O/0658/25

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NUMBER UK00917970869

IN THE NAME OF REDBOOK HOLDINGS LIMITED

IN RESPECT OF THE FOLLOWING TRADE MARK

小红书

IN CLASSES 9, 35, 38, 42 AND 45

AND

AN APPLICATION FOR REVOCATION THEREOF

UNDER NUMBER 507186

BY PRIVATE BUSINESS SOLUTIONS INVESTMENT LIMITED

Background and pleadings

1. Trade mark number 917970869 stands registered in the UK for the mark shown on the front page of this decision ("***the Contested Mark***"), in the name of Redbook Holdings Limited ("***the Proprietor***"). The Proprietor's registration is a comparable mark (EU).[1] It was filed on 19 October 2018 and completed its registration process on 16 February 2019. The mark is registered for the following goods and services:

   Class 9: Computer software recorded; Electronic publications, downloadable; Computer programs [downloadable software]; Computer software applications, downloadable; Cell phones; Tablet computers; Animated cartoons; Computer game software; computer programs, recorded; Computer operating programs, recorded.

   Class 35: Advertising; Business management assistance; Providing business information via a web site; Provision of an on-line marketplace for buyers and sellers of goods and services; Sales promotion for others; Web indexing for commercial or advertising purposes; Administrative processing of purchase orders; Accounting; Sponsorship search; Employment agency services.

   Class 38: Television broadcasting; Communications by cellular phones; Communications by computer terminals; Transmission of electronic mail; Transmission of digital files; Providing online forums; Computer aided transmission of messages and images; Radio communications; Message sending; Providing telecommunication channels for teleshopping services.

   Class 42: Technical research; Scientific research; Vehicle roadworthiness testing; Industrial design; Interior design; Dress designing; Providing search engines for the internet; Conversion of data or documents from physical

[1] Following the end of the transition period of the UK's withdrawal from the EU, all EU trade marks ("EUTM") registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A 'comparable trade mark (EU)' retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

to electronic media; Software as a service [SaaS]; platform as a service [PaaS].

Class 45: Dating services; On-line social networking services; Monitoring of burglar and security alarms; Chaperoning; Clothing rental; Personal wardrobe styling consultancy; Copyright management; Planning and arranging of wedding ceremonies.

2. On 15 March 2024, Private Business Solutions Investment Limited, ("***the Applicant***") sought revocation of the mark, in its entirety, for non-use under section 46(1)(a) of the Trade Marks Act 1994 ("***the Act***").[2] Under section 46(1)(a), the applicant claims non-use in the five-year period following the date on which protection was granted, namely **17 February 2019 to 16 February 2024** ("***the relevant period***"), with an effective date of revocation of **17 February 2024**. As the Contested Mark is a comparable mark, pursuant to paragraph 8 of Part 1, Schedule 2A of the Act, use within the EU is relevant for any part of the relevant period which falls prior to IP Completion Day (i.e., 31 December 2020).

3. In its statement of grounds, the Applicant submitted that the Contested Mark has not been put to genuine use, in the UK, within the relevant period in relation to the goods and services for which it is registered and there are no proper reasons for non-use. Accordingly, the Applicant requests the Contested Mark to be revoked in respect of all the goods and services for which it is registered and requests an award of costs to be made in its favour.

4. The Proprietor filed a defence and counterstatement[3] denying the claims made in relation all its goods and services. More specifically, the Proprietor contended that the Contested Mark "*has been used in the United Kingdom since June 2018 in respect of a mobile app and social media platform, including related computer software, online advertising services, online forums and social networking services*".

[2] The Form TM26N lists two related proceedings numbers OP443956 and CA506348. Although the related proceedings share the same parties with the case at hand, these proceedings were not consolidated with the current case, as they will not impact the outcome of this decision.
[3] Dated 13 May 2024.

5. The Applicant is represented by Daneel Williams LLP and the Proprietor is represented by Trademarkit LLP.

Evidence and submissions

6. During the evidence rounds, only the Proprietor filed evidence in the form of a witness statement of Jiang Beiyun, dated 31 July 2024, and accompanied by six exhibits (Exhibits JB1 - JB6). Mr Beiyun is the legal counsel of the Proprietor, Redbook Holdings Limited, and he has held this position since 2023. Therefore, Mr Beiyun is duly authorised to make submissions on behalf of the Proprietor. Neither party requested a hearing and only the Applicant filed written submissions in lieu on 30 October 2024. The submissions will not be summarised here but will be referred to as and where appropriate during this decision. A summary of the Proprietor's evidence is provided below. This decision is taken following a careful consideration of all the papers.

Summary of the evidence of use

7. Mr Beiyun submitted, in his witness statement, that the Proprietor, as part of a group of companies, operates a social media and e-commerce platform, founded in June 2013, called "小红书", which transliterates to 'Xiao-hong-shu' and which translates to "Little Red Book". The platform 'Xiaohongshu' is a content sharing site where users post photos of products and review them for other users to read and comment. Mr Beiyun reports that this platform is often referred to in English as "Red" and, for this reason, the brand logo features the Chinese characters in white on a red background as follows (Figure 1):

Figure 1

8. Mr Beiyun submitted, in his witness statement, that in 2020 the Proprietor's platform counted over 450 million registered users with over 121 million monthly active users. The platform and its related application are most popular with Chinese-speaking consumers and 90% of users are under the age of 32. The main source of revenue for the platform is advertising. In 2023 80% of the company's total revenue derived from advertising with around 20% of income coming from e-commerce.

9. Mr Beiyun submits that the 'Xiaohongshu' platform became first available in the EU and UK on 19 June 2018 and the mobile application for this platform (with the 'Xiaohongshu' app bearing the mark) has been continuously available for download on the UK Apple Store and Google Play store since this date. ***Exhibit JB1*** features:

    - 1 screenshot from the App Store website ('apps.apple.com/gb/app') featuring the app logo shown at Figure 1. Next to the logo there is some writing in Chinese characters. The page continues in English, but the screenshots contained in the page, albeit not clearly visible, show Chinese characters (apart from their respective titles in English). The page also contains a description of the Proprietor's platform in English and three reviews respectively from December 2021, November 2020 and December 2020 (all in English). Underneath the page contains three screenshots titled "Events" (two of which dated 2024). The screenshots mainly feature Chinese characters. The page features a copyright notice dated 2023.

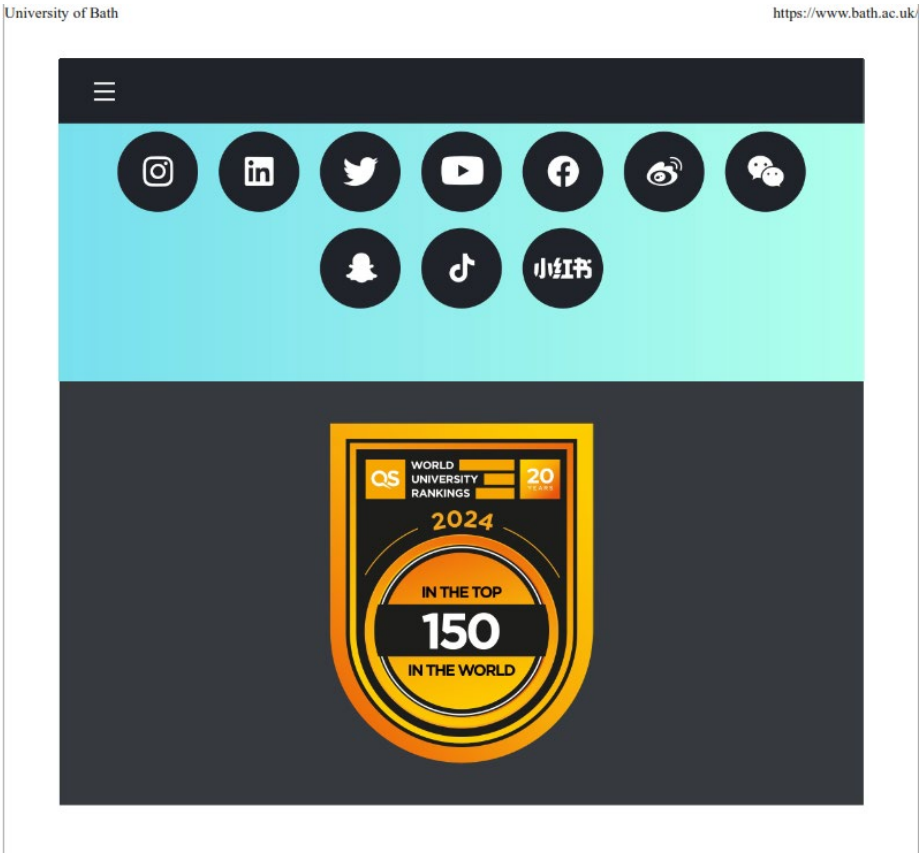
    - At page 6 of Exhibit JB1, the evidence shows again a page from the Apple Store website ('apps.apple.com/gb/app) with the app logo as shown in Figure 1 above and some Chinese characters next to it. This page also features screenshots of featured pages with titles in English and content in Chinese characters. The page contains three reviews from March 2024, December 2021 and December 2021 (the reviews are all in English). The page also features screenshots of featured pages titled "Events" along with other Chinese characters. The page features a copyright notice dated 2024.

    - At page 9 of Exhibit JB1 it is shown another screenshot of the Apple Store website ('apps.apple.com/gb/app') from which the Proprietor's app can be downloaded. The page features the app's logo in the stylised fashion as shown

in Figure 1. The page shows screens of previews of the app's interface on a phone. Each screenshot has a title in English, but its content shows only Chinese characters. The page continues providing a description of the platform (in English) along with reviews (in English) from users dated March 2024, December 2020 and December 2021. The page features a copyright notice dated 2024.

- One screenshot of the Google Play platform ('play.google.com/store/apps') from which the XiaoHongShu application can be downloaded. The page shows that the application has had more than one thousand downloads. The page features screenshots of the application's interface. The app mainly shows pictures, but one screenshot contains some text in Chinese characters. The page also contains instructions on how to use the application (in English). The page shows, at its end, the words "United Kingdom (English (United Kingdom)" as to show the page was available in the UK.

10. Mr Beiyun submitted that the XiaoHongShu application is popular among Chinese students in the UK and some universities in the UK advertise their services through this platform. ***Exhibit JB2*** provides extracts from the University of Bath website ('www.bath.ac.uk') where a stylised version of the Proprietor's mark is used as a logo to indicate the Proprietor's social media platform as an option among other social media platforms as shown below:



11. Exhibit JB2 also contains extracts from the University of Bath's user account for the XiaoHongShu social media platform. The extracts are taken from the website 'www. Xiaohongshu.com/user/profile'. The Proprietor provides two of the University of Bath's account pages advertising their services.

12. Exhibit JB2 also contains extracts from the University College of Birmingham (UCB)'s website ('www.ucb.ac.uk') addressed to Chinese students who intend to study in the UK, providing them with information on how to access the university's services.[4] The website features a page titled "Connect with us" listing, among other social media platforms, 'XiaoHongShu (Little Red Book)'.

13. Exhibit JB2 (page 30) features a screenshot of the UCB's account page from the 'XiaoHongShu' platform. The page contains some pictures and still of videos. The

[4] I derive this information from the fact that all the pages referred to in this part of the exhibit show a domain path (or internet key words) containing words such as "international-students" / "country-specific-information" / "studying in the UK" and "China". Additionally, the web pages featured contain information on entry requirements for Chinese students, English language requirements with reference to acceptable equivalent Chinese qualifications and a still of a video interview from a Chinese student sharing her experience.

page is in Chinese apart from one picture's description stating: "what to do in & around Birmingham".

14. Exhibit JB2 (pages 33-35) shows an extract from the University of Leicester's website where, in the section dedicated to international students, it is featured a page titled "Chinese social media" and the platform identified as "Little Red Book (XiaoHongShu)" is mentioned as an option among other social media platforms.

15. Exhibit JB2 contains an undated academic article titled "*Exploring the Bilingual Use of Chinese and English Among Chinese Students in the UK on the Chinese Social Media Platform Xiaohongshu*". Mr Beiyun, in his witness statement, did not provide me with further clarification on this article. The article analyses the use of English and Chinese on the 'Xiaohongshu' platform especially by Chinese/English bilingual international students.

16. Mr Beiyun submitted that Western businesses market through the Xiaohongshu platform. ***Exhibit JB3*** features a series of articles that present the Xiaohongshu platform and advise Western businesses on how to best use the Xiaohongshu platform to advertise and market in China. According to Mr Beiyun, this evidence is aimed at showing widespread business awareness of the Xiaohongshu platform. This evidence contains:

- One extract from 'focus.cbbc.org' titled "*What is Xiaohongshu and how can it help your brand in China?*" dated June 2021;
- One extract from 'focus.cbbc.org' titled "*how does Xiaohongshu work and why is it so popular?*" dated April 2022.
- One article from 'croud.com' titled "*How brands can utilise little red book*" dated April 2022. The article reports prices in Chinese yen and dollars.
- One article from the blog "FirstComAcademy" ('www.fca.edu.sg') titled "*Complete Guide on Advertising on Xiaohongshu (Little Red book)*" dated March 2023.
- One article from the blog "FirstComAcademy" ('www.fca.edu.sg') titled "*what is Xiaohongshu 小红书 and how to use it*" dated February 2023.
- One article from PRNewswire ('www.prnewswire.co.uk') titled "*Redefining And Developing New Opportunities for Luxury Marketing: XIAOHONGSHU and*

VOGUE Business Host China Digital Excellence Summit in Paris" dated March 2024. The article reports on the 'China Digital Excellence Summit and Gala Dinner hosted in occasion of the Paris Fashion Week 2024. The article reports that "*the event aimed to equip international luxury brands with fresh insights for engaging the Chinese market*".

- One article from PRovokeMedia ('www.provokemedia.com') titled "*Analysis: Why Brands Are Flocking To China Instagram Rival Xiaohongshu"* dated October 2023.
- One article from 'CHINAREALTIME BLOG' ('www.wsj.com') titled "*China's New 'Little Red Book': A shopping App for Foreign Products"* dated November 2015.
- One article from 'Pattern.com' (uk.pattern.com') titled "*Little Red Book: Understanding Social Commerce in China*". The article is undated. This article features prices in US dollars.
- One article from 'Vogue Business' ('www.voguebusiness.com') titled "*How Xiaohongshu is supercharging the co-creation economy in China"* dated November 2022.

17. Mr Beiyun also submitted that the company undertook sponsorship activities consisting of the sponsorship of the Belgian and Spanish football teams. To this regard Mr Beiyun provided:

- One article from 'Sportfive' (sportfive.co.uk') titled "*SPORTFIVE Facilitates Content Partnership Between Xiaohongshu and Royal Spanish Football Federation"* dated November 2022. The article reports of the partnership between Xiaohongshu and the Royal Spanish Football Federation.
- One article from 'SportBusiness Sponsorship' ('sponsorship.sportbusiness.com') titled "*Spanish and Belgian federations agree content deals with Xiaohongshu"* dated November 2022.

18. Mr Beiyun provided, in his witness statement, a table showing the marketing expenses to run an advertising campaign on Google in the UK and other EU countries (i.e., Germany, France, Spain, Italy and the Netherlands) between 2019 and 2024. The table is the following:

Year	United Kingdom	Germany, France, Spain, Italy, and Netherlands
2023	USD13,209	USD35,841
2022	USD14,059	USD33,644
2021	USD1,629	USD12,506
2020	USD3,372	USD30,099
2019	USD3,321	USD13,515

19. The Xiaohongshu app is available to download from the Google app store (i.e., "Google Play") and the Apple App Store ("App store"). Mr Beiyun submitted that each time the Proprietor's Xiaohongshu app is downloaded, there is a deduction from the Proprietor's advertising budget. ***Exhibit JB4*** features an email from Ye Tao, Principal Account Manager at Google Ads Department, detailing the Proprietor's spending on Google deriving from the downloads of the Proprietor's Xiaohongshu app from Google Play and the App store for the UK and the EU countries indicated above. The table below shows such spending for the relevant period:

Year	United Kingdom	Germany, France, Spain, Italy, and Netherlands
2023	USD8,390	USD25,753
2022	USD5,848	USD13,892
2021	USD626	USD7,578
2020	USD2,532	USD22,353
2019	USD2,371	USD10,283

20. ***Exhibit JB5*** features:

- screenshots from the Google Play platform showing the Xiaohongshu app available for download. The app is identified with the white Chinese characters 小红书 placed on a red background (creating an app logo) as shown in the Figure 1 above. The exhibit also contains a few reviews (in English) dated June and July 2024 (outside of the relevant period).
- The exhibit also features an article from 'daoinsights.com' titled "*How I cracked Xiaohongshu – China's hottest sial media platform*" dated April 2021. The article reports of a Chinese user who became viral on the Proprietor's social media platform offering content regarding his life as an oversea student in the UK.
- Six screenshots of the 'www. Xiaohongshu.com' website. In all the pages the logo provided in Figure 1 is featured. This evidence provides further information on the Proprietor's platform.
- An extract from the Wayback Machine database showing that between July 2021 and August 2023 the website 'www. Xiaohongshu.com' had been saved 23 times. Mr Beiyun did not provide me with further clarification concerning this piece of evidence. I take this evidence as aimed at showing the user traffic for the 'www. Xiaohongshu.com' website for part of the relevant period.
- Extracts from the Wikipedia website for 'Xiaohongshu'. These extracts provide a brief history and more general information on the Xiaohongshu platform.

21. Mr Beiyun also provided, in his witness statement, the turnover figures for the Xiaohongshu platform (and app) in the UK consisting of £625,653 for the period 1 January 2024 – 30 June 2024.

22. ***Exhibit JB6*** contains copies of invoices to businesses based in the UK and EU for the purchase of advertising services on the Proprietor's Xiaohongshu platform. Mr Beiyun clarified that the company Youtong Trading (Hong Kong) Limited, appearing on the invoices, is affiliated with Redbook Holdings Limited (the Proprietor) and under the same control. The evidence features seventeen invoices sent to the same address in Germany (Wolfenbüttel) and containing the following information:

Invoice number	Date	Value

I240130000001725	30 January 2024	CNY 63,18
I231207000002709	7 December 2023	CNY 8412,36
I231107000002289	7 November 2023	CNY 16347,01
I231008000001611	8 October 2023	CNY 10743,77
I230908000000199	8 September 2023	CNY 17429,46
I230803000000649	3 August 2023	CNY 6949,17
I230707000000334	7 July 2023	CNY 9663,36
I230606000000403	6 June 2023	CNY 11004,63
I230511000001168	11 May 2023	CNY 9495,96
I230511000001119	11 May 2023	CNY 8216,69
I220531000000729	31 May 2022	CNY 451636,42
I220531000000728	31 May 2022	CNY 138800,66
I210709000000088	9 July 2021	CNY 20077,04
I210513000000624	13 May 2021	CNY 23024,27
I210412000000359	12 April 2021	CNY 25143,47
I210304000000354	4 March 2021	CNY 19214,04
I210220000000284	20 February 2021	CNY 33749,01

23. The Exhibit JB6 also contains a few invoices for the UK territory. More specifically, the evidence contains six invoices for the same address in London reporting the information indicated in the table below:

Invoice number	**Date**	**Value**
I240701000005774	1 July 2024	CNY 6825,19
I240602000000353	2 June 2024	CNY 4213,70
I240501000001182	1 May 2024	CNY 1321,49
I240403000012015	3 April 2024	CNY 270,89

I240403000012013	3 April 2024	CNY 7,16
I240130000000025	30 January 2024	CNY 3619,15

24. Four invoices for the same address in Coventry with the information below:

Invoice number	Date	Value
I240715000004828	15 July 2024	CNY 9765,38
I240517000003009	17 May 2024	CNY 4562, 21
I240402000002226	2 April 2024	CNY 994,65
I240402000002225	2 April 2024	CNY 6454,00

25. Four invoices for the same address in Lowfield Heath Crawley with the following information:

Invoice number	Date	Value
I230830000002875	30 August 2023	CNY 3933,79
I230814000002831	14 August 2023	CNY 3838,80
I230814000002826	14 August 2023	CNY 6885,13
I230707000002806	7 July 2023	CNY 1514,87

26. Exhibit JB6 continues showing five invoices where the address is in Chinese characters. Thus, I am unable to determine if the invoices have been sent to the same or different addresses and I am unable to clearly understand the country of destination. However, whilst part of the recipient's name has been obscured, I note that four out of the five invoices show the letters 'S.R.L.' as part of the addressee's name. This letter combination is exclusively used in Italy to indicate a limited company under Italian law. Thus, I can assume that at least four of the Proprietor's invoices are addressed to one or more consumers based in Italy. The invoices present the details shown in the table below:

Invoice number	Date	Value

I240123000001813	23 January 2024	CNY 9469,86
I231128000000201	28 November 2023	CNY 23754,35
I230712000002125	12 July 2023	CNY 21917,17
I230303000000110	3 March 2023	CNY 13153,62
I221212000000609	12 December 2022	CNY 7780

27. The invoices also contain some sort of description of the services provided (e.g., 'Logistics fee', 'CPC Order' and 'Tech Service fee'). I will address this point later in the decision at paragraph 70.

28. That completes my summary of the Proprietor's evidence.

Decision

Statutory provisions

29. The relevant provisions of section 46 of the Act are as follows:

> "(1) The registration of a trade mark may be revoked on any of the following grounds –
>
> (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
>
> […]
>
> (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."

30. Section 100 of the Act 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."

31. Given that the Proprietor's mark is a comparable mark, paragraph 8 of part 1, schedule 2A of the Act is also relevant, which states:

"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".

Relevant case law

32. 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.

33. 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]."

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 the 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 undertaking, having regard to the interests of the proprietor, the opponent and, it should be said, the public."

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

"21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

'[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.'

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can

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

Form of the mark

35. Before I move on to assess if the Proprietor has shown genuine use, I must first consider if I find the use of the mark as shown in the evidence to be use of the mark as registered. As outlined in *Lactalis McLelland Limited v Arla Foods AMBA*, Case O/265/22,[5] the use of the mark in a different form may also constitute use of the mark as registered.

36. The test under s. 46(2) of the Act (i.e. whether the form in which the mark has been used differs in elements which do not alter the distinctive character of the mark) was summarised as follows by Phillip Johnson, sitting as the Appointed Person, in *Lactalis McLelland Limited v Arla Foods AMBA*, Case BL O/265/22:

"13. […] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a

[5] At [13 – 15]. See also *Hyphen GmbH v EUIPO,* Case T-146/15, at [28-32].

figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements."

37. I also note that in *hyphen GmbH v EUIPO*, Case T-146/15, EU:T:2016:469, the General Court ("GC") held that use of the mark shown on the left below constituted use of the registered mark shown on the right. The court held that the addition of a circle, being merely a banal surrounding for the registered mark, did not alter the distinctive character of the mark as registered.[6]

38. In *Dreamersclub Ltd v KTS Group Ltd*, BL O/091/19, Mr Philip Johnson, as the Appointed Person, found that the use of the mark  qualified as use of the registered word-only mark 'DREAMS'. This was because the stylisation of the word did not alter the distinctive character of the word mark. Rather, it constituted an expression of the registered word mark in normal and fair use.

39. The Applicant contended that the evidence showed the Proprietor's mark has been used in a number of variant forms and that such variants "*do not constitute use pursuant to Section 46(2) of the Act since they contain elements which alter the distinctive character of the Trade Mark in the form it was registered*".[7] More specifically, the Applicant referred me to the stylised variant in Figure 1 and the Contested Mark's transliteration (i.e., "Xiaohongshu") and translations (i.e., "Little Red Book" and "Red"). I will assess these variations in turn.

Stylised variants

[6] See also *Menelaus BV v EUIPO*, Case T-361/13, EU:T:2015:859; *Sony Computer Entertainment Europe v OHIM,* Case T-690/14, EU:T:2015:950; *LTJ Diffusion v OHIM*, Case T-83/14, EU:T:2015:974 and *PAL-Bullermann v EUIPO*, Case T-397/15, EU:T:2016:730.

[7] Applicant's submissions in lieu dated 30 October 2024, [19].

40. The Applicant submitted that the use of the stylised variant of the Contested Mark (Figure 1) is not an acceptable variant form as it alters the distinctive character of the Contested Mark. I notice that the Contested Mark, throughout the evidence, has been presented with the same stylised typeface reproduced in Figure 1, however, in different colour combinations. For convenience, I reproduce below the different stylised variations along with the original version of the Contested Mark.

<table>
<tr><td>Contested Mark as registered</td><td>White on Red Application Logo (“Variation 1”)</td></tr>
<tr><td rowspan="5">小红书</td><td></td></tr>
<tr><td>White on Black Application Logo (“Variation 2”)</td></tr>
<tr><td></td></tr>
<tr><td>Red characters on white background (“Variation 3”)</td></tr>
<tr><td></td></tr>
</table>

41. I will assess the acceptability of these variant forms jointly since they all share the same stylisation (i.e., typeface) of the Chinese characters and exclusively differ in their colour combinations and the shape of the outer edge (i.e., rounded-edged square in Variation 1, circle in Variation 2, and no background/outer edge in Variation 3).

42. With regard to the stylisation of the Contested Mark, the Applicant submitted that:

"*22. With regard to the Red logo, in the circumstances we submit that a greater emphasis should be placed on whether the differing elements serve to alter the distinctive character, from a visual perspective.*

23. The Trade Mark is represented in Chinese Characters in a relatively plain font. Whereas the Chinese characters in the Red logo are represented in a modern white bold font set against a distinctive and striking red background in the shape of an app icon.

24. Furthermore, there are differences when examining the Chinese characters side by side, such as the differing spacing between characters and the dot above the last character in the Red logo, rather than the angled dash on the Trade Mark.

25. Therefore, it is submitted that the Red logo differs in elements which alters the distinctive character of the trade mark in the form it was registered and therefore is not an acceptable variant form".[8]

43. The general public in the UK (and EU) will perceive the Asian characters in the Contested Mark as mere calligraphic and abstract signs, but will not be able to detect any meaning.[9] The general public will likely assume that the Contested Mark is composed of Chinese characters, but, in any case, it has no knowledge of the differences between e.g. Chinese, Korean and Japanese script and in any event this is not decisive for the perception of the public. Chinese script as such is illegible for the relevant public and consumers will neither be able to pronounce it nor to memorise it as a word. When confronted with the Contested Mark, the relevant public may perceive it as an abstract (or visually complex) figurative trade mark.

44. I appreciate that the stylised variant forms in object present the Contested Mark's Chinese characters with some level of stylisation (i.e., bolded and more rounded typeface with the line on the last character stylised into a dot) and in different colours (i.e., white on a red background, white on a black background and red on white background). I also appreciate that Variation 1 and Variation 2 feature the

[8] Ibid [22] - [25].
[9] Case T-517/10, Hypochol, [28].

Chinese characters inscribed, respectively, into a rounded-edged square and a circle. However, I find that the Chinese characters reproduced in the variant forms are in the same order as the registered mark and they are clearly recognisable in all their characteristics (albeit being bolded and more rounded in their style). Therefore, the Contested Mark's stylisation is such that it does not alter the distinctive character of the mark. I also find that the colour variations and the shapes containing the mark do not alter its distinctive character as the relevant consumer will recognise all three variants for what they are: stylised colour variations of the Contested Mark. Therefore, I find the figurative variants show use of the same mark in a more stylised manner and with non-distinctive matter added. Thus, I consider them to be acceptable variant uses in accordance with the guidance in *Lactalis*.

Transliteration and translations

45. The Applicant submitted that the evidence shows uses of the Contested Mark in other unacceptable variant forms: 1) the word "Xiaohongshu" being the transliteration of the Chinese characters forming the Contested Mark, 2) the English words "Little Red Book" and 3) the English word "Red". From the Proprietor's evidence I derive that numbers 2) and 3) are, respectively, the translation of the Contested Mark and the short version of the Contested Mark's translation as marketed by the Proprietor.

46. The Applicant contended that "*the average UK consumer is unfamiliar with the Chinese language and therefore will not know the transliteration or English translation of the Trade Mark. Accordingly, the variants Xiaohongshu, Little Red Book and Red are clearly very different and differ in elements which alters the distinctive character of the Trade Mark in the form it was registered*".[10]

47. The general public in the UK (and EU) does not speak the Chinese language and will perceive the Contested Mark as a combination of characters of an Asian alphabet (possibly Chinese) which are illegible and will not be able to pronounce the sign or memorise it aurally. The mark does not convey a clear concept, apart from the fact that it is a combination of characters from an Asian alphabet.

[10] Applicant's submissions in lieu dated 30 October 2024, [21].

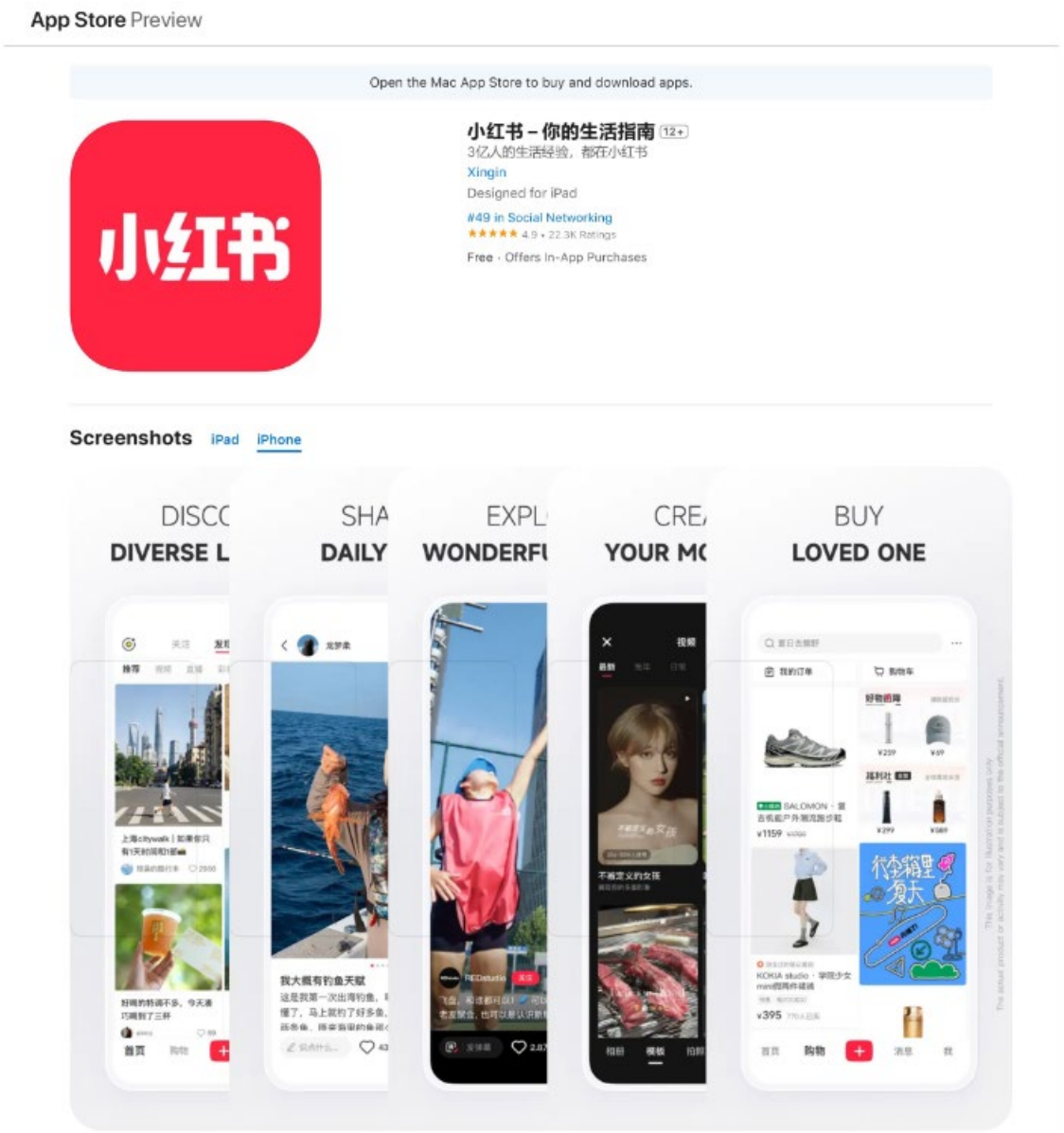
Conversely, the word elements in Latin characters contained in the mark's transliteration and translations (i.e., "Xiaohongshu", "Little Red Book" and "Red") are more likely to affect the distinctive character of the respective versions of the Contested Mark. This because, regarding "Xiaohongshu", the relevant consumers will perceive it as a word composed of Latin characters and although they will not understand its meaning, they will be able to read it and remember it as a neologism. Regarding the translations "Little Red Book" and "Red", these are formed by English dictionary words and the relevant consumers will be able to read and remember these words. Therefore, bearing in mind the different perception the general public will have of the Contested Mark and the words "Xiaohongshu", "Little Red Book" and "Red" I agree with the Applicant and I find that the Contested Mark's transliteration and translations are not acceptable variants to the extent that the use of such words in the evidence does not amount to use of the Contested Mark.

Assessment of the sufficiency of use

48. Whether the use shown is sufficient to constitute genuine use will depend on whether there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods and services at issue in the UK during the relevant five-year period. In making my assessment, I must consider all relevant factors, including:

- the scale and frequency of the use shown;
- the nature of the use shown;
- the services for which use has been shown;
- the nature of those services and the market(s) for them; and
- the geographical extent of the use shown.

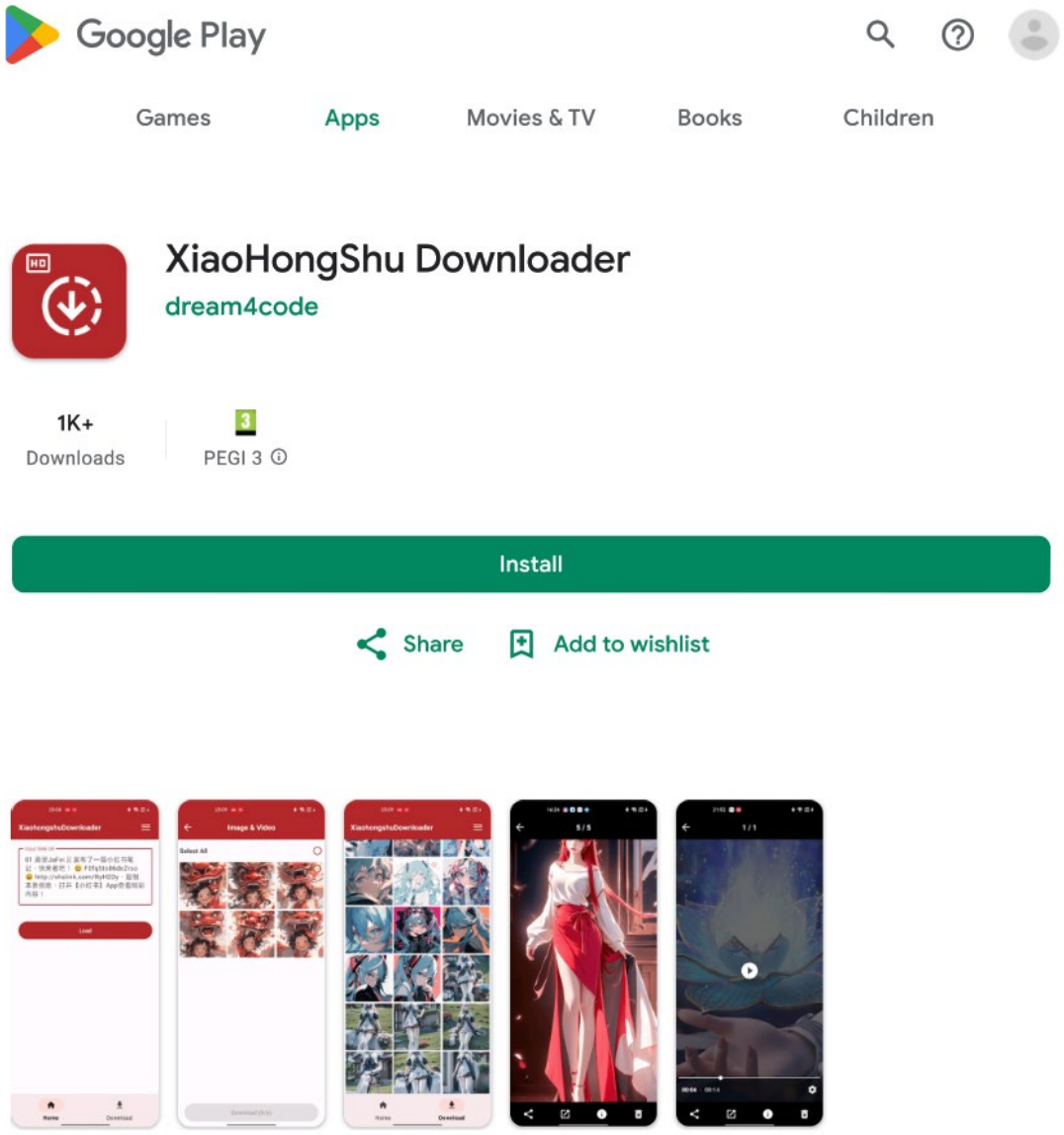
49. Exhibit JB1 includes extracts from the Apple's App Store and the Google Play store, where the Proprietor's application is available for download. Two extracts from the App Store are provided, showing the Proprietor's app available for download for both iPad® and iPhone®. Each extract displays Variation 1 of the Contested Mark along with previews of the app's interface on the respective devices. The evidence shows some Chinese characters and images or stills of videos as shown below:



50. The Applicant submitted that the extracts from the App Store show that the 'Provider' for the 'Xiaohongshu' application is the company called 'Xingin Information Technology (Shangai) Co., Ltd' and that there is no other reference to the Proprietor. The Applicant also argued that "*the Witness Statement makes no reference to Xingin to explain the relationship with the Proprietor or any information*

which confirms that Xingin has the Proprietor's consent to use the Red logo. It is not reasonable to infer that this use is with the Proprietor's consent".[11]

51. Turning to the evidence regarding the Google Play store, this shows the Contested Mark's transliteration (i.e., Xiaohongshu) along with previews of the app's interface for Android phones. The app's interface contains content in Chinese characters and images or stills of videos:



52. In relation to this evidence the Applicant contended that it is unclear whether the app is provided by the Proprietor. The Applicant submitted that "*appears to be offered by 'dream4code'*". To this regard, I note that the evidence contains a

[11] Applicant's submissions in lieu dated 10 October 2024, [28].

reference to the app's 'developer', however this is in Chinese characters and the Proprietor did not provide further clarification on this point. The Applicant also pointed out that the Proprietor did not clarify the relationship (if any) with 'dream4code'.[12] Therefore, I am unable to determine if the evidence shows that the Proprietor provides the app, under Variation 1 of the Contested Mark, via the Google Play store.

53. In Exhibit JB5 (pages 2 – 11) the Proprietor provided further extracts from the Google Play platform showing Variation 1 of the Contested Mark used to identify the Proprietor's app for download. The extracts contain a mix of Chinese and English characters as shown below:

[12] Ibid [31].

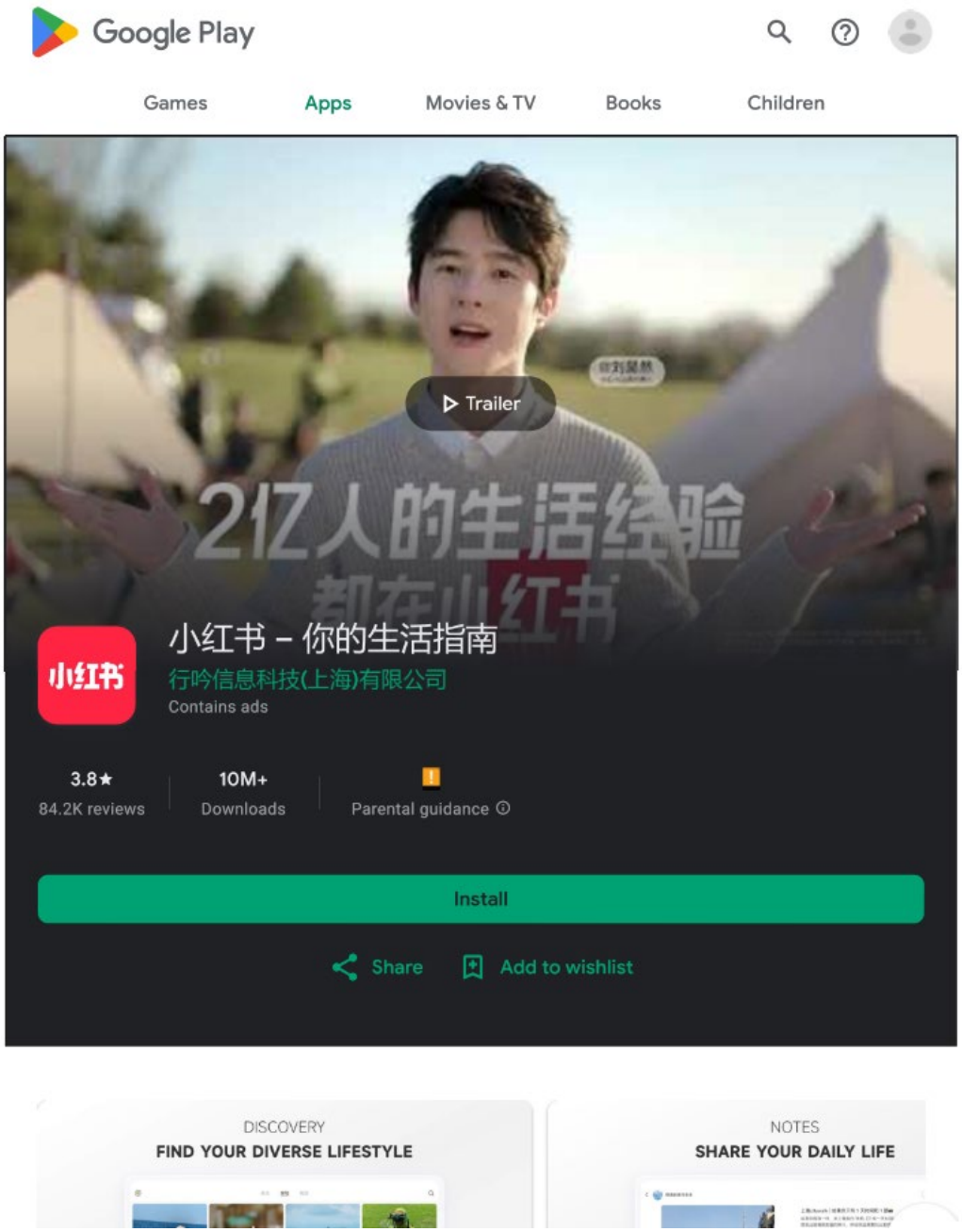


Exhibit JB5, page 2

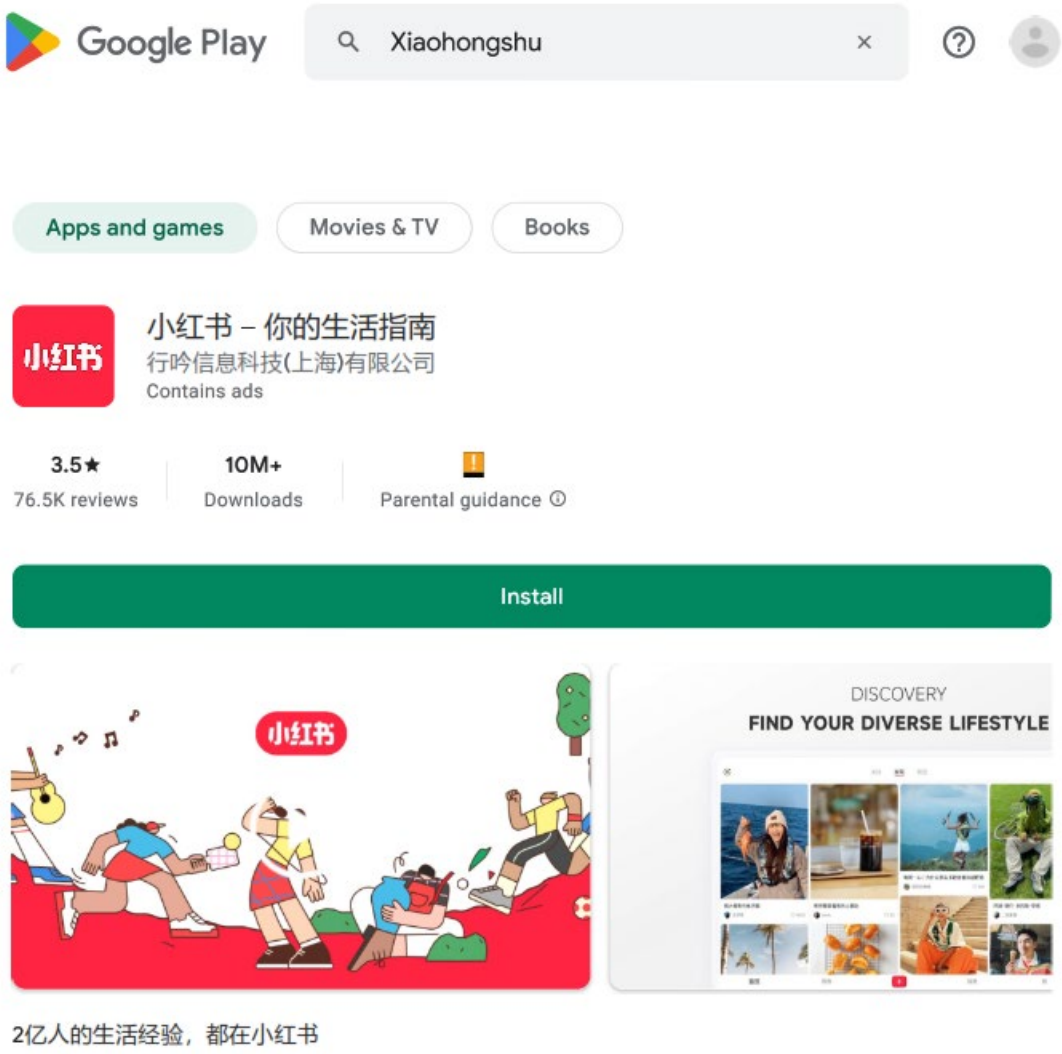


Exhibit JB5, page 6

54. The Applicant submitted that all the evidence in Exhibit JB5 is undated.

55. Exhibit JB5 also features a few comments from the app's users,[13] however, these are dated outside of the relevant period (i.e., June and July 2024).

56. Furthermore, the mix of Chinese and English characters, as shown in the extracts above, makes unclear whether the Proprietor's goods and services (e.g., "*computer software applications, downloadable*"; "*communications by cellular phones*"; "*platform as a service [PaaS]*"; "*on-line social networking services*") target the UK consumer. To this regard, Exhibit JB5 contains an article, titled "*How I*

[13] Exhibit JB5, page 4.

cracked Xiaohongshu – China's hottest social media platform",[14] reporting the app's review from a student in the UK and his successful endeavour in creating user traffic for his account on the Proprietor's social media platform. Although the article is in English and the user's account indicates the United Kingdom as location, the account's information and the content provided by this user are in Chinese.[15]

57. From the evidence above, it appears that a mobile application (identified with Variation 1 of the Contested Mark) has been available on the App Store and Google Play platforms for download and that some users have been using the application providing reviews of the app (some of which dated within the relevant period). I appreciate, however, that it is unclear whether the Proprietor actually is the "provider" and/or the "developer" of the application featuring the Contested Mark. The Applicant also contended that albeit the evidence showed that the Proprietor's app has had 21.1K ratings,[16] "*there is no evidence to support these are from UK consumers*".[17] The Applicant also submitted that although the evidence shows a few reviews for the 'Xiaohongshu' application, it is impossible to determine whether these reviews come from UK consumers and the mere fact that the reviews are in English is insufficient to prove a UK origin considering that, according to Mr Beiyun's witness statement, "*the app is available 'worldwide without geographical restrictions'*". Whilst I appreciate the Applicant's argument and agree that the reviews do not provide clear information on their origin, I notice that the evidence in Exhibit 1, featuring the extracts from the App Store, shows the Internet address 'apps.apple.com/gb/app'. I also note that the copyright disclaimer for all the Apple's pages indicates "United Kingdom". I consider this to show the extracts concern the UK territory. Regarding the Goole Play extracts, although the internet address contains the Top-Level Domain '.com' (i.e., 'play.google.com'), the Google Play's pages feature, at their bottom, a reference to the United Kingdom. Therefore, I can derive from the evidence provided that the Proprietor's app, both on the Apple Store and Google Play platforms, has been available for the UK territory. However, the Proprietor has not provided me with evidence showing download figures or

[14] Exhibit JB5, pages 12 – 19 (dated April 2021).
[15] Ibid, page 15.
[16] Exhibit JB1, page 2.
[17] Ibid [30].

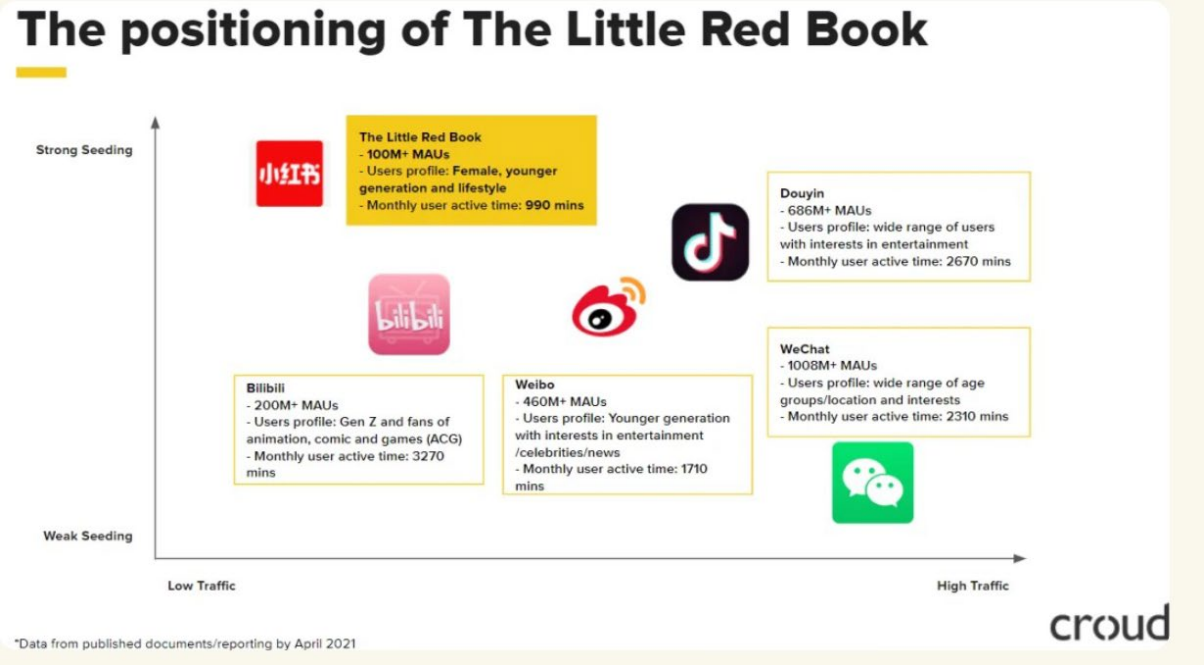
user numbers exclusively concerning the UK. Thus, whilst I find that the Proprietor's app (and its related services) was available for purchase in the UK, from this part of the evidence, I cannot determine to what extent (if any) the goods and services have been purchased by UK consumers.

58. Exhibit JB2 contains a series of extracts from universities' website pages in the UK (i.e., University of Bath, University College of Birmingham and University of Leicester) where the Xiaohongshu social media platform is indicated as an option for students, among other social media platforms. The University of Bath's website page features the Contested Mark in Variation 2. The web pages for University College of Birmingham (UCB) and University of Leicester exclusively use the transliteration and translations of the mark. The evidence also shows the user accounts for the University of Bath and UCB on the Xiaohongshu platform. The Applicant contended that all the evidence is dated outside of the relevant period (i.e., March 2024 and July 2024). I agree. Regarding the webpages for the University of Bath and the UCB, while I note both webpages show a copyright disclaimer of 2024, however, the dates reported on the extracts are, respectively, March and July 2024. The evidence concerning the University of Leicester's website page indicates the date of March 2024 (outside of the relevant period). Regarding the social media accounts for the Proprietor's platform, the evidence concerning the University of Bath is dated March and July 2024 (outside of the relevant period); the evidence concerning UCB is dated July 2024. Thus, all the evidence is dated outside the relevant period.

59. Turning to the evidence provided in Exhibit JB3 (i.e., news articles), the Applicant submitted that the evidence does not show use of the Contested Mark because the evidence features uses of the Contested Mark's variations that are unacceptable. Whilst I appreciate that most articles featured in Exhibit JB3 refer to the Contested Mark either in its transliteration or English translations (i.e., "Little Red Book" or "Red"), I also find that part of this evidence, dated within the relevant period, shows use of the Contested Mark in its acceptable variations:

i. The article titled "HOW DOES *XIAOHONGSHU WORK AND WHY IS IT SO POPULAR?"*[18] features a picture of a phone with the Proprietor's mark represented in its Variation 3.

ii. The article titled "*HOW BRANDS CAN UTILISE LITTLE RED BOOK*"[19] contains a graph showing how the Proprietor's platform compares to other competing social media applications (and platforms). The Contested Mark is shown in its acceptable Variation 1 as shown below:



iii. The article titled "*Complete Guide on Advertising on XiaoHongShu (Little Red Book)*"[20] features, underneath the title, an image featuring a hand holding a phone showing the Proprietor's mark represented in its acceptable Variation 1.

iv. The article titled "*what is Xiaohongshu 小红书 and how to use it*"[21] contains the Contested Mark (as registered) in the article's title and features an image of the mark's Variation 3. Furthermore, the Contested Mark (in its Chinese characters '小

[18] Exhibit JB3, page 5 (dated April 2022).
[19] Ibid, page 8 (dated April 2022).
[20] Ibid, page 13 (dated March 2023).
[21] Ibid, pages 23-27 (dated February 2023).

红书') also appears in the body of the article a few times to refer to the Proprietor's social media platform.

v. In the article titled "*Analysis: Why Brands Are Flocking to China Instagram Rival Xiaohongshu*"[22] the first paragraph refers to the Proprietor's platform using the Contested Mark as registered.

vi. The article titled "*How Xiaohongshu is supercharging the co-creation economy in China*"[23] shows the Proprietor's mark, in its acceptable Variation 1, as used on the Proprietor's platform as shown below:

[22] Exhibit JB3, page 38 (dated October 2023).
[23] Exhibit JB3, page 59 (dated November 2022).

60. Therefore, from the above, I find that the evidence shows some uses of the mark, within the relevant period, in online magazines and news articles to identify the Proprietor's goods and services. The mark is used as registered or in its acceptable variant forms.

61. Exhibit JB4 shows an email from Ye Tao, Principal Account Manager at Google Ads Department to the Rachel Liu providing information concerning the Proprietor's spending on Google for the UK and EU with regard to the relevant period. The Applicant contended that "*there is no explanation in the Witness Statement who Rachel Liu is and her connection to the Proprietor. Therefore, it cannot be assumed that this email was received by the Proprietor*".[24] Whilst I appreciate that Mr Beiyun did not clarify Ms Liu's relationship with the Proprietor, nonetheless, I note the email is addressed to Redbook Holdings Limited. Thus, I have no reason to believe that this piece of evidence does not concern the Proprietor. The Applicant continues arguing that "*[…] this evidence should not be given weight since it has not been provided in the form of a witness statement or affidavit and there is no statement of truth*". To this regard I note that the content of the email provided in Exhibit JB4 reproduces the graphs relating to the advertising spending and the total spending for the download of the Proprietor's app as already outlined in Mr Beiyun's witness statement, which contains a statement of truth. Therefore, I find the evidence contained in Exhibit JB4 to be acceptable and relevant for my assessment of use.

62. Mr Beiyun submitted that between 2019 and 2023 the Proprietor has run an advertising campaign on Google for the UK and some EU countries (i.e., Germany, France, Spain, Italy and Netherlands). Mr Beiyun provided me with a table showing the spending totals for these ad campaigns broken down per year and referring to the UK and EU territories (as reported in my summary of evidence above in this decision). As rightly pointed out by the Applicant,[25] the Proprietor did not provide examples of advertising campaigns that could have shown uses of the Contested Mark in advertising material. Nonetheless, Ye Tao's email explains that the expenditure figures are provided regarding the "小红书 (Xiaohongshu) App" which is identified with both the Proprietor's website 'www.xiaohongshu.com' and the

[24] Applicant's submissions in lieu, dated 30 October 2024, [49].
[25] Applicant's submissions in lieu, dated 30 October 2024, [51].

Contested Mark's stylised variation shown in Figure 1 of this decision (i.e., Variation 1). I note that the expenditure figures for the UK throughout the relevant period consist of an average of USD 7,118 per year whilst regarding the EU territory, for the relevant period (i.e., 2019 and 2020), the evidence shows an expenditure averaging USD 21,807 per year. These figures appear to me to be relatively small given the highly competitive nature of the online social media market.

63. Turning to the expenditure figures for the download of the Proprietor's app that Mr Beiyun provided in his witness statement. Whilst I acknowledge the Proprietor provided the total expenditure figures broken down per year, the Proprietor did not specify the expenditure in relation to one individual download. Thus, whilst I appreciate that the Proprietor incurred in some expenditure deriving from the downloads of its applications, I am unable to determine the total volume of downloads for the UK (and EU) within the relevant period to better understand to what extent the Proprietor's application (identified with the Contested Mark's Variation 1 stylisation) reached the relevant public (i.e., how many times the 'Xiaohongshu' application was downloaded). From the figures provided I see that the total spending for the app's downloads, in the UK between 2019 and 2023, consisted of an average of USD 3,653 per year and for some EU territories (Germany, France, Spain, Italy and Netherlands), between 2019 and 2020 (i.e., before IP Completion Day), the expenditure amounted to an average of USD 16,318 for all such EU territories combined. Absent further clarification from the Proprietor, these levels of expenditure seem to be quite low considering they refer to the downloading of a phone application for social media purposes.

64. Mr Beiyun also provided turnover figures deriving from the activities relating to the Xiaohongshu application and platform in the United Kingdom between 1 January 2024 and 30 June 2024 consisting of approximatively £625,653. According to Mr Beiyun's witness statement, the 'Xiaohongshu' social media platform, and relative application, first became available in the UK from 19 June 2018. Therefore, it is unclear why the Proprietor exclusively provided me with revenues figures relating to the first six months of 2024, of which less than the first two months (January and mid-February) fall within the relevant period. Mr Beiyun did not provide a breakdown of the revenues in relation to the goods and services at hand, but he merely submitted that such revenues derive from activities relating to the

Proprietor's app and platform in the UK. Absent further clarification from the Proprietor, I am unable to tell what proportion of that figure relates to the period falling within the *relevant* period.

65. At Exhibit JB5, the Proprietor submitted screenshots from the website 'www.xiaohongshu.com'. The site includes information about the company's mission, its investors, and its office address in China. Each page displays Variation 1 of the Contested Mark. The final page includes a copyright notice dated 2021, which falls within the relevant period. The website uses the Top-Level Domain '.com' and contains no references to the UK or UK consumers that would suggest it is directed at the UK market.

66. The evidence also features an extract from the Wayback Machine database showing that between July 2021 and August 2023 the website 'www. Xiaohongshu.com' had been saved 23 times. Mr Beiyun did not provide me with further clarification concerning this piece of evidence. I take this evidence is intended to show the user traffic for the 'www. Xiaohongshu.com' website for part of the relevant period.

67. The exhibit also contains extracts from the Wikipedia website for 'Xiaohongshu'. These extracts provide a brief history and more general information on the Xiaohongshu platform. The evidence is undated and, apart from the information on the Proprietor provided in the evidence, it is unclear what the Proprietor intends to show with this piece of evidence. Mr Beiyun did not provide me with further clarification to this regard.

68. In Exhibit JB6 Mr Beiyun provided invoices sent to businesses based in the UK and some other EU countries (i.e., Germany and Italy). The evidence contains 17 invoices addressed to Germany. Considering that evidence concerning the EU territory is only relevant before 31 December 2020 (IP Completion Day), I find this evidence to be insufficient to show the mark's use within the relevant period as all the invoices are dated between February 2021 and January 2024. Turning to the invoices seemingly addressed to Italy (as explained above in this decision) these invoices are also irrelevant as all of them are dated after 31 December 2020 (i.e., December 2022 – January 2024). After IP Completion Day (31 December 2020), only use in the UK is relevant.

69. Turning to the invoices addressed to the UK, of the six invoices addressed to London, only one falls within the relevant period (30 January 2024). The remaining invoices are dated between April and July 2024, which is outside the relevant period. The four invoices provided addressed to Coventry are all dated outside of the relevant period (i.e., between April and July 2024). The Proprietor also provided four invoices addressed to Lowfield Heath Crawley. These invoices are all dated within the relevant period (July 2023 - August 2023) with two invoices dated 14 August 2023 and one dated 30 August 2023. Taking into consideration the value of the relevant invoices, this amounts to a total of CNY 16.172,59 (£ 163.828,34) for the invoices dated July/August 2023 and CNY 3619,15 (£36,661.99) for the invoice of January 2024.

70. The Applicant submitted that "*the descriptions contained in the invoices are 'Logistics fee', 'CPC Order' and 'Tech Service fee' which are insufficiently clear, and it is not reasonable to imply that these descriptions relate to the Relevant Goods and Services*". Whilst I appreciate the Applicant's submissions, Mr Beiyun submitted, in his witness statement, that the invoices refer to "*advertising on the Proprietor's 小红书 (Xiaohongshu) App and platform*". Thus, whilst I appreciate that the invoices do not directly refer to the Contested Mark, I find Mr Beiyun's statement to be sufficient to believe that the invoices concern the Proprietor's revenues from third-party advertising on the Proprietor's platform, notwithstanding the invoices' description.

71. Considering the foregoing, I find that the number of relevant invoices is relatively small, and they refer to a small portion of the relevant period (i.e., July/August 2023 and January 2024). Nonetheless, they do demonstrate some level of third-party 'advertising' in the UK during at least part of the relevant period.

Conclusions

72. The burden is on the Proprietor to show use because the Proprietor is best placed to know what use has been made of a mark and to be able to produce evidence of it. In *Plymouth Life Centre*, O/236/13 Mr Daniel Alexander QC, sitting as the appointed person, observed that:

"20. Providing evidence of use is not unduly difficult. If an undertaking is sitting on a registered trade mark, it is good practice in any event from time to time to review the material that it has to prove use of it.

[…]

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

73. According to my account of the evidence in this decision, although the Proprietor's evidence has some merit, I found there to be significant gaps. Firstly, it is unclear if the Proprietor directly offers its goods and services (i.e., the mobile application and related services) via the Apple and Google app stores. Secondly, the Proprietor provided little evidence relating to the purchase of the goods and services under the Contested Mark (e.g., download of the mobile application software or the provision of online networking and advertising services) in the UK and/or EU. For example, the evidence concerning the Xiaohongshu app being available on the Apple Store and Google Play is mostly dated outside of the relevant period, the evidence did not show the number of downloads of the app for the relevant territory and the Proprietor filed very little evidence concerning user engagement with its goods and services. Regarding this latter point, I find a few user reviews (some of which are dated outside the relevant period) without any direct reference to the UK (or EU) are insufficient to show user engagement. Thirdly, the evidence regarding

the use of the Contested Mark by some UK universities is all dated outside of the relevant period. Fourthly, the expenditure relating to the Proprietor's app advertising and download are relatively small considering the size (and competitiveness) of the online social media market. Fifthly, is not clear what proportion, if any, of the revenue figures (which is said to relate to 1 Jan-30 June 2024) refers to sales that took place in the relevant period (i.e. prior to 17 February 2024).

74. I must also point out that for most of the evidence it is unclear whether it targets the UK consumers. A large part of the evidence is either in Chinese or combining Chinese and English characters. The average UK consumer is unfamiliar with Chinese (or characters of Asian derivation in general). The Proprietor submitted an article titled "*Exploring the Bilingual Use of Chinese and English Among Chinese Students in the UK on the Chinese Social Media Platform Xiaohongshu*". The Proprietor did not provide further clarification on this piece of evidence, however, I believe it intends to show that the users on the Proprietor's platform are bilingual and engage both in Chinese and English. Taking into consideration that UK consumers do not speak Chinese, I find that Chinese/English bilingual users (whether UK-based students or not) do not represent the UK general public for the goods and services at hand.

75. I have no evidence relating to the size of the corresponding market (which I value to be worth billions) or the percentage of market share enjoyed by the Proprietor for the Contested Mark. To determine whether there has been genuine use, I remind myself that the test is not whether the use has been quantitatively significant, but whether there has been real commercial exploitation of the mark intended to create and preserve an outlet for the goods and services which are sold under or in relation to that mark. I also remind myself that the assessment of genuine use is not simply about sales figures, and I must consider them alongside other evidence of use.[26] This requires looking at the evidential picture as a whole, and not whether each individual piece of evidence shows use by itself.[27]

76. While it is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof, in my view, the above

[26] Case T-467/20 *Industria de Diseño Textil, SA (Inditex) v EUIPO,* EU:T:2021:842.
[27] *New Yorker SHK Jeans GmbH & Co KG v OHIM,* T-415/09.

examples of use provided with the witness statement fall short of representing efforts to create and maintain a share of the UK (or the EU) market for the goods and services at hand during the five-year relevant period.

Outcome

77. The application for revocation on the grounds of non-use under section 46(1)(a) therefore succeeds in full. As a result, the trade mark is, subject to any successful appeal, hereby revoked for all the goods and services in classes 9, 35, 38, 42 and 45. The effective date of revocation is 17 February 2024.

Costs

78. As the Applicant for revocation has been successful, it is entitled to a contribution towards its costs. Bearing in mind the relevant scale set out in the Tribunal Practice Notice (TPN) 1/2023 I award costs as follows:

Official fee	£200
Preparing submissions in lieu of a hearing	£650
Total:	**£850**

79. I order Redbook Holdings Limited to pay Private Business Solutions Investment Limited the sum of **£850**. This 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 final determination of the appeal proceedings.

Dated this 17th day of July 2025

Andrea Rossi

For the Registrar