BL O/0280/25

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK REGISTRATION NO. UK00003240884

IN THE NAME OF

DINE CLUB LIMITED

FOR THE FOLLOWING TRADE MARK:

Dine Club

IN CLASSES 35 AND 36

AND APPLICATION FOR REVOCATION FOR NON-USE

THERETO UNDER NO. CA000506644

BY DINERS CLUB INTERNATIONAL LTD.

Background and pleadings

1. On 24 October 2023, Diners Club International Ltd. ("the cancellation applicant") filed an application to revoke Dine Club Limited's ("the registered proprietor") earlier mark on grounds of non-use. The application for revocation is directed against all of the registered proprietor's services. Details of the registered proprietor's mark are below.

2. Trade mark registration No UK00003240884. The trade mark was filed on 30 June 2017 and completed its registration procedure on 6 October 2017.

Dine Club

Class 35	Running and administration of discount schemes; promoting the services of others through discount schemes; advertising and promotional services; direct mail advertising; market research; marketing studies; Business mediation in the sale and promotion of goods and the selection and display of goods; Presentation of goods and services with the help of audiovisual productions for commercial or advertising purposes; information, advisory and consultancy services, all relating to the aforesaid services; Advertising; Marketing services; Office functions for loyalty schemes based on discounts or incentives; Promotion of goods and services of others; Providing and rental of advertising space; Negotiating and concluding commercial transactions for others; Market prospecting, research and analysis; Opinion polling; Information and consultancy relating to the aforesaid services; All the aforesaid services whether or not provided via electronic channels, including the Internet.
Class 36	Issue of tokens of value; providing credit card, debit card, charge card and stored value prepaid card services; discount card services; digital discount card services; the issuing of travel

vouchers; the issuing of vouchers for use in connection with transportation; electronic payment services relating to travel; the issuing of pre-paid and stored value cards and passes; electronic payments services; providing saving opportunities via saving and discount schemes and/or within the context of loyalty schemes; information, advisory and consultancy services, all relating to the aforesaid services.

3. The cancellation applicant seeks revocation of the contested mark under sections 46(1)(a) and (b) of the Trade Marks Act 1994 ("the Act").

4. Revocation is sought under Section 46(1)(a) as a result of alleged non-use in respect of the 5-year period following the date on which the mark was registered, i.e. 7 October 2017 to 6 October 2022 ("the first relevant period"). On this basis, the cancellation applicant requests revocation of the contested mark with effect from 7 October 2022.

5. Alternatively, revocation is sought under section 46(1)(b) as a result of alleged non-use in respect of the registered mark for the period 24 October 2018 to 23 October 2023 ("the second relevant period"), claiming an effective date of revocation of 24 October 2023.

6. The registered proprietor filed a counterstatement defending its registered mark for all the services for which it is registered, in respect of which it claims its mark has been used.

7. The cancellation applicant is represented by Mewburn Ellis LLP and the registered proprietor is unrepresented.

8. Both parties filed evidence in these proceedings. This will be summarised to the extent that it is considered appropriate. No hearing was requested and only the cancellation applicant filed submissions in lieu. This decision is taken following a careful consideration of the papers.

Evidence

9. The registered proprietor filed its evidence in the form of a witness statement from Daniel Simm, director of the registered proprietor, signed and dated 29 January 2024, together with 16 exhibits (DS1–DS16).

10. The cancellation applicant filed evidence from two people. First, there was a witness statement from Jacqueline Pang, partner and Chartered Trade Mark Attorney at Mewburn Ellis LLP, signed and dated 8 May 2024, together with 3 exhibits (JLP1–JLP3). Second, there was a witness statement from Xiaoyan Zhang, Senior Investigator at James Mintz UK Limited, signed and dated 7 May 2024, along with Annex 1.

11. I have given due consideration to all of the documents filed by both parties and will refer to the submissions and evidence to the extent it is necessary in my decision.

The law in relation to revocation and genuine use

12. Section 46 of the Act states:

"(1) The registration of a trade mark may be revoked on any of the following grounds-

> (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
>
> (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;
>
> (c) […]

(d) […]

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

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

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

[…]

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

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

(a) the date of the application for revocation, or

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

13. Section 100 of the Act states:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

14. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

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

"105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439*,* Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 *P Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV [EU:C:2012:816], Case C-609/11 Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for*

Harmonisation in the Internal Market (Trade Marks and Designs) [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU [EU:C:2020:854].*

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: Ansul at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns*: Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].

16. In *Awareness Limited v Plymouth City Council,* Case BL O/236/13, Mr Daniel Alexander QC (as he then was) as the Appointed Person stated that:

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

17. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd,* Case BL 0/404/13*,* Mr Geoffrey Hobbs QC (as he then was) as the Appointed Person stated that:

> “21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller-General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35: ‘[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be

made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.'

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not *'show'* (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

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

Evidence of use

19. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.[1]

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

20. Mr Simm claims to have been using his trade mark “since 30th June 2017, both online and in physical form through the use of marketing materials. During the specified time period in which the revocations are being claimed, Dine Club Limited was operating in the restaurant industry, offering restaurants a digital mobile platform to promote themselves via discounts and promotions … The business operated via an app to consumers, and would eventually have a paid membership for restauranteurs. The app was readily available to download by consumers, and restauranteurs could freely create and account via the web platform to advertise.”

21. Any evidence which could be said to corroborate these statements is scant to say the least. No figures have been put forward in relation to total revenue, sales achieved, or market share.

22. In terms of the app, Exhibit DS1 consists of an email dated 23 May 2016 from Apple iTunes Connect stating that the Dine Club app had the status of “Pending Developer Release” i.e. the first version of the app had not yet been released on the App Store.

23. Exhibit DS2 consists of an invoice from Hrunk Ltd dated 30 March 2016 pertaining to “Dine Club for Android”. This suggests that some work was done to create a Dine Club app that could function on the Android operating system. Again, there is no indication that the app was ever released.

24. Given what these two exhibits show, there is no direct evidence of the app ever having been launched on either the Apple or Android platforms, nor is there any evidence of any consumers or restaurateurs ever having interacted with it. Nor is there any indication that any revenue ever accrued to the registered proprietor as a result of the existence of the app.

25. Exhibits DS3 and DS4 are screenshots from the WayBack machine output for the registered proprietor’s website, showing the top half of the front page of dine-club.co.uk for 9 January 2018 and 22 December 2021.

26. The top-level domain of the website being uk indicates that it is aimed at UK consumers and the two screen shots dating from during the first relevant period show that the website was in existence during the first relevant period. But, again, there is no evidence of any consumers or restaurateurs ever having interacted with it. Nor is there any indication that any revenue ever accrued to the registered proprietor as a result of the existence of the website.

27. In terms of marketing activity and expenditure, Exhibit DS5 consists of an order from Square Business Cards for 50 business cards, dated 29 April 2016, costing £15.59 in total.

28. Exhibit DS6 shows photographs of the business cards. On one side, the cards feature a phone mock up including the registered proprietor's mark as it chose to use it, together with the registered proprietor's website address and email address. On the other side, there is the device element that the registered proprietor used with the mark.

29. There is no evidence to show that any of these business cards were distributed to members of the public or restaurateurs.

30. Exhibits DS7 to DS15 show examples of companies using the words "Dine Club" in a manner that the registered proprietor considered to be an infringement of its trade mark or copyright and examples email correspondence with those companies. Mr Simm says that the activity of pursuing these companies "took up a lot of time and resources, and naturally slowed and halted the growth of my company, which has appeared as 'non-use' by the cancellation applicant."

31. Mr Simm implies that the above constitutes a proper reason for non-use in accordance with the Act.

32. The final exhibit, Exhibit DS16 is an extract from the BBC news website dated 20 March 2020, with the headline “UK pubs and restaurants told to shut in virus fight.” Mr Simm says that “During the Covid-19 pandemic, I had a temporary withdrawal from the market due to outside forces. On 20th March 2020 it was government mandate that all restaurants close down … This restriction continued for a long period of time. Due to the nature of Dine Club being in the restaurant industry, this meant I could no longer grow or build the business. This obviously had a huge impact on the business usage of the trademark, so all I could do was protect the trademark it during this time.” He also cited “Miller Brewing Co. v. Oland's Breweries Ltd., 548 F.2d 349,352 (C.C.P.A. 1976) (acknowledging "abandonment does not result from a mere temporary withdrawal from the market forced by outside causes").”

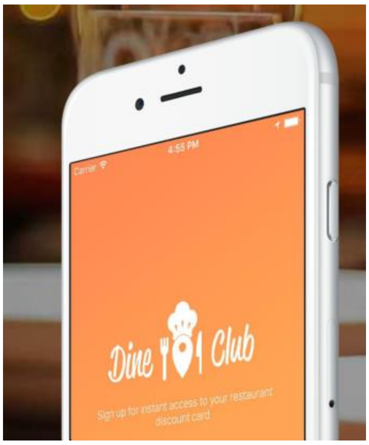
33. Again, I take it that Mr Simm is putting forward what he considers to be a proper reason for non-use.

Use of the mark at issue

34. There is an instance in the evidence where the mark appears as registered – “Dine Club” – or in a way that constitutes normal and fair use for a word mark. In the evidence, it appears as “dine-club” as part of a domain name, and this use of the two words of the mark as registered in lower case form joined together by a hyphen is acceptable.

35. The mark also appears on the registered proprietor’s website in a stylised typeface, orange on a grey background, with the words “Dine” and “Club” separated by a device as shown below.

36. The mark also appears as stylised white text on an orange background on the registered proprietor's website and business cards as part of a phone mock up as below.



37. In respect of the above two instances, I am conscious of *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12 where it was held that "the 'use' of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark" (paragraph 32) and that "a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term 'genuine use' within the meaning of Article 15(1)" (paragraph 35).

38. As per *Dreamersclub Ltd v KTS Group Ltd*, BL O/091/19, the stylised text of the words "Dine Club" constitutes normal and fair use of the word mark as registered, and it is my determination that the independent distinctive character of the word element "Dine Club" in the above examples is not altered by the presence of the device in between the two words. Indeed, the device, being a knife and fork either side of a chef's hat on top of a map pin, simply reinforce the words. As such, the words alone will continue to be perceived as indicative of the origin of the product at issue. Consequently, I consider such use of the mark to be acceptable variant use.

39. To sum up, I am satisfied that the opponent's mark, being a word mark, is shown in use in the evidence exactly as registered, in a different format which nevertheless constitutes normal and fair use, or in an acceptable variant form.

Sufficient use

40. I remind myself that, as per section 100 of the Act and the *Awareness Limited* case, the burden lies on the opponent to prove use.

41. The registered proprietor has failed to put forward any evidence of any revenue accruing from its use of the mark and hence there is no breakdown of sales supplied, nor is there any information as to market share.

42. There is no direct evidence of the registered proprietor's app ever having been launched on either the Apple or Android platforms.

43. There is no evidence of any consumers or restaurateurs ever having interacted with the registered proprietor's app or its website.

44. Evidence of marketing activity by the registered proprietor amounts to a spend of £15.59 on business cards with no evidence that these business cards were distributed to anybody.

45. I have looked at the evidential picture as a whole. I have also considered the cancellation applicant's submissions and its evidence. I broadly concur with the cancellation applicant's submissions as to the shortcomings of the registered proprietor's evidence. I also note the cancellation applicant's evidence to the effect that the registered proprietor's company was dormant throughout the relevant periods[2] and that on examination of the dine-club.co.uk website in the

[2] Jacqueline Pang's witness statement, paragraph 6, and Exhibit JLP3

summer of 2023, it had not been updated since 2018 and “the links to the Dine Club app on iOS and Android were not functional.”[3]

46. While the evidence shows a small amount of start-up activity in the form of the development of an app, the creation of a website, and the printing up of some business cards, there is no evidence that the app was ever launched or that the app or the website ever had any interactions from consumers or restaurateurs, nor of the business cards having been given out. While there could be said to have been the beginnings of an attempt to create a market for the registered proprietor’s services, it has not been proven that such a market was established and then preserved. It was open to, and should have been entirely possible for, the registered proprietor to supply evidence of app and website usage and any revenue that had accrued during the relevant periods, but it has not done so. I find that the material provided is inconclusive and wholly insufficient to demonstrate genuine use within the relevant periods and therefore the registered proprietor has not shown genuine use of its mark for any of its services.

Proper reasons for non-use

47. This leaves me to consider the registered proprietor’s claims in respect of proper reasons for non-use and, in that regard, I am reminded of *Armin Häupl v Lidl Stiftung & Co. KG,* Case C-246/05, where the Court of Justice of the European Union held that:

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

[3] Xiaoyan Zhang’s evidence, p5 of Annex 1

> 53. It must be pointed out, however, that the obstacle concerned need not necessarily make the use of the trade mark impossible in order to be regarded as having a sufficiently direct relationship with the trade mark, since that may also be the case where it makes its use unreasonable. If an obstacle is such as to jeopardise seriously the appropriate use of the mark, its proprietor cannot reasonably be required to use it nonetheless. Thus, for example, the proprietor of a trade mark cannot reasonably be required to sell its goods in the sales outlets of its competitors. In such cases, it does not appear reasonable to require the proprietor of a trade mark to change its corporate strategy in order to make the use of that mark nonetheless possible.
>
> 54. It follows that only obstacles having a sufficiently direct relationship with a trade mark making its use impossible or unreasonable, and which arise independently of the will of the proprietor of that mark, may be described as "proper reasons for non-use" of that mark. It must be assessed on a case-by-case basis whether a change in the strategy of the undertaking to circumvent the obstacle under consideration would make the use of that mark unreasonable. It is the task of the national court or tribunal, before which the dispute in the main proceedings is brought and which alone is in a position to establish the relevant facts, to apply that assessment in the context of the present action.
>
> 55. Having regard to the foregoing considerations, the answer to the second Proper question referred for a preliminary ruling must be that Art.12(1) of the Directive must be interpreted as meaning that obstacles having a direct relationship with a trade mark which make its use impossible or unreasonable and which are independent of the will of the proprietor of that mark constitute "proper reasons for non-use" of the mark. It is for the national court or tribunal to assess the facts in the main proceedings in the light of that guidance."

48. In respect of the registered proprietor's claim that the time and resources that it needed to devote to infringement activity constitutes a proper reason for

non-use, I do not accept this claim. Such activity is part of the usual day-to-day activity that might be required in the normal running of a business. It is a bureaucratic obstacle, and not an insurmountable one that would have prevented the registered proprietor from developing the activities of its company and the use of its mark during the relevant periods. Indeed, the infringement activity that the registered proprietor was engaged upon, was, from the evidence, at the level of email correspondence as opposed to full blown court action.

49. I now turn to the second of the registered proprietor's claims of a proper reason for non-use.

50. In its submissions, the cancellation applicant makes reference to the first instance decision of Allan James in CLICK EAT, BL reference O/0004/24. I find the circumstances of this case to be pertinent to the matter before me and I quote from Mr James' decision as follows:

> "129. … The COVID lockdowns in Spring to early Summer 2020 and December 2020 to mid-May 2021 were clearly obstacles outside the proprietor's control which prevented the provision of a restaurant booking service during these periods. However, this only accounts for around 9 months of the last 5 year period, whereas the marks at issue have been registered since 2nd January 2016, or earlier. Further, the evidence does not show that the marks were put into use in the period between the COVID restrictions being finally lifted in mid-May 2021 and the end of the last relevant period in April 2022.
>
> 130. Therefore, I do not accept the evidence establishes that if it had not been for the COVID pandemic, the proprietor would have made genuine use of the marks during the relevant periods in relation to restaurant reservation service and takeaway ordering services."

51. In the matter before me, the Covid shutdowns would have had an effect on the registered proprietor’s ability to run a business based on what he says was “operating in the restaurant industry, offering restaurants a digital mobile platform to promote themselves via discounts and promotions … via an app to consumers”. However, I have found that the evidence of use put forward by the registered proprietor has been wholly insufficient to demonstrate genuine use within the relevant periods i.e. the registered proprietor could have achieved customer interactions and accrued revenue between October 2017 and the spring of 2020, in the autumn of 2020, and between mid-May 2021 and October 2023 and there is no evidence that it did so. Consequently, I do not believe that the registered proprietor would have made genuine use of its mark during the relevant periods even if the Covid outbreak had not happened and restaurants were operating normally throughout the relevant periods.

CONCLUSION

52. The application for revocation on grounds of non-use succeeds in its entirety. Subject to any successful appeal, the registered proprietor’s mark is revoked from the earliest date claimed, namely 7 October 2022.

COSTS

53. The cancellation applicant has been successful and so it is entitled to a contribution towards its costs. I award costs accordingly in line with Annex A of Tribunal Practice Notice 1 of 2023:

Official fees:	£200
Preparing a statement and considering the other side’s statement:	£250

Preparing evidence and considering and commenting on the other side's evidence:	£600
Preparing submissions:	£350
Total:	**£1400**

54. I order Dine Club Limited to pay Diners Club International Ltd. the sum of £1400. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 25th day of March 2025

JOHN WILLIAMS
For the Registrar