BL O/0695/26

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NUMBERS UK00801313639, UK00801313051 AND UK00801312137

IN THE NAME OF REDSPHER IN RESPECT OF THE FOLLOWING TRADE MARKS

IN CLASSES 9, 35, 38, 39 AND 42

IN CLASSES 9, 38, 39 AND 42

IN CLASSES 9, 39 AND 42

AND APPLICATIONS FOR REVOCATION THEREOF UNDER NUMBERS CA000507672, CA000508098 AND CA000508099 RESPECTIVELY BY KILBURN & STRODE LLP

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF O. ROSE'MEYER (O/0263/26) DATED 26 MARCH 2026.

DECISION

Introduction

1. This is an appeal by Redspher ("**Appellant**") from decision O/0263/26 of Mr Oliver Rose'Meyer ("**Decision**") concerning the applications by Kilburn & Strode LLP ("**Respondent**") for revocation for non-use of three of the Appellant's registered trade marks.

2. The registrations are as follows:

UK Registration no. UK00801313639 ("**the Easy mark**")

Filing date: 14 June 2016

Registration date: 03 December 2018

Registered for the goods and services set out in Annex 1 of the Decision.

<u>UK Registration no. UK00801313051 (“**the Easy2Trace mark**”)</u>

Easy2Trace

Filing date: 09 June 2016

Registration date: 03 December 2018

Registered for the goods and services set out in Annex 2 of the Decision.

<u>UK Registration no. UK00801312137 (“**the Easy4Pro mark**”)</u>

Easy4Pro

Filing date: 09 June 2016

Registration date: 03 December 2018

Registered for the goods and services set out in Annex 3 of the Decision.

3. On 15 August 2024, the Respondent sought revocation of the Easy mark, in its entirety, for non-use under section 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 (“**the Act**”). On 22 November 2024, the Respondent also sought revocation of the Easy2Trace and Easy4Pro marks on the same grounds.

4. The period in respect of which non-use was claimed under the section 46(1)(a) ground for all revocations was 04 December 2018 – 03 December 2023, with an effective revocation date of 04 December 2023. Under the section 46(1)(b) ground, the relevant period in respect of the Easy mark was 15 August 2019 – 14 August 2024, with an effective revocation date of 15 August 2024. As for the Easy2Trace and Easy4Pro marks, the relevant period under section 46(1)(b) was 22 November 2019 – 21 November 2024 with an effective revocation date of 22 November 2024.

5. The Appellant filed a counterstatement denying the claims made in respect of certain of the goods and services (those which were not struck through in the Annexes to the Decision). The Appellant filed evidence. Neither party requested a hearing in the Registry, and only the Respondent filed submissions in lieu.

6. Mr O. Rose’Meyer for the Registrar upheld the applications for revocation in their entirety. On 21 April 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 Appellant did not provide any evidence of use of the Easy mark in its unaltered form. Rather, it relied upon evidence of use of the two variants shown below. However, the Hearing Officer held that the differences between the Easy mark and the two variants are substantial and change the core distinctive character of the mark. Accordingly, the Appellant had failed to demonstrate genuine use of the Easy mark. This part of the Decision was not challenged on appeal, and I therefore say no more about it;

   b. The Hearing Officer analysed each of the pieces of evidence of use filed by the Appellant in relation to the Easy2Trace and Easy4Pro marks. Although the Hearing Officer concluded that some commercial activity had been conducted in the UK in connection with the Easy2Trace and Easy4Pro marks, he was of the view that the evidence provided was insufficiently solid or specific to meet the requisite standard of proof;

   c. Accordingly, all three marks were revoked for all the goods and services for which they were registered, with an effective revocation date of 4 December 2023.

Grounds of Appeal

8. The Appellant's Grounds of Appeal are as follows (my numbering):

   a. **Errors in the assessment of the Appellant's evidence**: The Hearing Officer's analysis and assessment of each piece of the Appellant's evidence was flawed;

   b. **Incorrect standard of proof**: The Hearing Officer applied an unduly exacting evidential threshold, inconsistent with the settled principles governing genuine use;

   c. **Failure to conduct a global assessment**: The Hearing Officer analysed the Appellant's evidence exhibit by exhibit, and failed thereafter to stand back and consider whether, taking all the evidence together, it presents a coherent and credible picture of genuine commercial use in the UK.

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

Standard of review

10. 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.""

11. 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)])."

12. 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".

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

Discussion

(1) Errors in the assessment of the Appellant's evidence

14. In relation to the Easy2Trace mark the Appellant filed a witness statement with six exhibits. For the Easy4Pro mark, it filed a witness statement with 22 exhibits. The Hearing Officer analysed each exhibit individually at §§30-32 and §§34-36.

15. The Grounds of Appeal address each exhibit in turn, setting out an account of what the Appellant contends each exhibit shows, and what it contends the Hearing Officer ought to have concluded in relation to each. A striking feature of the Grounds of Appeal is that the explanations of the evidence provided were never put before the Hearing Officer. The appeal process is not an opportunity for a proprietor to supplement deficiencies in the way its evidence was originally presented. Whether the Hearing Officer erred must be judged by reference to the material and arguments that were before him at the time he made his decision.

16. In that regard, the Appellant was given the opportunity either to request and attend a hearing, or to file submissions in lieu, but took neither option. It cannot be an error of principle for the Hearing Officer to reach conclusions contrary to those now contended by the Appellant, when no assistance by way of submissions was given to the Hearing Officer by the Appellant.

17. A further difficulty for the Appellant is that a wide degree of discretion is afforded to the Hearing Officer on appeal in relation to his analysis of evidence. As the case law makes clear, it is not enough that a different Hearing Officer might have reached a different conclusion in relation to a piece of evidence. Rather, the appeal tribunal must be satisfied that the Hearing Officer's conclusion was one that no reasonable decision maker could have made.

18. I have looked for myself at the evidence filed below by the Appellant, and considered its submissions in the Grounds of Appeal in relation to each of the exhibits. Whereas I acknowledge that, for at least some of the exhibits, a different Hearing Officer may have reached a different conclusion, the actual conclusion reached by the Hearing Officer was in each case one that was reasonably open to him. I shall not set out an analysis in relation to each of the exhibits, but set out below some observations on three representative examples of them.

19. Exhibit IT4 is an English-language translation of a French-language extract from the Luxembourg Business Register. At §32, the Hearing Officer said:

> "Further, the reliance of the Proprietor on exhibit IT4, being the extract from the Luxembourg business register, is also flawed. Whilst at a high level it describes the types of services and activities the Proprietor provides, there is no additional evidence to support that any of the listed activities or services were actually provided by the Proprietor during the relevant period in the UK".

20. The Appellant contends in the Grounds of Appeal that:

> "… the corporate purpose extract from the Luxembourg Business Register provides contextual evidence of the nature and scope of the Applicant's commercial activities.
>
> In a global assessment, contextual background evidence of this kind, confirming that the Appellant is a commercial entity engaged in precisely the type of activities reflected in the registered specification, contributes to the overall credibility and coherence of the evidence of use. It should not have been disregarded on the basis that it was not independently corroborated by separate transactional evidence.
>
> The Registrar should have inferred from Exhibit IT4 that it demonstrates the Appellant carries out activities aligned with the following goods and services: …"

21. I do not agree. Whereas IT4 may provide some limited evidence of business activities in Luxembourg, it says nothing at all about whether the Appellant conducts business in the UK, let alone whether it does so under the marks. The Hearing Officer was entitled to reach the conclusion he did.

22. Exhibit IT12 consists of screen shots relating to the Appellant's gross revenue for 2019 – Nov 2024. At §37 the Hearing Officer said:

> "Furthermore, although the Proprietor has submitted gross revenue figures for the app which, on their face, appear significant, there is no indication of what proportion of this revenue, which is reported in Euros, derives from UK sales. When these figures are considered alongside the limited, UK-specific invoice evidence, they suggest that UK sales constitute only a minute proportion of the overall revenue. Furthermore, the Proprietor claims that they offer goods and services spanning classes 09, 39, and 42, covering goods ranging from software, to services including transport, storage, packaging, freight brokerage and computer programming. It is not clear from the evidence what of these services, if any, are provided through the proprietor's platform. That being the case, it is difficult to establish from the revenue figures provided, from which goods and services the money has been generated. The Proprietor has made no attempt to demonstrate how the revenue figures can be apportioned to the relevant goods and services. On this point, I remind myself of the comments of Phillip Johnson, sitting as the Appointed Person, in *Eros Bodyglide* (BL O/0984/25) that articulation of revenue is important in establishing genuine use when a party is seeking to prove use across a full range of goods and services".

23. The Appellant contends:

> "The application of *Eros Bodyglide* to the present case is a material error of law. Professor Johnson's reasoning in that decision was directed at a specific and narrow evidential

problem: where a proprietor advances a single global revenue figure covering multiple, distinct goods simultaneously, it is impossible to determine whether any particular good has been sold at all, let alone in sufficient quantity to constitute genuine use for that good. The principle is a response to the impossibility of attributing an undifferentiated global figure across distinct product lines.

The present case does not present that problem. Exhibit IT12 does not show an undifferentiated global revenue figure. It shows revenue broken down by business unit, with Easy4Pro identified as a distinct and separate revenue line. There is accordingly no attribution problem across product lines: all of the E4P revenue relates, by definition, to the Easy4Pro platform operated under the Easy4Pro Trademark".

24. Again, I disagree. Even if it is clear that all the revenues in question relate to the Easy4Pro platform operated under the Easy4Pro mark, no breakdown or other information was provided which would have enabled the Hearing Officer to attribute the revenue across the various goods and services for which the Easy4Pro mark is registered.

25. Furthermore, in relation to geographical breakdown, the Appellant contends:

> "The correct approach to that question was: to note that the UK is identified as a contributing market within the revenue data, to note that the existence of UK revenue is directly corroborated by the invoices in Exhibit IT14, and to treat the absence of a precise UK breakdown as a feature to be weighed, with appropriate caution, as part of the global assessment, not as a reason to disregard the revenue evidence entirely".

26. I do not accept that the Hearing Officer was obliged to analyse the Appellant's deficient evidence in that manner. He was entitled to disregard it on the basis that it would have been straightforward for the Appellant to provide a breakdown by geographical market, and in the absence of such breakdown the Hearing Officer simply had no way of knowing whether the UK revenues constitute a substantial part of the overall revenues.

27. A third example is the Appellant's criticism of the Hearing Officer's treatment of Exhibit IT22, namely a terms and conditions agreement between the Appellant and a UK customer dated 19 November 2020. The Appellant contends that this document constitutes direct evidence of a completed commercial relationship in the UK and that the Hearing Officer failed to give it adequate weight.

28. Although the existence of a contractual agreement with a UK customer undoubtedly provides some support for the proposition that the Appellant carried on a degree of commercial activity in the United Kingdom, I do not agree that the Hearing Officer failed to give it adequate weight. The Hearing Officer expressly accepted that some commercial activity had taken place in the UK in connection with the Easy4Pro mark. The real issue was not whether any commercial activity had occurred, but whether the evidence was sufficiently solid and specific to establish genuine use of the mark for the goods and services relied upon.

29. Viewed in that context, the Hearing Officer was entitled to conclude that Exhibit IT22 added relatively little to the overall evidential picture. The agreement demonstrates the existence of a contractual relationship with a single UK customer, but it does not reveal the scale of use made of the platform, the extent of any resulting commercial activity, the revenue generated from that customer, the duration of the relationship, or the particular goods and services which were actually supplied under the contract. Nor does it address the deficiencies identified

elsewhere in the evidence, including the absence of a meaningful geographical breakdown of revenue, limited invoice evidence, and the lack of objective material showing the scale and extent of UK use.

30. The Appellant's criticism accordingly amounts to no more than a disagreement with the weight which the Hearing Officer attached to the document. The Hearing Officer was not obliged to treat the existence of a single contractual agreement as sufficient to discharge the Appellant's burden under s. 100 of the Act. In circumstances where he had already accepted that some commercial activity had occurred, but nevertheless concluded that the overall evidence remained insufficiently robust and specific, his treatment of Exhibit IT22 was plainly one that was reasonably open to him. I therefore reject this aspect of the Appellant's challenge.

31. In summary, much of the Appellant's argument under this ground rests upon propositions which, it contends, the Hearing Officer ought to have inferred from the evidence. However, the issue on appeal is not whether such inferences were available. It is whether the Hearing Officer was obliged to draw them. In my judgment he was not. In each instance identified in the Grounds of Appeal, the Hearing Officer's refusal to draw the suggested inference fell well within the ambit of conclusions reasonably open to him.

32. I dismiss this first ground of appeal.

(2) Incorrect standard of proof

33. The Appellant states in its Grounds of Appeal:

> “The Appellant draws attention to the nature of the market in which the Easy4Pro platform operates, which the Registrar failed to engage with adequately at any point in his analysis. The Easy4Pro platform is a specialist business-to-business digital marketplace for transport procurement. Its users are professional logistics and transport operators, freight forwarders, carriers, shippers, not members of the general public. The characteristics of the market concerned are a mandatory consideration in the assessment of genuine use. The Registrar's analysis at paragraphs 37-41 of the Decision contains no engagement whatsoever with these market characteristics. Applying the expectations of the Registrar in its decision to a B2B specialist platform is to apply the evidential standards of a mass consumer market to a sector with fundamentally different commercial structures.
>
> The Registrar acknowledged at paragraph 41 that “some commercial activity took place in the UK in connection with the 'Easy4Pro' mark" but failed to factor the specific characteristics of this market into his assessment of whether the level of use demonstrated was consistent with genuine use in that sector. The Appellant respectfully submits that this failure constitutes a material error of approach”.

34. The Grounds of Appeal also contain a similar passage in relation to the Easy2Trace mark.

35. I accept that the nature of a trade mark owner’s market may be a relevant factor in determining genuine use. For example, it may be unrealistic to expect a specialist operating in a niche market to be able to provide evidence of extensive promotional efforts, or of large numbers of customers, whereas a business entity operating in the mass consumer market is likely to be able to produce such evidence without difficulty. It is also true that the Appellant’s witness statements set out details of the niche market in which Appellant operates, whereas the Hearing Officer did not expressly mention any details of the market in the Decision.

36. However, I do not believe that anything turns on this. The Hearing Officer said at §§31-33 (in relation to the Easy2Trace mark):

> "… there is no evidence to show how many of these downloads [of the Appellant's app] occurred in the UK within the relevant period. In fact, these download figures have not been broken down in any way at all.
>
> 32. Nevertheless, the authorities stipulate that not every commercial use of a mark may automatically be deemed to constitute genuine use. The Proprietor has provided no details of the size of the relevant markets or any evidence as to the shares of the same held by the 'Easy2Trace' app. It has also failed to provide any turnover figures, any examples of promotional materials or efforts to promote the app, any information relating to advertising expenditure during the period, no invoices from customers demonstrating sales of the Proprietor's goods and services. This is evidence that ought to have been readily available to the Proprietor. Broadly speaking, the Proprietor's evidence relates to the features of its app. It consists mainly of user manuals, screenshots of its own website describing the features of its app, as well a few 3rd party websites doing the same. There is no evidence to demonstrate how many of user manuals were disseminated at all, let alone to UK customers, nor is there any evidence that shows how many views the Proprietor's website had had during the relevant period. Further, the reliance of the Proprietor on exhibit IT4, being the extract from the Luxembourg business register, is also flawed. Whilst at a high level it describes the types of services and activities the Proprietor provides, there is no additional evidence to support that any of the listed activities or services were actually provided by the Proprietor during the relevant period in the UK.
>
> 33. Although I do not doubt that some commercial activity was conducted in the UK in connection with 'Easy2Trace', it is my view that the evidence provided is insufficiently solid or specific to meet the requisite standard of proof. Following a careful consideration of the evidence in its entirety, I am not satisfied that the Proprietor has demonstrated genuine use of its mark in the UK for any of the goods and services for which it is registered for either of the relevant periods".

37. It seems to me that, irrespective of the market that the Appellant operates in, at least some of documentation mentioned above ought to be readily available. For example, numbers of UK-based downloads, UK turnover figures and customer invoices should all have been available to the Appellant. In the absence of any such documentation, the Hearing Officer was entitled to conclude that the Appellant's evidence of use was insufficiently solid or specific to meet the required standard.

38. Turning now to the Easy4Pro mark, the Hearing Officer said at §§37-41:

> "The Proprietor has provided no information regarding the size of the relevant markets, nor any evidence of the market share held by the 'Easy4Pro' app. Furthermore, although the Proprietor has submitted gross revenue figures for the app which, on their face, appear significant, there is no indication of what proportion of this revenue, which is reported in Euros, derives from UK sales. When these figures are considered alongside the limited, UK-specific invoice evidence, they suggest that UK sales constitute only a minute proportion of the overall revenue. Furthermore, the Proprietor claims that they offer goods and services spanning classes 09, 39, and 42, covering goods ranging from

software, to services including transport, storage, packaging, freight brokerage and computer programming. It is not clear from the evidence what of these services, if any, are provided through the proprietor's platform. That being the case, it is difficult to establish from the revenue figures provided, from which goods and services the money has been generated. The Proprietor has made no attempt to demonstrate how the revenue figures can be apportioned to the relevant goods and services. On this point, I remind myself of the comments of Phillip Johnson, sitting as the Appointed Person, in *Eros Bodyglide* (BL O/0984/25) that articulation of revenue is important in establishing genuine use when a party is seeking to prove use across a full range of goods and services.

38. Furthermore, there is a notable absence of promotional materials, and the evidence does not demonstrate any efforts by the Proprietor to market its app in the UK. There is also no information regarding advertising expenditure during the relevant period; material that the Proprietor should reasonably have been able to provide.

39. Overall, the Proprietor's evidence focuses predominantly on describing the app's features. It includes user manuals outlining those features, screenshots of its own '.com' website, use of which does not suggest it is specifically targeted at UK customers, and a small number of third-party websites doing the same. Additionally, there is no evidence showing how many user manuals were distributed, if any, or whether any reached UK customers. Nor is there evidence indicating the number of views the Proprietor's website received from UK customers during the relevant period.

40. The Proprietor's reliance on exhibit IT4, an extract from the Luxembourg business register, is also problematic. While the register provides a high-level description of the types of services and activities the Proprietor is authorised to provide, there is no corroborating evidence demonstrating that any of these activities or services were actually carried out by the Proprietor.

41. Although I do not dispute that some commercial activity took place in the UK in connection with the 'Easy4Pro' mark, the evidence submitted is, in my view, neither sufficiently robust nor sufficiently specific to satisfy the required standard of proof. Having carefully assessed the evidence as a whole, I am not persuaded that the Proprietor has demonstrated genuine use of its mark in the UK for any of the goods or services for which it is registered during either of the relevant periods.

39. Although the Appellant did submit more evidence in relation to the Easy4Pro mark than in relation to the Easy2Trace mark, it is clear that, again, key types of evidence, which it would be reasonable to expect any trade mark user to provide, was not provided.

40. In summary, even accepting that the relevant market was a specialist B2B market for transport procurement, the evidential deficiencies identified by the Hearing Officer were not deficiencies peculiar to consumer-facing businesses. The absence of evidence such as UK-derived revenue, geographical breakdowns, customer invoices, customer numbers, contractual documentation, market information or other objective indicators of UK commercial activity remains striking in a B2B context. The Hearing Officer was therefore entitled to conclude that the evidence remained insufficient notwithstanding the nature of the market concerned.

41. I dismiss this second ground of appeal.

(3) Failure to conduct a global assessment

42. The Appellant states in its Grounds of Appeal, in relation to the Easy4Pro mark:

> "At paragraph 35 of the Decision, the Registrar correctly reminded himself that "the assessment of genuine use is a global one and does not depend on whether each individual item of evidence demonstrates use in isolation". The Appellant submits, however, that this self-direction was not then carried through into the analysis, which proceeds exhibit by exhibit, identifying a specific deficiency in each. At no point does the Registrar stand back and ask: taking all of this evidence together, does it present a coherent and credible picture of genuine commercial use in the UK?"

43. The Grounds of Appeal then make the same complaint in relation to the Hearing Officer's analysis of the Easy2Trace mark.

44. I do not agree that this is a fair or accurate summary of the Hearing Officer's reasoning. The Hearing Officer, as he was required to do, looked at each piece of evidence individually. He identified deficiencies in most or all of the Appellant's evidence. It is clear, however, that having reminded himself of the need to carry out a global analysis, he actually did so. He identified the categories of evidence he would have expected to see but which was not in fact provided. He acknowledged that it was clear that some commercial activity had taken place under the marks. However, even taking the Appellant's evidence at its highest, the Hearing Officer concluded, in relation to each mark, that "I am not persuaded that the Proprietor has demonstrated genuine use of its mark in the UK for any of the goods or services for which it is registered during either of the relevant periods". As I have said above, that was a conclusion he was entitled to reach.

45. Additionally, the Hearing Officer's acceptance that some commercial activity occurred did not compel a conclusion that genuine use had been established. As the authorities make clear (and the Hearing Officer recognised), not every instance of commercial activity amounts to genuine use. The real question was whether the evidence was sufficiently solid and specific to permit an assessment of the nature, extent, territorial scope and commercial significance of the use relied upon. In that regard, the burden was not on the Hearing Officer to reconstruct the Appellant's commercial activities from fragmentary evidence, nor to draw speculative inferences in the Appellant's favour. Rather, as s. 100 of the Act makes clear, it was for the Appellant to show what use had been made of the marks. Where information plainly within the Appellant's possession, such as that listed in §40 above, was not produced, the Hearing Officer was entitled to conclude that the burden had not been discharged.

46. I dismiss this third ground of appeal.

Conclusion

47. Stepping back and considering the appeal as a whole, I do not consider that it identifies any gap in logic, inconsistency, failure to take account of a material factor, or other identifiable flaw in the Hearing Officer's reasoning. Rather, it advances an alternative interpretation of the evidence and invites the appeal tribunal to substitute its own evaluation. That is not the function of an appeal by way of review. The evidence may have permitted a range of views, but the views adopted by the Hearing Officer were plainly ones reasonably open to him.

48. The appeal is accordingly dismissed. The Easy, Easy2Trace and Easy4Pro marks are revoked with effect from 4 December 2023.

Costs

49. Clearly, the Respondent has been the successful party in this appeal. In accordance with the scale costs in TPN 1/2023, I order that the Appellant should pay the Respondent the sum of £500 in connection with the preparation of the Respondent's Notice.

50. The Hearing Officer ordered that the Appellant should pay the Respondent £2,900, which I do not disturb. Accordingly, the Appellant must pay the Respondent the sum of £3,400 within 21 days of this decision.

Dr. Brian Whitehead

26 July 2026

Representation

Mr Olivier Laidebeur of Laidebeur & Partners for the Appellant

Kilburn & Strode LLP, Respondent