

O/0831/26

**CONSOLIDATED PROCEEDINGS**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NO. 3877785**

**BY VICTOR E PILIPOVICH**

**AND**

**IN THE MATTER OF THE OPPOSITION THERETO**

**UNDER NO. 441453 BY**

**EEC ASSETS LIMITED**

**AND**

**IN THE MATTER OF UK REGISTRATIONS NOS. 3113050 & 3113053**

**IN THE NAME OF EEC ASSETS LIMITED**

**AND**

**THE APPLICATIONS FOR THE REVOCATION THEREOF**

**UNDER NOS. 507975 & 507976 BY**

**VICTOR E PILIPOVICH**

## BACKGROUND AND PLEADINGS

1. On 14 February 2023, Victor E Pilipovich ("Mr Pilopovich") applied to register **Ukrainian National Circus** as a trade mark in the United Kingdom in respect of the following services:

### Class 41

*Circus shows; Circus performances; Animal shows; Hypnotist shows [entertainment]; Circus productions; Presentation of circus performances; Organisation of comedy shows; Presentation of live comedy shows; Live stage shows; Production of entertainment shows featuring dancers; Production of roller-skating shows; Presentation of ice-skating shows; Direction of theatre shows; Arranging of entertainment shows; Production of shows; Shows (Production of -); Production of TV shows; Roller-skating shows (Organising of -); Magic shows (Presentation of -); Production of live shows; Production of music shows; Production of theatrical shows; Entertainment in the nature of magic shows; Production of entertainment shows featuring dancers and singers; Organization of shows; Organisation of live shows; Production of entertainment shows featuring singers; Organisation of stage shows; Artistic management of theatre shows; Organising of stage shows; Organisation of shows; Planning of plays or musical shows; Production of stage shows; Production of talent shows; Directing of theatrical shows; Entertainment in the nature of fashion shows; Entertainment in the nature of television news shows; Theatrical shows provided at performance venues; Organization of shows [impresario services]; Planning of shows; Circus services; Organization of cultural shows; Shows and films production; Presentation of live show performances; Entertainment services for producing live shows; Arranging for ticket reservations for shows and other entertainment events; Theatrical floor shows provided at performance venues; Directing of shows; Presentation of variety shows; Organisation of fashion shows for entertainment purposes; Magic show services; Provision of television news shows; Circuses; Live show production services; Entertainment in the nature of gymnastic performances; Presentation of live entertainment performances; Entertainment in the nature of dance performances; Show production services.*

2. The application was accepted and published for opposition purposes on 17 March 2023. On 16 May 2023, The European Events Corporation Ltd filed a notice of threatened opposition. This was forwarded to the applicant on the same day. The letter from the Registry explained that:

“The two-month publication period of your Trade Mark has now been extended to three months. This will begin from the date on which your application was published. Only the filer of the TM7a will be able to oppose your application during this time.”

3. On 16 June 2023, the application was opposed by EEC Assets Limited (“EEC Assets”). The opposition is based on section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and concerns all the services in respect of which registration is sought. EEC Assets relies on UKTM No. 3113053, **UKRAINE STATE CIRCUS**, and UKTM No. 3113050, **CIRCUS UKRAINE**. Both marks have a filing date of 12 June 2015 and a registration date of 20 November 2015 and are registered for the following services, all of which are relied upon:

*Class 41*

*Entertainment; sporting and cultural activities; organisation of entertainment events and exhibitions; roadshows; outdoor shows and exhibitions; provision and management of entertainment services; circuses; circus shows; circus services; circus performances; clown shows; clowning; acrobatic displays; acrobatic performances; theatre shows; theatre productions; provision of live theatre services; organisation of live theatre; organisation of live shows; production of live shows; ticketing and reservations for shows and other cultural events.*

4. On 8 June 2023, the Registry had received notice of an assignment of these two marks from The European Events Corporation Ltd to EEC Assets. The effective date of assignment is 24 September 2021. The change of ownership was recorded on 13 June 2023.

5. Both marks qualify as earlier marks pursuant to section 6(1)(a) of the Act and, because they were registered more than five years before the filing date of the contested application, are subject to the proof of use requirements in section 6A of the Act.

6. EEC Assets claims that the contested application is highly similar to both earlier marks and that Mr Pilipovich's services are identical or at least highly similar to the services of the earlier marks. Consequently, EEC Assets asserts that there is a high likelihood of confusion between the parties' marks.

7. Mr Pilipovich filed a defence and counterstatement denying the claims made and putting the opponent to proof of use of both earlier marks in relation to all the services relied upon. In addition, Mr Pilipovich denies that The European Events Corporation Ltd had any *locus standi* to file the Form TM7A, and thereby extend the period allowed for filing an opposition. It adds that this company was dissolved on 11 August 2022 and so was no longer in existence at the time of filing the TM7A. Therefore, Mr Pilipovich contends, the opposition was filed out of time and so should be rejected. Alternatively, he argues that EEC Assets had no authority to file a Notice of Opposition relying on the TM7A filed by The European Events Corporation Ltd. While the Tribunal Manual states at section 3.1.3 that a TM7A may be filed by a subsidiary or a holding company, Mr Pilipovich argues that there could not have been an ongoing corporate relationship between The European Events Corporation Ltd and EEC Assets, given that the former was dissolved when the TM7A was filed. I shall deal with this point in due course.

8. On 28 October 2024, Mr Pilipovich sought revocation of the earlier marks relied on in the opposition on the grounds of non-use. Under section 46(1)(a) of the Act, he claims non-use in the five-year period following the date on which the marks were registered, i.e. 21 November 2015 – 20 November 2020 ("the first relevant period"). He seeks revocation from 21 November 2020.

9. Under section 46(1)(b), Mr Pilipovich claims that the marks have not been used during the following periods:

| Period of Non-Use                                                     | Date of Revocation |
|-----------------------------------------------------------------------|--------------------|
| 13 February 2018 – 12 February 2023<br>("the second relevant period") | 13 February 2023   |
| 28 October 2019 – 27 October 2024<br>("the third relevant period")    | 28 October 2024    |

10. EEC Assets filed a defence and counterstatement denying the claims made. It accepts that no use was made of the marks during the first relevant period, but denies that there was no use in the second and third relevant periods.

11. Both parties filed evidence and written submissions and I will briefly summarise these shortly.

12. The two revocation applications were consolidated on 21 February 2025. By this time, the evidence rounds in the opposition had concluded. Following a Case Management Conference (“CMC”) held on 17 February 2025, I declined to consolidate all the matters, given the different stages of the proceedings. However, I said that if the revocations had caught up with the opposition by the time I came to take a hearing or write the decision from the papers I would consider both sets of proceedings at the same time.<sup>1</sup>

13. EEC Assets requested a hearing on the opposition. This was listed for 19 February 2026. The evidence rounds in the revocations were concluded on 22 December 2025 and so these proceedings were also listed for 19 February 2026. The evidence for the separate proceedings differed, but as both parties requested that all the evidence be taken into account for both sets of proceedings I agreed. For the sake of consistency and of convenience in the event of an appeal, I have consolidated the proceedings under Rule 62(1)(g) of the Trade Marks Rules 2008 and written a single decision.

14. At the hearing, Mr Pilipovich represented himself. He had previously been represented by Hiddleston Trade Marks. EEC Assets was represented by Seaghan Davey of Counsel, instructed by Clarion Solicitors.

## **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

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<sup>1</sup> The letter following the CMC is dated 18 February 2025.

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 AND SUBMISSIONS**

### ***The opposition***

16. The opponent's evidence in chief comes in the form of a witness statement from Anthony John Thomas Anderson, sole director of EEC Assets Limited, a position he has held since 18 July 2013. He states that he is also a director of European Entertainment Corporation Ltd ("European Entertainment"), which was responsible for putting on circus shows. His witness statement is dated 27 August 2024 and is accompanied by six exhibits.<sup>2</sup> The evidence goes to the use made of the earlier marks. Five of these exhibits contained letters from individuals with dates between 17 and 23 August 2024, all adduced to prove use of the earlier marks. However, they are not in evidential format.

17. EEC Assets also filed written submissions dated 27 August 2024. As with all the submissions I list here, I shall not summarise them at this point but refer to them where appropriate in my decision.

18. Mr Pilipovich's evidence consists of six witness statements. The first is his own. It is dated 28 October 2024 and is accompanied by eight exhibits.<sup>3</sup> He explains that he is a circus entertainer with over 50 years of experience in the circus entertainment industry in the UK and worldwide. His evidence covers his career and dealings with Mr Anderson and European Entertainment and his witness statement also contains submissions on Mr Anderson's evidence.

19. There is a further witness statement from Richard Mark Hiddleston, a Trade Mark Attorney at Hiddleston Trade Marks which was representing Mr Pilipovich at this point. His witness statement is dated 28 October 2024 and is accompanied by eight exhibits. These include Registry correspondence relating to the examination of the earlier marks; information from the UK Register of Companies; documents relating to the

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<sup>2</sup> I shall refer to this witness statement as **AJTA WS1 Opp**. Where I need to refer to exhibits, I shall use the following format: **Exhibit AJTA1 Opp**.

<sup>3</sup> I shall refer to this witness statement as **VEP WS1 Opp** and to the exhibits as **Exhibit VEP1 Opp** etc.

assignment of the earlier marks; and the results of searches for media coverage of European Entertainment's shows that took place in the locations and on the dates given by Mr Anderson in AJTA WS1 Opp.

20. Finally, Mr Pilipovich filed witness statements from a number of Ukrainian circus performers, who deny any knowledge of the use of the earlier marks for circus shows. These witnesses are Viktor Polishuk, an aerial acrobat; Oleksander Parshyn, a circus aerial artist; Iryna Usenko, an aerial circus artist; and Tetiana Kundyk, a slack wire walker. Their witness statements are dated 19 October 2024, 18 October 2024, 19 October 2024 and 21 October 2024 respectively.

21. The applicant also filed written submissions dated 28 October 2024.

22. EEC Assets filed evidence in reply in the form of a second witness statement from Mr Anderson, dated 28 December 2024, accompanied by six exhibits.<sup>4</sup> This evidence responds to challenges and other comments made in Mr Pilipovich's evidence.

23. On 16 January 2025, Mr Pilipovich's representative wrote to the Registry requesting leave to file evidence in reply to address some of the points raised in AJTA WS2 Opp. The evidence that Mr Pilipovich hoped to rely on was filed on 30 January 2025. It consists of a second witness statement from Mr Pilipovich, dated 28 January 2025, accompanied by 13 exhibits.<sup>5</sup> There is also a translation from Russian of one of these exhibits and a witness statement from the translator, Khrystyna Valkiv, who confirms that she is familiar with the English and Russian languages. Her witness statement is dated 29 January 2025. This particular exhibit contains a conversation on the Facebook Messenger service between Mr Pilipovich and one of the performers referred to by Mr Anderson.

24. This request was discussed at the CMC held on 17 February 2025. I directed that the additional evidence be admitted as it responded to challenges made to statements in VEP WS1 Opp and to Mr Pilipovich's credibility as a witness. In the light of the Supreme Court decision in *TUI UK Ltd v Griffiths* [2023] UKSC 48, I considered that it would be unfair to Mr Pilipovich not to admit the evidence and that at this stage in the proceedings the opponent would not suffer prejudice. I did, however, confirm that the

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<sup>4</sup> I shall refer to this witness statement as **AJTA WS2 Opp**.

<sup>5</sup> I shall refer to this witness statement as **VEP WS2 Opp**.

contents of the translated exhibit would be considered as hearsay, given that the performer's comments were not in evidential format.<sup>6</sup> I note that this was the only point raised by EEC Assets at the CMC.

### ***The revocations***

25. EEC Assets' evidence in chief consists of seven witness statements. The first comes from Mr Anderson. It is dated 17 April 2025 and is accompanied by 13 exhibits.<sup>7</sup> These include two video recordings, which I confirm that I have viewed.

26. The remaining witness statements are from Vladyslav Kukurudz, Ivan Nedostup, Ievgen Didyk, Hanna Olinyk, Serhii Tkachenko and Oleksii Kupriianov, all of whom are circus performers who confirm that they appeared in Circus Ukraine shows in Brighton (11 May 2023), Dundee (21 June 2023) and Inverness (3 July 2023) and the Ukraine State Circus show in Aberdeen (12 July 2023). Their witness statements are dated 16 April 2025.

27. Mr Pilipovich's evidence consists of his own witness statement, dated 8 July 2025.<sup>8</sup> It is accompanied by six exhibits. Mr Pilipovich provides an outline of his career and then comments on EEC Assets' evidence. I shall treat these comments as submissions and refer to them where necessary. He also comments on evidence filed in the opposition case and provides three related exhibits and challenges the witness statements from the performers. I note that from this point in the proceedings, Mr Pilipovich has been representing himself.

28. EEC Assets filed evidence in reply. There are 11 witness statements. The first is a second witness statement from Mr Anderson dated 8 October 2025.<sup>9</sup> It is accompanied by four exhibits. These include material going to the relationship between EEC Assets and European Entertainment and a breakdown of income from each of the shows put on under the earlier marks.

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<sup>6</sup> The post-CMC letter erroneously referred to Exhibit VEP21, where it should have read "Exhibit VEP14".

<sup>7</sup> I shall refer to this witness statement as **AJTA WS1 Rev**. Where I need to refer to exhibits, I shall use the following format: **Exhibit AJTA1 Rev**.

<sup>8</sup> I shall refer to this witness statement as **VEP WS Rev** and the exhibits as **Exhibit VEP1 Rev** etc.

<sup>9</sup> I shall refer to this witness statement as **AJTA WS2 Rev**.

29. There are also witness statements from the following individuals, reproducing the content of four of the “to whom it may concern” letters that were filed to support the opposition:

a) Stephen Courtney Junior, who has worked in the circus industry *“for a number of years”* and served as Ringmaster for the shows performed under the earlier marks. His witness statement is dated 7 October 2025 and is accompanied by one exhibit, which is a photograph of a promotional banner for CIRCUS UKRAINE shows put on at Paignton in August 2022;

b) John Parsons, a director of Footprint Litho Ltd, who provided printing services for the CIRCUS UKRAINE and UKRAINE STATE CIRCUS shows. His witness statement is dated 7 October 2025 and is accompanied by one exhibit, which contains images of posters produced for the shows;

c) Simon Amos, a director of Arts Media Services (NE) Ltd, who provided outdoor poster distribution services for the CIRCUS UKRAINE and UKRAINE STATE CIRCUS shows. His witness statement is dated 6 October 2025 and is accompanied by one exhibit, which contains invoices sent to European Entertainment for these services; and

d) Jacqueline Courtney, who has *“worked in the circus industry for most of my life in a variety of roles”* and who worked in the box office at Rochester in 2022 and Inverness in 2023, selling tickets for CIRCUS UKRAINE and UKRAINE STATE CIRCUS shows. Her witness statement is dated 7 October 2025.

30. In addition, the individuals named in paragraph 26 above have made second witness statements, all dated 7 October 2025. In identical terms, they deny the allegation of Mr Pilipovich that they only signed their previous witness statements because they had no choice but to do so.

31. On 25 October 2025, Mr Pilipovich filed what is labelled as *“The second witness statement of Victor Pilipovich”* in response to EEC Assets’ evidence in reply. The Registry wrote to Mr Pilipovich on 4 November 2025, informing him that, if he wished to file further evidence, he should make a formal request to do so. This was received on 11 November 2025. The reason he gave was that he had received a clearer version

of the video evidence and said that he had not had chance to comment upon it. The Registry responded on 13 November 2025 giving the preliminary view that the paragraphs containing comments would be treated as written submissions and admitted into proceedings, while the rest of the witness statement and the exhibits would be disregarded as these constituted new evidence of fact for which no permission to file had been sought. As there was no challenge to the preliminary view, this was confirmed and the evidence rounds concluded on 22 December 2025.

## **PRELIMINARY ISSUES**

### ***Validity of the Opposition***

32. Before going any further, I need to address the question of whether the opposition is a valid one. I have already explained that a notice of threatened opposition (Form TM7A) was filed on 16 May 2023 by The European Events Corporation Ltd. The effect of this filing is to extend the two-month period for filing an opposition to three months for the person or entity filing the Form TM7A or, in the case of a company, of a subsidiary or holding company or any other subsidiary of that holding company, per Rule 17(3) of the Trade Marks Rules 2008. The opposition was filed on 16 June 2023 (one day short of the three months from the date of publication). As the entity filing the opposition was EEC Assets, not The European Events Corporation Ltd, Mr Pilipovich submits that the opposition was filed out of time and so is not valid.

33. During the course of the proceedings, EEC Assets had advanced arguments based on the corporate relationship between itself and The European Events Corporation Ltd, referring to Rule 17(3) of the Trade Marks Rules 2008 which provides that the extension of the opposition period may apply to subsidiaries or holding companies of a company filing the TM7A. However, by the time of the hearing, EEC Assets dropped this line of argument which had been difficult to maintain in the light of the fact that at the time of filing the TM7A The European Events Corporation Ltd had been dissolved.

34. Mr Davey submitted that what had occurred had been a procedural irregularity which was capable of correction under Rule 74 of the Trade Marks Rules 2008 which says that:

“(1) Subject to rule 77, the registrar may authorise the rectification of any irregularity in procedure (including the rectification of any document filed) connected with any proceeding or other matter before the registrar or the Office.

(2) Any rectification made under paragraph (1) shall be made-

(a) after giving the parties such notice; and

(b) subject to such conditions,

as the registrar may direct.”

35. This was, according to Mr Davey, an error that had been made because EEC Assets’ representatives had had incomplete information concerning the ownership of the marks at the time of filing the TM7A. The Register showed the proprietor as The European Events Corporation Ltd and that was what the representatives had relied on. In support of this submission, EEC Assets sought to rely on a witness statement from Sarah Molloy, a Legal Director in the Intellectual Property Team at Clarion Solicitors Limited, EEC Assets’ representative in these proceedings. Her witness statement is dated 18 February 2026. Mr Pilipovich made no submissions on the question of whether it should be admitted. I considered that this was material to my consideration of whether the opposition was valid, and so I admitted Ms Molloy’s witness statement.

36. Ms Molloy states that the TM7A was filed on 16 May 2023 by a trainee solicitor, supervised by a partner in the IP Team. She says that they understood that the proprietor of the earlier marks relied on was European Events Corporation Ltd, as shown on the Register. In June 2023, following her return from annual leave, Ms Molloy took over the conduct of the matter and conducted further research on European Events, discovering that it had been dissolved. She sought clarification from Mr Anderson, who was a director of both companies. He explained that, during the liquidation of European Events, its assets, including the trade marks, “*were transferred/sold*” to EEC Assets.<sup>10</sup> The relevant assignment documentation was sent to her on 7 and 8 June 2023, whereupon Clarion filed a TM16 to record the

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<sup>10</sup> Paragraph 4.

assignments and update the Register. The change was made on 13 June 2023 and on 16 June 2023 the TM7 was filed in the name of EEC Assets.

37. Some of Ms Molloy's evidence is hearsay. Notably there is no witness statement from either the trainee solicitor who filed the Form TM7A or the partner who supervised their work. Neither is there any documentary evidence to indicate what they might have understood at that point. However, I can accept that Ms Molloy undertook some research on European Events Corporation Ltd, discovered that it had been dissolved, and then sought clarification from Mr Anderson.

38. Mr Davey referred me to three decisions, the most relevant of which he considered to be *Caswick Limited v The Thompson Minwax Company*, BL O-197-00, a decision of Mr Geoffrey Hobbs QC, sitting as the Appointed Person. In this case, the notice of opposition had been filed in the name of a Delaware Corporation, The Thompson Minwax Company, which had been merged with and into The Sherwin Williams Company a few months before the filing of the notice of opposition. It was the understanding of the Appointed Person, and the representatives for the opponent that the effect of this merger was that The Thompson Minwax Company ceased to exist and The Sherwin Williams Company became the successor to its rights and obligations. The notice of opposition had, it was held, been filed in the name of a non-existent corporation and the opponent's representatives subsequently sought to substitute The Thompson Minwax Company with The Sherwin Williams Company. Mr Hobbs considered the case law and concluded that:

“(1) When a company which has brought opposition proceedings in the Trade Marks Registry is merged with and into another company during the pendency of the proceedings, the Registrar may allow the successor company to pursue the opposition in lieu of the original opponent and should normally do so.

(2) However, opposition proceedings brought in the name of a company which has previously ceased to exist as the result of such a merger cannot be pursued, and must be dismissed, if those who caused the Notice of Opposition to be filed in the name of the non-existent company did so intending to identify that company rather than its successor as the opponent.

(3) If, on the other hand, there is no reasonable doubt that the successor, rather than the non-existent company, was intended to be identified as the opponent, the Registrar has a discretion to allow an amendment to correct the misnomer.”<sup>11</sup>

39. On the basis of the facts before him, he held that the Notice of Opposition had been intentionally filed in the name of the non-existent company rather than its successor, so that it could not be said that there was a misnomer to be corrected.

40. In the present opposition proceedings, the notice of threatened opposition was filed in the wrong name. I am satisfied that this was not done intentionally and the application to record a change of ownership was filed promptly after the error was identified. Furthermore, it is apparent that Mr Pilipovich knew who was going to oppose the mark. The number of companies of which Mr Anderson has been the director and, in some instances, a person of significant control is fairly large. Mr Anderson confirms that he was the sole director of EEC Assets. Mr Pilipovich himself says that, after filing his application, he discussed his plans with Mr Anderson, who informed him that he had trade mark registrations for CIRCUS UKRAINE and UKRAINE STATE CIRCUS.<sup>12</sup> Mr Anderson says that he alerted Mr Pilipovich to the potential conflict as soon as he became aware of the application.<sup>13</sup> It is my view that Mr Pilipovich will not suffer any prejudice through allowing the error to be rectified and the opposition continue to a decision on the substance. I consider that it is likely that, if it does not, EEC Assets would file an invalidation application, leading to further delays in resolving the dispute.

### ***Validity of the Assignments***

41. Before turning to the substance, I must address Mr Pilipovich’s submission that the assignments themselves are not valid. In his written submissions of 28 October 2024, he also requested that the Registry use Rule 74 of the Trade Marks Rules 1998 to rectify the recordal of the assignments and reinstate The European Events Corporation Ltd as the proprietor of the marks, on the basis of a “*clearly invalid*” application to record the assignments and the lack of a valid assignment document for the CIRCUS

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<sup>11</sup> Page 8, lines 5-21.

<sup>12</sup> VEP WS1 Opp, paragraph 15.

<sup>13</sup> AJTA WS2 Opp, paragraph 17.

UKRAINE mark.<sup>14</sup> He submits that The European Events Corporation Ltd cannot be said to have authorised EEC Assets' representatives to record the assignment.

42. Rule 74 of the Trade Marks Rules 2008 is as follows:

“(1) Subject to rule 77, the registrar may authorise the rectification of any irregularity in procedure (including the rectification of any document filed) connected with any proceeding or other matter before the registrar or the Office.

(2) Any rectification made under paragraph (1) shall be made-

(a) after giving the parties such notice, and

(b) subject to such conditions,

as the registrar may direct.”

43. Section 72 of the Act states that:

“In all legal proceedings relating to a registered trade mark (including proceedings for rectification of the register) the registration of a person as proprietor of a trade mark shall be prima facie evidence of the validity of the original registration and of any subsequent assignment or other transmission of it.”

44. I therefore start from the position that the assignments are valid and it is for Mr Pilipovich to persuade me otherwise.

45. Mr Pilipovich argues that the CIRCUS UKRAINE assignment is not valid as it is a deed that has not been properly executed. The witnesses to the signatures on behalf of the parties have printed their names and addresses, but not signed the documents. Section 24 of the Act sets out the requirements for assignments. Subsection 3 reads:

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<sup>14</sup> Paragraph 29.

“An assignment of a registered trade mark, or an assent relating to a registered trade mark, is not effective unless it is in writing signed by or on behalf of the assignor or, as the case may be, a personal representative.

Except in Scotland, this requirement may be satisfied in a case where the assignor or personal representative is a body corporate by the affixing of its seal.”

46. It is not necessary for the assignment to be a deed. EEC Assets referred me to *Signature Living Hotel Ltd v Sulyok & Anor* [2020] EWHC 257 (Ch) as authority for its position that where the parties had intended to use a deed to effect an agreement, but the formalities had not been complied with, the agreement could still be enforced as a contract, provided that the elements required for a contract were present. EEC Assets submits that the assignment documents contain an offer, acceptance, consideration and intention.

47. The Form TM16 was signed by Clarion on behalf of the old and the new owners and was therefore accepted by the Registry. Clarion was the recorded representative for the old owner. I also note that it was not necessary to file the assignment documents with the TM16. Consequently, I cannot see that there was an irregularity in procedure on the part of the Registry. In my view, Rule 74 is not applicable here.

## **DECISION**

48. I shall begin by considering the applications for revocation, as the extent to which they are successful will have a bearing on the opposition.

### **Revocations**

49. Section 46 of the Act is as follows:

“(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;

...

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (the 'variant form') differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

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

(4) An application for revocation may be made by any person, and may be made either to the registrar or the court, except that—

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(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 were existing at an earlier date, that date.”

50. The case law on genuine use was summarised by Arnold LJ in *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247:

“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 *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 Bundersvereinigung 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] and [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].”

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. Case T-78/19 *Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33]. In *Awareness Ltd v*

*Plymouth City Council* [2013] RPC 24 Daniel Alexander QC sitting as the Appointed Person said:

‘19. For the tribunal to determine in relation to what goods or services there has been genuine use of a mark during the relevant period, it should be provided with clear, precise, detailed and well-supported evidence as to the nature of that use during the period in question from a person properly qualified to know.

...

22. ... 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 ... 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.”

#### *EEC Assets’ evidence*

51. EEC Assets admits that neither of the marks has been used during the first relevant period.

52. Mr Anderson says that European Entertainment developed two new shows, CIRCUS UKRAINE and UKRAINE STATE CIRCUS, in 2022. This is another company of which Mr Anderson was the director and he confirms that use made by European Entertainment was with the consent of EEC Assets.<sup>15</sup> The shows were introduced in

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<sup>15</sup> AJTA WS1 Rev, paragraph 5.

what he describes as “*a cautious manner*”, because of uncertainty as to how they would be perceived by the public.<sup>16</sup> He explains that this caution was not about the feasibility of a Ukrainian-themed show *per se* but a reflection of increased financial pressures and changing audience expectations since the Covid-19 pandemic. The shows were presented as special events at locations where European Entertainment was already hosting other productions, such as CIRCUS BERLIN and CIRCUS VEGAS. The aim was to gauge interest to help inform a decision on whether to make further investment in the shows and embark on a larger tour.<sup>17</sup> The following photograph dated 18 August 2022 shows a banner for the CIRCUS UKRAINE show on the left of the image, along with banners and hoardings for other shows.



53. Mr Anderson describes both shows as “*family entertainment shows featuring classic circus performances, dare devil acts, performers and acrobatic displays*”.<sup>18</sup>

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<sup>16</sup> AJTA WS1 Rev, paragraph 9.

<sup>17</sup> AJTA WS1 Opp, paragraph 3.

<sup>18</sup> Ibid, paragraph 4.

Nowhere does he explain whether there were any differences between the CIRCUS UKRAINE and the UKRAINE STATE CIRCUS shows.

54. The table below contains a complete list of the shows performed under the CIRCUS UKRAINE and UKRAINE STATE CIRCUS marks, along with a breakdown of earnings:<sup>19</sup>

Circus Ukraine

| Date                                   | Number of Shows | Location  | Net Ticket Sales  |
|----------------------------------------|-----------------|-----------|-------------------|
| 18 August 2022<br>25 August 2022       | 2               | Paignton  | £20,514.40        |
| 22 September 2022<br>29 September 2022 | 2               | Southsea  | £5,845.66         |
| 6 October 2022                         | 1               | Ascot     | £5,061.76         |
| 20 October 2022<br>27 October 2022     | 2               | Ealing    | £14,124.82        |
| 11 May 2023                            | 2               | Brighton  | £4,163.95         |
| 21 June 2023                           | 2               | Dundee    | £6,379.40         |
| 3 July 2023                            | 2               | Inverness | £12,650.42        |
|                                        |                 |           | <b>£68,740.41</b> |

Ukraine State Circus

| Date            | Number of Shows | Location  | Net Ticket Sales  |
|-----------------|-----------------|-----------|-------------------|
| 13 October 2022 | 1               | Rochester | £6,621.48         |
| 12 July 2023    | 2               | Aberdeen  | £13,084.33        |
|                 |                 |           | <b>£19,705.81</b> |

55. Mr Anderson states that the shows were promoted using existing advertisements for other shows. Exhibit AJTA2 Rev contains four examples, one of which I have reproduced below.<sup>20</sup> They advertise performances of CIRCUS UKRAINE at Paignton Green on 18 and 25 August 2022, at Southsea Common on 22 and 29 September 2022, at Ascot Racecourse on 6 October 2022 and at Ealing Common on 20 and 27 October 2022 and were posted on the registered proprietor's Instagram account. At the (unidentified) time of capture, the posts had received 81, 65, 35 and 67 likes respectively.

<sup>19</sup> Exhibit AJTA17 Rev.

<sup>20</sup> The names of people commenting on the post have been redacted.



56. Similar examples from 2023 can be seen in Exhibit AJTA13 Rev. In addition, the evidence for the opposition contains examples from Facebook. A post dated 14 September 2022 from Continental Circus Berlin advertises the performances in Rochester, including a 13 October 2022 CIRCUS UKRAINE special. (Elsewhere in the evidence, the Rochester show is promoted under the UKRAINE STATE CIRCUS name.) This post had received 1.1k reactions and 618 comments at the time of capture.<sup>21</sup>

57. In his witness statement, Mr Parsons states that his firm, Footprint Litho Ltd, provided printing services for the shows listed in the table. This included producing banners and A2 and A3 posters. The following examples are included in Exhibit JP1.

<sup>21</sup> Exhibit AJTA4 Opp, page 1.



58. Simon Amos, director of Arts Media Services (NE) Ltd, states that his firm was involved in the outdoor distribution of these posters and provides invoice evidence in Exhibit SA1. These do not distinguish between distribution services for different events, but Mr Anderson says that 15% of the total amount invoiced (£54,360) is attributable to poster distribution services in connection with CIRCUS UKRAINE and UKRAINE STATE CIRCUS shows during the second relevant period.<sup>22</sup> He does not give an equivalent figure for the third relevant period, although I note that this period would also cover the 2022 shows.

59. Generic tickets were used for each of European Entertainment's shows, as, according to Mr Anderson, printing customised tickets would have been too expensive. In her witness statement, Jacqueline Courtney states that she worked in the box office and sold tickets for the UKRAINE STATE CIRCUS show in Rochester on 13 October 2022 and the CIRCUS UKRAINE show in Inverness on 3 July 2023.

60. Mr Anderson says that free tickets were offered to Ukrainian refugees living near the locations of the UKRAINE STATE CIRCUS and CIRCUS UKRAINE shows. Exhibit AJTA7 Rev contains correspondence between European Entertainment and Ealing Council offering tickets to the performances on 20 and 27 October 2022 and an email from Torbay Council dated 17 August 2022 stating that 25 tickets were needed for

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<sup>22</sup> AJTA WS1 Rev, paragraph 22.

Ukrainian refugees and 100 tickets for cared-for children for the performance at Paignton Green on 18 August 2022.

61. Mr Courtney states that he acted as Ringmaster for all the Circus Ukraine and Ukraine State Circus shows and adds that *“At the conclusion of every performance, I announce the name of the show that has been performed and wish the audience a safe journey home.”*<sup>23</sup> Exhibit AJTA9 Rev is a video recording of the close of a Circus Ukraine show in which the name is given.

62. The registered proprietor’s evidence in chief also contains witness statements from Vladyslav Kukurudz, Ivan Nedostup, Ievgen Didyk, Hanna Olinyk, Serhii Tkachenko and Oleksii Kupriianov, all of whom are circus performers who confirm that they appeared in Circus Ukraine shows in Brighton (11 May 2023), Dundee (21 June 2023) and Inverness (3 July 2023) and the Ukraine State Circus show in Aberdeen (12 July 2023). Their witness statements are dated 16 July 2023.

*Was the use with the consent of the proprietor?*

63. Mr Pilipovich submits that EEC Assets has provided no evidence to support its claim that any use of the marks by European Entertainment was made with its consent as the proprietor of those marks. In his skeleton argument, he argues that *“Use by a third party only qualifies if the Proprietor proves consent or a licence arrangement.”*<sup>24</sup> There is no requirement for EEC Assets to file a licence agreement. It should be borne in mind that the standard of proof is the civil standard, i.e. the balance of probabilities. This means that I must be satisfied that it is more likely than not that any use was with the consent of the proprietor. Given that Mr Anderson was a director of both these undertakings, I am so satisfied.

*Does the evidence show genuine use of the marks?*

64. In making my assessment, I bear in mind all the principles set out by Arnold LJ in *easyGroup*. However, I consider that the following two are particularly relevant for the present purposes:

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<sup>23</sup> Witness statement, paragraph 4.

<sup>24</sup> Section B, paragraph 3.

“(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 ...

...

(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. ...”

65. I remind myself that the assessment of genuine use is a global one, in which I must take account of all the relevant factors: see *New Yorker SKH Jeans & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-415/09, paragraph 51.

66. At the hearing, Mr Davey submitted that:

“... genuine use ... does not need to be quantitatively significant. Minimal or small use can qualify and should qualify if it is justified in the economic sector for creating a market share for the relevant services. We would say there is an important distinction between that and token use. A small use, testing the market share, is different from token use of using it once to keep a registration.”<sup>25</sup>

67. I accept that the marks have been used. The evidence of use includes the banner at the Paignton Green site, the emails to local authorities offering tickets to Ukrainian refugees and cared-for children, the announcement of the name of the show at the end of the performance, and the mentions on social media posts. I also note that the evidence shows that posters were produced, although it is not clear how many were distributed or where they were put up. The question I have to address, though, is whether this use was commercially warranted in the circus entertainment sector to

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<sup>25</sup> Transcript, page 10.

create or maintain a share of that market. In doing so, I must take account of all relevant facts and circumstances.

68. Both parties have given me lengthy submissions and evidence on the market conditions operating in the circus entertainment industry. Mr Pilipovich focuses on larger scale runs of shows. Mr Anderson, on the other hand, states that the shows were launched in a cautious manner so that the market reaction could be tested before making the required investment in a longer run of shows. In 2022, there were seven performances under the mark CIRCUS UKRAINE and one under the mark UKRAINE STATE CIRCUS; in 2023, the figures were six and two respectively. The locations of the performances were nine towns and cities in the south of England and in Scotland. In the third relevant period, net ticket sales for CIRCUS UKRAINE shows amounted to £68,740.41, while net ticket sales for UKRAINE STATE CIRCUS were £19,705.81. These are fairly small figures (particularly for UKRAINE STATE CIRCUS), but as I have already noted this is not, in itself, a bar to a finding that genuine use has been made of a trade mark.

69. I asked Mr Davey directly about the use of UKRAINE STATE CIRCUS at just one location in each of the years in question. He replied:

“We would say even if it was just one show that occurred in the relevant period for the Ukraine State Circus, it is not [a] massive amount of use, but it is use. There were people attending a show under that mark, preparations had gone in and they had contacted the printing companies and distribution. Tickets were sold and there is not a distinct threshold for how many circus shows need to be run to demonstrate use. The fact that they got one up and running is good. There is some authority on preparation work, but we are well beyond that in my opinion. This is a fully-fledged, tickets being sold to a show under reference to that name and that is sufficient in this sector to start establishing that market share and that is what genuine use is as reflected by the principles in *Easy Group* and one show should be sufficient to establish the same.”<sup>26</sup>

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<sup>26</sup> Transcript, page 14.

70. Mr Anderson states that the shows were promoted locally and on social media. I have reproduced a sample social media post in paragraph 54 above. The size of the image promoting **CIRCUS UKRAINE** is small in the context of the electronic poster. This is the only one of the social media posts in evidence that refers to the special shows in the text. One Instagram user asked “*What are the Ukraine UA shows?*”, but it does not appear that they received a response. I find this surprising in the context of the statement that EEC Assets was testing market interest in these special shows. Local promotion appears to have focused on distribution of posters, flyers and banners. Mr Anderson states that 15% of the amount invoiced by Arts Media Services (NE) Ltd is attributable to services in relation to the **CIRCUS UKRAINE** and **UKRAINE STATE CIRCUS** marks, and that this amounts to £54,360. Mr Pilipovich challenged this figure and noted that it was not clear how it had been calculated. EEC Assets had the opportunity to provide an explanation in reply evidence, but did not do so. Neither Mr Anderson nor Mr Amos provide any evidence showing how many posters, flyers or banners were put up around the local area, or where these could have been seen by potential customers. There is only one image of advertising *in situ*. This was at Paignton Green and I have reproduced one of the photographs in paragraph 52 above. The same site also appears on an Instagram post from a third party and a video filed in evidence in the revocation proceedings.<sup>27</sup>

71. Mr Pilipovich also refers to the lack of media coverage. He argued that, given the situation with the war in Ukraine, he would have expected there to be some press coverage. Mr Anderson replied, saying that:

“54. The assumption by the Applicant that there would be significant media interest in the shows is purely speculative, especially given the small scale of the **CIRCUS UKRAINE** and **UKRAINE STATE CIRCUS** shows. Media coverage depends on various factors, including competing stories and editorial priorities, which is beyond European Entertainment’s control.”

72. It cannot be denied that there are a range of different factors influencing what gets published in the media. However, Mr Pilipovich’s then representative had conducted a search for news articles and reports about European Entertainment’s shows which

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<sup>27</sup> See Exhibits AJTA1 Rev page3 and AJTA6 Rev.

took place in Paignton, Southsea, Ascot, Rochester and Ealing in 2022 and Brighton and Inverness in 2023. Exhibit RMH6 contains the following articles:

- a) Circus Berlin performances in Rochester from 12 October 2022 to 16 October 2022 included in a *“What’s On”* feature on the website [www.kentononline.co.uk](http://www.kentononline.co.uk);
- b) “Great offers on Continental Circus Berlin in Paignton and Plymouth”, [www.plymouthherald.co.uk](http://www.plymouthherald.co.uk), published on 19 August 2022;
- c) Circus Berlin performances in Paignton (5 to 30 August 2022) included on the Visit South Devon website;
- d) “Continental Circus Berlin comes to Southsea, Portsmouth”, on the “What’s On” section of the [www.portsmouth.co.uk](http://www.portsmouth.co.uk) website. This article is described as *“Ad Feature by Continental Circus Berlin”* and was published on 15 September 2022;
- e) “Continental Circus Berlin is here to astound Ascot”, on the [www.getreading.co.uk](http://www.getreading.co.uk) website, highlighting the performances between 5 and 9 October 2022;
- f) Continental Circus Berlin performances at Ealing Common from 19 to 30 October 2022 are highlighted in *Wimbledon Times*;
- g) Continental Circus Berlin performances in Brighton from 10 to 14 May 2023 are promoted in *The Argus*;
- h) Continental Circus Berlin performances in Glasgow promoted on [www.whatsonglasgow.co.uk](http://www.whatsonglasgow.co.uk).

73. None of these articles mentions the CIRCUS UKRAINE or UKRAINE STATE CIRCUS shows. Mr Anderson’s response to this evidence was as follows:

“40. I also do not agree that there would be significant press interest in the CIRCUS UKRAINE and UKRAINE STATE CIRCUS shows that could have been taken advantage of. Given the small scale of the shows, it is unlikely

that major media outlets would have taken much interest in the shows whilst they were not fully developed.”<sup>28</sup>

74. I do not know how Mr Anderson defines a “*major media outlet*”. The coverage found by Mr Hiddleston is not from national newspapers, but from local websites and newspapers. Mr Anderson says that

“55. European Entertainment’s approach reflects sensitivity to the ongoing conflict in Ukraine and the public perception. Whilst the CIRCUS UKRAINE and UKRAINE STATE CIRCUS shows included Ukrainian performers, the promotional strategy prioritised showcasing the quality of the overall production rather than overly emphasising the Ukrainian theme, considering the global context at the time.”<sup>29</sup>

75. Mr Anderson says elsewhere that:

“12. It is important to note that the circus industry has changed drastically since COVID-19. Business now operates at a much faster pace, with increasing financial pressures and a greater emphasis on cost control and efficiency. Particularly since the pandemic, the industry has had to adapt rapidly to new challenges, including rising operational costs, shifting audience expectations, and tighter financial margins. This is why European Entertainment conducted trial performances before committing to such a large financial investment [more than £1 million]. The decision to test market interest first was not about questioning the feasibility of a Ukrainian-themed show but rather ensuring that any large-scale production would be commercially viable and sustainable.”<sup>30</sup>

76. Given what Mr Anderson says about the cost of a full-scale tour and the desire to undertake some market testing to see whether such an investment would be worthwhile, I find it surprising that EEC Assets has not pointed me to any local media coverage or provided details of the local distribution of promotional material. I consider it reasonable to infer that a business contemplating a decision of that financial scale

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<sup>28</sup> AJTA WS2 Opp.

<sup>29</sup> Ibid.

<sup>30</sup> AJTA WS1 Rev.

would have been able to provide more specific information on promotion and publicity, as such activities are important for creating and maintaining a share of the market, even if they are done locally rather than nationally. The sole image showing a poster or banner *in situ* has this somewhat to the side of the circus site, with other marks more visible to the passer-by. I am not satisfied on the basis of the evidence that has been filed that the use of the marks was such as to be warranted in the sector concerned to create or maintain a share of the market for services supplied under either of EEC Assets' marks.

77. I find that EEC Assets has not shown that it has made genuine use of the marks, which will, subject to a successful appeal, be revoked from the earliest requested date, i.e. 21 November 2020.

### **The Opposition**

78. Because of my findings on the revocations, EEC Assets may not rely on the CIRCUS UKRAINE and UKRAINE NATIONAL CIRCUS marks and the opposition falls away.

### **OUTCOME**

79. UK Trade Mark Nos. 3113050 and 3113053 are, subject to a successful appeal, revoked with effect from 21 November 2020.

80. Application No. 3877785 may, again subject to a successful appeal, proceed to registration.

### **COSTS**

81. Mr Pilipovich has been successful and is entitled to a contribution towards the costs of these proceedings. As he was represented for part of these proceedings, I have used the scale set out in Tribunal Practice Notice 1/2023 to calculate the award up to that point:

*£300 for considering the opposition statement and preparing a defence;*  
*£1000 for preparing evidence for the opposition and considering and commenting on the other side's evidence*

*£250 for preparing statements in the revocation applications and considering the other side's statements;*

*£400 for official fees for filing the two revocation applications*

***£1950 in total***

82. For the rest of the proceedings, I treat Mr Pilipovich as a litigant in person. He returned a proforma setting out the number of hours spent on various activities associated with the proceedings. I have already dealt with those that were undertaken while Mr Pilipovich was represented by Hiddleston Trade Marks. He does not claim to have spent any time preparing evidence for the revocation applications, but states that he has spent 2.5 hours preparing for the hearing. I consider that this is a reasonable amount of time. Mr Pilipovich has quoted an hourly rate of £300. However, the hourly rate awarded to litigants in person is analogous to that set out in the Civil Procedure Rules, Part 46. This is currently £24. I therefore award Mr Pilipovich the sum of **£60** for preparing for the hearing. I also award an additional two hours (**£48**) for attendance at the hearing. The total costs award is **£2058**.

83. I therefore order EEC Assets Limited to pay Victor E Pilipovich the sum of £2058. 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 if the appeal is unsuccessful.

**Dated this 15<sup>th</sup> day of September 2026**

**Clare Boucher,  
For the Registrar**