

O/0348/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION UK00004081825

IN THE NAME OF NIKITA TCHESNOKOV

AND

APPLICATION 508673

BY OCC ESTABLISHMENT FOR A DECLARATION THAT REGISTRATION

UK00004081825 IS INVALID

Background and Pleadings

1. The following registered trade mark ('the Contested Mark') stands in the name of Nikita Tchesnokov, the Registered Proprietor ('the RP'):

UK00004081825



Filing date: 30 July 2024

Date of entry in register: 15 November 2024

Registered for the following goods and services:

Class 9:

Software and applets for Embedded Universal Integrated Circuit Cards (eUICC); software and applications for mobile devices enabling and managing mobile network connectivity, provisioning and management of eUICC profiles and MSISDNs, software for Voice over IP (VoIP), voice calling, the distribution of data plans, and managing secure digital identities. None of the aforementioned goods pertain to data diode network security, administration, or management, or social networking or dating.

Class 38:

Services for providing connectivity through the issuance and management of SIMs and eSIMs, including provisioning, activation, and configuration of SIMs and eSIM profiles; services related to mobile network connectivity, including enabling and managing access to global telecommunications networks, provisioning and management of MSISDNs, Voice over IP (VoIP), voice calling, the distribution of data plans, and multi-region or multi-profile connectivity. None of the aforementioned services pertain to data diode network security, administration, or management, or social networking or dating.

2. On 28 March 2025, OCC Establishment, the Cancellation Applicant ('the CA'), applied to invalidate the RP's registration, pursuant to sections 47(2)(a) and 5(2)(b)

of the Trade Marks Act 1994 ('the Act'). The application for invalidation is directed against all of the goods/services for which the Contested Mark is registered. The CA seeks to rely upon the following two earlier rights¹ ('the Earlier Marks'), each in its entirety:

(i) UK00915179674 ('the 674 Mark')



Current status of the mark: Expired²

Filing date: 3 March 2016

Date of entry in register: 6 July 2016

Priority details:

Priority date: 19 November 2015

Priority country: Jamaica

TM from which priority claimed: 068669 (priority relating to the whole of the UK registration).

(ii) UK00915179625

¹ Both rights are comparable marks pursuant to Article 54 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01), also known as the 'Withdrawal Agreement', based on EUTMs which were registered prior to the withdrawal of the UK from the European Union.

² UK00915179674 became due for renewal on 3 March 2026. 6 months prior to the renewal date, on 3 September 2025, the Registry sent an official reminder to the CA with a link to the online renewal form. To date, the CA has not sought to renew the registration of this mark.

ORBIT (word mark)³ ('the 625 Mark')

Current status of the mark: Registered⁴

Filing date: 3 March 2016

Date of entry in register: 6 July 2016

Priority details:

Priority date: 19 November 2025

Priority country: Jamaica

TM from which priority claimed: 068670 (priority relating to the whole of the UK registration).

Both Earlier Marks are in respect the following goods and services (albeit only Earlier Mark (ii) remains registered):

Class 9:

Communications equipment, namely, equipment for receiving transmissions of television, radio, audio, video and data information delivered via satellite, global computer network, telecommunications network, wireless communication network, or other electronic or digital communications network or device; equipment for receiving transmissions broadcast via satellite, namely, radios, tuners, decoders, demodulators and receivers.

Class 38:

Telecommunications services, namely, providing broadband internet access via satellite; television and radio broadcasting via satellite; telecommunication services, namely, transmission of television, radio, video, image, voice, audio, and data

³ In *LA Superquimica v EUIPO*, Case T-24/17, at paragraph [39] it was held that:

'[...] it should be noted that a word mark is a mark consisting entirely of letters, words or groups of words, without any specific figurative element. The protection which results from registration of a word mark thus relates to the word mentioned in the application for registration and not the specific figurative or stylistic aspects which that mark might have. As a result, the font in which the word sign might be presented must not be taken into account. It follows that a word mark may be used in any form, in any colour or font type (see judgment of 28 June 2017, *Josel v EUIPO — Nationale-Nederlanden Nederland (NN)*, T-333/15, not published, EU:T:2017:444, paragraphs 37 and 38 and the case-law cited).'

⁴ The registration of UK00915179625 was renewed on 15 October 2025.

information via satellite, cable, wireless communication network, global computer network, fiber optics, or other electronic or digital communications network or device; provision of equipment for telecommunication services, namely, transmission of television, radio, video, image, voice, audio, and data information via satellite, cable, wireless communication network, global computer network, fiber optics, or other electronic or digital communications network or device.

3. Although the CA has not included any narrative within its Form TM26(1),⁵ the essence of an invalidation claim, pursuant to sections 47(2)(a) and 5(2)(b), is that the parties' marks are similar, and for identical or similar goods/services, leading to a likelihood of confusion. The CA has claimed that each of its earlier rights has been used during the relevant five-year period for the full width of the registered specifications.
4. The RP filed a Defence and Counterstatement in which it: denied the claim against it in its entirety; and requested proof of use for each of the earlier rights, for their specifications in full.
5. The CA is represented by Haseltine Lake Kempner LLP. The RP is represented by Acuity Law Limited.
6. Only the CA filed evidence. A hearing was neither requested nor considered necessary, and neither party filed written submissions in lieu thereof.

EVIDENCE

7. The CA's evidence comes from Fouad Halawi, Chief Executive of Orbit Mobile Limited, an affiliated company of the CA. Mr Halawi's Witness Statement is dated 16 June 2025, accompanied by nine exhibits: EH1 – FH9. I confirm that I have read all of the evidence, to which I will refer to the extent that it is relevant.

⁵ Application to declare invalid a registration or a protected international trade mark (UK).

8. The following decision has been made after careful consideration of the case papers available to me.

RELEVANCE OF EU LAW

9. 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.

DECISION

The relevant legislation

10. Section 47 of the Act states as follows:

'47. (1) [...]

(2) Subject to subsections (2A) and (2G), the registration of a trade mark may be declared invalid on the ground-

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) ...

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.

(2ZA) [...]

(2A) The registration of a trade mark may not be declared invalid on the ground that there is an earlier trade mark unless –

(a) the registration procedure for the earlier trade mark was completed within the period of five years ending with the date of the application for the declaration,

(b) the registration procedure for the earlier trade mark was not completed before that date, or

(c) the use conditions are met.

(2B) The use conditions are met if –

(a) the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with their consent in relation to the goods or services for which it is registered-

(i) within the period of 5 years ending with the date of application for the declaration, and

(ii) within the period of 5 years ending with the date of filing of the application for registration of the later trade mark or (where applicable) the date of the priority claimed in respect of that application where, at that date, the five year period within which the earlier trade mark should have been put to genuine use as provided in section 46(1)(a) has expired, or

(b) it has not been so used, but there are proper reasons for non-use.

(2C) For these purposes-

(a) 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

(b) use in the United Kingdom includes affixing the trade mark to the goods or to the packaging of goods in the United Kingdom solely for export purposes.

...

...

(2E) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

...

(5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.

(5A) An application for a declaration of invalidity may be filed on the basis of one or more earlier trade marks or other earlier rights provided they all belong to the same proprietor.

(6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made:

Provided that this shall not affect transactions past and closed.'

11. Section 5(2)(b) of the Act states:

'5(2) A trade mark shall not be registered if because –

(a) ...

- (b) It is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

There exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.’

Earlier Marks

12. In accordance with section 6 of the Act, both of the CA’s marks (‘the Earlier Marks’) are earlier marks by virtue of their priority dates (as well as their filing dates)⁶ which fell before the filing date of the Contested Mark.

Proof of use

13. The relevant provisions of the Act are set out in section 47(2A) – (2E), set out above. Given that the Earlier Marks are comparable marks, the following provisions of Schedule 2A, Part 1 of The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019 are relevant:

‘9.- (1) Section 47 applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 47(2A)(a) and 47(2B) (the “five-year period”) has expired before IP completion day—

(a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 47 to the United Kingdom include the European Union.

⁶ The Earlier Marks have the same filing dates and completed registration on the same date.

(3) Where IP completion day falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day—

- (a) the references in section 47(2B) and (2E) to the earlier trade mark are to be treated as references to the corresponding EUTM; and
- (b) the references in section 47 to the United Kingdom include the European Union.’

14. Section 100 of the Act provides that:

‘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 periods

15. In invalidation proceedings, there are two relevant periods within which use is required to be shown. The first is the five years ending with the date of application for invalidation, i.e. **29 March 2020 – 28 March 2025**. The second is the five years ending with the date the application for the Contested Mark was filed, i.e. **31 July 2019 to 30 July 2024**.

The relevant case law

16. 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 Court of Justice of the European Union (‘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 Bunderversammlung 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]; *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.”

17. 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 or services protected by the mark’ is, therefore, not genuine use.

18. When considering the matter of genuine use of a comparable EU trade mark prior to and including IP Completion Day (31 December 2020), use in the EU remains relevant.⁷ In this regard, I bear in mind the guidance laid down by the CJEU in the case of *Leno Merken BV v Hagelkruis Beheer BV*.⁸

The relevant territories

19. The Relevant Periods overlap significantly. Broadly speaking, the period of time to be considered is 31 July 2019 to 28 March 2025.

20. EU use is relevant from 31 July 2019 to 31 December 2020.

21. From 1 January 2021 until 28 March 2025, only UK use is relevant.

The CA’s evidence of use

22. The CA’s documentary evidence includes, inter alia: extracts from the website of the CA and its subsidiaries; three documents referred to as ‘invoices’ for offerings

⁷ Kerly’s Law of Trade Marks and Trade Names, 17th Ed., [12-073].

⁸ Case C-149/11, at [36], [50] and [55].

sold by the CA; invoices intended to demonstrate the CA's marketing expenditure in respect of the Earlier Marks; and an extract from the CA's LinkedIn page. I note the following from the evidence:

(a) Mr Halawi has given narrative evidence that the CA is part of a group of companies, the Orbit Group ('the Group'), and that it 'holds since its inception the Orbit trademarks for the Orbit Group'.⁹ A UK subsidiary of the Group, Orbit Mobile Limited, formerly named Orbit Mobile I Company Limited, ('the UK Arm'), was incorporated on 10 June 2024. Mr Halawi has stated that the Group 'owns and operates multiple television channels [and] radio stations' as well as having 'connectivity and technology offerings'.¹⁰ Mr Halawi has made the following overarching positive statement that the Earlier Marks have been used:¹¹

'6. The Registrations are used by the [CA] and its related subsidiaries [sic] companies in connection with a variety of goods and services. References to use in this statement include use by the [CA] and/or its related subsidiary companies'

7. The [CA] has made extensive use of the Marks in relation to the Goods and Services for many years.'

I note that this statement makes no reference to any specific territories or time periods. Mr Halawi's narrative does not include any explicit statement that either of the Earlier Marks has been used within the UK (or, prior to IP Completion Day, within the EU) and within the Relevant Periods.

(b) Website extracts

(i) Mr Halawi has stated that the Group's offerings under the marks can be found on its website, an extract of which has been provided.¹² The extract (undated, save for the 2024 Copyright Notice) shows the home page with the 674 Mark in the top left corner:

⁹ Witness Statement of F. Halawi, [10].

¹⁰ As above.

¹¹ Witness Statement of F. Halawi.

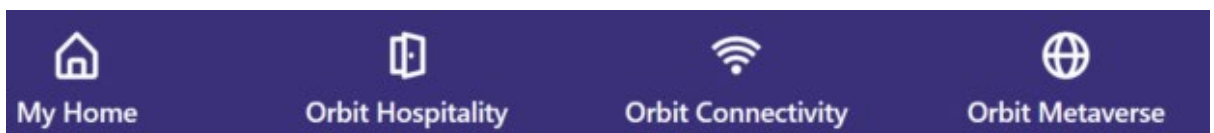
¹² Witness Statement of F. Halawi, [12]; Exhibit FH2.



The following text is positioned prominently at the top of the home page:



The following 'categories' are shown along the bottom of the page:



Given the paucity of material provided in the exhibits, it is appropriate to simply reproduce the content provided under each of the aforesaid 'categories':

My Home

Experience the ultimate comfort and convenience for your home and loved ones with My Home services that will cover all your home and family needs from entertainment to smart home technology, E-learning, and beyond. Embrace a modern stress-free lifestyle with just one click.

Orbit Hospitality

We offer hotel owners and operators to enhance the entertainment for their guests with more than 100 TV channels with the use of the latest technologies and various solutions including central and decentralized multicast as well as unicast with OTT technology to make your hotel distinguished with exceptional entertainment options for your guests.

Orbit Connectivity

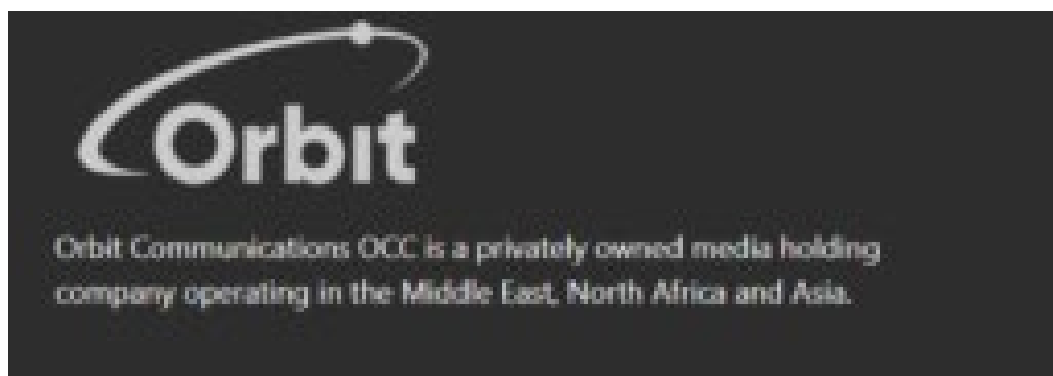
Internet service provider for the Kingdom of Saudi Arabia from Orbit provides you with Internet and connectivity solutions to homes and companies using the latest technologies. offering high-speed internet and a stable smooth connection. Orbit offers the latest smart systems to ensure all areas needs of your home or business are covered.

The text headed 'Orbit Metaverse' reads 'Coming soon'. I presume this to indicate that the offering, whatever it might be, was, at the time, not yet being held out as available.

There are no specific product listings and no detail on pricing.

The following details suggest that the webpage is targeted at consumers in Saudi Arabia:

Information at the end of the page explicitly states that the undertaking to which the webpage relates operates in the Middle East, North Africa and Asia:



The URL for the website ends with the characters 'sa' and the content relating to the Group's offering 'Orbit Connectivity' relates to the Kingdom of Saudi Arabia.

Despite the content being in English, there is nothing to indicate that this material was directed to UK consumers (nor EU consumers).

(ii) Two Wayback¹³ prints have been provided, showing ‘historical use of the Marks on the website as it appeared on 23 October 2019 and 23 April 2020. The web page extract is the same for both dates and features the earlier figurative mark in the top left corner. The featured text suggests that the website is aimed at consumers in the Arab states:

‘Profile

Fully owned by the Mawarid Group, the Orbit Group is a diversified media and communications company with investments in operations across sectors along the entire value chain.

Loyal to its mission “to provide services to every home and business in the Arab world”, the Orbit Group is committed to realise its vision to “create, manage and deliver content in all forms”.

Orbit Group’s current investments include OSN, Media Gates and Orbit Data Systems. Among others, Orbit is affiliated with Integrated Telecom Company (ITC), a leading Saudi based telecom provider.’

[my underlining]

The content suggests that this is directed to consumers in the Arab world, including Saudi Arabia. There is nothing to indicate that this is directed to, or that the CA’s offerings are being held out as available to UK/EU consumers.

(iii) Mr Halawi has stated that ‘[a]s part of Orbit Group’s connectivity and growing growth technology vision, [the UK Arm] operates a travel eSIM service’.¹⁴ In support of this statement, Mr Halawi has introduced an extract of the homepage from the UK Arm’s website (undated save for a Copyright notice 2024-2025) and pointed out that the UK is listed as a “Top Destination”.¹⁵

The following mark is visible in the top left corner of the page:

¹³ The Wayback Machine is an internet archiving service.

¹⁴ Witness Statement of F Halawi, [14].

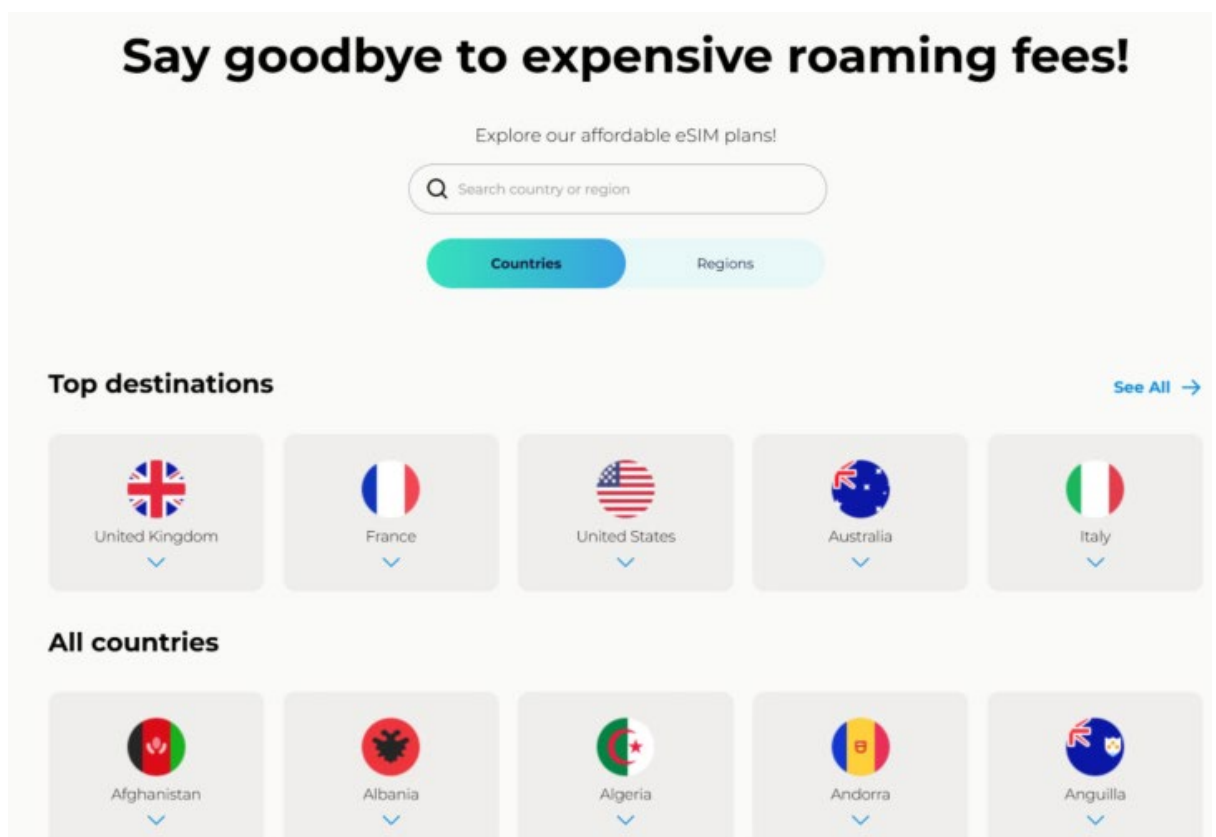
¹⁵ As above.



I note the following instance of the UK flag, which I understand to denote the language in which the web content is rendered:

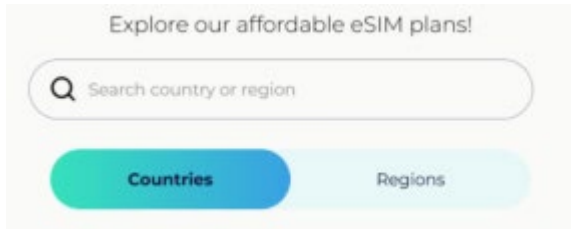


The following image includes the UK:

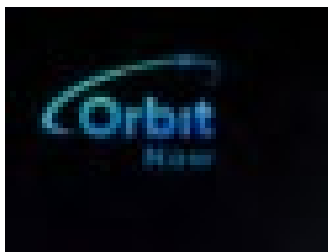


The UK is listed here as a destination, therefore, this service will be targeted to, inter alia, consumers intending to travel to the UK, as opposed to those domiciled in the UK. So, the fact that the UK is listed as a destination to which the CA's roaming service relates does not necessarily substantiate use of the mark directed to UK consumers. Furthermore, the fact that a consumer would need to purchase a roaming service in order to use their phone in the UK is rather evidence that the consumer is not based in the UK.

The content indicates that the UK Arm’s offering is a ‘Single download, reusable eSIM’, as an alternative to roaming charges; and it is available for a variety of countries/regions as shown by the search button:



(iv) An undated screenshot showing an extract from the landing page of Orbit Group’s on-demand TV service has been provided.¹⁶ The mark is shown in the top left-hand corner in the following form:



Whilst there is some English wording ('Live TV', 'Recommendations', 'see more', 'Programs Recommendations', and 'Video On Demand'), most of the programme/film titles are in a non-English language - a non-Latin alphabet that might be Arabic, although I cannot be sure. My view is that this landing-page is unlikely to target UK consumers. Even if this page was clearly aimed at the UK, it has little probative value with any further detail on, inter alia: the numbers of UK subscribers and the dates when the subscriptions were purchased. A screenshot providing detail headed 'About Us'¹⁷ fares little better in terms of probative value – it is undated; and the text conveys a focus on Saudi Arabia, Egypt and Lebanon. No other country/state or region is mentioned. The contact numbers for prospective customers to subscribe to whatever is being offered by Orbit Group are based in: KSA,¹⁸ Egypt, Lebanon, Qatar, Jordan, Bahrein, Oman and the United Arab Emirates. No numbers are provided for the UK or any EU Member States.

¹⁶ Exhibit FH5.

¹⁷ Exhibit FH6.

¹⁸ Kingdom of Saudi Arabia.

(c) Invoices:

A sample of 3 documents described as 'invoices' has been provided for a range of dates between 25 December 2024 and 7 March 2025, for sums payable in respect of the 'Orbit Now (on-demand TV) package'.¹⁹ These appear to be receipts rather than invoices. No customer names or addresses are visible, although there are usernames which appear to be email addresses. One of the email addresses ends in the characters 'doctors.net.uk', which indicates a UK-registered email address. The other two addresses are for Gmail accounts. Each document bears the following mark in its header, which includes the word 'Orbit' in a plain typeface:



The units of currency are 'SAR' which I understand to be Saudi riyal.

It is convenient to summarise the details of these 'invoices' as follows:

Date of document:	UK customer?	Description of service rendered	Sum due:
25 December 2024	No information on the territory of the customer	'Orbit Now Standard Package (1 SAR) Service Period: 25/12/24 – 25/01/25	SAR 1.00
23 February 2025	No physical address detailed, but customer has UK-registered email account	'Orbit Now Standard Package (1 SAR) Service Period: 23/02/25 – 23/03/25.	SAR 1.00
7 March 2025	No information on the territory of the customer	'Monthly Recurring Charge for Orbit Now – New Service Period: 07/03/25 – 07/04/25'	SAR 14.99

¹⁹ Witness Statement of F Halawi, [17].

(d) Information on marketing expenditure:

A section of Mr Halawi's Witness Statement headed 'MARKETING EXPENDITURE' introduces several documents described as 'sample invoices and purchase orders demonstrating the investments made in promoting the marks widely, over a sustained period, and through a variety of mediums'.²⁰ I will address the documents in turn:

(i) A document headed 'Standard Advertising Insertion Order', dated 10 March 2025, has been provided in respect of advertising services engaged by Orbit Mobile from 'expediagroup media solutions'. The contact information for Orbit Mobile includes an address in London, UK. The 'Campaign Name' is recorded as 'Orbit Esim passport ads Q1'. Mr Halawi's accompanying narrative reads '2,000,000 impressions through Partnership with "Passport Ads", the digital advertising solution offered by Expedia Group Media Solutions'. The document includes the following table is included:

Campaign Overview		
Currency: USD		
Site	Impressions	Net Value
Passport Ads	2,000,000	10,000.00
Totals (excluding tax)	2,000,000	10,000.00

Another table details the 'Targeting' of the campaign:

²⁰ Witness Statement of F Halawi, [18].

Targeting
Link-Off
AND
Even
AND
[DV360 Country=United States ;Saudi Arabia ;United Arab Emirates ;Bahrain ;Kuwait ;Qatar ;Oman ;Albania ;Austria ;Belgium ;Bosnia and Herzegovina ;Bulgaria ;United Kingdom ;Greece ;Denmark ;Estonia ;Ireland ;Italy ;Liechtenstein ;Lithuania ;Cyprus ;Luxembourg ;Hungary ;North Macedonia ;Malta ;Moldova ;Monaco ;German ;Norway ;Poland ;Portugal ;Romania ;Slovakia ;Slovenia ;Serbia ;Ukraine ;Finland ;France ;Netherlands ;Croatia ;Montenegro ;Czechia ;Switzerland ;Sweden ;Spain]
AND
PassportAds Bookers DEST of Europe 90 - (7076351990),PassportAds Shoppers Dest of Europe 90 - (809670862),PassportAds Bookers Dest of USA 90 - (894859639),PassportAds Shoppers Dest of USA 90 - (893242268)

I note that the UK is included within the list of target territories for whatever the campaign is intended to promote. No copy of the advertising material has been provided. I am, therefore, unable to determine what goods/services were being advertised, nor whether either of the Earlier Marks was visible in it. Given the fairly long list of non-UK countries targeted, it is not possible to determine what proportion of the 10,000 \$US payable by the CA represents marketing efforts aimed at the UK market.

(ii) Three tax invoices for sums payable by Orbit Mobile to a UK-based business called 'Mobilise' have been introduced by Mr Halawi as 'Partnership with Mobilise, a provider of telecommunications software solutions'.²¹ Three sums, each approximately £19,000 - £20,000, were payable on the following dates: 21 July 2024, 30 December 2024 and 21 January 2025. The invoices relate to instalments of 'set-up fees'. In the absence of any further detail, these invoices are of little, if any, probative value. I am unable to determine in any real detail: the marketing/advertising activity that took place; what was being advertised/offered, and whether either Earlier Mark was shown; the extent of any targeting to UK consumers. Mr Halawi's repeated use of the word

²¹ Witness Statement of F Halawi, [18].

'partnership', in my view, does not appear to describe a collaboration between the CA and other entities. It seems more likely that the CA has merely engaged the services of 'Mobilise' etc. Another tax invoice, dated 17 December 2024, for 'Social Media Management' services provided by 'mediaunitdmcc' is similarly unhelpful.

(iii) A document headed 'Order Form' appears to relate to a year-long subscription to be taken out by Orbit Mobile from 'impact', for the period 1 June 2025 – 31 May 2026. The total fee quoted for the subscription is 6,000 \$US. The following table details the 'product' purchased by the CA:

Product	Rates		
	Incremental Usage Rate	Monthly Payment Processing Volume	Monthly Subscription Fees*
Performance - Essentials	20.00%	\$2,500	\$500
Onboarding Services Fees - One-Time Fees			\$500
Total Subscription Fees for Subscription Term*			\$6,000
Initial Invoice			\$500

*Excludes additional amounts that may be billed hereunder, such as Incremental Usage Fees, Upgrade Fees and Additional Services. Company's subscription is for the following web properties or applications: Orbitmobile.com
Company is required to provide a resource to implement tracking.

Mr Halawi's sole reference to this document is by way of the words 'Partnership with Impact.com, an influencer marketing platform'. In the absence of any further detail, e.g. on the particular marketing/advertising activity concerned, and whether any UK consumers were exposed to either Earlier Mark, this material is of very little assistance.

(iv) Three internal documents prepared by the CA's own finance/procurements teams have been provided in respect of services engaged by the CA as follows:

- A 'Purchase Requisition Approval Form', dated 6 March 2025, is in respect of budgetary approval for services from a supplier called 'Ethos' (territory unknown) described by My Halawi as 'a creative marketing consultancy'.²² The cost for which approval was sought is 55,000 \$US. The descriptions of the services are recorded as 'Performance Campaign' and 'Media Buying 10%'.

²² Witness Statement of F Halawi, [18].

- A 'Purchase Order', dated 1 February 2025, for the sum of £11,500, is in respect of services from a Berlin-based company called 'Adjust', described by My Halawi as 'a digital marketing developer'. The service descriptions are recorded as 'Adjust Core; Spendworks Base; Fraud Prevention Suite; and Audience Builder'.
- A 'Purchase Order', dated 3 May 2025, for the sum of 72,000 \$US, is in respect of services from a Beirut-based company called 'Hovi', described by Mr Halawi as 'a digital marketing services platform'.

Without any evidence by way of examples of the CA's marketing and promotional materials, showing the Earlier Marks, goods/services held out, and the territories targeted, these documents are of very little assistance.

(e) Mr Halawi has given narrative evidence that the CA's LinkedIn page '[at the time of filing the Witness Statement, i.e. 16 June 2025] has around 14,000 followers.²³ I am unable to determine the proportions (if any) of followers based in relevant territories (i.e. the UK or, prior to IP Completion Day, the EU). I am also unable to determine whether any of the followers were 'acquired' within the Relevant Periods.

A note of the matter of variant forms

23. I note that the mark that appears most frequently in the documentary evidence is the 674 Mark, whose current status is 'expired':



There are fewer instances of the 625 Mark, which is currently registered: ORBIT. However, for reasons that will become apparent (set out at [29] to [33]), it is

²³ Witness Statement of F Halawi, [19].

unnecessary for me to address the matter of whether instances of the 674 Mark substantiate instances of the 625 Mark.

Sufficient Use

24. For use to be genuine, it must have been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods/services at issue; in the EU between 31 July 2019 and 31 December 2020, and in the UK between 1 January 2021 and 28 March 2025.

25. In making my assessment, I am required to consider all relevant factors, including (i) the scale and frequency of the use shown; (ii) the nature of the use shown; (iii) the goods and services for which use has been shown; (iv) the nature of those goods and services, and the market(s) for them; and (v) the geographical extent of the use shown. I also bear in mind the comments of the GC in *New Yorker SHK Jeans GmbH KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (OHIM), Case T-415/09:

'53. In order to examine whether use of an Earlier Mark is genuine, an overall assessment must be carried out which takes account of all the relevant factors in the particular case. Genuine use of a trade mark, it is true, cannot be proved by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (*COLORIS*, paragraph 24). However, it cannot be ruled out that an accumulation of items of evidence may allow the necessary facts to be established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts (see, to that effect, judgment of the Court of Justice of 17 April 2008 in Case C-108/07, *Ferrero Deutschland v OHIM*, not published in the ECR, paragraph 36).'

Assessment of the evidence

26. 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.²⁴

27. I have borne in mind the case of *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, in which Mr Geoffrey Hobbs Q.C. (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

²⁴ *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

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.’

28. By way of a general observation on the body of evidence filed, the documentary material provided is scant and the accompanying narrative rather vague. For reasons that I will explain at [29] to [33], my view is that the totality of evidence lacks sufficient granularity to enable me to make a finding that either of the Earlier Marks has been put to genuine use.

29. Whilst I have no reason to question the integrity of the evidence filed, it is distinctly lacking in granular detail to enable me to find concrete examples of the Earlier Marks being used to hold out goods/services to consumers in the relevant territories.

30. No sales figures have been provided. If sales have been made within relevant territories during the Relevant Periods, then such information would unlikely have been onerous to obtain. Just three documents described as ‘invoices’ have been provided, two of which cannot be determined as relating to transactions with UK consumers. There is just one transaction, dated 23 February 2025, linked to a UK-registered email account. Whilst this indicates that the user of this email account has some link to the UK, it does not necessarily show that they are located within the UK. Even if it were clear that all three ‘invoices’ did relate to UK sales, they punctuate a very short slice of time within the Relevant Periods, i.e. 25 December 2024 to 7 March 2025. It seems likely that the descriptions of the services rendered (‘Orbit Now Standard Package’) refer to the CA’s ‘on-demand’ TV service. However, as noted at [22(c)(iv)], the website extract of the ‘Now TV’ landing page appears to be directed to consumers in territories outside of the UK and EU.

31. Whilst the fact that the extracts from the CA’s web pages are in English self-evidently shows that the content is aimed at speakers of English, I am unable to determine whether it is aimed at UK-based consumers. The web extracts noted at

[22(b)(i)] appear to be targeted to the following territories: the Middle East, North Africa and Asia, with particular emphasis on Saudi Arabia. The webpage extracts dated 23 October 2019 and 23 April 2020 also appear to be directed to the Arab world, and there is nothing to show that the EU or UK is targeted.

32. The only webpage extract to mention the UK relates to the Orbit Group's 'travel eSIM' roaming service. As noted at [22(b)(iii)], the fact that the UK is listed as a destination in which the CA's roaming service can be used does not, without more, necessarily demonstrate sales directed to the UK market. That said, the evidence of the CA's marketing efforts by way of the 'Advertising Insertion Order', dated 10 March 2025, for Expedia Group to run the advertising campaign referenced 'Orbit Esim passport ads Q1' does list, inter alia, the UK as a target market. Whilst it is, therefore, likely that the advertising content will have been seen by at least some UK consumers, the evidence is not sufficiently detailed to enable me to make a finding on the scale of this exposure. Furthermore, without seeing a copy of the advertising material itself, I do not consider it appropriate to simply presume that either of the Earlier Marks was shown on it – to make such a finding would risk straying into the 'supposition' territory that I must take care to avoid. Aside from these concerns, I consider that even if it were clearly demonstrated that the marketing materials were shown to UK consumers, the timing of the aforementioned campaign is very much approaching the end-point of the most recent Relevant Period. Whilst I am cognisant of the fact that there is no *de minimis* level of use that must be shown, I consider that this sole example of UK-targeted marketing efforts would not be sufficient to support a finding of genuine use anyway. The provision of concrete examples of promotional literature/content, bearing either Earlier Mark, directed to the UK (or, where relevant, the EU) might have strengthened the CA's case. In the spirit of Mr Alexander Q.C.'s (as he then was) comments in *Awareness Ltd v Plymouth City Council*, such examples would unlikely have been onerous to obtain.

Conclusion

33. In the light of the foregoing, I find the totality of evidence to be inconclusive by reason of its lack of sufficiently granular detail to show concrete instances of the

Contested Marks being used in relevant territories within the Relevant Periods. The CA has failed to demonstrate genuine use of the Contested Marks.

Outcome

34. Given that the CA has failed to demonstrate genuine use of either Earlier Mark, it may not rely upon either UK00915179674 or UK00915179625 to seek to invalidate the Contested Mark, UK00004081825.

35. The invalidation action, therefore, fails absolutely. Subject to any successful appeal, the RP's registration UK00004081825 may remain on the Register.

COSTS

36. The RP is the successful party and is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023, calculated as follows:

Preparing a statement and considering the other side's statement	£250
Total	£250

37. I, therefore, order OCC Establishment to pay to Nikita Tchesnokov the sum of £250. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 24th day of April 2026

N. R. Morris

For the Registrar,

the Comptroller-General