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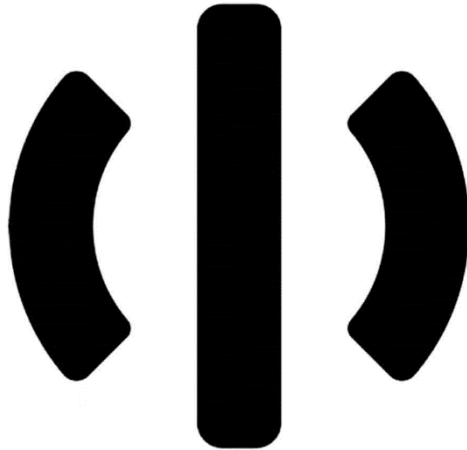
TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 507232 BY RENAULT S.A.S.

TO REVOKE ON THE GROUNDS OF NON-USE

TRADE MARK REGISTRATION

NO. 3369641:



OWNED BY:

HUMAN HORIZONS HOLDINGS (SHANGHAI) CO., LTD.

BACKGROUND AND PLEADINGS

1. These proceedings concern United Kingdom Trade Mark (“UKTM”) 3369641 for the mark shown on the cover page to this decision. It holds a filing date of 24 January 2019 and a registration date of 12 April 2019. The trade mark stands registered in the name of Human Horizons Holdings (Shanghai) Co., Ltd. (“the proprietor”) in respect of the following goods and services:

Interactive touch screen terminals; Traffic-light apparatus [signalling devices]; Facial recognition apparatus; Electrified fences; Parking meters; Holograms; Semi-conductors; Reflective safety vests; Sunglasses; Navigational instruments; Cabinets for loudspeakers; Alarms; Calibrating rings; Fire extinguishers; Electronic key fobs being remote control apparatus; Meters; Video screens; Gauges; Accumulators, electric, for vehicles; Electric apparatus for remote ignition; Lightning arresters (class 9)

Trolleys; Locomotives; Cars; Automobile tires; Air vehicles; Bicycles; Pumps for bicycle tires; Boats; Repair outfits for inner tubes; Brake discs for vehicles; Remote control vehicles, other than toys; Carts; Seat cushions for the seats of vehicles (class 12)

Clothing repair; Heating equipment installation and repair; Motor vehicle maintenance and repair; Electric appliance installation and repair; Repair information; Retreading of tires; Vehicle washing; Burglar alarm installation and repair; Rustproofing; Airplane maintenance and repair (class 37)

2. On 15 April 2024, RENAULT S.A.S. (“the applicant”) applied for the revocation of the above trade mark, in its entirety, relying upon section 46(1)(a) of the Trade Marks Act 1994 (“the Act”). Under section 46(1)(a), “the relevant period” is 13 April 2019 to 12 April 2024, with revocation sought from 13 April 2024.

3. The applicant submits that the proprietor’s mark has not been put to genuine use in the UK for the five year period stated above and, consequently, asks that the mark is revoked in its entirety. In its pleadings, the applicant acknowledges that genuine use must be more than token use and must be undertaken within the relevant territory.

4. The proprietor filed a counterstatement setting out its intention to defend its application in respect of all goods and services for which it stands registered. In its counterstatement, it maintains that it has put its trade mark to use in respect of all goods and services during the relevant period, in the United Kingdom.

5. In these proceedings the applicant is represented by Kilburn & Strode LLP and the proprietor by Stobbs (IP) Limited. Both parties filed evidence during the course of the evidence rounds. Neither party requested a hearing, although the applicant elected to file written submissions in lieu. This decision is taken following a careful perusal of the papers.

Relevance of EU Law

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

Legislation and leading case-law relating to revocation

7. The pertinent legislation is contained in section 46 of the Act, the relevant parts of which read 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;

(b)...

(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 is 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 existed at an earlier date, that date.”

8. Section 100 is also relevant. It 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.”

9. In *easyGroup Ltd v Nuclei Ltd & Ors*¹, 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 Bunderversammlung Kameradschaft 'Feldmarschall Radetsky* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Marken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C-720/18 and C-721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

¹ [2023] EWCA Civ 1247

(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].”

The proprietor’s evidence

10.. The proprietor’s evidence takes the form of a witness statement and eighteen accompanying exhibits. The statement is made by Mr Savan Bains of Stobbs and is dated 19 September 2024.

11. I take the following from Mr Bains’ statement and supporting exhibits:

- In July of 2023, the proprietor debuted its HiPhi Z and Y car models at the “Goodwood Festival of Speed”, held in the UK. In an *autocar* online article of 14 July 2023, photographs from the festival show the proprietor’s mark displayed on the bonnet and wheels of its HiPhi Y model. The article states that the models’ launch is “expected to open new avenues... serving as the flagbearer for the four-year-old firm’s expansion into Europe. The first cars will be sold in a left-hand-drive configuration before right-hookers make their way into the UK.” The article explains that “Pricing also hasn’t been detailed yet, but it’s expected the Y will be cheaper than the £75,000 X and Z grand tourer. First orders are expected to be taken by the end of the year.”

- An article from *fleetworld*² detailing the debut of the HiPhi brand states that the HiPhi Z is due for launch in Europe at the end of 2023. It goes on to say that “Both the X and the Z are now available to order in Germany and Norway and the first vehicles are already registered for road use, following inspection by TUV SUD. The brand is also imminently opening its first HiPhi Hubs, or showrooms, in Munich, Germany and Oslo, Norway. Further European markets will be announced later in the year and sales in the UK are expected to start in 2024.”
- It was anticipated that the festival would attract a “record TV audience”³ with live coverage in the UK due to be aired on ITV1.
- An article⁴ reflecting on the event retrospectively shows that the festival enjoyed 200,000 “public sales” visitors over four days (excluding VIP attendees, partners, sponsors etc).
- In 2020, the proprietor partnered with Meridian Audio for the purpose of developing a sound system for the HiPhi car.
- Published in June 2023, a review of the HiPhi Z in *carmagazine* states that the model “reaches its first European customers in August 2023, and though prospective UK buyers will have a couple of years to wait before right-hand drive models are available, we were hardly going to turn down the chance to drive a 662bhp dual-motor ‘Super GT’ so... individual. ...We sense the UK’s battle-scarred surfaces will present more of a challenge; the Z’s 22-inch wheels certainly won’t be forgiving.” The article informs readers that “it’s going to be at least two years before the cars reach the UK”.
- Stills from Youtube videos posted by *carwow* show the earlier mark displayed in various locations on the proprietor’s vehicle with videos titled, for example, “This is the most hi-tech car I’ve ever reviewed!” and “This is the most attention-grabbing car I’ve ever driven!”. Each video enjoyed over 1 million views and, at the time of retrieval, were posted “11 months ago” or “1 year ago”. The images show that *carwow* has 9.45 million subscribers.
- In a review of the HiPhi Z 2023, an article published on 30 July 2023 at *www.driving.co.uk* comments on the technology and safety of the model, specifically: “The system mostly performed well though did momentarily mistake a bollard for a pedestrian, which is why these things aren’t legal on UK roads just yet.”

² The article appears to have been accessed on 2 August 2024 with its publication being “1 year ago”

³ See article from *Broadcast Now* dated 12 July 2023

⁴ *Carmagazine*, 19 July 2023

- The same review says, of the model's release date, that "HiPhi has said that the Z and X models will go on sale in the UK in 2025 but the British chief technical officer, Mark Stanton, says that the company already has a history of under-promising and over-delivering. In short, the cars may find their way to the UK even sooner than that. There's still no word on pricing but in the two European markets in which HiPhi has already launched – Germany and Norway – the Z will set you back a chunky EUR105,000, or over £90,000 at today's exchange rate."
- A *Fleet News* article from September 2023 features the proprietor's HiPhi model, stating that "HiPhi's arrival in the UK is expected by 2026." Mr Bains explains in his statement that "'Fleet News' is a UK leading media brand for the fleet sector and associated industries. Their main audience are UK companies responsible for cars, vans and trucks... Given Human Horizons' launch of the HiPhi Car in the UK in 2023, this type of coverage is invaluable to reach UK vehicle owners."

The applicant's evidence

12. The applicant's evidence comes in the form of a witness statement from Ms Nora Fowler of Kilburn & Strode LLP, dated 5 November 2024, alongside three accompanying exhibits (NXF1 – NXF3).

- At Exhibit NXF1 is a selection of articles concerning the proprietor's bankruptcy filing. An *Autocar* article of 8 August 2024 explains that "Human Horizons, parent company to the once much fancied HiPhi electric vehicle brand, has filed for bankruptcy in China... The high-profile Chinese EV start-up announced in February 2024 that it had placed production of the three luxury electric cars on hold as part of a re-organisation programme for the struggling company. Under the reorganisation, Human Horizons aimed to refinance its operations and seek a possible joint venture partner following a downturn in sales and an increase in production costs due to the supply-chain squeeze in the wake of the Covid pandemic."
- A *Motor Finance* article published on 21 August 2024 encouraged "caution among fleet managers buying vehicles from new Chinese manufacturers entering the UK market, following the recent bankruptcy of HiPhi."
- The applicant also encloses articles detailing the financial standing of the proprietor in the months preceding its bankruptcy filing. An article in *Yicai Global* in February

2024 is headed “Struggling Chinese EV Brand HiPhi Pays Workers To Go”, with the article revealing that Human Horizons “is encouraging employees to leave voluntarily with financial incentives” and that, on 18th February, it “announced that it would suspend production for at least six months due to its distressed capital chain.”

- A further article from the same publication, in the same month, explained that “Poor sales lie behind HiPhi’s difficulties. It sold only 4,237 units in 2021 and 4,349 a year later. After launching a lower-priced model, the HiPhi Y, sales increased to 8,681 last year, but that was not enough to support the company’s sustainable operation.”

- An article in *BrokerNews* headed “Bye bye HiPhi” indicates that the proprietor had already started selling the vehicles in Norway and Germany.

- Ms Fowler also encloses a graph showing the annual amount spent on advertising in the automotive industry in the UK between 2019 and 2021. In 2021, the amount exceeded \$225 million (USD).

DECISION

13. I begin by reminding myself of the relevant period in play in these proceedings, namely, 13 April 2019 to 12 April 2024.

14. In *Awareness Limited v Plymouth City Council*⁵, Mr Daniel Alexander Q.C. as the Appointed Person stated:

“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

⁵ Case BL O/236/13

proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

and further at paragraph 28:

“28. I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as “tuition services”, is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to “tuition services” even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted.”

15. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*⁶, Mr Geoffrey Hobbs Q.C., as the Appointed Person, stated:

“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

⁶ Case BL 0/404/13

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.”

16. Whether the use shown is sufficient for this purpose 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 during the relevant five-year period. In making the assessment I am required to consider all relevant factors, including: the scale and frequency of the use shown; the nature of the use shown; the goods and services for which use has been shown; the nature of those goods and services and the market(s) for them and the geographical extent of the use shown.

17. To briefly address the applicant’s evidence, whilst the circumstances concerning the proprietor’s standing are unfortunate, they do not speak to the proprietor’s actions or use of its mark in the UK during the relevant period which is where I will focus my assessment.

18. I begin by acknowledging that the proprietor has not achieved any sales of its goods or services in the United Kingdom. I also have no indication of the monetary

amount the proprietor invested in its efforts to create a market for the relevant goods or services in the UK during the relevant period. Whilst such deficiencies are not necessarily binding, they are nonetheless relevant to my assessment and I must consider the strength of the evidence as a whole. It seems reasonable to conclude, based on the information both in Mr Bains' witness statement and the various articles enclosed alongside, that the proprietor was *intending* to launch its vehicles in the UK at some point, with some articles suggesting that this was likely to be 2024 and others indicating that it may not be until 2026. Even so, an intention alone does not satisfy the use provisions and it is not clear what specific steps the proprietor undertook to implement its plan to launch in the UK. Whilst its vehicles were displayed at the Goodwood Festival in July 2023, this was not necessarily targeting the UK consumer specifically, nor is it clear how many of the festival's UK visitors expressed an interest in the proprietor's vehicles nor how much of the UK television coverage was dedicated to the promotion of the proprietor's vehicles. I accept that the vehicles featured in articles from publications boasting a reasonable UK readership, in terms of showing *use* in the UK specifically, the content appears predominantly speculative. Whilst it may be that UK representatives from within the industry were invited to test-drive a HiPhi model within the relevant period, in the screenshots provided the registration plates are clearly foreign and such limited exposure is nonetheless not, in my view, consistent with *creating or preserving an outlet*. Furthermore, whilst I am satisfied that the proprietor intended to launch its vehicles in the UK, it appears from the evidence that the UK wasn't necessarily one of its priorities, particularly given that sales of its HiPhi vehicles had already been placed in countries such as Norway and Germany by the time the proprietor declared its bankruptcy. I have nothing before me to indicate that provisional orders, or even notes of interest, for example, had been made available to the UK consumer. I remind myself at this juncture that, as laid out in *Ansul*, "a mark's commercial raison d'être... is to create or preserve an outlet for the goods or services that bear the sign of which it is composed, as distinct from the goods or services of other undertakings. Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns." (my emphasis) There is nothing of this nature exhibited in the evidence before me, and nothing to indicate that any tangible use of the marks in the UK was imminent or that material preparations were underway during the relevant period.

Having regard to these conclusions, whilst I am appreciative of the time and investment likely to be required, commercially speaking, in readiness of launching a new line of vehicles, I am not satisfied that the proprietor's evidence is sufficient to demonstrate genuine use of its mark in the UK.

Conclusion

19. The application has succeeded. Subject to any successful appeal against my decision, the contested mark is revoked effective from 13 April 2024.

Costs

20. The applicant has been successful and is therefore entitled to a contribution toward its costs. Awards of costs in proceedings are governed by Annex A of Tribunal Practice Notice ("TPN") 1 of 2023. Applying that guidance, I award costs to the applicant on the following basis:

Official fee:	£200
Preparing a statement and considering the other side's statement:	£300
Preparing evidence and considering and commenting on the other side's evidence:	£800
Total	£1300

21. I order Human Horizons Holdings (Shanghai) Co., Ltd. to pay to RENAULT S.A.S. the sum of **£1300**. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated 28th of August 2025

Laura Stephens

For the Registrar

The Comptroller-General