The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed; "The duty to give reasons must not be turned into an intolerable burden" (see *REEF* at [29]). The reasons need not be elaborate. There is no duty on a judge, in giving her reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what she says shows the basis on which she has acted (*English* at [17], *Fage* at [115]). The issues the resolution of which were vital to the judge's conclusions should be identified and the manner in which she resolved them explained (*English* at [19]).

ix) In evaluating the evidence, the appellate court is entitled to assume, absent good reason to the contrary, that the first instance judge has taken all of the evidence into account (*TT Education* at [52(vi)])."

15. To the above should be added the judgment of the Court of Appeal in *Lidl Great Britain Ltd v. Tesco Stores Ltd* [2024] EWCA Civ 262, where Arnold LJ said at §110 "It is common ground that,

in so far as the appeals challenge findings of fact made by the judge, this Court is only entitled to intervene if those findings are rationally insupportable".

16. I shall bear all the above in mind when reviewing the Decision.

Discussion

Preliminary issue – the Appellant's witness statement

17. The Grounds of Appeal are accompanied by a further witness statement of the Appellant's founder, Liam Gibson. The purpose of this statement is said to be to "provide clarification of evidence demonstrating genuine use of the FATEDATE trade mark in the United Kingdom during the relevant period".

18. I therefore first need to address the admissibility of that further witness statement. If it simply addresses the Hearing Officer's treatment of the evidence before her, I should treat it as submissions in this appeal. If, though, it introduces new evidence, it needs to comply with the strict requirements for admissibility of new evidence laid down in *Ladd v Marshall* [1954] EWCA Civ 1.

19. The statement introduces and describes four new exhibits, LG33-36. These are as follows:

- LG33 – this is described as a screenshot of "App Store Connect analytics indicating approximately 700 downloads in the United Kingdom between 1 October 2020 and 6 January 2024". It appears to relate to same app store as discussed by the Hearing Officer at §31(viii) of the Decision. She described it as showing that the app "received 69.9k impressions between 18 March 2021 and 9 February 2025". She rejected the evidence on the grounds that it does not state the number of downloads or users of the app, nor is it clear whether the impressions relate only to the UK. LG33 is therefore new evidence.
- LG34 – this is described as "website statistics for the period 2021-2024, including visits from users located in Great Britain in each year". It appears to relate to the website analytics discussed by the Hearing Officer at §31(v) of the Decision. She rejected that evidence on the basis that it did not show the number of visitors from UK, as opposed from elsewhere. LG34 is accordingly new evidence.
- LG35 – this comprises receipts confirming payment of the UK Information Commissioner's data protection fee in multiple years. It purports to "demonstrate that Fatedate Ltd was operating in the United Kingdom, handing user date, and running the service as a live business during the relevant period". It does not appear to relate to any evidence put before the Hearing Officer. It is therefore new evidence.
- LG36 – this is described as "a dated social media post from 29 July 2022 promoting a partnership and giveaway campaign". It does not appear to relate to any evidence put before the Hearing Officer, and is again new evidence

20. The test for admissibility of new evidence in an appeal, as laid down in *Ladd v Marshall*, is as follows:

    1. The evidence could not have been obtained with reasonable diligence for use at trial;

2. The evidence must be such, if given, it would probably have an important influence on the result of the case, though it need not be decisive; and

3. The evidence must be such as is presumably to be believed, it must be apparently credible, though it need not be incontrovertible.

21. Whereas I believe it is likely that requirements 2 and 3 would be satisfied by each of the new pieces of evidence, all four items of new evidence are of a type that would have been readily available to the Appellant prior to the hearing, being analytics or internal records. The first limb of *Ladd v Marshall* is therefore not satisfied.

22. With particular regard to the comment of Lewison LJ in *Fage*, cited at §13 above, that "the trial is not a dress rehearsal. It is the first and last night of the show", I can see no good reason to allow this new evidence to be admitted into this appeal, and shall therefore confine myself to reviewing the evidence which was before the Hearing Officer.

(1) The Hearing Officer failed properly to assess the totality of the evidence

23. The Hearing Officer considered and rejected, at §30, much of the Appellant's evidence on the grounds that it did not feature the Registration, was undated, or comprised internal documents. It is clear from the Grounds of Appeal and accompanying witness statement that the Appellant does not seek to challenge that aspect of the Decision. I therefore only need to consider the 8 pieces of evidence considered by the Hearing Officer at §31.

24. Although the Appellant does not contend that the Hearing Officer's analysis of any individual piece of evidence is flawed, I have reviewed the evidence for myself. The Hearing Officer's analysis of the evidence, and particularly her identification of its shortcomings, cannot be faulted. She reached conclusions on each piece of evidence that she was entitled to reach.

25. In relation to totality, the Hearing Officer said at §§32-33:

> "32. Having set out the evidence and discussed the various issues thereof, the majority of the evidence does not show use by way of real commercial exploitation of the mark on the market for the relevant services. I say this because most of the evidence is either undated, unrelated to the Fatedate word mark, or comprises internal documents. What remains is eight pieces of evidence which, albeit indicate that a business exists, are not sufficiently solid to build a clear picture of the extent of the use of the Fatedate mark during the relevant period. There are no download figures or user figures for the app, no details of the amount spent on marketing (save for approximately £50 on unknown ads) and no turnover figures. Whilst Mr Gibson has referred to partnerships with third parties, there are no details identifying any of the partners and no evidence of press coverage or press releases discussing such partnerships.
>
> 33. Whilst minimal use of a trade mark may qualify as genuine use, I must be satisfied that such use is justified in the sector concerned, whilst forming a view as to what the evidence shows and what it does not show. All the evidence tells me is that a business (and a related app) exists. I cannot determine the scale, frequency or territorial extent of the use and I am not satisfied that the minimal evidence of use provided is justified in the context of internet dating services. Whilst it is not strictly necessary to file any particular kind of documentation, it is for the owner of the mark at issue to file its best evidence up front and to provide sufficiently solid evidence which, in this case, has not been done.

The material provided is wholly inconclusive and I cannot make a determination that there has been genuine use of the Fatedate word mark during the relevant period."

26. The contention that the Hearing Officer failed to consider the evidence as a whole is inconsistent with the express reasoning at §§30–33, where she reviewed categories of evidence, looked at pieces of evidence individually, and then stood back to assess their cumulative effect, taking a global view as to whether the evidence as a whole established genuine use. In doing so, she made no error of principle.

27. I dismiss this first ground of appeal.

(2) The conclusion that there was no genuine use was wrong on the evidence as a whole

28. The Appellant contends that the Hearing Officer's conclusion was simply wrong. As is clear from the case law I cite at §§13-14 above, this is a high hurdle for the Appellant to overcome. It is not enough, without more, that the Appellant might establish that a different hearing officer, or indeed the appellate tribunal, might have arrived at a different evaluation. Rather, the Appellant must show that the Hearing Officer's decision was "outside the bounds within which reasonable disagreement is possible". Or, put another way, that no reasonable hearing officer could have reached the decision actually reached by the Hearing Officer.

29. The Hearing Officer cited at §26 the familiar observation of Mr Daniel Alexander KC, sitting as the Appointed Person in *Awareness Limited v Plymouth City Council*, Case BL O/236/13:

> "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."

30. It is clear from the Hearing Officer's analysis at §§32-33, quoted above, that although she accepted that the Appellant had operated a business during the relevant period, the evidence of use of the Registration was simply insufficiently solid to form a conclusion of genuine use. I do not accept the Appellant's characterisation (in its written submissions) of the issue as one of "presentation rather than substance". The difficulty identified by the Hearing Officer was not merely presentational. It was that the evidence failed to establish key indicia of genuine use - particularly scale and territorial extent. That is an evidential deficiency going to substance, not form.

31. In a digital, app-based market such as online dating, evidence of user numbers, downloads, or engagement metrics would ordinarily be readily available. The absence of such evidence was therefore a legitimate basis for the Hearing Officer's scepticism. It would be reasonable to expect a person claiming to have used a mark in the UK in relation to internet dating services, to provide some or all of the following evidence:

- Number of UK-based visitors to the website;
- Number of UK-based subscribers;
- Number of UK-based users of the App;
- The Appellant's revenues;
- The Appellant's marketing and advertising efforts.

32. The fact that none of this was provided, when it would have been very straightforward for the Appellant to provide it, together with the sparse nature of the evidence actually provided, entitled the Hearing Officer to conclude that the Appellant had not proven genuine use. It cannot therefore be said that she reached a conclusion "outside the bounds within which reasonable disagreement is possible".

33. I dismiss this second ground of appeal.

Conclusion

34. Given that the appeal has failed, Trade Mark No. UK00003392099, in the name of Fatedate Limited, is revoked in full for non-use as of 27 July 2024.

Costs

35. Clearly, the Respondent has been the successful party in this appeal. Although it did not attend the hearing, it did file a Respondent's Notice, and in accordance with the scale costs in TPN 1/2023, I order that the Appellant should pay the Respondent the sum of £500 reflecting the preparation of the Respondent's Notice only.

36. The Hearing Officer ordered that each party should pay its own costs of the proceedings below. which I do not disturb. Accordingly, the Appellant must pay the Respondent the sum of £500 within 21 days of this decision.

Dr. Brian Whitehead

24 June 2026

Representation

Mr Liam Gibson, director, for the Appellant

Dynham Limited for the Respondent