

**O/1011/25**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION NO. UK00002481271**

**IN THE NAME OF GBA (HOLDINGS) LTD**

**FOR THE FOLLOWING TRADE MARK:**

**GBA**

**IN CLASSES 9, 37, 39 AND 42**

**AND**

**AN APPLICATION FOR A DECLARATION OF THE REVOCATION THEREOF**

**UNDER NO. 506386**

**BY GBA LOGISTICS LTD**

## BACKGROUND AND PLEADINGS

1. GBA (Holdings Ltd) (“the proprietor”) applied to register the trade mark on the cover page of this decision in the UK (“the proprietor’s mark”). The application was published for opposition purposes on 1 March 2008 and entered into the register on 28 May 2010. The proprietor’s mark stands registered for the following goods and services:

**Class 9:** Computer software programs for shipping and forwarding business processing, computer software programs for automotive logistics processing, computer software programs for estimate resource requirements in relation to automotive logistics and vehicle technical services.

**Class 37:** Technical repairs and enhancement and body/panel repairs and enhancement of automotive vehicles new and used, all provided as part of the service of arranging transportation of motor vehicles.

**Class 39:** Shipping agency services; shipping of goods, shipping agency services for arranging transportation of goods.

**Class 42:** Computer software development for shipping and automotive logistics purposes.

2. On 4 August 2023, GBA Logistics Ltd (“the applicant”) sought a revocation of the proprietor’s marks on the grounds of non-use under sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 (“the Act”). Under section 46(1)(a), the applicant claims non-use in the five-year period following the date on which the mark was registered, i.e. 29 May 2010 to 28 May 2015 with revocation sought from 29 May 2015. Under section 46(1)(b), the applicant claims non-use in respect of the proprietors’ mark for the periods between 30 September 2011 to 29 September 2016, with revocation sought from 30 September 2016, and between 30 September 2016 to 29 September 2021, with revocation sought from 30 September 2021.

3. The proprietor filed a counterstatement defending their registration for all goods and services for which it is registered, on the basis that the mark had been used during the relevant period for all of them.

4. Both parties filed evidence in chief and the applicant also filed submissions. The proprietor also filed evidence in reply. A hearing took place before me on 5 June 2025, by

video conference. The applicant was represented by Mr Richard Darby of Three New Square as Counsel who was instructed by Trademark Eagle Limited. The proprietor was represented by Kendal Watkinson as Counsel, who was instructed by Gordons LLP.

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

## **EVIDENCE**

6. The proprietor's evidence in chief came in the form of the witness statement of Mr Cale Judah. Mr Judah's witness statement is dated 20 May 2025 and is accompanied by 8 exhibits, being CJ1-8. Mr Judah is the Managing Director of the proprietor, and he has worked at the proprietor since 2011. The evidence adduces use of the proprietor's mark.

7. The applicant's evidence came in the form of the witness statement of Mr Andrew Birkbeck undated and accompanied by 1 exhibit, being exhibit AB1. Mr Birkbeck is one of the Founders and Principal Directors of the applicant. The applicant filed evidence; however, this was in the context of consolidated proceedings, specifically in relation to the opposition to an application which has now been withdrawn. Mr Darby did not seek to rely on the evidence during the hearing.

8. The applicant also filed submissions dated 22 July 2024.

9. The proprietor filed evidence in reply in the form of a witness statement from Mr Stephen McVey. His witness statement is dated 24 September 2024 and accompanied by two exhibits, being SAM1-2. Mr McVey is a Solicitor at the proprietor's representative. The evidence consists of the proprietor's financial accounts and the accounts for two subsidiaries.

10. I do not intend to summarise the evidence any further at this stage (or their submissions for that matter). However, I confirm that I have taken all filed documents and oral submissions made at the hearing into account and will summarise them to the extent that I deem necessary below.

## DECISION

11. Section 46 of the Act states:

“(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 differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, 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) An application for revocation may be made by any person, and may be made to the registrar or to the court, except that –

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(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.”

12. Section 100 is also relevant, which reads:

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

13. 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 Laboratoires 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 Bundesvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I9223, 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 subcategory 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].”

14. Proven use of a mark which fails to establish that “the commercial exploitation of the mark is real” because the use would not be “viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark” is not, therefore, genuine use.

15. I am also guided by *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander Q.C. 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.”

16. I also note Mr Alexander Q.C.’s comments in *Guccio Gucci SpA v Gerry Weber International AG*, Case BL O/424/14. He stated:

“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 up 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 a 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]

17. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/404/13, Mr Geoffrey Hobbs Q.C. 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.”

#### The proprietor’s evidence

18. Mr Judah states, in his witness statement, that the proprietor is an internationally renowned logistics business with several physical locations throughout the UK, Europe and Asia. In addition, Mr Judah states that the proprietor specialises in the movement of vehicles, moving over 27 million vehicles in total and an excess of 2 million vehicles a year.

19. Mr Judah also says that the proprietor provides end-to-end logistics solutions, including automotive logistics, vehicle distribution channels, PDI and vehicle enhancements, fleet administration services, technical and D fleet services, vehicle transportation, specialist stevedoring, linear agency, port agency, freight forwarding, information technology and IT consultancy.

20. The proprietor provided evidence consisting of screenshots of use of the mark on its website, awards, turnover figures and press releases. I note the following regarding the evidence:

a) Exhibit CJ5 are press releases in relation to the proprietor’s awards. The awards listed are Terminal & Ports Operator Excellence Award and Vehicle Processing Excellence Award (2015), Terminal & Ports Operator Excellence Award and Logistics Quality Award (2017) and Terminal & Ports Operator Excellence Award and IT Innovation Award (2018).

The applicant criticised the proprietor’s awards evidence on the following basis i) the awards reflect the proprietor’s contribution to the award event and were not awarded based on merit ii) the proprietor nominated itself for the awards and so the awards do not reflect how the proprietor is viewed by the world and iii) the proprietor’s awards are not a reflection of trade mark use or reputation. Starting with the first criticism, the applicant stated that the proprietor’s awards reflect *“the company’s support at the particular event, for example, how many tables or tickets for the ceremony were bought by the relevant company;”* which was denied by the proprietor. Whilst this criticism by the applicant is noted, it is dismissed; firstly, this is clearly disputed by the proprietor, and, secondly, and more importantly, no evidence has been provided by the applicant in support of this accusation – the burden of proof lies on the applicant, and it has failed to meet the required standard of proof. Moving onto the next criticism, firstly, I note that it is not unusual for companies or organisations to enter themselves into awards. Secondly, whilst I cannot comment on how the proprietor is viewed by the world, I consider that the proprietor’s success at the awards reflects how the proprietor was seen by the awarding body in comparison to the other nominees. Finally, in relation to demonstrating genuine use of the mark, the proprietor disagreed with the applicant’s assertion. I also disagree with the applicant, and I consider that the awards assist in the global picture of genuine use of the proprietor’s mark. The proprietor’s mark is used in the exhibits and the awards are for some services provided by the proprietor, such as vehicle logistics.

b) In his witness statement, Mr Judah has provided turnover figures of the proprietor in the past 4 years. I have replicated the table below:

|           |             |
|-----------|-------------|
| 2014/2015 | £37,803,884 |
| 2015/2016 | £40,126,695 |
| 2016/2017 | £47,157,896 |
| 2017/2018 | £54,309,689 |
| 2018/2019 | £51,799,370 |
| 2019/2020 | £73,070,203 |
| 2020/2021 | £54,333,968 |

No breakdown has been provided to indicate that the sales are attributed to sales in the UK or the other physical locations and of the goods and services that the figures are attributable to.

c) Exhibit CJ2 is a screenshot of the proprietor's website taken from the Wayback machine within one of the relevant periods, dated 1 February 2011. The pages demonstrate that the proprietor provides vehicle shipping services, vehicle inspection, defleet, enhancement and refurbishment services, port and stevedoring services alongside consultancy services. In addition, the evidence states that as IT systems are important to providing goods and services to its customers, the proprietor is always looking for ways of improving *"its IT systems in order to provide the best IT driven operational systems possible."* Similarly, the screenshot in exhibit CJ3, dated 18 July 2014, also demonstrates that the proprietor provides shipping and automotive services. In addition, the screenshot in exhibit CJ4, that the proprietor states were from February 2018,<sup>1</sup> demonstrates that the proprietor provides automotive logistics services, shipping services, port management services and information systems. The applicant criticised these exhibits on the basis that no information has been provided concerning the interactions with the website such as figures and origin of consumers. I agree with the applicant's criticisms.

d) The screenshots provided in Exhibit CJ1 by the proprietor are all dated 22 August 2003 and are therefore all outside of the relevant periods.

e) Exhibit CJ6 consists of two articles, entitled "GBA helps VW towards zero-emissions goal" dated 20 August 2023 and "Back to back wins keep GBA at the top of the automotive industry" which is undated, from [automotivelogistics.media](http://automotivelogistics.media) and [GBAgroups.com](http://GBAgroups.com) respectively. Whilst the second article is undated, given the reference to GBA's success in 2017 and the awards won, which are listed in CJ5, cross referencing this would suggest that the article originates from 2018. The first article states that the proprietor "developed software which identifies the most fuel-efficient route for vehicles during the ship discharge operation" reducing the distance travelled and the subsequent CO2 emissions for each vehicle. The second article is difficult to read; however, I can identify that it discusses how the proprietor has increased the web-capability in its services, provided an

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<sup>1</sup> At the hearing, the proprietor drew my attention to the numerical sequence in the search bar of the exhibit of '2018021', which it states is the date of February 2018.

increasingly customer facing platform and, expanded the opponent's 'Humber hub' and supported the Ministry of Defence, which suggests the location of these services may be in the UK.

f) Exhibit CJ7 consists of a news article entitled "GBA plugs into future needs of automotive industry with technical centre launch at expanded terminal" from Business live dated 19 August 2021. The article states that GBA launched a new automotive technical centre in Grimsby, which offers pre-delivery inspections and bodyshop facilities. Further, the proprietor states that it uses GBA's latest in-house technology to deliver its capabilities and meet the requirements of its customers. I note that the scope and the distribution of this article and the audience has not been provided.

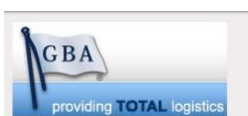
g) Exhibit CJ8 consists of two news articles entitled "Solent Gateway to run Marchwood Military Port" from the BBC dated 5 November 2015. The article discusses the venture between GBA and another port operator to run a military port on behalf of the Ministry of Defence. The second article is entitled "£26m auto terminal opens in Grimsby" from [automotivelogistics.media](http://automotivelogistics.media) dated 24 September 2013. The article states that the proprietor provides roll-on and roll-off vehicle logistics solutions.

### Form of the mark

21. Before considering whether the proprietor has made sufficient use of the mark and, if so, for what goods and services, I shall deal with the question of the form of the mark. The evidence shows use of the mark in plain font as 'GBA.' This is use of the mark as registered, therefore in all instances where the proprietor has used the mark in plain text it is clearly use upon which the proprietor can rely.

22. Throughout its evidence, the proprietor has also used its mark in the following ways shown below:

### Example 1



Example 2



Example 3



Example 4

GBA Group

Example 5

GBA Group of Companies

Example 6

GBA Transport

Example 7

GBA Technologies

23. At the hearing, the applicant argued that the above variants of the proprietor's mark, contain elements that alter the distinctive character of the mark. In particular, the applicant submitted that the presence of the flag, the additional words such as 'Technologies', and reference to 'Group' and a 'Group of Companies' alter the distinctive character of the proprietor's mark. Accordingly, it was submitted that each of these variants cannot contribute to the genuine use of the mark.

24. In relation to the distinctive character of the proprietor's mark, the mark consists of the word 'GBA' presented in capital letters and a standard black font. It is my view that the distinctive character of the proprietor's mark lies in the word 'GBA' as a whole.

25. As per the case of *Colloseum*,<sup>2</sup> use of a mark generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark. Some of the evidence shows the use of the mark with the additional words

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<sup>2</sup> *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12

'providing total logistics' and contained within a flag, as seen in example 1. In this example, where the additional words appear, the words are likely to be viewed as an indication of the overarching slogan of the proprietor. Therefore, I consider that the word 'GBA' maintains its role as an independent indication of origin. In examples 2 and 3, I also consider that the addition of the flag does not alter the distinctive character of the mark. I consider that the 'GBA' element will be perceived independently and continue to be indicative of the origin of the goods and services at issue. The presence of the flag does not alter that 'GBA' remains the primary origin of the goods and services, in accordance with *Colloseum*, I consider this example to be use of the proprietor's mark as registered.

26. As seen above, some of the evidence shows the use of the mark with the additional words 'Transport', 'Technologies', 'Group' and 'Group of Companies'. The registered mark and the additional words appear alongside each other as separate words. In relation to examples 6 and 7, GBA appears alongside dictionary defined terms, I consider that where these additional words appear, it is likely to be seen as a sub-brand under the mark GBA. In these examples, I consider that the word 'GBA' maintains its role as an independent indication of origin. I also consider this to be the case in relation to examples 4 and 5 where the words 'Group' and 'Group of Companies' appear; they are likely to be viewed as an indication of the overarching corporation that 'GBA' belongs to. In these examples, I consider that the word 'GBA' maintains its role as an independent indication of origin. Even considering the additional words or the presence of a flag, it is not my view that this alters the distinctive character of the mark as registered.<sup>3</sup> As a result, and in accordance with *Colloseum*, and contrary to the applicant's submissions, I consider the marks shown above are all examples of acceptable variants of the opponent's mark as registered.

#### Genuine use of the mark

27. For use to be genuine, it must have been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the relevant territory during the relevant five-year period. In making my 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 service for which use has been shown;

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<sup>3</sup> *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22

- the nature of those goods and services and the market(s) for them; and
- the geographical extent of the use shown.

28. 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.<sup>4</sup>

29. I am mindful that the proprietor is relying on both section 46(1)(a) and 46(1)(b) grounds, of which there are two relevant periods under the 46(1)(b) ground, therefore resulting in three different periods. Given the overlap between the relevant periods, particularly 29 May 2010 to 28 May 2015 with revocation sought from 29 May 2015 and 30 September 2011 to 29 September 2016, with revocation sought from 30 September 2016 a substantial amount of the same evidence will apply to both. On the basis that the dates provided in the exhibits cross various periods and the evidence itself is brief, I will also assess the period 30 September 2016 to 29 September 2021, with a revocation date of 30 September 2021, collectively with the other periods.

30. The evidence shows that during the relevant periods, the proprietor sold their goods and services to consumers amounting to over £77 million in between 2010 and 2016 and over £279 million between 2016 and 2021. Whilst the proprietor states that it has a number of physical locations globally, it states its business is a UK business and the origin of the trade is from Grimsby. However, no breakdown has been provided of the goods and services to which these figures relate.

31. There are some clear deficiencies in the evidence provided by the proprietor. There is a lack of evidence in relation to the marketing and advertising. However, I do note that genuine use requires a global assessment of the evidence as a whole. The sales figures are substantial and constitute a genuine attempt to create a market for the proprietor's goods and services under the mark. That said, I accept that they are not broken down by specific goods and services. Whilst I have no invoices to demonstrate the geographic scope of the customers, given the figures, they are clearly not simply attributable to a one-off sale. In addition, the period that these figures have been provided for demonstrates a consistent and repeated pattern of sales throughout the relevant periods. In addition, the proprietor was conferred a number of awards, as mentioned above, for its services and its innovation. The proprietor has provided a number of articles from third party websites that demonstrate the proprietor's goods

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<sup>4</sup> *New York SHK Jeans GmbH & Co KG v OHIM*, T-415/09

and services in use, they contain reference to the proprietor. However, I do note that I have no further evidence, other than the UK jurisdictional origin of the sites and that they are in English, to suggest that they are aimed at the UK market. No evidence of distribution or viewers etc has been provided. Despite this and taking all the factors into account, I am satisfied that the proprietor has demonstrated genuine use of its mark during the relevant periods.

32. Now I shall go through the proprietor's specification to determine a fair specification of its goods and services.

33. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors*, [2017] EWCA Civ 1834, Kitchin LJ (as he then was) set out the approach to be followed when considering partial revocation of a trade mark. The same approach is relevant when framing a fair specification. He said:

"244. As I described in *Maier v Asos*, the approach to be adopted is relatively straightforward (although I readily acknowledge that it may on occasion be difficult to apply) and it is in my view consistent with the earlier decisions of the Court of Appeal to which I referred at paragraph [63]. On reflection, I think it can be expressed more clearly as follows.

245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other categories.

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

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

34. This approach was endorsed by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC:

“261. ... so far as I am aware, that approach has proved workable and appropriate and has stood the test of time, save that it must now be seen in light of the more recent guidance given by the CJEU in, for example, *Ferrari SpA v DU* (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021] Bus LR 106, at paras 36-53. There the CJEU explained, at para 40, that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently is their purpose and intended use.”

35. As I have set out above, turnover figures are not specifically broken down into the proprietor’s goods and services. Therefore, I am required to consider the evidence as a whole and compare what is shown within it to the proprietor’s specification. It would be unfair for me to simply accept the turnover figures provided are for any or all the goods and services for which the proprietor’s registration is registered. Any use that I am able to identify will be determined by cross referencing the turnover figures with the evidence that has been provided.

36. In relation to the goods and services for which the proprietor’s registration is registered. I will now go through the proprietor’s specification to determine a fair specification.

37. Firstly, I will deal with the goods relating to computing, specifically “*computer software programs for shipping and forwarding business processing, computer software programs for automotive logistics processing, computer software programs for estimate resource requirements in relation to automotive logistics and vehicle technical services.*” The proprietor’s evidence contained references to computer software that it states identifies the most fuel-efficient route for vehicles during the ship discharge operation with the effect of reducing the distance travelled and the subsequent CO<sub>2</sub> emissions for each vehicle.

38. The evidence also states that the proprietor uses in house technology to deliver its requirements and meet the requirements for its customers. I also note that the proprietor was awarded the IT Innovation award in 2018. It is noticeably clear that computer software and IT

innovation play a key role in the proprietor's business. The proprietor's evidence is sufficient to show use of some of the goods in the above term. The proprietor states that it provides an *'increasingly customer-facing enabled platform'* and that the proprietor's group has developed a *'complete suite of core and complementary systems and programmes that offer customers the dependable, agile foundation required for a successful high volume logistics operation'*.<sup>5</sup> It is my understanding that 'customer facing enabled platforms' allow businesses to deliver their services to customers and offers customers the ability to conveniently access various services through an app or portal. In these circumstances, I consider that as the platform is provided to customers (as demonstrated by the platform being customer-facing) and it is used in relation to vehicle logistics, as the proprietor's award recognised their contribution in the field of 'ports & terminals operators', reference was made to enabling a 'high volume logistics operation' concerning the software, and the proprietor's customer benefits of the IT software include real time reporting, accurate forecasting and cost control – (so it is clear what the software does).<sup>6</sup> It is my view that the goods provided to customers would be described by the average consumer as *"computer software programs for automotive logistics processing"*. Taking the above into account and recognising that the turnover figures provided by the proprietor are not broken down to demonstrate use of the proprietor's goods, I am of the view that the proprietor has not produced sufficient evidence in respect of the all the goods relating to computer software. The proprietor has demonstrated use in relation to *"computer software program for automotive logistics processing"* only.

39. Regarding class 37, *"technical repairs and enhancement and body/panel repairs and enhancement of automotive vehicles new and used, all provided as part of the service of arranging transportation of motor vehicles"*, it is inclusive of anything that is carried out to repair or conduct improvement on a vehicle. The proprietor has provided evidence in the form of a news article, where the proprietor is reported to have launched a technical centre which offers pre delivery inspections and bodyshop facilities and a webpage demonstrating the provision of technical and enhancement services.

40. Exhibit CJ7 consists of a news article entitled *"GBA plugs into future needs of automotive industry with technical centre launch at expanded terminal"* from Business live dated 19 August 2021. The article states that GBA launched a new automotive technical centre, which offers pre-delivery inspections and bodyshop facilities. It is my understanding that the term bodyshop facilities will include facilities that are essential for maintaining the value

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<sup>5</sup> Exhibit CJ6 article entitled "Back to back wins keep GBA at the top of the automotive industry"

<sup>6</sup> Exhibit CJ2, page 5

and safety of vehicles and ensuring that they are restored to a condition that is both safe to drive and aesthetically pleasing. In addition, I note that Exhibit CJ2 states that as part of its technical services to customers the proprietor offers services that include “*enhancement and refurbishment all the way to final dispatch to dealer or end user*”. It is my understanding that vehicle refurbishment services will include services that repair and restore vehicles to a saleable condition. Whilst I note that no breakdown has been provided to demonstrate that the sales figures are attributable to those services, there is corroborating evidence in the form of articles and webpages to demonstrate that this service is provided to customers as part of the service for arranging the transport of motor vehicles. Taking all the factors into account, it is my view that the proprietor has proven use in relation to these services.

41. Now, moving onto the next services, being “*shipping agency services; shipping of goods, shipping agency services for arranging transportation of goods.*” I note that the applicant argued that the proprietor was providing a specialist service of moving vehicles and that the current term is too broad for the services provided by the proprietor. In response, at the hearing, the proprietor argued that this is not a *Sky v Skykick* specification that is being dealt with as the specification is specific and tailored and cannot be narrowed down any further, given the services the proprietor engages in. Bearing in mind this argument, I will consider whether, based on the evidence before me and applying the cases of *Skykick* and *Merck*, this term is a fair specification.

42. The above term, in the proprietor’s specification appears to be the primary service provided by the proprietor. It has won numerous awards for its logistics, being Terminal & Ports Operator Excellence Award and Vehicle Processing Excellent Award (2015), Terminal & Ports Operator Excellence Award and Logistics Quality Award (2017) and Terminal & Ports Operator Excellence Award (2018). Further, my attention was drawn by the applicant to the proprietor’s witness statement, where it states it specialises in the movement of vehicles, moving over 27 million vehicles in total and an excess of 2 million vehicles a year; the applicant submits that the proprietor’s own words demonstrate that the proprietor moves vehicles and that is its specialism. I note that the proprietor has not indicated whether these are from purely UK sales or international sales.

43. The proprietor describes its services in its witness statement as being “*end-to-end logistics solutions, including automotive logistics, vehicle distribution channels, PDI and vehicle enhancements, fleet administration services, technical and D fleet services, vehicle transportation, specialist stevedoring, linear agency, port agency, freight forwarding.*” Of the ‘waybackmachine’ extracts provided in the relevant period, it is clear that a vehicle logistics

service was offered on the proprietor's webpage, which bore an acceptable variant of the proprietor's mark. I note that the proprietor won a contract in 2015 to manage the port operations at Marchwood Military Port alongside another company, which started April 2016. The article states that the port has been used for the "*movement of troops and equipment since 1943.*"<sup>7</sup> I note that no clarification has been provided of what port management services will involve and whilst the article would suggest it involves the movement of troops and equipment, I note that the proprietor has not clarified what services it provides in the contract and which are provided by the partner company. It would be inappropriate, without evidence before me, to assume on the services provided by the proprietor in the contract. I consider that whilst use has been demonstrated for vehicle logistics, I agree with the applicant that the registration of the goods and services is broad and that it is possible to identify within the term a number of subcategories and that the use demonstrated will not constitute use of all the categories. I consider that the average consumer would see use of the proprietor's mark within this term as "*shipping agency services for arranging the transportation of vehicles.*" I do recognise that the turnover figures have not been broken down to clearly demonstrate what sales are to be attributed to this specific service. However, looking at the turnover figures alongside the wider picture of the evidence provided by the proprietor, they have demonstrated use of "*shipping agency services for arranging the transportation of vehicles.*"

44. Finally, I will assess "*Computer software development for shipping and automotive logistics purposes.*" I do not consider that any use has been shown for these services. Whilst I appreciate that the proprietor has stated in its witness statement that consultancy services in relation to IT are offered by the proprietor, throughout the evidence, there has been no demonstration of that. The mention of IT is that discussed above. There is nothing to demonstrate that this service is provided wider to any customers. I remind myself that the burden of proof is on the proprietor to demonstrate use, under the current circumstances, the proprietor has failed to demonstrate that. Therefore, there has been no use for this service in any of the relevant periods or the period allowed under 46(3).

45. Consequently, the proprietor has demonstrated use of the following:

**Class 9:** Computer software programs for automotive logistics processing.

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<sup>7</sup> Exhibit CJ8, article entitled "Solent Gateway to run Marchwood Military Port" dated 5 November 2015

**Class 37:** Technical repairs and enhancement and body/panel repairs and enhancement of automotive vehicles new and used, all provided as part of the service of arranging transportation of motor vehicles.

**Class 39:** Shipping agency services for arranging the transportation of vehicles.

## CONCLUSION

46. The proprietor has failed to establish genuine use of the entirety of its specification within the relevant periods. The application for revocation on the grounds of non-use succeeds in part under section 46(1)(a) and 46(1)(b). Therefore, the mark loses its registration for the following of the proprietor's goods and services for which use has not been demonstrated. As the revocation date under 46(1)(a) is earlier, revocation will be effective for the following goods and services from 29 May 2015:

**Class 9:** Computer software programs for shipping and forwarding business processing, computer software programs for estimate resource requirements in relation to automotive logistics and vehicle technical services.

**Class 42:** Computer software development for shipping and automotive logistics purposes.

47. The proprietor's mark will remain registered for the following goods and services for which use has been demonstrated:

**Class 9:** Computer software programs for automotive logistics processing.

**Class 37:** Technical repairs and enhancement and body/panel repairs and enhancement of automotive vehicles new and used, all provided as part of the service of arranging transportation of motor vehicles.

**Class 39:** Shipping agency services for arranging the transportation of vehicles.

## COSTS

48. In my view, both parties have enjoyed approximately an equal degree of success in these proceedings. As a result, I do not consider it appropriate to make an award of costs in the favour of either party.

**Dated this 30<sup>th</sup> day of October 2025**

**A KLASS**

**For the Registrar**