O/0327/25

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO.
2410549 BY VisionOSS Limited

FOR THE TRADE MARK:

VisionOSS

IN CLASSES 9, 37 AND 42

AND

APPLICATION FOR REVOCATION
UNDER NO. 505826
BY TANOSZ PRIVATE MARKETING LIMITED

Background and pleadings

1. VisionOSS Limited ("the proprietor") is the registered proprietor of the following trade mark ("the registration"):

> **VisionOSS**
> UK registration no. 2410549
> Filing date: 7 January 2006
> Registration date: 6 October 2006

2. The registration is for the following goods and services:

> Class 9: Computer software and hardware for use in communications; communications apparatus and instruments; computer and communications accessories and peripherals; downloadable electronic material, including web pages, and software downloadable from the Internet or other computer network; and parts and fittings therefor.
>
> Class 37: Installation and maintenance of computer hardware for use in communications; provision of information regarding installation and maintenance of computer hardware and communications systems, installation and apparatus.
>
> Class 42: Design, development and installation, implementation and maintenance of computer software for use in communications; consultancy in the field of computer software and hardware; providing information regarding design, development, installation, implementation and maintenance of computer software systems, installations and apparatus; providing information regarding design, development and implementation of computer hardware and communications systems, installations and apparatus.

3. On 10 February 2023, Tanosz Private Marketing Limited ("the applicant") applied to revoke the registration under section 46(1)(b) of the Trade Marks Act 1994 ("the Act"), claiming that there has not been genuine use of the registration during the following "relevant period":

> 8 February 2018 - 7 February 2023
> Effective date of revocation being 8 February 2023

4. The applicant's revocation claim is directed against all of the registration's goods and services.

5. The proprietor filed a counterstatement stating that the registration has been genuinely used in respect of all the goods and services covered.

6. The proprietor is represented by Boyes Turner and the applicant is unrepresented.

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

Evidence

8. The proprietor filed its evidence in chief in the form of a witness statement of Derek Lipscombe dated 7 September 2023 together with exhibits DL1 – DL2. The evidence seeks to demonstrate that the contested mark has been put to genuine use throughout the relevant 5-year period.

9. The applicant filed its evidence in the form of a witness statement of Harald Rolf Linhart dated 13 November 2023 together with exhibits HRL1 – HRL10.

10. The proprietor's evidence in reply consists of a further witness statement from Derek Lipscombe dated 13 December 2023.

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

DECISION

Relevance of EU Law

12. 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.

Legislation

13. Section 46 of the Act states:

> "46. - (1) The registration of a trade mark may be revoked on any of the following grounds-
>
> > (a) […]

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c) […]

(d) […]

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

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

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

(4) […]

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

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

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

14. Section 100 is also relevant, which reads:

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

Relevant case law

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 C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v 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. Proven use of a mark which fails to establish that "the commercial exploitation of the mark is real" because the use would not be "viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services protected by the mark" is not, therefore, genuine use. [1]

[1] *Jumpman*, Case BL O/222/16

17. In *Awareness Ltd v Plymouth City Council* [2013] RPC 24 Daniel Alexander QC (as he then was) 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. 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.”
>
> and further at paragraph 28:
>
> “28. .... I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as “tuition services”, is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to “tuition services” even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted.”

18. Furthermore, in *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/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."

19. 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 for the goods and/or services which the proprietor claims use to have been made.

20. Whether the evidence is sufficient for this purpose will depend on whether it demonstrates that there has been real commercial exploitation of the marks, in the course of trade, sufficient to create or maintain a market for the goods at issue in the relevant territory during the relevant five-year period. In making this assessment, I am required to consider all relevant factors, including:

- The scale and frequency of the use shown;
- The nature of the use shown;
- The goods and services for which use has been shown;

- The nature of those goods/services and the market(s) for them; and
- The geographical extent of the use shown.

21. I must now carefully consider the evidence provided by the proprietor and whether this meets the requirements for genuine use as per *easyGroup*, set out earlier in this decision. I am also mindful of the guidance from the *Dosenbach-Ochsner* and *Awareness* appeal cases emphasising the need to consider what the evidence fails to "show" and what might reasonably have been conclusively shown.

Assessment of the evidence

22. The proprietor's evidence consists of two witness statements and two exhibits. Both witness statements are in the name of Derek Lipscombe who is a Director for the proprietor.

23. Mr Lipscombe states that exhibit DL1 to the witness statement consists of "invoices", "quotations", "contracts" and "internet archive website snapshots". The proprietor claims that this evidence demonstrates genuine use of the mark for all of the goods and services it is registered for. I shall run through each of them in turn.

"invoices"

24. Mr Lipscombe states that the exhibit contains "invoices" and the applicant "accepts…that the two exhibits include invoices". However, upon my inspection of the evidence this does not appear to be the case. The evidence does include quotations, a purchase order and various contracts and references to invoices, but not invoices themselves. Whilst I am prepared in some instances to accept admissions by one party, if no invoices are present then no reasonable conclusion can be reached from the extent of sales, presence of the mark, dates, etc.

"quotations"

25. Exhibit DL1 does include four quotations (one being a "DRAFT QUOTATION"). Two are for companies based in the UK, and the other two outside. The word VisionOSS appears with Ltd and is in each quotation in the top right as shown below. The registration does not appear anywhere else on the quotes.

26. All of the quotations are dated within the relevant period with the “Line Description” of the “Products and Services” including reference to “VOSS Orchestration Software”.

27. One quotation has an effective date of 11 September 2019 and is for a company based in Qatar. It is for $686,475 and includes the mark at the top right corner as shown above. The quotation states:

> “This quotation provides for the CUCDM to VOSS-4-UC licence transfer and for the Maintenance Support subscription for such converted VOSS-4-UC (transfer) licences as well as M2UC-Transition and VOSS Reporter Maintenance Support subscriptions.”

28. The other non-UK quotation is dated 9 January 2023 and is to a company based in the Netherlands.

29. Page 59 of the exhibit is a quotation for a UK based business. It has an effective date of 29 July 2021 and an expiration date of 28 August 2021. In the line description it refers to “VOSS Orchestration Software Licensing Subscription”. The quotation is for £43,291.78.

30. The draft quotation is for a company based in the UK. It has an “Expiration date” of 31 May 2021 and an effective date of 12 August 2021. In the line description there is no reference to VisionOSS or VOSS. The quote is for £45,360.

31. Mr Lipscombe does not state whether either the draft or actual quotations materialised into an order. I think it is reasonable to infer that neither did else this would have been stated or a subsequent invoice submitted as evidence.

Contracts

32. Mr Lipscombe states that the evidence includes, “Contracts between my Company and various third parties which relate to a range of the relevant goods and/or services and which bear the Mark”.

33. The evidence includes a contract which is an "Amendment" to an earlier contract between BT and VisionOSS Limited. It is dated 21 November 2018 and amends the earlier contract dated 1 October 2017. The earlier contract is not in evidence.

34. The proprietor is described as 'The Supplier' and seeks to amend the contract of service the proprietor provides relating to "Call Manager Provisioning Software, Analytics and Migration Products". Schedule 1 to the contract includes a table headed "VOSS PRICING SCHEDULE". The table includes the following headings:

Product, Support and Services Rate Card (in GBP)**License/Maintenance Type**	**Description**	**Base Price GBP**	**Discounted GBP**

The rest of the table includes references to "VOSS", "VOSS4UC" and VOSS-40UC" but not VisionOSS.

35. Section 4.1 to the contract is headed "INTELLECTUAL PROPERTY" and effectively states that all of the IP deriving from the software and services is the property of VisionOSS.

36. The contract also makes various references to the proprietor providing "Support and Maintenance Services", "Training materials" and "Technical Support". Such support is described as including:

A. SUPPORT
Support shall include VisionOSS providing the following technical support:

a. Advice by telephone, fax or e-mail on the use of the Software in accordance with the Documentation;
b. Discuss error messages or abnormal situations which may arise within the Software.
c. Assist in diagnosing, isolating, and identifying problems in the Software. Customer should have available a full description of the circumstances, sequence of events, error messages noted, key sequencing, etc.;
d. Assist in diagnosing malfunctions or interface problems with equipment which is not a part of the Software provided by VisionOSS but is covered by the interface specification for the Software. VisionOSS has no responsibility for making corrections or for malfunction of 3rd party interfaces or equipment; and
e. Provide resolution of Defects in the Software covered by this policy (i.e. any repeatable, verifiable errors in the Software which result in the failure of the Software to perform to its specifications) which may be in the form of a corrected copy of the Software, a documented patch until the next release of the Software, a documentation correction or a "work-around" or temporary fix until a Software correction or new release can be installed.

Training Materials License: VisionOSS agrees to provide Customer access to VisionOSS training material in slide format on a royalty free basis. This material is provided for internal use (i.e. not for re-sale or white labelling). The Customer agrees to work collaboratively with VisionOSS to extend this material to incorporate contact centre adaptions through their use of and learnings in the material.

The exhibit includes a "Framework agreement" between the proprietor and a company called Mannai Trading Co. W.L.L which is based in Qatar. Whilst the agreement states that the "Law and jurisdiction" is governed by the law of England and Wales, I am unable to determine where the services are being provided. It does refer to Mannai Trading Co. W.L.L as being the "customer", which suggests the proprietor offers the services to parties outside of the UK. The applicant argues that this means that "such use is not relevant for the purpose of these proceedings"[2].

37. Exhibit DL1 also includes a "Services subcontractor statement of work" between the proprietor and a UK based business. At the top of the document it states, "Project Name: VOSS upgrade". It is signed by both parties and dated 1 September 2021. The proprietor has signed it on behalf of VISIONOSS Ltd. It is not clear, and has not been explained, what services are covered by the statement of work.

Internet archive website snapshots

38. The exhibit also includes Wayback Machine extracts from the proprietor's website. They include reference to VISIONSOSS LIMITED at the bottom of the extracts but they are otherwise, as pointed out by the applicant, illegible.

39. The final page of the exhibit is a purchase order for "Prepaid Professional Services Support". It is for $10,000 and is dated 9 February 2023, which is after the relevant period and to a company based in the Netherlands. It includes a reference to VISIONOSS LTD.

40. Exhibit DL2 to the witness statement includes the following:

a. Company's UK sales figures in GBP from the sale of the relevant goods and services under and by reference to the Mark throughout the Relevant Period

	2018	**2019**	**2020**	**2021**	**2022**
	GBP	**GBP**	**GBP**	**GBP**	**GBP**
UK	£7,915,852	£4,194,173	£4,850,569	£5,176,958	£4,968,850
Group	£11,515,870	£8,658,121	£11,847,956	£12,930,146	£14,015,307

[2] Applicant's written submissions of 16 January 2024

It also states that during the relevant period the total amount spent on advertising and marketing is "Over $1M dollars spend (including people resource here as our website and digital communications is our primary advertising and requires constant work)".

41. The second witness statement does not include any exhibits but is simply a critique of the applicant's evidence. I shall refer to these criticisms where necessary when summarising the applicant's evidence.

42. The onus is on the proprietor to demonstrate genuine use of the mark VisionOSS for the following goods and services:

> Class 9: Computer software and hardware for use in communications; communications apparatus and instruments; computer and communications accessories and peripherals; downloadable electronic material, including web pages, and software downloadable from the Internet or other computer network; and parts and fittings therefor.
>
> Class 37: Installation and maintenance of computer hardware for use in communications; provision of information regarding installation and maintenance of computer hardware and communications systems, installation and apparatus.
>
> Class 42: Design, development and installation, implementation and maintenance of computer software for use in communications; consultancy in the field of computer software and hardware; providing information regarding design, development, installation, implementation and maintenance of computer software systems, installations and apparatus; providing information regarding design, development and implementation of computer hardware and communications systems, installations and apparatus.

43. I shall begin with my assessment in respect of the goods. No evidence has been provided to show the mark used on any physical goods. I appreciate that the turnover provided by the proprietor is significant. Further, these figures are uncontested. However, the proprietor has not broken these figures down to demonstrate how much is for the sale of goods and how much is for services provided. The proprietor claims that the evidence demonstrates genuine use for all of the goods or services provided. To my mind, it would be relatively straightforward for the proprietor to demonstrate what proportion of sales are for goods as opposed to services, but this is not the case.

44. The proprietor's best position is that the sales figures which are *prima facie* high. However, I simply do not know which services these sales should be attributed to from the list of services.

45. There are further problems for the proprietor. There is very little evidence of the mark solus. Instead, there are more references to Visionoss Limited. In *Aegon UK Property Fund Limited v The Light Aparthotel LLP,* BL O/472/11, Mr Daniel Alexander Q.C. as the Appointed Person stated that (my emphasis added):

> "17. ..... unless is it obvious, the proprietor must prove that the use was in relation to the particular goods or services for which the registration is sought to be maintained.
>
> 18. In *Céline SARL v. Céline SA*, Case C-17/06 (*Céline*), the Court of Justice gave guidance as to the meaning of "use in relation to" goods for the purpose of the infringement provisions in Article 5(1) of the Directive. Considering a situation where the mark is not physically affixed to the goods, the court said at [23]:
>
>> "…even where the sign is not affixed, there is use "in relation to goods or services" within the meaning of that provision where the third party uses that sign in such a way that a link is established between the sign which constitutes the company, trade or shop name of the third party and the goods marketed or the services provided by the third party."
>
> 19. The General Court has, on more than one occasion, proceeded on the basis that a similar approach applies to the non-use provisions in what is now Article 42 of the European Union Trade Mark Regulation. For example, in *Strategi Group*, Case T-92/091, the General Court said:
>
>> "23. In that regard, the Court of Justice has stated, with regard to Article 5(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989, L 40, p. 1), that the purpose of a company, trade or shop name is not, of itself, to distinguish goods or services. **The purpose of a company name is to identify a company, whereas the purpose of a trade name or a shop name is to designate a business which is being carried on.** Accordingly, where the use of a company name, trade name or shop name is limited to identifying a company or designating a business which is being carried on, such use cannot be considered as being 'in relation to goods or services' (*Céline*, paragraph 21).
>>
>> Conversely, there is use 'in relation to goods' where a third party affixes the sign constituting his company name, trade name or shop name to the goods which he markets. In addition, even where the sign is not affixed, there is use 'in relation to goods or services' within the meaning of that provision where the third party uses that sign in such a way that a link is established between the sign which constitutes the company,

trade or shop name of the third party and the goods marketed or the services provided by the third party (see *Céline*, paragraphs 22 and 23).

20. Those passages must be read together with the general requirements of proof of use in *Ansul* at [43] that there is genuine use of a trade mark where the mark is used in accordance with its essential function namely to guarantee the identity of the origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services."

As previously stated, the quotations relied upon have the word VOSS with the company name underneath it. Further, VOSS is used on the website (as evidenced by the Wayback machine, see Annex A) with VISIONOSS LIMITED at the bottom indicating that it is the company name. The purpose of such use would be viewed as identifying the company name, rather than designating trade origin.

46. Taking all of the evidence as a whole, I find that the proprietor has failed to demonstrate genuine use of the registration. The proprietor has filed evidence of quotations which have not materialised into invoices, agreements with no real explanation for which goods or services they relate to and no evidence of the mark being present on any goods. As the case law states[3] I am entitled to be sceptical of material being provided which is inconclusive, particularly in light of the evidence which has been submitted (i.e. the quotations, agreements, internet extracts).

OUTCOME

47. The revocation action succeeds in full under section 46(1)(b) of the Act. The trade mark registration shall be revoked in full, with an effective revocation date of 8 February 2023.

COSTS

48. The applicant has been successful and would therefore typically be awarded a contribution towards its costs. This is in accordance with Tribunal Practice Notice ("TPN") 1/2023. However, on 18 December 2023, the Tribunal wrote to the applicant stating that if they intended to request costs they should complete and submit the costs proforma. In this letter it states that "If the pro-forma is not completed and returned, costs, other than official fees arising from the action (excluding extensions of time), may not be awarded."

[3] *Awareness Ltd v Plymouth City Council* [2013] RPC 24

49. The costs proforma was not submitted and therefore I decline to make an award of costs in respect of the proceedings themselves. However, as stated in the tribunal's letter, the applicant is entitled to its official fee.

50. In view of the above, I order VisionOSS Limited to pay Tanosz Private Marketing Limited the sum of £200. This sum should 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 4th day of April 2025

MARK KING
For the Registrar,
The Comptroller-General

Annex A