O/0652/25

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NOS. UK00918015879 & UK00003370177 IN THE NAME OF GUANGDONG OPPO MOBILE TELECOMMUNICATIONS CORP., LTD. FOR THE FOLLOWING TRADE MARKS:

Reno

AND

Reno

BOTH IN CLASS 9

AND

APPLICATIONS TO REVOKE ON THE GROUNDS OF NON-USE UNDER NOS. 507601 & 507602 BY RENAULT S.A.S.

BACKGROUND AND PLEADINGS

1. GUANGDONG OPPO MOBILE TELECOMMUNICATIONS CORP., LTD. ("the proprietor") is the owner of the two trade marks shown on the front page of this decision. The first mark, being that under registration number 918015879 was applied for in the EU on 29 January 2019. The second mark, being that under registration number 3370177 was applied for in the UK on 25 January 2019. Both marks were registered in their respective territories on 20 July 2019 and 14 June 2019, respectively.

2. In respect of the proprietor's first mark, I note that by virtue of Article 54 of the Withdrawal Agreement between the UK and the European Union, the UKIPO created a comparable trade mark based on the proprietor's EUTM. This comparable mark now enjoys protection in the UK as a duly registered UK trade mark and benefits from the same filing and registration date as its European counterpart.

3. While the proprietor's marks presently stand registered for an almost identical set of goods, their specifications differ slightly. They are as follows:

The proprietor's first mark

Class 9: Tablet computers; Computer programs, recorded; Electronic game software; Computer peripheral devices; Computer programs [downloadable software]; Smartphone software applications, downloadable; Smartwatches; Smartglasses; Interactive touch screen terminals; Humanoid robots with artificial intelligence; wearable computers; Gesture recognition software; Virtual reality game software; Biometric scanners; Facsimile machines; Navigational instruments; Wearable activity trackers; Smartphones; Cases for smartphones; Protective films adapted for smartphones; Covers for smartphones; Cell phone straps; Keyboards for smartphones; Speakers, using a short-range radio technology that allows data multi-point or point-to-point

connections between a wide range of mobile and stationary devices; Portable media players; Earphones; Teaching apparatus; Camcorders; Virtual reality headsets; Security surveillance robots; Cameras [photography]; Selfie sticks [hand-held monopods]; USB cables; Chips [integrated circuits]; Touch screens; Batteries, electric; Chargers for electric batteries; Power banks; Animated cartoons; Air analysis apparatus; Measuring apparatus; Biochips.

The proprietor's second mark

Class 9: Tablet computers; Computer programs, recorded; Computer game software; Computer peripheral devices; Computer programs [downloadable software]; Smartphone software applications, downloadable; Smartwatches; Smartglasses; Interactive touch screen terminals; Humanoid robots with artificial intelligence; Wearable computers; Gesture recognition software; Virtual reality game software; Scanners [data processing equipment]; Facsimile machines; Navigational instruments; Wearable activity trackers; Smartphones; Cases for smartphones; Protective films adapted for smartphones; Covers for smartphones; Cell phone straps; Keyboards for smartphones; wireless Speaker; Portable media players; wireless ear plug; Teaching apparatus; Camcorders; Virtual reality headsets; Security surveillance robots; Cameras [photography]; Selfie sticks [hand-held monopods]; USB cables; Chips [integrated circuits]; Touch screens; Batteries, electric; Chargers for electric batteries; Power bank (rechargeable batteries); Animated cartoons; Air analysis apparatus; Measuring apparatus; Biochips.

4. On 30 July 2024, Renault S.A.S ("the applicant") applied to have the proprietor's marks revoked on the grounds of non-use under sections 46(1)(a) and 46(1)(b) of the Act.

5. In respect of the revocation application against the first mark. The period during which the applicant alleges non-use under section 46(1)(a) is the five years after registration of the mark, being 21 July 2019 to 20 July 2024 with revocation sought from 21 July 2024. Under its section 46(1)(b) ground, the applicant is alleging non-use of the mark for the period of 30 July 2019 to 29 July 2024 with revocation sought from 30 July 2024.

6. As for the revocation application against the second mark, the period during which the applicant alleges non-use under section 46(1)(a) is the five years after registration of the mark, being 15 June 2019 to 14 June 2024 with revocation sought from 15 June 2024. Under its section 46(1)(b) ground, the applicant is alleging non-use of the mark for the period of 30 July 2019 to 29 July 2024 with revocation sought from 30 July 2024.

7. The proprietor filed counterstatements in response to both applications. In doing so, it only sought to defend its marks in respect of the following goods:

Class 9:	Computer programs, recorded; Computer game software; Computer programs [downloadable software]; Smartphone software applications, downloadable; Interactive touch screen terminals; Gesture recognition software; Smartphones; Cases for smartphones; Covers for smartphones; Portable media players; wireless ear plug; Camcorders; Cameras [photography]; USB cables; Touch screens; Chargers for electric batteries.

8. The proprietor claims that it has genuinely used its marks for the above goods during the relevant periods and that it would provide evidence to demonstrate as such.

9. After the conclusion of the evidence rounds in these proceedings, the Tribunal consolidated them under the power given to it under Rule 62(1)(g) of the Trade

Marks Rules 2008. This was communicated to the parties by way of written correspondence dated 24 February 2025.

10. Only the proprietor filed evidence. A hearing took place before me on 4 June 2025, by video conference. The proprietor was represented by Mr Alan Fiddes of Murgitroyd & Company, who have represented the proprietor throughout these proceedings. The applicant was not represented at the hearing but it did elect to file written submissions in lieu of its attendance. It is noted that D Young & Co LLP represented the applicant throughout these proceedings.

11. 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.

EVIDENCE

12. Under both sets of proceedings, the proprietor filed evidence in the form of the witness statement of Chen Chen dated 20 January 2024. While two witness statements were filed, their contents (save for their reference to the relevant set of proceedings) are identical. This was confirmed by Mr Fiddes at the hearing. As a result, I will simply refer to the witness statement of Chen Chen in the singular and confirm that any reference to evidence is to be taken as a reference to both sets of evidence.

13. Chen Chen is General Counsel of the proprietor, a position they have held since 22 July 2019. Their witness statement is accompanied by 11 exhibits, being CC1 to CC11. The purpose of the statement was to demonstrate that the proprietor has used its marks during the relevant periods.

14. I do not intend to summarise the proprietor's evidence in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

DECISION

15. Section 46 of the Act states:

> "46. - (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.

(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".

16. Given that the proprietor's first mark is a comparable mark, paragraph 8 of part 1, schedule 2A is relevant. It reads:

"8.— Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)

(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the "five-year period") has expired before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union.

(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 sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union".

17. 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."

18. 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]."

19. 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"[1] is not, therefore, genuine use.

20. I have set out the relevant periods above when discussing the basis of the revocation action. For ease of reference, I remind myself that the relevant periods for the section 46(1)(a) revocations against the proprietor's first and second marks are 21 July 2019 to 20 July 2024 and 15 June 2019 to 14 June 2024, respectively. For the section 46(1)(b) revocations against both marks, it is 30 July 2019 to 29 July 2024. While there is a difference of approximately one month between all relevant periods, I am of the view that the significant overlaps (or indeed identity) between them is such that I can proceed by treating them all together, being 15 June 2019 to 29 July 2024 ("the relevant period"). I take this approach because if use is proven for one of the relevant periods that fall within this broader timeframe, it is not controversial to state that it will also be proven for all others given their overlaps. For the avoidance of doubt, the same applies if the evidence fails to prove genuine use.

21. In respect of the relevant period, I remind myself that between 15 June 2019 and 31 December 2020, the relevant territory for the proprietor's first mark is the EU, as a whole which, at that time, included the UK. However, the relevant territory for this mark between 1 January 2021 and 29 July 2024, is the UK only. This is of no real consequence to the present decision because, as I will come to discuss below, the use relates mostly to the UK only. For the avoidance of doubt, the relevant

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

territory for the entirety of the relevant period in respect of the proprietor’s second mark is the UK only.

Form of the mark

22. It is noted that the applicant’s position in respect of the use shown by the proprietor is that it is *not* use of the mark as registered. This argument is on the basis that the proprietor’s marks are for ‘Reno’ and the evidence filed relates to use of ‘OPPO Reno’ followed by a numeral. It is submitted that such use should not be considered an acceptable variant of the proprietor’s marks. While the argument as to variant use is noted, I do not consider that it carries any weight here. I say this because rather than the mark relied upon being a ’variant’ of the proprietor’s marks, it is simply use of the mark as registered in accordance with the case of *Colloseum Holdings AG v Levi Strauss & Co.,* Case C-12/12. In that case, the Court of Justice of the European Union set out that use of a mark as registered includes use of that mark as part of a composite mark or alongside another mark so long as the mark at issue remains an indicator of origin for the goods upon which the use is shown. In the present case, while I note the presence of other elements such as ‘OPPO’ preceding the word ‘Reno’ and a numeral following it, the word ‘Reno’ is still capable of being an indicator of origin for the goods at issue. As a result, I see no merit in the argument put forward by the applicant in respect of the form of the mark. Therefore, the proprietor is permitted to rely upon the marks featured in the evidence, such as ‘OPPO Reno’ followed by a numeral, for example.

Evidence of use

23. The proprietor operates the mobile phone brand ‘OPPO’. This branding appears to attract some of the focus of the proprietor’s evidence.[2] Where that brand is discussed without reference to the ‘Reno’ brand, I consider that it is of no assistance here. As such, I will only discuss the evidence insofar as it can be said to contribute to use of the ‘Reno’ branding.

[2] See paragraph 4 of Chen Chen’s witness statement, for example, which discusses the launch of the OPPO MP3 player and other OPPO branded mobile phones. In addition, paragraph 5 of the witness statement discusses advertising endeavours undertaken under the ‘OPPO’ branding and not ‘Reno’.

24. The evidence sets out that the proprietor launched its ‘Reno’ series of mobile phones on 24 April 2019. It initially launched with three variations, being the ‘Reno 5G’, ‘Reno 10X Zoom’ and simply ‘Reno’. Press releases covering the launch of these mobile phones are provided in evidence.[3] A second generation of ‘Reno’ smartphone was launched in October 2019 with subsequent generations also being released in the following years, including the Reno3 in March 2020 and extending to the Reno12 in August 2024. The last generation of ‘Reno’ phone that was released during the relevant period appears to be the ‘Reno8’ which was launched in August 2022. Press releases and media reports covering the launches of these phones are provided in evidence.[4]

25. The evidence confirms that the proprietor’s smartphones were initially sold in the UK alongside a range of included accessories. It is confirmed that the phone used to come with a charger, a USB cable, a case and earphones. However, later models came with a charger and a USB cable only. Evidence of screenshots showing the package contents and a review of the Reno2 discussing its accessories are provided in evidence.[5]

26. The narrative evidence sets out that the proprietor has sold in excess of 156,000 smartphones in the UK during the relevant period. It is confirmed that this level of sales has amounted to a turnover of more than £46 million.

27. In respect of turnover and unit sales of the ‘Reno’ range of smartphones, the proprietor has provided a table of its annual breakdowns with a selection of invoices accompanying the same.[6] Having considered this, I note that the figures regarding unit sales provided in the table are not consistent with those discussed in the preceding paragraph. The table of annual breakdowns is as follows:[7]

[3] CC3
[4] CC4
[5] CC5
[6] CC8
[7] I note that the turnover and unit sales for 2024 have been provided but they are no assistance here as they fall outside the relevant period.

Year	UK turnover (£)	Unit sales
2019	5,547,000	18,490
2020	10,558,500	35,195
2021	11,109,000	37,030
2022	7,862,700	26,209
2023	11,955,000	23,850
Total	**47,032,200**	**140,774**

28. The unit sales figures are off by some 16,000 units. I have no explanation for why this is the case and, in light of such, I am only content to proceed with the lower figures provided in the table reproduced above.

29. In respect of marketing, I note that the evidence sets out that during the relevant period, the proprietor has spent almost £2 million promoting the 'Reno' brand in the UK. Contrary to this, however, the evidence goes on to state at paragraph 12 of Chen Chen's witness statement that the proprietor spent almost £6 million promoting the 'Reno' brand of smartphones between 1 January 2021 and 31 December 2023. A further point of inconsistency regarding the marketing spend comes in the breakdown provided which, while somewhat in line with the claim of a spend of almost £6 million, covers the years 2019 to 2023, and not 2021 to 2023 as set out above. The breakdown provided is as follows:

Year	Marketing expenditure (£)
2019	1,224,731
2020	2,030,340
2021	1,663,532
2022	719,048
2023	408,931
Total	**6,046,582**

30. It is noted that accompanying the above table, the proprietor has provided a selection of invoices relating to the promotion and marketing activities of the Reno

brand.[8] In terms of the actual figures provided, no explanation is given as to the discrepancy between the £2 million and £6 million claimed. This issue gives me some difficulty as I am unable to accurately determine the level of actual spend. As I have done above, I will proceed in considering the lower figure.

31. The evidence then turns to awards that the Reno smartphones have won. Printouts of articles discussing the awards are provided in evidence.[9] While these are noted, all bar one appear to be awards granted by entities that operate outside of the relevant territory. On this point, I note that the evidence either comes from '.com' websites (which are not confirmed as being UK focused and some even include reference to prices in dollars) or websites relating to other jurisdictions such as Australia (via a '.au' website) and Asia, generally (via an article from Forbes Asia). As for the one that is from within the relevant territory, this comes from an article via 'Benchmark' dated October 2019.[10] This is a Polish website and while it may be of assistance to the proprietor's first mark, it represents just one example of an award given by a website for which there is no evidence in support of its reach across the relevant territory.

32. In respect of the above awards evidence, the narrative evidence claims that potential customers in the UK will research smartphones and will, therefore, be exposed to these awards. While noted, this is not something that is actually proven in evidence and, as such, I am not willing to infer that this is the case. As a result, I do not consider that the awards provided offer any real assistance to the issue of genuine use in the UK.

33. There is additional evidence provided which the proprietor purports to cover use of goods other than smartphones. This includes reference to awards won in respect of the proprietor's 'ColorOS' software, being the operating software that the Reno phones use. In addition, there is reference to a typeface called 'OPPO SANS' which is the typeface used on the phones as well as an 'O Relax' wellbeing app. Printouts of various 'Red Dot Awards' regarding these features/functions are

[8] CC9?
[9] CC10
[10] See page 250 at CC10

provided in evidence.[11] While noted, the evidence does not make any specific reference to such products being offered under the ‘Reno’ brand. Lastly, there is reference to the ‘Two-finger split screen’ functionality of the ‘Reno’ range of phones. This has been mentioned so as to support a claim that the proprietor has used its marks for a wider set of goods than simply smartphones, being an issue I will discuss below if it becomes necessary to assess a fair specification.

<u>Assessment of the evidence</u>

34. In its written submissions in lieu of a hearing, the applicant has made a number of criticisms of the sufficiency of the proprietor’s evidence. While I can confirm that I have taken the applicant’s submissions into account, the assessment that I must undertake here is based upon my own assessment of the evidence.

35. In considering the entirety of the evidence before me, I note that I have no evidence as to the size of the market at issue. However, I do not consider it controversial to suggest that the market at issue is a very large one with turnover likely in the billions of pounds per annum. When comparing the use before me to such a market, I am of the view that a turnover of £47 million with unit sales of 140 thousand goods reflects a low level of use. On this point, I appreciate that the evidence confirms that the proprietor owns a rather significant share of the global smartphone market.[12] However, this relates to the ‘OPPO’ brand as a whole which, as I have discussed above, is not relevant to proving use for the ‘Reno’ brand across the relevant territory.

36. Despite the low level of use, I remind myself that, as per the case law cited above, use need not be quantitatively significant in order for it to be deemed genuine. In the present case, while the use may be low, I am of the view that the sales evidence together with the evidence as to the proprietor’s advertising expenditure are, despite their inconsistencies, still reflective of a genuine attempt by the proprietor to create or preserve a market share for goods sold under the ‘Reno’ brand.

[11] CC11
[12] CC1

37. The above being said, I am of the view that the primary issue facing the proprietor in the present case is that of a fair specification. I note that the proprietor's submission is that it should be permitted to retain its marks for all of the defended goods whereas the applicant's position is that, at best, the proprietor's marks should only remain registered for 'smartphones'.[13]

Fair specification

38. In considering the issue of a fair specification, I refer to the case of *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited,* BL O/345/10, wherein Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

> "In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned."

39. In addition, I refer to the Court of Appeal decision in *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 wherein the proper approach to partial revocation was set out as follows:

> "245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.
>
> 246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.

[13] On this point, I remind myself that the applicant's primary position is that the marks be revoked in their entirety but set out in its submissions that, at its highest point, the evidence only covered use of smartphones.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. […] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered."

40. Lastly, in *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch) at [47], the late Carr J pointed out that it is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do; for example, in *Pan World Brands v Tripp Ltd (Extreme Trade Mark)* [2008] RPC 2, it was held that use in relation to holdalls justified a registration for luggage generally.

41. I remind myself that the defended goods in the proprietor's marks are as follows:

Class 9: Computer programs, recorded; Computer game software; Computer programs [downloadable software]; Smartphone software applications, downloadable; Interactive touch screen terminals; Gesture recognition software; Smartphones; Cases for smartphones; Covers for smartphones; Portable media players; wireless ear plug; Camcorders; Cameras [photography]; USB cables; Touch screens; Chargers for electric batteries.

42. Given the nature of the evidence filed, I consider it appropriate to first, briefly, deal with the term “smartphones”. In short, I am satisfied that the use shown in evidence sufficiently demonstrates use of this term. Both of the proprietor’s marks may, therefore, remain registered for the same.

43. I will deal with the remaining defended terms in turn, grouping them together where I consider it appropriate to do so.

Computer programs, recorded; Computer game software; Computer programs [downloadable software]; Smartphone software applications, downloadable; gesture recognition software.

44. The proprietor’s argument in respect of the above goods is that its phones all include software in order to operate. I agree that smartphones do require software but I see no reason why selling a smartphone constitutes a genuine attempt to create or preserve a market share for software under the ‘Reno’ brand. In short, the consumer selecting a smartphone is buying a smartphone and while they will expect software to be provided, this is not the product they are actually seeking to select.

45. In addition, I also note that the evidence before me, when discussing software, refers to software that appears under the branding ‘ColorOS’. So while it may be the case that the proprietor offers software with its smartphones, it seemingly does so under a different brand and there is nothing to suggest that the proprietor offers any software under the ‘Reno’ brand. In respect of this point, it is my understanding

that it is common in the trade for manufacturers of smartphones to utilise software that is not under the same brand as the phone itself.

46. In respect of the 'ColorOS' evidence, I note that it is under this brand that the proprietor appears to offer its 'two-finger split screen' function.[14] Therefore, any evidence in respect of software that offers this functionality is of no assistance here.

47. As a result of the above, I find that while the proprietor offers software goods to its customers, it does not appear to do so under the appropriate marks. Therefore, I find that the proprietor has failed to provide genuine use for the above goods.

Touch screens.

48. While I accept that smartphones commonly include touch screens as component parts, I do not accept that this means that use of a trade mark on a smartphone represents a genuine attempt to create or preserve a market share in touch screens. The proprietor, in selling its 'OPPO RENO' goods, is selling smartphones as finished products, not touch screens. The average consumer will be aware of this and will seek such goods on the basis that their purpose or intended use is as a mobile device. They will, therefore, categorise the proprietor's use simply as covering 'smartphones'. Therefore, while I was content to accept that the use before me covered smartphones, I am not willing to accept that it covers the above goods. To accept such an argument would, in my view, grant an unduly wide level of coverage for use of smartphones. I say this because smartphones commonly include processor chips, batteries, antennas, flashlights and loudspeakers. It cannot be the case that use of a smartphone would result in there being genuine use of such goods.

49. Taking all of the above into account, I hereby find that the proprietor has failed to provide genuine use for the above goods.

[14] See page 287 at CC11.

Interactive touch screen terminals.

50. Upon the plain reading of the above term, I am of the view that it covers finished articles such as those terminals found in fast food restaurants wherein a customer may place their order via a large touch screen. While not limited to this purpose, I refer to it here merely as an example of what the above term covers. Such goods are clearly not covered in the evidence and, as such, I find that the proprietor has failed to provide genuine use for the above goods. Alternatively, if the above goods can be said to cover those touch screen components used in smartphones, then the finding in the preceding paragraph applies.

51. As a result, regardless of the interpretation of the above term, the proprietor has failed to provide genuine use for the same.

Portable media players.

52. While I appreciate that a smartphone can be used as a media player and, of course, it is a portable device, I do not consider that this is how the average consumer would categorise the goods at issue. In short, a smartphone would not be categorised by average consumers as a portable media player, or vice versa. Following similar reasons to those that I have discussed during my various assessments above, I am of the view that the evidence before me does not demonstrate that the proprietor has made a genuine attempt to create or preserve a market share under the 'Reno' brand for 'portable media players'. As a result, I find that the proprietor has failed to provide genuine use for the above goods.

Wireless ear plug; Cases for smartphones; Covers for smartphones; USB cables; Chargers for electric batteries.

53. The proprietor's case in respect of the above goods is that, when selling its smartphones, they come packaged with the above goods. This is demonstrated in the evidence that I have assessed above. While this is noted, I have a number of issues with the claim. Firstly, following a similar narrative to that I have already discussed above, I am of the view that selling a smartphone is not a genuine

attempt to create or preserve a market share for the other goods that are shipped with the phone itself. The proprietor is selling a smartphone and the accessories are simply ancillary goods. I do not consider that the consumer will understand that the proprietor is seeking to makes sales of the accessory goods under the ‘Reno’ branding. Secondly, the primary branding of the proprietor is ‘OPPO’ and while the goods may be shipped and sold with a ‘Reno’ branded smartphone, there is nothing before me to suggest that the peripheral goods referred to above are under the ‘Reno’ branding as opposed to being ‘OPPO’ branded goods. On this point, I refer to the oft-cited cases of *Awareness Limited v Plymouth City Council,* Case BL O/236/13, and *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd,* Case BL O/404/13, which set out that evidence of use should be sufficiently solid and in the absence of such, Hearing Officers are entitled to be sceptical of such evidence. Lastly, I note that there is nothing before me suggesting that the proprietor has sold any of the above goods individually and under the ‘Reno’ branding. As a result, I find that the proprietor has failed to provide genuine use for the above goods.

Camcorders; Cameras [photography].

54. Given everything I have said above, it should come as no surprise as to my views on the above goods. I accept that smartphones commonly come with cameras that are capable of taking both photographs and videos. In addition, I appreciate that consumers will, when looking to buy a smartphone, consider the quality of the camera/camcorder attached to it. However, I do not consider that these points are sufficient to demonstrate that the proprietor has sought to create or preserve a market share for the above goods. In short, the above goods, in the context of smartphones, are simply components to a finished product and average consumers, while appreciating that cameras are features to smartphones, would not categorise a smartphone as a camera or a camcorder, or vice versa. Taking all of this into account, I hereby find that the proprietor has failed to demonstrate genuine use for the above goods.

CONCLUSION

55. The applications have succeeded against all bar one of the goods for which revocation was sought. As such, the proprietor's marks are hereby revoked for the below goods, being those for which there has been no genuine use and those that the proprietor elected not to defend. As these goods have been either undefended or not shown in evidence, the effective date of revocation is the earliest date sought. As such, the effective of dates of revocation are 21 July 2024 and 15 June 2024 for the proprietor's first and second marks, respectively.

<u>The proprietor's first mark</u>

Class 9: Tablet computers; Computer programs, recorded; Electronic game software; Computer peripheral devices; Computer programs [downloadable software]; Smartphone software applications, downloadable; Smartwatches; Smartglasses; Interactive touch screen terminals; Humanoid robots with artificial intelligence; wearable computers; Gesture recognition software; Virtual reality game software; Biometric scanners; Facsimile machines; Navigational instruments; Wearable activity trackers; Cases for smartphones; Protective films adapted for smartphones; Covers for smartphones; Cell phone straps; Keyboards for smartphones; Speakers, using a short-range radio technology that allows data multi-point or point-to-point connections between a wide range of mobile and stationary devices; Portable media players; Earphones; Teaching apparatus; Camcorders; Virtual reality headsets; Security surveillance robots; Cameras [photography]; Selfie sticks [hand-held monopods]; USB cables; Chips [integrated circuits]; Touch screens; Batteries, electric; Chargers for electric batteries; Power banks; Animated cartoons; Air analysis apparatus; Measuring apparatus; Biochips.

The proprietor's second mark

Class 9: Tablet computers; Computer programs, recorded; Computer game software; Computer peripheral devices; Computer programs [downloadable software]; Smartphone software applications, downloadable; Smartwatches; Smartglasses; Interactive touch screen terminals; Humanoid robots with artificial intelligence; Wearable computers; Gesture recognition software; Virtual reality game software; Scanners [data processing equipment]; Facsimile machines; Navigational instruments; Wearable activity trackers; Cases for smartphones; Protective films adapted for smartphones; Covers for smartphones; Cell phone straps; Keyboards for smartphones; wireless Speaker; Portable media players; wireless ear plug; Teaching apparatus; Camcorders; Virtual reality headsets; Security surveillance robots; Cameras [photography]; Selfie sticks [hand-held monopods]; USB cables; Chips [integrated circuits]; Touch screens; Batteries, electric; Chargers for electric batteries; Power bank (rechargeable batteries); Animated cartoons; Air analysis apparatus; Measuring apparatus; Biochips.

56. The proprietor's marks may, however, remain registered for the following goods:

Class 9: Smartphones

COSTS

57. The applicant has succeeded in revoking all bar one of the proprietor's goods. It is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. Given the level of success achieved in that only one term is retained in the specifications of the proprietor's marks, I do not consider it necessary to reduce the costs award to reflect the holder's very

limited degree of success. In the circumstances, I award the applicant the sum of £1,700 as a contribution towards its costs. The sum is calculated as follows:

Preparing two applications for revocation and considering the counterstatements:	£400
Considering the proprietor's evidence:	£600
Filing written submissions in lieu:	£300
Official fees (x2):	£400
Total:	**£1,700**

58. I hereby order GUANGDONG OPPO MOBILE TELECOMMUNICATIONS CORP., LTD. to pay Renault S.A.S. the sum of £1,700. The above sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 17th day of July 2025

A COOPER
For the Registrar