

O/0770/24

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

**IN THE MATTER OF
UK REGISTRATIONS NO. 800950035 & NO. 1515035
IN THE NAME OF EUROPEAN M SYMBOL LIMITED
IN RESPECT OF THE TRADE MARKS**



IN CLASSES 9, 12, 16 AND 25

AND

MATCHLESS

IN CLASS 12

**AND THE APPLICATIONS FOR REVOCATION THEREOF
UNDER NUMBERS 505445 & 505446
BY ORIGINAL MATCHLESS MOTORCYCLE COMPANY LIMITED**

BACKGROUND AND PLEADINGS

1. Trade mark No. 800950035 (the figurative mark) and No. 1515035 (the word mark) for the trade marks shown on the cover page of this decision each stand registered in the UK in the name of European M Symbol Limited (“EMSL”). The application for registration of the figurative mark was filed on 2 August 2007,¹ and the trade mark was registered on 30 November 2010, in respect of goods in classes 9, 12, 16 and 25. The application for registration of the word mark was filed on 7 October 1992, and the trade mark was registered on 1 September 1995, in respect of goods in class 12.

2. On 17 October 2022, Original Matchless Motorcycle Company Limited (“OMMCL”) filed applications seeking to revoke each of EMSL’s trade marks on the grounds of non-use under sections 46(1)(a) and 46(1)(b) of the Act.

3. Under section 46(1)(a) of the Act, OMMCL claims non-use of the marks in relation to goods in class 12 only² in the five year period following the date on which the marks were registered, i.e. 1 December 2010 to 30 November 2015, with an effective date of revocation of 1 December 2015 (the figurative mark); and 2 September 1995 to 1 September 2000, with an effective date of revocation of 2 September 2000 (the word mark).

4. Revocation is also sought under section 46(1)(b), where OMMCL claims non-use of the marks in relation to all goods of each of the registrations for the following periods:

The figurative mark:

1 December 2010 to 30 November 2015, with an effective date of revocation of 1 December 2015; 1 December 2015 to 30 November 2020, with an effective date of revocation of 1 December 2020; and 12 October 2017 to 11 October 2022, with an effective date of revocation of 12 October 2022.

¹ Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration (IR) designating the EU. I note that EMSL’s figurative mark is a comparable mark derived from an IR(EU) and that on filing the IR, priority was claimed in classes 9, 16 and 25 from UK00002460103, with a filing date of 2 July 2007.

² Meaning full revocation of the word mark and partial revocation of the figurative mark under 46(1)(a).

The word mark:

2 September 2010 to 1 September 2015, with an effective date of revocation of 2 September 2015; 2 September 2015 to 1 September 2020, with an effective date of revocation of 2 September 2020; and 13 October 2017 to 12 October 2022, with an effective date of revocation of 13 October 2022.

5. In a letter dated 10 March 2023, the Registry confirmed to the parties that having considered the nature of the claims in the individual cases, it considered it appropriate to consolidate the proceedings.

6. EMSL filed counterstatements defending the use of each of its marks in relation to all of its goods during the relevant periods for which non-use is claimed.

7. Both parties elected to file evidence during the evidence rounds. Neither party requested a hearing; both parties filed written submissions in lieu of a hearing which will be referred to as and where appropriate during this decision. This decision is taken following careful consideration of the papers.

8. In these proceedings, OMMCL is unrepresented, and EMSL is represented by Mewburn Ellis LLP.

EVIDENCE

EMSL's evidence

9. EMSL filed evidence by way of two witness statements, dated 8 May 2023 ("WS1") and 16 November 2023 ("WS2"), both in the name of Franco Malenotti, who is a director of EMSL, being a position he has held since 18 October 2011. Sixteen exhibits, labelled 1 -16, are adduced alongside WS1, with a further twelve exhibits, labelled 17 to 28, adduced alongside WS2.

10. WS1 is focussed primarily on the use of the marks in the UK, although some information on use in the EU is also provided. The main purpose of the evidence by way of WS2 is in reply to the evidence submitted by OMMCL.

OMMCL's evidence

11. OMMCL filed evidence by way of a witness statement dated 21 July 2023 in the name of Stephen Edward Oliver. Mr Oliver is the director of OMMCL, a position he has held since 2022.³ Twenty one exhibits were filed alongside the witness statement, which are labelled SEO1 to SEO21.

12. Mr Oliver states that the evidence and information contained within the witness statement focusses primarily on the lack of relevant use of the Matchless registrations within the UK.

13. I have taken the evidence into account in reaching my decision and I will refer to the relevant material throughout the decision to the extent that I consider necessary.

DECISION

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

Section 46

15. Section 46 of the Act states:

³ I note that Mr Oliver also started a separate UK company (RA Marketing Support Ltd) in which he continues to act as a consultant to overseas companies advising marketing strategies and developing new global markets.

“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. Section 100 of the Act states that:

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

17. As the figurative mark is a comparable mark, pursuant to paragraph 8 of Part 1, Schedule 2A of the Act, EMSL may rely upon use of that mark in the EU (including the UK) for any parts of the relevant periods which fall prior to IP Completion Day, being 31 December 2020.

18. As noted previously, the relevant period for assessing whether there has been genuine use of the figurative mark is 1 December 2010 to 30 November 2015 (“the first relevant period”) under section 46(1)(a); and 1 December 2010 to 30 November 2015 (“the second relevant period”); 1 December 2015 to 30 November 2020 (the third relevant period”); and 12 October 2017 to 11 October 2022 (“the fourth relevant period”) under section 42(1)(b).

19. As the word mark is a UKTM, the relevant territory in which use must be shown is the UK. Under section 46(1)(a), the relevant period for assessing whether there has been genuine use is 2 September 1995 to 1 September 2000 (“the fifth relevant period”), while the relevant periods under section 46(1)(b) are 2 September 2010 to 1 September 2015 (“the sixth relevant period”); 2 September 2015 to 1 September 2020 (“the seventh relevant period”); and 13 October 2017 to 12 October 2022 (“the eighth relevant period”).

20. A finding of genuine use during the latter relevant periods will be sufficient to avoid revocation of the marks under section 46(1)(b), and, by virtue of section 46(3), section 46(1)(a). Provided that such use is deemed to be genuine use, this will be the case even if the evidence in relation to the earliest periods is deemed insufficient.

21. I note that the evidence provided relates jointly to the figurative mark and the word mark and I will therefore consider the marks in tandem.

22. 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 Bunderversvereinigung 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]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(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].”

Evidence of use

23. In each of its notices of defence, EMSL has claimed that use has been made of all of the goods and services for which the marks are registered. I must consider

whether, or the extent to which, the evidence shows genuine use of the mark in relation to the goods and services covered,⁴ being:

The figurative mark

Class 9: *Optical apparatus and instruments; motorcycle goggles; eyeshades; sunshades; visors; sunglasses; spectacles; cases for sunglasses; cases for spectacles; protective clothing, footwear and headgear for motorcyclists; protective headgear for motorcyclists, motorcycle helmets, crash helmets; protective clothing for motorcyclists; protective gloves for motorcyclists; electrical accessories, parts and instruments for motorcycles; fire extinguishers; pre-recorded CDs; pre-recorded CD-ROMs; pre-recorded DVDs; electronic publications downloadable from the Internet; printed publications in electronically readable form; printed publications in machine readable form; printed publications in optically recorded form.*

Class 12: *Motorcycles; parts and fittings for motorcycles.*

Class 16: *Printed matter; printed publications; books; manuals; magazines; catalogues; flyers; stationery; note pads and note books; photographs; photograph albums; book markers; personal organizers; posters; poster magazines; postcards; greetings cards; calendars; graphic prints, representations and reproductions; paper weights; gift wrap and packaging paper; gift bags and bags for packaging; stickers; transfers (decalcomanias).*

⁴ I note that the application for revocation under the 46(1)(a) grounds was only brought against class 12 of the figurative mark. However, on form TM26(N), the application by OMMCL under the 46(1)(b) grounds was indicated as being in relation to all the goods for which the mark stands registered. The witness statement of Stephen Oliver states that the cancellation application is against all goods in classes 9, 12, 16 and 25, and this was further confirmed in an email sent to the Tribunal by Mr Oliver on 27 June 2024.

Class 25: *Clothing, footwear, headgear; clothing, footwear and headgear for motorcyclists; leatherware for motorcyclists; articles of outer clothing; T-shirts; sweat shirts; caps; hats; belts.*

The word mark

Class 12: *Motorcycles; parts and fittings for motorcycles; all included in Class 12.*

24. I note the following from EMSL's evidence by way of WS1 and exhibits 1 - 16:

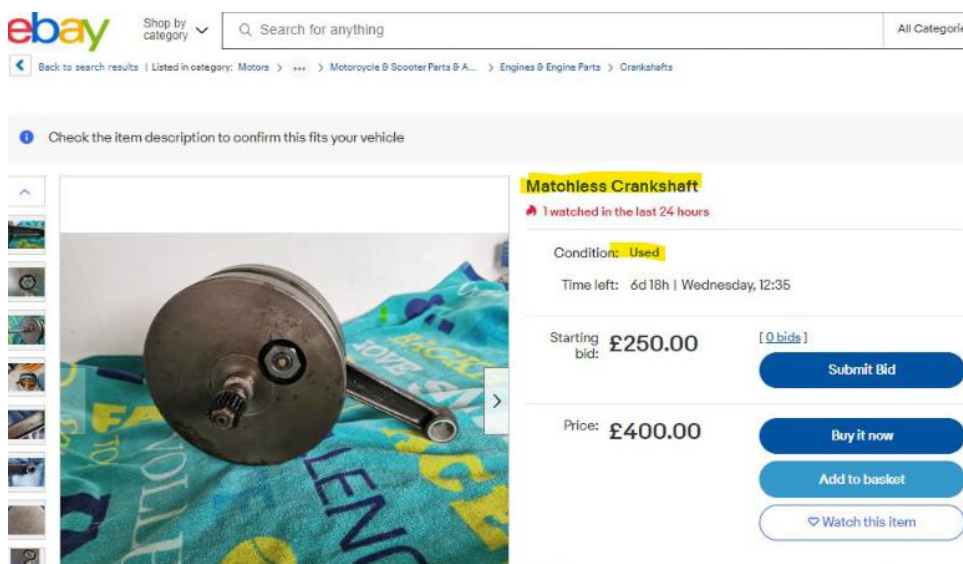
- a) Production of original Matchless motorcycles ceased in 1967, although there continued to be a market for the purchase and repair of second-hand Matchless branded motorcycles.
- b) A new line of motorcycles was introduced in 2014 and motorcycles as well as clothing and "a variety of other products" under the Matchless registrations have been sold in the UK since then.⁵ However, the evidence indicates that only one model of motorbike, being the Matchless Model X Reloaded, has actually been produced.
- c) Mr Malenotti states that EMSL sell a wide range of products through the Matchless website and that the Matchless registrations are used heavily on the website, "matchlesslondon.com", to promote and advertise the matchless product range. Exhibit 2 is adduced in support of these claims, although I note that pages 1 to 31 are undated, as is exhibit 3 showing use of the mark on a variety of goods. I further note that where goods are advertised for sale within exhibit 1, they are priced in euros (€) and not GBP (£).⁶
- d) As explained at point 17 of the witness statement, exhibit 4 comprises a report taken from Google Analytics which shows that from 1 January 2013

⁵ See point 11 of WS1, dated 8 May 2023.

⁶ I acknowledge that the figurative mark is a comparable mark and therefore evidence of use in the EU is acceptable for this mark up until 31 December 2020, although that is not the case for word only mark.

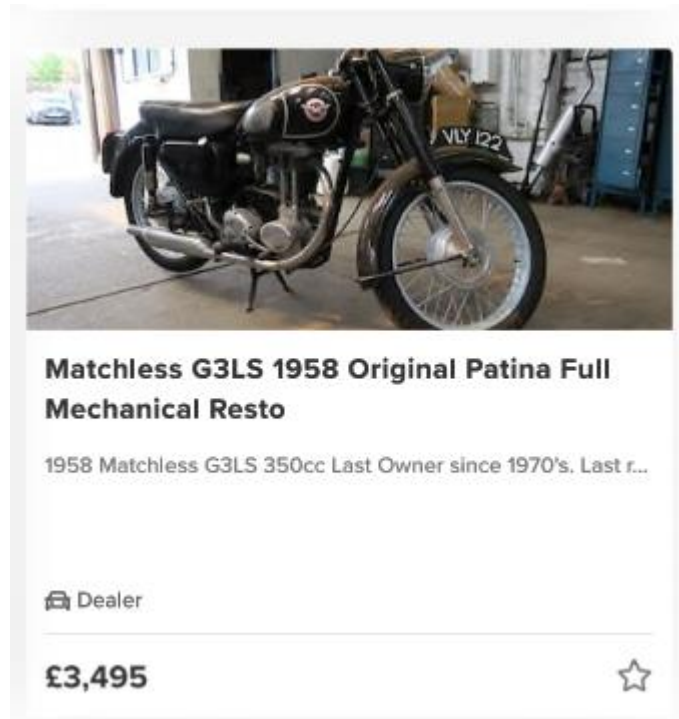
to 10 April 2023, the Matchless website received over 11.8 million page views, with the biggest proportion of visitors (being nearly 30%) coming from the UK.

- e) Mr Malenotti also states that Matchless products are also sold through its flagship stores located in Italy, Germany and the UK, although I note that while the London Regent Street store was open to the public from 2020 to 2022, it is currently (temporarily) closed. Mr Malenotti lists the location of its previous London stores and the relevant trading dates between 2013 to 2020.
- f) EMSL uses brochures, specification sheets and stock books alongside the sale of the Matchless products in the UK. Exhibit 8 has been provided in evidence, however, the printouts are again undated.
- g) Goods under the Matchless brand, including clothing and accessories, motorcycles and spare parts, and posters, magazines and publications, are also sold by third parties such as ebay, as shown in exhibit 9. While I note that the screenshots from ebay come from the ebay.co.uk domain, some of the goods originate from the US, and some of the goods are “used”:



Further, the date on the ebay screenshots is shown as accessed on 03/05/2023, as are the screenshots from Redbubble.com which offer Matchless posters for sale. Meanwhile, the Matchless motorbikes

advertised for sale by the Car & Classic website relate to much earlier “second-hand” bikes rather than new motorbikes as sold during the relevant periods:



While I acknowledge that sales of second-hand goods marketed under the trade mark by the proprietor, or with his consent, may in principle count as genuine use of the mark,⁷ in the examples given it seems that the sale was made by third parties, and that at least some of the goods were manufactured many years prior to the registration of the marks at issue by EMSL. Neither is there any evidence to show that these sales were made with the proprietor’s consent.

- h) At point 41, it states that the total investment made in the UK in relation to promoting the brand by way of print advertisements between 2013 to 2021 was over €1.7 million. I note that exhibit 13 adduced in support of this gives an analysis of the Matchless brand by a company called Visual Box, as performed on 12 May 2021. The figures in relation to the UK are only given for 2013 to 2018, although I note that figures relating to spend in other countries are given up to 2021. It is unclear whether this analysis was

⁷ Joined cases C-720/18 & -721/18, EU:C:2020:854, *Ferrari SpA v DU* at [55-56] and [59-60].

commissioned directly by EMSL or whether the quoted figures were actually provided by EMSL. I take the following information from the exhibit as being the estimated gross investment for advertising and the estimated gross value of spend on editorial, in euros between 2013 to 2018:

Year	Advertising	Editorial
2013	€520,411	€217,615
2014	€636,078	€110,881
2015	€41,500	€173,729
2016	€0	€8,972
2017	€0	€141
2018	€0	€424

- i) Mr Malenotti provides the following as an approximated overview of UK revenue from 2013 to 2022:

YEAR	Revenue – Euros (€)
2013	€ 795,000
2014	€ 2,360,000
2015	€ 2,890,000
2016	€ 2,190,000
2017	€ 1,245,000
2018	€ 350,000
2019	€ 560,000
2020	€ 520,000
2021	€ 760,000
2022	€ 225,000
TOTAL	€ 11,895,000

I further note that approximated figures have also been provided in relation to EU revenue for the same years, totalling €28,975,000. The figures themselves do not give a breakdown of sales in relation to the different type of goods provided under the marks for which use is claimed, although exhibit 10 includes a selection of invoices.

I note that these are dated between July 2013 until August 2022 and show sales in the UK of various Matchless products during the relevant period. Of the twenty invoices provided for the latter relevant periods (October 2017 till October 2022), the majority of invoices are for clothing, headgear and footwear, although I also note that one invoice refers to the sale of a Matchless Model X Reloaded motorcycle and two invoices in this period refer to the Urban e-bike. However, I do not consider an electric bikes (or “e-bike”) to be the same as a motorcycle, and e-bikes do not form part of the specification under either of the earlier marks for which use has been claimed.

Form of the mark

25. Section 46(2) of the Act states that:

“... 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 is registered...”

26. As outlined in *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12,⁸ the use of the mark encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark.

27. The earlier marks are registered for the word mark “**MATCHLESS**” and the



figurative mark . I note that the evidence shows use as a word mark in both upper and title case (MATCHLESS/Matchless), and alongside the word London (i.e. “Matchless London”) in some of the online articles at exhibit 11. The figurative mark is predominantly shown within the evidence as follows:⁹

⁸ At [31 – 35].

⁹ As shown on many of the goods themselves, as well as, inter alia, on the header the Matchless website pages (exhibit 2) and as presented on some of the included invoices within exhibit 10.



28. I consider the difference in presentation of the figurative mark, by way of the additional, non-distinctive words "IN NAME & REPUTATION" within the banner beneath the stylised word "MatchlesS", makes no material difference to the distinctiveness of the mark as registered. The additional word "London" as used in conjunction with the word "Matchless" in some of the text, merely indicates where the company is based and is thus considered non-distinctive. The word "MatchlesS" within the figurative mark is considered to play an independent role capable by itself of designating trade origin of the goods. I do not consider the stylised typeface or the capitalisation of the final letter "S" to be significant. Use of the word "MATCHLESS" also counts as use of the figurative mark as it does not alter the distinctive character of the marks. The evidence in both word form, with and without the word "London", and in the figurative form shown above may therefore be relied upon by the opponent.

29. I also note that many of the invoices adduced under exhibit 10 are headed with



the mark:

I consider the above mark to bear no resemblance to the marks as registered and so cannot be relied upon. However, some of the invoices include the word MATCHLESS within the description of the goods being sold, and also include the trading name Matchless Motorcycles Ltd at the bottom of the invoice, which I consider sufficient to demonstrate that the goods are provided under the Matchless brand:



INVOICING ADDRESS				SHIPPING ADDRESS					
LINEA FASHION [REDACTED] [REDACTED] LONDON UNITED KINGDOM				IDEM					
INT.VAT. #	CUST.CODE	COMMER.ZONE	AGENT CODE	TYPE OF DOCUMENT	PAGE	DOCUMENT NO	DOCUMENT DATE		
GB 719110264	ZE003	000	AE005	INVOICE	1	16\21\0\000405	13.09.16		
CODICE FISCALE		DELIVERY TERMS		TRANSPORT		1° SHIPPER			
		DDP DELIVERY DUTY PAID				CARRIER			
TERMS OF PAYMENT				STARTING FROM	PACKING				
ADVANCED PAYMENT					BOX				
BANCA/REFERENZES				MEGEXES		NET WEIGHT	GROSS WEIGHT		
				1					
STYLE	DESCRIPTION			U.M.	QUANTITY	PRICE	DISCOUNT	AMOUNT	VAT
	MATCHLESS MOTORCYCLE MODEL X RELOADED 996 CC			PZ	1,00	52.000,00		52.000,00	

Counter-evidence of OMMCL and evidence in reply by EMSL

30. I note that in his witness statement, in reference to EMSL’s evidence, Mr Oliver states that “there seems to be an important part of the timeline missing between the 1960’s and 2014”.¹⁰ As outlined earlier in this decision, I will be considering the evidence to ascertain if there has been genuine use of the marks in the five year periods following the date on which the marks were registered and/or during the subsequent periods prior to 17 October 2022.

31. In brief, in his witness statement, Mr Oliver raises the following points, with the responses by Mr Malenotti by way of WS2 shown beneath each point:

1. Motorcycles – Mr Oliver has collated the UK market motorcycle vehicle registrations by brand from 2012 to 2022 and Matchless does not appear with a single registration in the UK during any of those years (Exhibits SEO2 to SE07 are provided in support of these claims).
In response, in WS2, Mr Malenotti states that the motorcycles are sold with ‘test plates’ and it is the buyer’s responsibility to register it following

¹⁰ As supported by exhibit SEO1.

purchase and delivery, through a kind of authorisation called “unique specimen”. Further, many motorcycles are purchased in order to be displayed as collector’s items in motorcycle museums, shop windows and at motorcycle events.

2. Invoices - EMSL’s sample invoices provided alongside WS1 do not show unique identifying references VIN number and/or engine number, and only three documents refer to non inter-company sales. Without the traceability of the unique VIN number shown on documentation, “it can only be assumed that this is the sales history of one machine.... And potentially used as a store display item only”. Mr Oliver further states that not one of the invoices appear to have been issued to a bona fide motorcycle dealership.

Mr Malenotti has responded by stating that it is not necessary for the VIN number and/or engine number of motorcycles to be provided on the invoices and that these details are provided separately to the customer. Exhibit 25 comprises additional invoices marked to show the type of consumer to whom the sale has been made, i.e. a matchless shop, a private buyer, a museum, a private buyer through a physical matchless shop, or via the internet.

3. Protective equipment and clothing for motorcyclists - The motorcyclist clothing sold under the Matchless brand does not meet motorcyclist PPE as per legislation from 2018 with regards to the same.

Mr Malenotti counters that nothing prevents someone from using the garments produced by Matchless for riding a motorbike and that garments with approved protections are only mandatory for use in motorcycle competitions. However, Matchless have produced and sold garments with protection for these specific uses, with exhibit 27 being provided in support. I note that this exhibit shows the likes of elbow and shoulder protection being offered for sale through the matchlesslondon website during the relevant period, and that mention is made of the CE certification under the product descriptions of the goods offered for sale.

4. Financials - Mr Oliver has made a number of comments on the financial position of EMSL, which Mr Malenotti has stated are irrelevant to the

issue at hand. He has, however, made brief points in reply on the investments made in relation to the Matchless brand.

5. Social Media – Mr Oliver states that given that Matchless have a significant number of ‘followers’ (27,000 on Facebook [FB], and 24,000 on Instagram [Insta]), only 23 posts out of 565 refer to current Matchless automotive products on FB and 43 out of 1,358 post refer to its motorcycle or e-bike on Insta.

Mr Malenotti states that in particular, the Matchless Instagram account has numerous posts regarding the e-bike and motorcycle (Model X Reloaded) and ‘perfectly reflects the entire story of the relaunch of the Matchless brand.’

32. In WS2, Mr Malenotti states that EMSL has invested €15 million (euros) in the relaunch of the Matchless brand spanning over a period of more than 10 years, spread over three phases. Phase 1 was to promote Matchless in the clothing-fashion sector; Phase 2 was with regard to the production of motorcycles and e-bikes; Phase 3 (being the phase EMSL is currently undertaking) is in relation to the development and preparation of the public release of more affordable motorcycle models. He states that the Matchless relaunch project was an ambitious plan involving large investments and very long realisation times. He states that the evidence submitted alongside the first and second witness statements clearly shows that use has been made of the Matchless registrations for all of the relevant products and services.

33. Before I make my assessment on the evidence of genuine use as provided by EMSL, I will address some of the points raised by OMMCL.

34. While I accept Mr Oliver’s explanation of the data provided by way of exhibits SEO2 to SE07, and I note that they are headed as being the Copyright of the Motor Cycle Association Limited, the exhibits themselves do not clearly evidence the point that Mr Oliver is trying to make, i.e. that the lack of relevant information within the exhibits is sufficient to illustrate that something (being, in this case, the registration of Matchless motorcycles) does not exist. I consider the same to be true for exhibit SEO8, which is merely headed as “MATCHLESS MISSING – How Many Left?”. Meanwhile, while I acknowledge Mr Oliver’s claim that he could find no further press

releases following those produced under exhibit SEO9, being articles pertinent to the launch of the Matchless Model X Reloaded (articles dated between 2012 and 2014), I cannot accept that a lack of evidence provided by the opponent means that no such articles exist. Neither do I consider the search results for the sale of Matchless bikes produced under exhibit SEO10 to be conclusive evidence that no such goods were available for sale at the time of the search, being 5 July 2023. That being said, I can only go by any evidence that has been provided by EMSL to refute these claims, the burden of showing use of the marks resting on EMSL. With regards to the invoices, I have not been provided with any evidence that unique identifiers such as VIN numbers are a legal requirement which must be shown on customer invoices for motorcycles. In relation to the 2018 legislation on PPE such as protective clothing, it is not for the Tribunal to ascertain whether the goods actually comply with any such legislation, but merely to assess whether the mark has been put to genuine use on the contested goods as registered under the appropriate class during the relevant period (i.e. goods labelled or described as being protective clothing in the evidence).

Assessment on genuine use

35. 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 at issue in the EU (as far as use of the figurative mark prior to the end of 2020 is concerned) and in the UK during the relevant five-year periods. 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 goods for which use has been shown;
- the nature of those goods and the market(s) for them; and
- the geographical extent of the use shown.

36. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself. It is possible for an accumulation of evidence to show use, even if

individual items of evidence would on their own be insufficient proof: see *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, Case T- 415/09, paragraph 53. However, where there is no use of the mark in respect of the goods as registered, it follows there has been no genuine use of the mark: *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13.¹¹

37. As mentioned earlier in this decision, in WS2, although Mr Malenotti has said that the Matchless relaunch project was an ambitious plan involving large investments and very long realisation times, he also states that use has been made of the Matchless registrations for all of the relevant products. Consequently, I must make my decision based on the evidence of actual use, or a lack thereof, of the marks in relation to the goods which are subject to the applications for revocation.

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

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

¹¹ At [22].

39. I also note Mr Alexander's comments in *Guccio Gucci SPA v Gerry Weber International AG*, Case BL O/424/14, where he stated that:

"56. The Registrar says that it is important that a party puts its best case up front – with the emphasis both on "best case" (properly backed with credible exhibits, invoices, advertisements and so on) and "up front" (that is to say in the first round of evidence). Again, he is right. If a party does not do so, it runs a serious risk of having a potentially valuable trade mark right revoked, even where that mark may well have been widely used, simply as a result of procedural error. . . . The rule is not just "use it or lose it" but (the less catchy, if more reliable) "use it - and file the best evidence first time round - or lose it".
(Original emphasis)

40. I acknowledge that, as per the principles outlined under paragraph 22 of this decision, use of the mark must be more than token, although that use need not always be quantitatively significant for it to be deemed genuine.¹²

41. To my mind, the biggest deficiency in the evidence is that there has been no breakdown of figures provided for each of the goods at hand to show how much revenue and how much advertising spend can be attributed to each of the goods under the marks for which revocation is sought. While the overall revenue figures are shown to be in the millions, and Mr Malenotti has stipulated that they include sales of motorcycles, motor-powered e-bikes, and related accessories; protective equipment and clothing; clothing, footwear, headgear; accessories (including sunglass cases, belts, gloves); and miscellaneous products, without attributing a percentage of sales and advertising spend to each set of goods, it is very difficult to ascertain the extent of the use of the marks in relation to the particular goods at issue for which use is claimed. I also note that the advertising spend and revenue figures tabulated under paragraph 24(h) and (i) show a general decline in both since 2015/2016.

¹² *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72] and [76]-[77]; *Leno* at [55].

42. In my view, the invoices provided at exhibit 10 should support the revenue figures provided in WS1, however, of the 64 invoices provided, 43 appear to be internal transfers from one location to another:



SPETTABILE / Invoicing Address MATCHLESS MOTORCYCLES LTD 5th Floor, North Side 7/10 Chandos Street W1G 9DD Cavendish Square LONDON UNITED KINGDOM				DESTINAZIONE MERCE / Shipping Address MATCHLESS MOTORCYCLES LTD 67 GROSVENOR STREET 1ST FLOOR LONDON W1K3JN					
PARTITA IVA / Inv. Vat. # GB 157360211	COD. CLI / Customer code C0025	COD. ZONA / Commercial zone 000	COD. AGENTE / Agent code	TIPO DOCUMENTO / Type of document SAMPLE INVOICE	PAG / Page 29	N.DOC / Document No 16\21\0\001091	DATA DOC / Document date 30.06.16		
CODICE FISCALE	PORTO / Delivery terms		TRASPORTO A CURA DEL / Transport		1° VETTORE / 1° Shipper				
PAGAMENTO / Terms of payment BANK TRANSFER 180 DAYS EOM				DATA DECORRENZA / Starting from	ASPETTO ESTERIORE DEI BENI / Packaging				
BANCA D'APPOGGIO / Bank references				N. COLLI / N. Boxes	P. NETTO / Net w. kg.	P. LORDO / Gross w. kg.			
ARTICOLO / Style	DESCRIZIONE / Description			U.M.	QUANTITA' / Quantity	PREZZO / Price	SCONTO / Discount	AMMONTARE / Amount	IVA / Vat.

43. This was addressed by Mr Malenotti at point 17 of WS2, with exhibit 25 containing additional invoices relating to sales of the Matchless Model X Reloaded, used motorcycles and the Urban e-bike, which are hand marked to show whether the invoice relates to an internal transfer to a Matchless shop; to a private buyer; to a museum; to a private buyer through a physical Matchless shop; or via the internet. I note that the majority of these invoices are marked “SHOP” and that the invoices marked “MUSEUM” refer to the original Matchless bikes (i.e. Pre 1967), which pre-date the current registrations at issue, as do some of the invoices marked “PRIVATE”.

44. The invoices contained within exhibit 10 are priced in either euros or in GBP, the majority of which relate to specific items of clothing, footwear and headgear. However, I am unable to ascertain the true extent of sales in relation to each of the different types of goods for which use must be shown from these invoices. For some of the invoices only one page has been adduced, but it is evident that there are previous pages to which the total amount relates which have not been provided. By way of example, the printout for Invoice/Document No. 19\21\0\000359 is marked as page 12 and shows the sale of a man’s jacket (“BLOUSON”) (quantity 1) at 349

(GBP), although the total value of the invoice is GBP 45,119.00. As no other pages have been provided for this particular invoice, I am unable to deduce to what the higher total amount pertains:



M SYMBOL GROUP S.R.L.							
Sede Legale / Registered Office: Via Toniolo, 1 - 31100 Treviso (TV) - P.I e C.F. 04534640265 - R.E.A. TV-357791 - PEC: msymbolgroup srl@pec.it							
Sede Operativa / Head Office: Via Giotto, 5 -31021 Mogliano Veneto (TV) - Ph. +39 0422 549310 - Fax: +39 0422 1834926 - Email: headoffice@matchlesslondon.com							
Sede Logistica / Logistic Office: Via Giotto, 5 -31021 Mogliano Veneto (TV) - Ph. +39 0422 549310 - Email: customercare@matchlesslondon.com							
SPETTABILE / Invoicing Address				DISTRIBUZIONE INDIRIZZO / Shipping Address			
MATCHLESS LONDON LTD 7710 CHANDOS ST. WIG90Q LONDON UNITED KINGDOM				MATCHLESS LONDON LTD 31-33 CORK STREET MAYFAIR GB - W1S3HQ LONDON			
PARTITA IVA / PI, VAL #	COD. CLI / Customer code	COD. ZONA / Commercial area	COD. AGENTE / Agent code	TIPO DOCUMENTO / Type of document	PAG / Page	NUMERO / Document No.	DATA DOC / Document date
GB 265647767	C0000		AE014	INVOICE	12	19121101000369	31.10.19
CODICE FISCALE	PORTO / Delivery terms		TRASPORTO A CURA DEL / Transport		1° VETTORE / 1° Shipper		
	DAP DELIVERED AT PLACE				DHL		
PAGAMENTO / Terms of payment				DATA DECORRENZA / Billing date		ASPETTO ESTERIORE DEL BILE / Packaging	
DIRECT REMITTANCE 180 DAYS EOM						BOX	
BANCA BANPARIGIO107 Best references				N. COLLI / N Boxes		P. NETTO / Net w. Ig.	
				16		190,00	
ART. / Type	DESCRIZIONE / Description			U.M.	QUANTITA' / Quantity	PREZZO / Price	SCONTO / Discount
113159	SCARLET 5033 CRAIG BLOUSEON PAV OTTANIO 100K30 XXL 1			CA	1,00	349,00000	349,00
T. IMPORTO / Total amount		N. SCONTI / Discount		TOT. NETTO / Net amount		SP. TRASP. / Freight charges	
45.119,00				45.119,00			
T. IMPORTO IVA / Total IVA		DESCRIZIONE IVA / VAT description		IMPORTO IVA / Vat Amount		TOTALE IMPORTO IVA / Total taxes	
45.119,00		41 NON IMP. ART. 41 D. 1331/93				45.119,00	
SCADENZA / Expiry date		IMPORTO / Amount		SCADENZA / Expiry date		IMPORTO / Amount	
30.04.20		45.119,00					
TOTALE FATTURALE / Total amount						63P 45.119,00	
VALUE FOR CUSTOM						63P 45.119,00	

45. As such, the amounts relating to the goods at issue which have been shown on the invoices appear to be extremely small in comparison to the sum totals of the invoices. Overall, the amount of sales demonstrated through the invoices do not seem to corroborate the revenue figures provided under WS1 as shown in the table at paragraph 24(i) of this decision.

46. I also acknowledge that at paragraph 23 of his witness statement, Mr Oliver submits that the company revenue within the EU from 2013 to 2022 of €28m, as stated by Mr Malenotti in WS1, does not appear to be reflected within EMSL's reported trading figures at Companies House. Mr Oliver adduces exhibit SE017 in support of these submissions, which comprises end of year balance sheets from 2012 to 2021. In WS2, Mr Malenotti responds that the discrepancy is explained "because investments were made not only by the English company, but also by Italian and German companies within the M Symbol Group".

47. While the word only mark is in relation to motorcycles and parts and fittings for motorcycles, the figurative mark is registered across four very different sectors. I accept Mr Malenotti's submissions that "the Matchless Model X Reloaded motorcycle is intentionally a very high cost, unique and exclusive motorcycle" and that it is not targeted at or aimed to be sold to the mass general public.¹³ I acknowledge Mr Malenotti's assertions that the Matchless relaunch project was an ambition one with long realisation times. I would expect the market for such luxury goods to be relatively small and niche, and in this respect, I take into account the findings the General Court in *Polfarmex SA v EUIPO*.¹⁴ That being said, use of the figurative mark has been claimed in relation to goods in class 9 (including, inter alia, optical equipment, protective clothing and CD-ROMs), class 16 (including printed matter, posters, photographs and gift wrap), and class 25 for clothing, footwear and headgear. I have not been provided with any details of the size of the corresponding markets or the percentage market share enjoyed by EMSL, however I would expect the size of these markets to be substantial.

¹³ See point 12 i and ii of WS2.

¹⁴ Case T-677/19, EU:T:2020:424, at [69-73].

48. I acknowledge EMSL's written submissions dated 19 December 2023, and in particular paragraph 38 in which it provides a summary of which exhibits that it considers shows use in relation to each class of goods. In my view the evidence provided does not clearly demonstrate genuine use of the figurative mark in relation to any of the goods in classes 9 or 16. I take into account the additional evidence filed, and in particular, exhibit 27 which is described as printouts showing the sale of protective equipment and clothing for motorcyclists. However, I find the overall evidence deficient for a number of reasons, including a) many of the screenshots are undated, or only show the date the pages were accessed, being outside the relevant periods, although I accept that in some circumstances, this can "cast light backwards"¹⁵; b) the domain address of the websites are ".com", rather than ".co.uk" and so do not self-evidently actively target either the UK or EU (where relevant) market; and/or c) the goods are not actively offered for sale. Neither are there any invoices pertinent to these goods. Even where the evidence shows the goods being offered for sale, I have not been provided with the revenue generated specifically from the sale of goods in either class. As such, I consider the evidence insufficient to demonstrate genuine use of the mark in these classes.

49. I turn to the class 12 goods and I again note that I have not been provided with the sales figures specific to motorcycles and parts and fittings for motorcycles. In WS2, Mr Malenotti states that the Matchless Model X Reloaded is prominently placed in the physical store, where customers are invited to place orders to have a custom Matchless Model X Reloaded hand produced. Exhibit 5 shows the bike displayed within what are first and foremost clothing stores, but it is not evident that the displays serve the purpose of inviting orders for the bikes or are merely displayed for aesthetic purposes. While I note that the Nice classification system is merely an administrative tool¹⁶, the marks as registered are protected for motorcycles under class 12 (being fully functioning, 'complete' vehicles), and not for the custom manufacture of the goods, which would fall under class 40. However, I accept that this, in principle, constitutes use of the mark to promote sales of the goods themselves.

¹⁵ *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch).

¹⁶ See *Mould Pro* decision Case T-794/21 at [22-28].

50. The independent article by Marc Potter headed “Matchless is back with new 1916cc V-Twin”, posted on 5 November 2014, as included in exhibit 1, as well as the other articles dated from around this time (i.e 2014/2015)¹⁷, sheds light on EMSL’s endeavours to bring the goods to market, although there is little evidence of value subsequent to this period. I return to the previously mentioned case law which states that “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].”

51. I acknowledge that many of the invoices adduced under exhibit 10 appear to be internal transactions. I also take into account Mr Malenotti’s point that the motorcycles are sometimes bought for use in displays and I accept that as such it still demonstrates use of the mark in order to attract a market for the goods. The additional invoices under exhibit 25 show the sale of a Matchless Model X Reloaded to a private buyer in Italy at a cost of 27,500 euros (dated 31 December 2017); one to a UK buyer for the same price on 30 September 2015; a further two to a UK buyer on 10 January 2018 (total cost £62,400 [GBP]. Meanwhile, the transactions to Italy, being prior to IP Completion Day on 31 December 2020 can only be considered in relation to the figurative mark.

52. With regards to the parts and fittings, in *Ferrari SpA v Du*, Joined Cases C-720/18 and C-721/18, the CJEU held that use of a trade mark amounts to genuine use if the trade mark holder sells second-hand goods directly. I note that exhibit 24 comprises a heavily redacted UK licence for Matchless parts between EMSL and a British company called “Britain Only”, with delivery notes showing delivery of such parts by that company to various places in the EU before 31 December 2020, and to UK addresses during the last relevant periods.

53. In the *Ferrari SpA* cases, the CJEU stated that “*Taking the view that the use of a mark does not always have to be extensive in order to be genuine, and also taking*

¹⁷ See exhibit 11.

into account the fact that Ferrari used the marks at issue in respect of high-priced sports cars which are typically only produced in small numbers, the referring court does not share the view expressed by the court of first instance that the extent of use demonstrated by Ferrari is not sufficient to establish genuine use of those marks” (at [18]). It also stated that “... the use, by its proprietor, of a registered trade mark in respect of replacement parts forming an integral part of the goods covered by that mark is capable of constituting ‘genuine use’, ..., not only for the replacement parts themselves but also for the goods covered by that mark. It is irrelevant in that regard that the registration of that mark covers not only entire goods but also replacement parts thereof.”¹⁸

54. In the case before me, the evidence of sales of licensed spare parts for old bikes, including in the UK (exhibit 24) and the few sales of high priced motorcycles seems to me to show an attempt to create a market under the marks for high price niche products. Taking all of the evidence in combination, including the pre-launch promotion of the Matchless Model X Reloaded, alongside Mr Malenotti’s assertions in WS2 that EMSL has invested €15 million (euros) in the relaunch of the Matchless brand spanning over a period of more than 10 years, spread over three phases, as well as the (albeit limited) sales invoices, I consider that the evidence is just sufficient to demonstrate that there has been genuine use of the marks in relation to motorcycles and parts and fittings for motorcycles in class 12.

55. Finally, I turn to the class 25 goods at hand. I again have not been furnished with details of the market share percentage enjoyed by EMSL in what I would expect to be multi-billion pound market. However, I remind myself that it is not for me to assess economic success or large-scale commercial use, and that there is no *de minimis* rule - even minimal use may qualify as genuine use if it is use warranted, in the economic sector concerned, to maintain or create market shares for the relevant goods.¹⁹ Conversely, even proven commercial use may not be sufficient for a finding of genuine use.²⁰

¹⁸ At [35].

¹⁹ *Naazneen Investments Ltd v OHIM*, Case T-250/13 at [49].

²⁰ At [115(8)].

56. While the majority of the exhibits which show the mark being used on the clothing are undated, it seems clear to me that the mark has been used on the goods. This is supported by the screenshots from the Wayback Machine, as well the invoices for various items of clothing at exhibit 10 which are dated within the last relevant periods. I also note the clothing on display in the various Matchless stores London (exhibit 5), which Mr Malenotti confirms in WS1 as being open during the relevant period.

57. In spite of its shortcomings, taking the evidence as a whole, I consider that EMSL have done enough for me to find genuine use of certain items under the class 25 goods. I note that the figurative mark is registered for "*Clothing, footwear, headgear; clothing, footwear and headgear for motorcyclists; leatherware for motorcyclists; articles of outer clothing; T-shirts; sweat shirts; caps; hats; belts*". Given the broad term "*Clothing*" would encompass articles of clothing for which EMSL have clearly shown no evidence (for example, inter alia, the likes of *lingerie* or *children's clothing*) I consider the registration should be revoked in this respect, leaving only the specified "*footwear, headgear; leatherware for motorcyclists; articles of outer clothing; T-shirts; sweat shirts; caps; hats; belts*", which seems to be a fair specification from the evidence provided.

58. To clarify, in relation to the goods in classes 9 and 16, the evidence does not allow me to find that EMSL has demonstrated genuine use on any of the goods for which use is claimed in these classes under the figurative mark.

CONCLUSION

The word mark

59. The application for revocation of UK00001515035 fails under section 46(1)(a) and section 46(1)(b).

The figurative mark

60. The application for revocation of UK00800950035 fails under section 46(1)(a) in class 12 and fails under section 46(1)(b) in class 12 and for "*footwear, headgear;*

leatherware for motorcyclists; articles of outer clothing; T-shirts; sweat shirts; caps; hats; belts” in class 25. The application for revocation under section 46(1)(b) succeeds in classes 9 and 16, and in part for class 25. EMSL’s registration is revoked with effect from the earliest date requested, being 1 December 2015, for the following goods only:

Class 9

Optical apparatus and instruments; motorcycle goggles; eyeshades; sunshades; visors; sunglasses; spectacles; cases for sunglasses; cases for spectacles; protective clothing, footwear and headgear for motorcyclists; protective headgear for motorcyclists, motorcycle helmets, crash helmets; protective clothing for motorcyclists; protective gloves for motorcyclists; electrical accessories, parts and instruments for motorcycles; fire extinguishers; pre-recorded CDs; pre-recorded CD-ROMs; pre-recorded DVDs; electronic publications downloadable from the Internet; printed publications in electronically readable form; printed publications in machine readable form; printed publications in optically recorded form.

Class 16

Printed matter; printed publications; books; manuals; magazines; catalogues; flyers; stationery; note pads and note books; photographs; photograph albums; book markers; personal organizers; posters; poster magazines; postcards; greetings cards; calendars; graphic prints, representations and reproductions; paper weights; gift wrap and packaging paper; gift bags and bags for packaging; stickers; transfers (decalcomanias).

Class 25

Clothing.

COSTS

61. In these consolidated proceedings, both parties have enjoyed a share of success. Considering the balance of success is roughly equal, adopting a “rough and ready” approach to the matter, I have concluded that both parties should bear their own costs.

Dated this 14th day of August 2024

**Suzanne Hitchings
For the Registrar,
the Comptroller-General**