**O/1114/25**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK REGISTRATION NO. 900493049**

**IN THE NAME OF SPORT ATLAS AB**

**FOR THE FOLLOWING TRADE MARK:**


**IN CLASSES 9, 12 AND 28**

**AND**

**AN APPLICATION FOR REVOCATION THEREOF**

**ON GROUNDS OF NON-USE**

**UNDER NO. 505935**

**BY**

**RUROC IP HOLDINGS LIMITED**

## Background and pleadings

1. Sport Atlas AB ("***the Proprietor***") is the registered proprietor of trade mark number 900493049 for the (figurative) mark shown on the front page of this decision ("***Contested Mark***"). The Contested Mark is a comparable trade mark (EU)[1] with filing date of 13 March 1997 and it reached registration on 15 September 1999. The Contested Mark also has a seniority for the trade mark number 2038840 registered in the UK on 28 September 1995. The Contested Mark stands registered for the following goods:

Class 9 Protective helmets.

Class 12 Safety seats for children (for vehicles).

Class 28 Cycle helmets.

2. On 23 March 2023, Ruroc IP Holdings Limited ("***the Applicant***") sought revocation of the Contested Mark on the grounds of non-use under sections 46(1)(a) and (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 protection was granted, namely, **16 September 1999 to 15 September 2004** ("***the first relevant period***"). The earliest possible revocation date is 16 September 2004. Under section 46(1)(b) the Applicant claims non-use in respect of the Contested Mark for the following periods:

- 13 November 2011 - 12 November 2016 ("***the second relevant period***")
- 23 March 2012 – 22 March 2017 ("***the third relevant period***")
- 23 March 2018 – 22 March 2023 ("***the fourth relevant period***")

3. The Applicant claims an effective date of revocation respectively of 13 November 2016, 23 March 2017 and 23 March 2023. A finding of genuine use during the fourth

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

relevant period will be sufficient to avoid revocation of the Contested Mark 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 earlier relevant periods is deemed insufficient.

4. In its statement of grounds, the Applicant contends that the Contested Mark has not been put to genuine use within the five-year period subsequent to the Contested Mark's registration as well as its use has been suspended, without any proper reasons for non-use, for different uninterrupted periods of five years. For this reason, the Applicant requests the Contested Mark to be revoked for all goods covered by the registration.

5. The Proprietor filed a counterstatement defending its registration for all the goods for which the Contested Mark is registered, claiming that it has been genuinely used in all of the relevant periods.[2]

6. During the evidence rounds the Proprietor filed evidence consisting of the witness statement, dated 25 October 2023, from Ingunn Henaes (a member of the Board and Vice President of Sport Atlas AB) with Exhibits IH1 – IH5 thereto and the witness statement, dated 22 November 2023, from Mikael Frejd of Bergenstråhle & Partners AB, with Exhibits MF1 and MF2 thereto. The Applicant filed written submissions dated 8 March 2024. The Proprietor filed evidence in reply, dated 13 May 2024, in the form of a witness statement from Evan Chiu (an employee at Sipara Limited since 2019) and Exhibits EC1 – EC4. All the witnesses are duly authorised to provide evidence.

7. A hearing took place before me, by videoconference, on 21 November 2025. Prior to the hearing, the Proprietor filed skeleton arguments, and the Applicant filed written submissions in lieu. The Proprietor was represented by Henry Edwards of 8 New Square. In attendance, as observers, were Robert Furneaux and Tom Priem of Sipara Limited. The Applicant did not take part at the hearing.

8. The submissions will not be summarised here but will be referred to as and where appropriate during this decision. I provide a summary of the evidence below. This decision is taken following a careful perusal of the papers as well as a careful consideration of the submissions presented at the hearing.

[2] TM8(N) form dated 22 June 2023.

9. The Proprietor is represented by Sipara Limited. The Applicant is represented by Albright IP Limited.

**Summary of the evidence of use**

10. Miss Henaes, in her witness statement, reports that the Proprietor has been involved in the market of road safety since 1954, with bicycle helmets as the leading products of the company, and that in the 70's the Proprietor became one of the leading brands for moped helmets. Exhibit IH1 provides an overview of the Proprietor's business. The evidence reports that although in 2004 Meca AB acquired part of the Proprietor's business, the Proprietor maintained the company's sector for helmets (marketing under the new company "Sport Atlas") and in 2006 the Proprietor also acquired the rights for Jofa branded riding helmets.

11. Exhibit IH2 shows examples of the Contested Mark being used on the goods (protective helmets) as shown below:



12. Miss Henaes provides the Proprietor's turnover as follows:

| **Period** | **EU turnover (converted from SEK)** |
|---|---|
| Financial Year 2017 | £750,000+ |
| Financial Year 2018 | £950,000+ |
| Financial Year 2019 | £800,000+ |
| Financial Year 2020 | £700,000+ |

| | |
|---|---|
| Financial Year 2021 | £800,000+ |
| Financial Year 2022 | £1,200,000+ |

13. Miss Henaes clarifies that the EU turnover figures include the UK. For the years 2017 – 2020 the EU figures are relevant. For the period 2021 – 2022 the table does not clarify what part of the total EU revenues refer to the UK.

14. Miss Henaes, in her witness statement, also provides the EU turnover (including the UK) relating to helmets as indicated below:

| **Period** | **EU turnover (converted from SEK)** |
|---|---|
| Financial Year 2017 | £46,000+ |
| Financial Year 2018 | £21,000+ |
| Financial Year 2019 | £30,000+ |
| Financial Year 2020 | £30,000+ |
| Financial Year 2021 | £15,000+ |
| Financial Year 2022 | £29,000+ |

15. Also for this table, although the revenues for the period 2017 – 2020 are relevant, Miss Henaes does not clarify what amount of the revenues refer to the UK market for the years 2021 and 2022.

16. Miss Henaes provides sample invoices and indicates that they refer to helmets and roller skis. As roller skis are not part of the Contested Mark's specification, I will consider only the "helmet" goods reported in the invoices. The evidence indicates that the Proprietor markets some of the helmets under the names "Street", "Stingray", "Hardtop", "Dorado", "Jofa" and "Meca".[3] Part of the evidence also identifies some of the Proprietor's helmets more generally as "conehead" (or conehead classic).[4]

17. The evidence contains a table indicating the historical exchange rates between Swedish krona (SEK) and sterling pounds (GBP). On this basis I calculated the

[3] See Exhibit IH2, pages 4, 11, 12 and 15 as well as Exhibit EC2.
[4] See, for example, Exhibit IH2 at page 9 and Exhibit IH4 at page 8.

approximate values for the invoices in sterling pounds. The value of the invoices is calculated exclusively in relation to the total number of helmet goods contained in each invoice.

18. I summarised the relevant data provided in Exhibit IH3 in the table below:

| Invoice no. | Date | Place | Goods (Qty) | Value |
|---|---|---|---|---|
| 57654 | 12 June 2018 | Anderstorp | Hotshot (21); Jofa (19); Street (35) | SEK 7,860 (£694) |
| 57704 | 13 August 2018 | Huddinge | Street (2) | SEK 2,363 (£209) |
| 57722 | 23 August 2018 | Gnosjö | Hotshot (2); Dorado (2) | SEK 9,888 (£874) |
| 58005 | 2 April 2019 | Czestochowa | Conehead (1) | SEK 1312,20 (£106) |
| 58126 | 20 August 2019 | Denmark | Conehead (5) | SEK 3,062 (£273) |
| 58138 | 4 September 2019 | Anderstorp | Hardtop (10) | SEK 1,000 (£81) |
| 58420 | 29 April 2020 | Västervik | Conehead (5) | SEK 1,845[5] (£164) |
| 58513 | 5 August 2020 | Helsingborg | Hardtop (22) | SEK 2,371 (£211) |
| 58522 | 7 August 2020 | Gnosjö | Meca (200) | SEK 44, 700 (£3,984) |
| 58526 | 19 August 2020 | Eskilstuna | Helmets (hardtop) (22) | SEK 2,370 (£212) |

[5] The unitary prices for conehead items numbers 41971 and 41977 are not indicated in the invoice. To find an approximative value of the invoice, I attributed the price of SEK 396 (indicated for the other conehead helmets in the invoice) also to these items.

19. Apart from the goods identified as helmets, the invoices also feature goods that are not helmets (e.g., goggles, lenses, gloves). The invoices contain items identified as “Moveo Concept”, “Atlas supersoft”, “Red/Yellow cube” and “Mean green”. According to part of the evidence, “Moveo” goods are neck braces whereas the other items (i.e., “Supersoft”, “Red/Yellow cube” and “Mean green”) seem to refer to gloves and/or goggles.[6]

20. The invoices are dated between 2018 and 2020, and they all show total values in SEK (Swedish krona). Most of the invoices are addressed to cities in Sweden with one invoice addressed to a city in Poland (Czestochowa) and another one addressed to an unspecified location in Denmark.

21. I note that invoice number 57654 features “Jofa” helmets. From the evidence, I see that this type of helmets does not seem to display the “ATLAS” mark on them, but rather it carries the “Jofa” mark:

**Jofa Flexy Bicycle and Riding Helmet**

*Figure 1*

22. Miss Henaes provides a list of EU retailers that distribute the Proprietor’s goods (i.e., Team Sportia, Coop, Babyproffsen Eskilstuna, Babyproffsen Helsingborg, Selstad, Speed Connection). Exhibit IH4 features a few extracts from the Wayback

[6] Exhibit IH4, page 11.

Machine database for the website “Speed Connection” (www.speedc.dk). The evidence shows two extracts, dated 10 January 2019, where the Contested Mark is reproduced and one of the extracts shows a helmet being offered. The evidence also contains two additional extracts from the same website, dated 8 August 2019 and 1 October 2020, of what seems to be the same page (as indicated from the URL) featuring a series of pictures of helmets. The two extracts feature the same pictures of helmets being offered for sale. All the images show the Contested Mark as applied on the helmets being offered for sale. The evidence contains one additional undated extract featuring a series of images of products including helmets carrying the Contested Mark. Although translated into English I note that all the evidence was originally in a foreign language (presumably Swedish or Danish) and all the prices are in Danish krone (DKK). The exhibit also contains the product catalogue 2019 from the company Selstad AS where one of the Proprietor’s helmets is featured. Although in the catalogue the Contested Mark is not visible on the helmet, Mr Edwards, at the hearing, confirmed that the helmet is the same one reproduced in exhibit IH2 page 14 showing the Contested Mark applied on the helmet (see the images below for comparison). The catalogue is in a foreign language, presumably Norwegian according to the map contained in the catalogue and the fact that the Selstad website ‘www.selstad.no’ contains the country code top-level domain (ccTLD) for Norway (‘.no’).

## Atlas Helmet for Selstad AS


*Exhibit IH2, page 14*

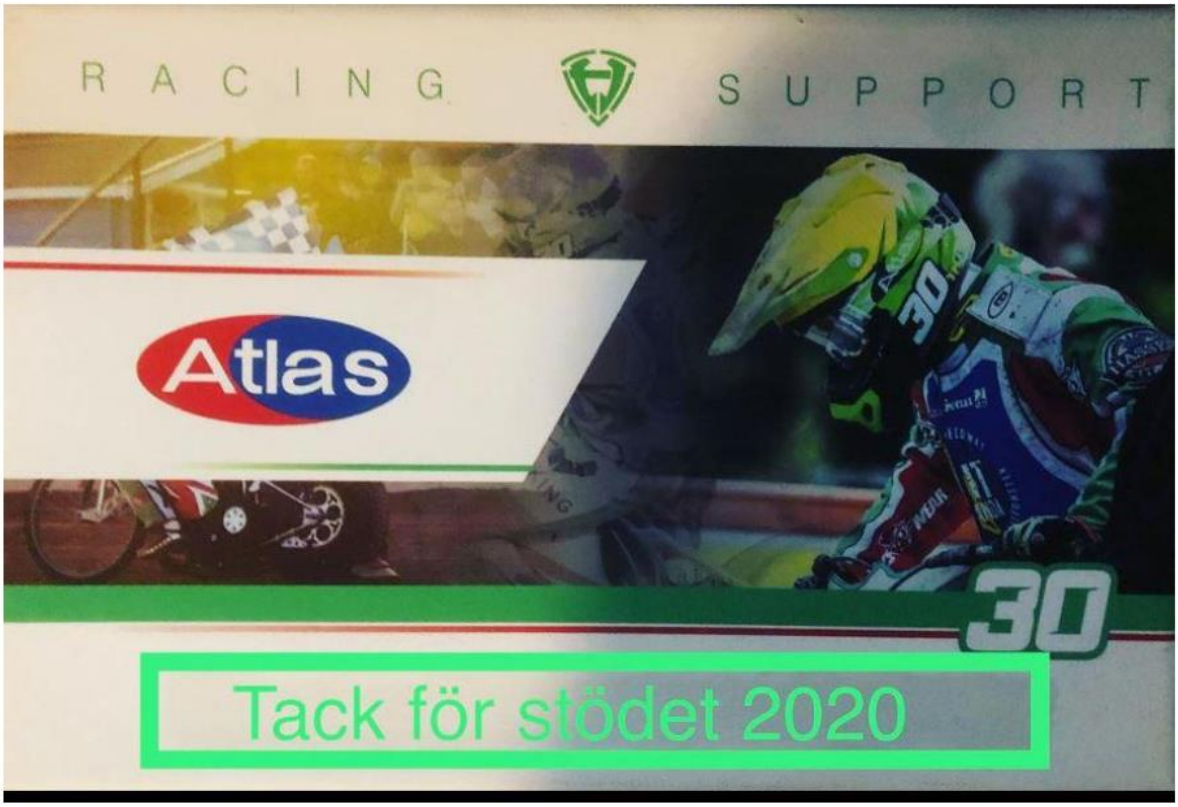

*Selstad product catalogue - Exhibit IH4, page 15*

23. Miss Henaes states that the Proprietor has promoted the Contested Mark on social media and via sponsorships. To this end, exhibit IH5 shows a series of extracts from the Facebook and Instagram social media platforms. The evidence features a few posts from the Proprietor's Facebook account (i.e., Sports Atlas AB) dated 17 November 2020, 7 August 2020 and 6 September 2018 showing images of helmets (what seem to be cycling helmets) for advertising purposes. The evidence also features a Facebook post containing the image of an egg helmet dated 17 September 2018. All the posts are originally in a foreign language (presumably Swedish) and feature the Contested Mark.

24. Turning to the Instagram advertising. The evidence features a few extracts from the Proprietor's account (@sportatlas) showing a series of images mostly reproducing motorcyclists using helmets whilst riding their motorcycles (especially for motocross). The evidence features the Contested Mark. I note the evidence is dated outside of the relevant periods (24 October 2023).

25. With regard to the sponsors who have endorsed the Contested Mark, the evidence shows one Facebook post (from the Proprietor's account), dated 5 December 2019, reporting on the longstanding relationship between the Proprietor and Rune Holta who has been acting as testimonial for the Proprietor. The evidence also contains a Facebook post from the Proprietor, dated 22 December 2018, where Jimmy Olsen, motorcycle racer, reports on the good quality of the Atlas equipment he wears. The post shows pictures of Mr Olsen's helmet that he used in the race he is reporting on. Although English translations were provided, I note that all the evidence was originally

in a foreign language (presumably Swedish or Danish). The exhibit also contains additional evidence showing Thomas H. Jonasson, a Swedish motorcycle speedway rider, who competed as part of the Swedish national speedway team, endorsing the Contested Mark. The evidence seems to indicate that Mr Jonasson endorsed, in 2020, the Proprietor's motorcycle helmets. This is because, although not expressed directly, the evidence features a few examples of Mr Jonasson wearing the Contested Mark on his protective suit. The evidence relating to Mr Jonasson's endorsement of the "ATLAS" brand also features one image (see image below) showing a motorcycle racer (presumably Mr Jonasson) wearing a motorcycle helmet and supporting the Contested Mark.




"Tack för stödet 2020" translates to "Thanks for the support 2020"

26. In addition to Miss Henaes' witness statement, the evidence contains a witness statement from Evan Chiu. Mr Chiu provides an extract from the Semrush database showing the Proprietor's website traffic (i.e., the website 'sportaltas.se'). To this regard, Exhibit EC1 shows that between January 2016 and January 2024 the website saw user traffic deriving from organic user research (as opposed to paid traffic). The extract reports that during the whole activity of the website, this reached its peak in

user traffic between 2016 and 2019. The evidence shows that all the users accessed the website from Sweden. Mr Chiu does not provide further clarification on this piece of evidence.

27. Mr Chiu provides additional images of products listed on the Proprietor's website ('sportatlas.se'). Exhibit EC2 contains a few screenshots showing some cycling helmets. Most of the goods show the Contested Mark applied on them. All the evidence is undated.

28. Mr Chiu's evidence also features the screenshot of one post from the Proprietor's Facebook account, dated 29 September 2017, featuring a few motorcycling helmets. The post is in a foreign language (presumably Swedish) and features the Contested Mark.

29. Mr Chiu also provides a marketing research report concerning the cycling helmet market. The report indicates that the global cycling helmet market was estimated at USD 700 million in 2022 and it is expected to reach around USD 1400 million by 2030.[7]

30. For the sake of completeness, I clarify that I considered Miss Henaes' witness statement and exhibits IH1 – IH5 where possible and integrated my assessment of this evidence with the English translation provided in Mikael Frejd's witness statement (and exhibits MF1 and MF2) as needed.

31. That completes my summary of the evidence.

## Decision

### Statutory provisions

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

> "(1) The registration of a trade mark may be revoked on any of the following grounds-
>
> > (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the

[7] Exhibit EC4.

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."

33. Section 100 of the Act is also relevant, which reads:

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

34. As the contested mark is a comparable trade mark (EU), pursuant to paragraph 8 of Part 1, Schedule 2B of the Act, the Proprietor may rely upon use of the mark in the EU for any parts of the relevant periods which fall prior to IP Completion Day, being 31 December 2020.

**Relevant Case Law**

35. 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.

36. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

"105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and*

*Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], Case C-141/13 P *Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

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

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional

items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial raison d'être of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no de minimis rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].

107. The trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. Case T-78/19 *Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33]. In *Awareness Ltd v Plymouth City Council* [2013] RPC 24 Daniel Alexander QC sitting as the Appointed Person said:

> "19. For the tribunal to determine in relation to what goods or services there has been genuine use of the mark during the relevant period, it should be provided with clear, precise, detailed and well-supported evidence as to the nature of that use during the period in question from a person properly qualified to know. […]
>
> 22. […] it is not strictly necessary to exhibit any particular kind of documentation but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal […] comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaking, having regard to the interests of the proprietor, the opponent and, it should be said, the public."

37. 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."

38. In *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, the Court of Justice of the European Union ("CJEU") noted that:

> "36. It should, however, be observed that […] the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase 'in the Community' is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.
>
> […]
>
> 48. To determine whether the condition of genuine use in the Community is satisfied, I consider that the national court must examine all forms of use of the mark within the internal market. In that context, the geographical definition of the relevant market is the entire territory of the 27 Member States. The borders between Member States and the respective sizes of their territories are not pertinent to this inquiry. What matters is the commercial presence of that mark, and consequently that of the goods or services covered by the mark, in the internal market.
>
> […]
>
> 55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77)."

39. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Ecotive Limited* [2016] EWHC 52, Arnold J (as he then was) reviewed the case law since *Leno* and concluded as follows:

> "228. Since the decision of the Court of Justice in *Leno* there have been a number of decisions of OHIM Boards of Appeal, the General Court and national courts with respect to the question of the geographical extent of the use required for genuine use in the Community. It does not seem to me that a clear picture has yet emerged as to how the broad principles laid down in *Leno* are to be applied. It is sufficient for present purposes to refer by way of illustration to two cases which I am aware have attracted comment.
>
> 229. In Case T-278/13 *Now Wireless Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* the General Court upheld at [47] the finding of the Board of Appeal that there had been genuine use of the contested mark in relation to the services in issue in London and the Thames Valley. On that basis, the General Court dismissed the applicant's challenge to the Board of Appeal's conclusion that there had been genuine use of the mark in the Community. At first blush, this appears to be a decision to the effect that use in rather less than the whole of one Member State is sufficient to constitute genuine use in the Community. On closer examination, however, it appears that the applicant's argument is not that use within London and the Thames Valley was not sufficient to constitute genuine use in the Community, but rather that the Board of Appeal was wrong to find that the mark had been used in those areas, and that it should have found that the mark had only been used in parts of London: see [42] and [54]-[58]. This stance may have been due to the fact that the applicant was based in Guildford, and thus a finding which still left open the possibility of conversion of the Community trade mark to a national trade mark may not have sufficed for its purposes.
>
> 230. In *The Sofa Workshop Ltd v Sofaworks Ltd* [2015] EWHC 1773 (IPEC), [2015] ETMR 37 at [25] His Honour Judge Hacon interpreted *Leno* as establishing that 'genuine use in the Community will in general require use in more than one Member State' but 'an exception to that general requirement arises where the market for the relevant goods or services is restricted to the

territory of a single Member State'. On this basis, he went on to hold at [33]-[40] that extensive use of the trade mark in the UK, and one sale in Denmark, was not sufficient to amount to genuine use in the Community. As I understand it, this decision is presently under appeal and it would therefore be inappropriate for me to comment on the merits of the decision. All I will say is that, while I find the thrust of Judge Hacon's analysis of *Leno* persuasive, I would not myself express the applicable principles in terms of a general rule and an exception to that general rule. Rather, I would prefer to say that the assessment is a multi-factorial one which includes the geographical extent of the use."

**Form of the mark**

40. Before I move on to assess if the Proprietor has shown genuine use, I must first consider if I find the use of the mark as shown in the evidence to be use of the mark as registered. For convenience, I reproduce the registered mark below:


41. In the evidence the Contested Mark has been mostly used in colour variations of the (black and white) registered mark. Although most of the evidence shows the mark used with a red and blue background (Figure 2), the mark is also represented in a variety of other different colour variations (Figures from 3 to 8).


*Figure 2*

| | | |
|---|---|---|
|  <br>*Figure 3* |  <br>*Figure 4* |  <br>*Figure 5* |
|  <br>*Figure 6* |  <br>*Figure 7* |  <br>*Figure 8* |

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

> "13. […] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).
>
> 14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.
>
> 15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, <u>where a mark contains words and a figurative element the word element will usually be more distinctive</u>: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative

elements are usually less likely to change the distinctive character than those related to the word elements."

43. The Applicant contends that the mark's colour variation in Figure 2 is not an acceptable variant of the Contested Mark because "*the addition of the red broad crescent and blue oval alters the appearance of the logo to the extent that this version differs in distinctive character from the Trade Mark as registered*". The Applicant submits the same argument also for the mark's colour variant in Figure 3.[8]

44. The Proprietor argues, first, that the core distinctive element of the Contested Mark is the word "ATLAS" and, second, that because the Contested Mark is registered in black and white without any colour limitation, it is not restricted to any specific colour. Consequently, the mark may be used in all colours, and the background does not form a distinctive element of the mark.[9]

45. I agree with the Proprietor. I find the word element "ATLAS" to be the main distinctive element in the mark and I find the difference in colour between the mark as registered (i.e., black and white) and the different bi-colour background variations (sometimes associated also with a different colour variation for the word "ATLAS" such as, for example, Figure 6) to have a minimal impact on its distinctiveness. This is because the relevant consumer will recognise the colourful variants for what they are, namely colour variations of the same elements that compose the Contested Mark (i.e., the word "ATLAS" inscribed in an oval shape) and the use of different colour combinations for the mark's background is only a minor variation that does not alter the distinctive character of the mark. Thus, I consider them to be acceptable variant uses in accordance with the guidance in *Lactalis*.

46. According to my assessment of the Contested Mark's distinctive character above (i.e., the word "ATLAS" being the main distinctive element irrespective of the mark's colour variations), I find that the word-only uses of the mark also amount to acceptable variants given the role the mark's figurative components (i.e., the combination of oval outer shape and the various colourful backgrounds) play in the Contested Mark's overall distinctive character.

[8] Applicant's written submissions dated 8 March 2024, pages 3 and 4.
[9] Proprietor's skeleton arguments dated 19 November 2025 at [37] and [38].

47. The Applicant also contends that in the evidence there are instances where the Contested Mark is used in combination with other words such as, for example, “ATLAS HOTSHOT” and “ATLAS DORADO”. The Applicant submits that such uses do not amount to use of the Contested Mark as registered.[10] Conversely, the Proprietor argues that these are also genuine uses of the Contested Mark in line with *Colloseum*.

48. As per the case of *Colloseum*,[11] 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. Since the distinctive character of the Contested Mark, as noted above, lies in the word “ATLAS”, in situations where the mark appears alongside additional words, such as those reported by the Applicant, I find it likely that the relevant consumers will perceive these combinations as indicating that “hotshot” or “dorado” are product lines under the “ATLAS” brand. Therefore, I conclude that in these instances the word “ATLAS” continues to function as an independent indication of origin, and the uses cited above constitute acceptable uses upon which the Proprietor may rely in accordance with *Colloseum*.

**Assessment of the evidence of use**

49. The parties agree that the relevant period to assess the evidence at hand is the one between 23 March 2018 and 22 March 2023.[12] As specified at paragraph [3] above, a finding of genuine use for this period will be sufficient to avoid revocation of the Contested Mark under section 46(3) of the Act.

50. Firstly, I will assess the geographical extend of the Proprietor’s commercial activity. The Proprietor provided EU turnover figures for the years 2017 – 2022. Miss Henaes states that the EU figures also include the UK market. To this regard, I note that all the Proprietor’s turnover figures, concerning the EU territory, were converted from Swedish krona. The EU turnover figures are not broken down by product, however, the evidence also contains the turnover figures (for the financial period 2017 – 2022) relating to the retail of helmets. Whilst Miss Henaes reports that these figures include those relating to the UK market, the evidence shows the Swedish krona as the original

[10] Applicant’s written submissions dated 8 March 2024, page 5.
[11] *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12.
[12] See the Applicant’s submissions in lieu dated 19 November 2025 at [4] and the Proprietor’s skeleton arguments dated 19 November 2025 at [26].

currency. Furthermore, almost all the invoices are addressed to Swedish cities, with two invoices addressed to cities in Poland and Denmark. I also note that the Proprietor's website ('www.sportatlas.se') features the ccTLD specifically for Sweden (i.e., '.se'). Furthermore, the evidence also features the Proprietor's website user traffic which in the years contained in the relevant period (2016 – 2019) shows that the totality of users accessing the website were from Sweden.[13]

51. Miss Henaes provides a list of EU retailers that distribute the Proprietor's goods. The evidence provided refers to two of these retailers: Speed Connection and Selstad. Regarding the former, this is a website where the prices are shown in Danish krona (DKK) and the website address ('www.speedc.dk') contains the ccTLD specifically for Denmark (i.e., '.dk'). Regarding the latter, from the Selstad product catalogue it appears that the company operates in Norway. Mr Edwards submitted, at the hearing, that although Selstad has most of its retailers in Norway (as it is clear from the map provided in the product catalogue), Selstad also distributes the Proprietor's products in Denmark. Accordingly, the map in the Selstad product catalogue indicates one retail (or distribution) location in Denmark.[14]

52. Turning to the Proprietor's advertising material, the evidence features a few posts from the Proprietor's Facebook account showing some of the Proprietor's cycling helmets. The evidence also features a few posts where a couple of sponsors (motorcycle racers) are reported endorsing the Proprietor's motorcycling protective helmets. The first post shows the racer Rune Holta and it reports that Mr Holta races in Poland and he has been collaborating with the Proprietor for 15 years on product development for the Proprietor. The original post is in a foreign language (presumably Swedish) as the post was published by the Proprietor's Facebook account. In the second post the Proprietor reposts one of Jimmy Olsen's[15] Facebook posts where he endorses his "ATLAS" helmet. Both the Proprietor's and Mr Olsen's posts are in a foreign language. I find likely that the original language of both posts to be Swedish. The evidence also reports that the motorcycle speedway rider Thomas H. Jonasson is a testimonial for the Proprietor. The evidence reports that Mr Jonasson is Swedish.

[13] Exhibit EC1.
[14] Exhibit IH4, page 14.
[15] Jimmy Olsen is a motorcycle racer.

The original evidence regarding Mr Jonasson's testimonial activity is in a foreign language and I find it likely to be Swedish.

53. From the above considerations, I find that the evidence mostly (if not exclusively) concerns Sweden. Although I appreciate that part of the evidence shows that the retailers Speed Connection and Selstad distribute the Proprietor's goods in Denmark, I was provided with only one invoice showing the retail of five helmets shipped to Denmark. I find this evidence to be insufficient to show a genuine use of the Contested Mark for this territory. The same reasoning applies to Poland as the evidence for this territory exclusively consists of one invoice showing the retail of one item (helmet conehead).

54. Having found that the evidence provides instances of use of the Contested Mark for Sweden and bearing in mind that the relevant period is 23 March 2018 and 22 March 2023, I must determine if the Proprietor's evidence shows genuine use of the Contested Mark for this territory. In carrying out my assessment of the Proprietor's evidence, I must remind myself that for the 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. Until 31 December 2020, that territory is the EU; after that, it is the UK.

55. In her witness statement Miss Henaes reports that helmets have been the leading products of the company maintaining the helmet market sector even after Meca AB acquired part of the Proprietor's rights and extending the Proprietor's rights to the "Jofa" riding helmets in 2006.

56. The Applicant contends that the Proprietor is an original equipment manufacturer (OEM) or a white-label manufacturer and it argues that, accordingly, the Proprietor manufactures unbranded goods that are, then, retailed by third-party companies under their own marks.[16] Mr Edwards, at the hearing, submitted that although the Proprietor operates as OEM (as Miss Henaes reports), the evidence shows that all the helmets are marketed in conjunction with the "ATLAS" mark.

57. The evidence shows that the helmets retailed either by the Proprietor or by other third-party website platforms (e.g., Speed Connection) carry the "ATLAS" mark on

[16] Applicant's written submissions dated 8 March 2024 at [12].

them (in their acceptable colour variations).[17] With regard to the "Meca" helmets, the evidence features one picture of the back of the "Meca" helmet where the mark "ATLAS" is not visible on the product.[18] Mr Edwards, at the hearing, submitted that also "Meca" helmets are marketed by the Proprietor under the "ATLAS" mark. Mr Edwards contends that this is visible from the evidence where pictures of the "Meca" helmet user manual are provided.[19] Although I am unable to clearly identify what is on the front of the "Meca" helmet reproduced in the manual, I see that the manual features the Contested Mark. In particular, page 9 of the manual shows a picture of a helmet along with the wording "ATLAS MECA" underneath. The same page features the Contested Mark represented in a predominant size at the top of the page and with the word "Helmets" underneath. Thus, I find that the Proprietor is likely to also market "Meca" helmets in combination with the "ATLAS" mark. Similarly, the evidence shows that the "Selstad" helmets are retailed along with the "ATLAS" mark placed at the front of the helmets.[20] Conversely, the same cannot be said for the "Jofa" helmets. The evidence provided shows the "Jofa" helmet without the "ATLAS" mark (see Figure 1). Absent additional evidence in this sense, I find that "Jofa" helmets are not retailed in connection with the "ATLAS" mark. Therefore, although I do not find that the Proprietor manufactures unbranded goods for third-party to retail, I find that some of the Proprietor's goods (i.e., "Jofa" helmets) are not retailed in conjunction with the "ATLAS mark". I will bear this in mind in my final assessment on the Contested Mark's genuine use.

58. The Proprietor also provided turnover figures concerning the market of the goods in Sweden (as the original prices in SEK seem to suggest); between 2018 and 2020 the company's total turnover amounted to an average of £320,000 per annum. Although the revenue figures are not broken down by product, the evidence also provides the turnover figures for helmets (again, presumably for Sweden as the original SEK prices indicate) of an average of £81,000 per annum between 2018 and 2020. Regarding the 2018 year in both tables, I appreciate that the figures reported include a period placed outside of the fourth relevant period (i.e., January and February 2018). I have taken this element into account in my final assessment.

[17] Exhibit IH4, page 6.
[18] Exhibit IH2, page 11.
[19] Exhibit IH2, page 12.
[20] Exhibit IH2, page 14 and Exhibit IH4, page 15.

59. Between June 2018 and August 2020, the invoices show that the Proprietor has distributed a number of helmet goods to cities in Sweden. With regard to the volume of helmets being distributed and their nominal value, I find this to be relevant enough to show genuine use of the Contested Mark. I note that one invoice indicates the retail of a few "Jofa" helmets. As I found above that these helmets, according to the evidence provided, do not carry the "ATLAS" mark I consider the part of the evidence regarding this type of helmets to have reduced probative weight.

60. The Proprietor provided evidence concerning social media advertising. With regard to the Facebook platform, the Proprietor provided three posts (dated September 2018 and August/November 2020) showing the Proprietor's helmets (including the "Meca" helmet) and one extract, dated 29 September 2017, featuring images of conehead helmets carrying the Contested Mark (in its acceptable variants).[21] The evidence also shows the endorsing of the Proprietor's helmets by a few motorcycle racers: Rune Holta, Jimmy Olsen and Thomas H Jonasson. Mr Holta and Mr Holsen appear to be testimonials of the "ATLAS" brand as the Contested Mark appears on Mr Holta's cap in the Facebook post and on Mr Jonasson's protective suit. With regard to Mr Olsen, it is unclear if he has a sponsorship agreement with the Proprietor; nonetheless, the evidence reports Mr Olsen praising the quality of one of the Proprietor's helmets. Although the evidence features only a few posts, this nonetheless shows some level of social media advertising of the Contested Mark in relation to the Proprietor's helmets.

61. When determining whether the Proprietor has made genuine use of the Contested Mark, I must remind myself that the assessment of genuine use is a multifactorial one that must take into consideration all the facts and circumstances pertinent to the case under exam. Accordingly, the territorial extent of the mark's use is only one of the elements to consider in my overall assessment. To this regard, the evidence submitted shows that the place of use is Sweden for a period prior to Brexit. Although the evidence does not refer to a wider part of the European Union or the UK, the CJEU has clarified that, in assessing whether the EUTM has been put to 'genuine use', the territorial borders of the Member States should be disregarded.[22] Therefore, I find the evidence can be considered to relate to the territory of the European Union.

[21] Exhibit IH5, page 2 – 7 and Exhibit EC3.
[22] Case C-149/11, *OMEL / ONEL*, [44].

62. Furthermore, I appreciate that most of the evidence provided spans between September 2017 and November 2020 (with the revenue figures covering also the years 2022) and that this covers only part of the relevant period (i.e., 23 March 2018 and 22 March 2023). Nonetheless, I must bear in mind that, to show genuine use, use of the Contested Mark does not need to have been made throughout the whole period of five years, but rather within the five years of the relevant period under examination.[23] Thus, the use the Proprietor made of the Contested Mark for the two years and nine months is relevant for my assessment of genuine use.

63. I appreciate that the evidence provided is not particularly extensive and some parts of the evidence have a few gaps. However, I find the evidence showed that the Proprietor has created and maintained, within the relevant period of 23 March 2018 and 20 December 2020, a good market presence for some of its goods. The evidence shows the Contested Mark is used on most of the helmets the Proprietor retails including the helmets retailed by third-party platforms (e.g., Speed Connection). The invoices showed the Proprietor markets various types of cycling/motorcycling helmets in Sweden and that most of these helmets carry the "ATLAS" mark (apart from the "Jofa" helmets). The Proprietor provided the company's total EU turnover figures for the years 2017 – 2022 amounting to an average of £800,000 per annum in relation to the relevant period 2017 - 2020 and EU turnover figures for helmets averaging £127,000 per annum for the same period. The Proprietor did not provide evidence showing the market share it occupies, but the evidence reports that the value of the global cycling helmet market was estimated at around USD 700 million in 2022. Therefore, I find it reasonable to believe that the Proprietor's revenues figures are relevant enough to show genuine use of the Contested Mark. The Proprietor also provided evidence showing some social media advertising (and engagement) for its helmets along with instances of a few testimonials in the motorcycling racing endorsing the Proprietor's helmets.

64. In light of the above considerations, I find the evidence provided shows genuine use of the "ATLAS" mark in relation to some of the registered goods throughout the relevant period. Below in this decision I will detail which goods I consider there to have been genuine use for and what constitutes a fair specification.

[23] Case T-86/07, *Deitech*, [52].

**Fair specification**

65. Having found use of the Contested Mark, I must determine a fair specification upon which the Proprietor is entitled to rely, bearing in mind the use that has been demonstrated.

66. 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.

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

67. This approach was endorsed by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36:

"261. […] First, there can be no doubt that an application to register a mark in respect of a broad category of goods or services may be made partly in bad faith in so far as the broad description includes distinct sub-categories of goods or services in relation to which the applicant never had any intention to use the mark, whether conditionally or otherwise. In my view, that emerges clearly from the decision of the CJEU in this case. The approach to be adopted in such a case was explored and explained by the Court of Appeal in *Merck KGaA v Merck Sharp & Dohme Corp* [2017] EWCA Civ 1834; [2018] ETMR 10, at paras 241-2491 and, 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 3653. 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."

68. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person summed up the law as being:

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

69. As a preliminary matter, I note that the Proprietor's specification features the term "*Cycle helmets*" in class 28. While this term would now fall under class 9 according to the Nice Classification (12th edition), it was correctly classified at the time the Contested Mark was filed in 1997 and subsequently registered.[24] I will bear this in mind when defining the Proprietor's fair specification below.

70. Turning to "*Protective helmets*" in class 9, Mr Edwards, at the hearing, submitted that this term also encompasses protective equipment for workers. To this regard, Mr Edwards pointed out that the evidence concerning the retail of the "Selstad" helmet shows use of the "ATLAS" mark for protective equipment. [25] Although I appreciate that the evidence features images of the "Selstad" helmet also bearing the "ATLAS" mark and that the 2019 Selstad product catalogue defines the "Selstad"/"ATLAS" helmets as "protective equipment", the Proprietor did not provide additional evidence concerning the retail of "Selstad" helmets (or other protective equipment for workers) to show genuine use for these goods. In particular, I note that the invoices do not contain instances where the Proprietor has marketed "Selstad" (or other types of) protective equipment. As confirmed recently by Iain Purvis KC,[26] it is not the role of the Tribunal to fill in obvious gaps in the evidence and, in my view, that is what would be required to make a finding of genuine use in relation to "*protective helmets*" (intended as protective equipment for workers) in class 9. The evidence that has been

[24] According to the 1997 version of the Nice Classification (7th Edition).
[25] Exhibit IH2, page 14 and Exhibit IH4, page 15.
[26] Sitting as the Appointed Person in BL O/0725/25. See [37]. I note this decision was published after the commencing of these proceedings; however, the message is the same as that communicated in *Awareness Limited v Plymouth City Council*, cited earlier in my decision.

provided is inconclusive and requires too much inference and speculation. While it is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof, in my view, even considering that there is no *de minimis* rule, had these goods been marketed, it should not have been difficult for the Proprietor to have provided additional evidence.

71. Regarding "*Safety seats for children (for vehicles)*", no evidence was provided to show use of the Contested Mark.

72. For the sake of completeness, I note that the evidence includes instances where the Contested Mark is used in relation to an "egg helmet".[27] An "egg helmet" is an educational tool consisting of a small helmet in which one can place an egg to show the protective benefits of wearing a helmet in real life. Therefore, an "egg helmet" does not fall within the definition of "protective helmet" in class 9 (or class 28) for which the Contested Mark is registered. Thus, I have disregarded the evidence concerning this educational tool and it does not form part of the Contested Mark's fair specification.

73. Overall, from my assessment of the evidence above in this decision I find that the Proprietor provided sufficient evidence to show use of the Contested Mark for cycle and motorcycle helmets. From the above considerations I believe that a fair specification for the Contested Mark would be:

Class 9 Protective helmets, **namely motorcycle helmets.**

Class 28 Cycle helmets.

**Outcome**

74. The application for revocation on the grounds of non-use under section 46(1)(b) partially succeeds for class 9 and fully succeeds for class 12. As a result, the trade mark is, subject to any successful appeal, hereby revoked as outlined above. The effective date of revocation is **23 March 2023**.

[27] See, for example, exhibit IH2, pages 5 and 16 exhibit IH5, page 7.

## Costs

75. I find the parties obtained a similar degree of success. Therefore, each party should bear its own costs.

**Dated this 27th day of November 2025**

**Andrea Rossi**

**For the Registrar**