O/0785/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF
TRADE MARK REGISTRATION NO. 900107714
BY MPDV MIKROLAB GMBH
IN RESPECT OF THE FOLLOWING TRADE MARK:

HYDRA

IN CLASS 9

AND

AN APPLICATION FOR REVOCATION
UNDER NO. 507782
BY PERATECH IP LIMITED

AND

IN THE MATTER OF
TRADE MARK REGISTRATION NO. 801305855
BY MPDV MIKROLAB GMBH
IN RESPECT OF THE FOLLOWING TRADE MARK:

HYDRA

IN CLASSES 9, 35 AND 42

AND

AN APPLICATION FOR REVOCATION
UNDER NO. 507784
BY PERATECH IP LIMITED

BACKGROUND & PLEADINGS

1. These consolidated proceedings concern the following trade mark registrations ("the contested registrations"):

   a. The trade mark registration no. 900107714[1] shown on the front page of this decision stands registered in the name of MPDV Mikrolab GmbH ("the registered proprietor"), which retains the filing date of 1 April 1996 and the registration date of 28 October 1998 of the corresponding EUTM. The application for partial revocation is directed only against the following goods:

      Class 9: Computers, data processing equipment, individual calculating installations, computer memories, all the aforementioned goods for operational data acquisition (so far as included in class 9).

   b. The trade mark registration no. 801305855[2] shown on the front page of this decision stands registered in the name of the registered proprietor, which has a designation date of 7 March 2016 and for which protection in the EU was granted on 20 January 2017. The application for partial revocation is directed only against the following goods:

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[1] Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM. As a result, the registered EUTM was automatically converted into a comparable UK trade mark. Comparable UK marks, created under Schedule 2A of the 1994 Act, are now recorded on the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

[2] Under Article 56 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable trade marks (IR) for all right holders with an existing International Registration designating the EU ("IR(EU)"). As a result, the registered mark was originally protected in the UK as an IR(EU) and is now automatically converted into a comparable trade mark (IR). Comparable trade marks (IR), created under Schedule 2B of the 1994 Act, are now recorded on the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same.

Class 9: Computers; computer hardware; data processing devices and equipment and accessories [electrical and mechanical]; electric and electronic components; parts and fittings for all the aforesaid goods, included in this class.

2. On 10 September 2024, PERATECH IP LIMITED ("the applicant") sought partial revocation of the contested marks on the grounds of non-use under section 46(1)(b) of the Trade Marks Act 1994 ("the Act").[3] The applicant claims non-use for both of the contested marks for the period from 29 August 2019 to 28 August 2024 ("the relevant period"), claiming an effective date of revocation of **29 August 2024**.

3. The registered proprietor filed counterstatements defending the contested registrations for the goods against which non-use has been claimed by the applicant, on the basis that the registered marks have been genuinely used during the relevant period.

PAPERS FILED AND REPRESENTATION

Registered Proprietor's Evidence

4. The registered proprietor's evidence consists of a witness statement, dated 3 March 2025, in the name of Ms Nathalie-Lorena Kletti accompanied by Exhibits NK1-NK6. Ms Kletti is the Managing Director of the registered proprietor, a position which she has held since 1 October 2020.

Applicant's Evidence

5. The applicant's evidence consists of a witness statement, dated 1 May 2025, in the name of Rigel Moss McGrath accompanied by Exhibits

[3] 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.

RMM1-RMM7. Ms McGrath is a Chartered Trade Mark Attorney at HGF Limited, the applicant's representative in these proceedings. The applicant's evidence goes to the nature, manufacture, and branding of certain goods referred to in the registered proprietor's evidence.

6. The applicant filed written submissions, which will not be summarised but will be referred to as and where appropriate during this decision.

7. The matter came to be heard by me via video conference on 22 June 2026. The registered proprietor filed a skeleton argument prior to the hearing. Ms Karen Veitch of Lincoln IP attended on behalf of the registered proprietor. The applicant, who is represented by HGF Limited, did not attend the hearing.

DECISION

8. 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 (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was

registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) […]

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from-

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date."

9. Section 100 of the Act states:

"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."

10. As the contested marks are comparable marks (EUTM and IR), pursuant to Schedules 2A and 2B of the Act, the registered proprietor may rely upon use of the marks in the EU for the part of the relevant period which falls prior to IP Completion Day, being 31 December 2020, and use shown after that date must be use in the UK.

Relevant Case Law

11. 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 a 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 undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

12. I also note Mr Alexander’s comments in *Guccio Gucci SpA v Gerry Weber International AG*, BL O/424/14, where 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]

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

"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."

14. In *Jumpman* BL O/222/16, Mr Daniel Alexander QC (as he then was), as the Appointed Person, upheld the registrar's decision to reject the sale of 55,000 pairs of training shoes through one shop in Bulgaria over 16 months as insufficient to show genuine use of the EU trade mark in the European Union within the relevant 5 year period. Proven use of a mark which fails to establish that "*the commercial exploitation of the marks 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, therefore, not genuine use. [4]

[4] See *Jumpman*, Case BL O/222/16.

Form of the marks

15. Before considering whether the registered proprietor has made genuine use of the marks and, if so, for what goods, I shall deal with the question of the form of the registered marks.

16. In Case C-12/12 *Colloseum Holdings AG v Levi Strauss & Co.*, which concerned the use of one mark with, or as part of, another mark, the CJEU found that:

> "31. It is true that the 'use' through which a sign acquires a distinctive character under Article 7(3) of Regulation No 40/94 relates to the period before its registration as a trade mark, whereas 'genuine use', within the meaning of Article 15(1) of that regulation, relates to a five-year period following registration and, accordingly, 'use' within the meaning of Article 7(3) for the purpose of registration may not be relied on as such to establish 'use' within the meaning of Article 15(1) for the purpose of preserving the rights of the proprietor of the registered trade mark."
>
> 32. Nevertheless, as is apparent from paragraphs 27 to 30 of the judgment in *Nestlé*, <u>the 'use' of a mark, in its literal sense, 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.</u>
>
> 33. As the German and United Kingdom Governments pointed out at the hearing before the Court, the criterion of use, which continues to be fundamental, cannot be assessed in the light of different considerations according to whether the issue to be decided is whether use is capable of giving rise to rights relating to a mark or of ensuring that such rights are preserved. If it is possible to acquire trade mark protection for a sign through a specific use made of the sign, that same form of use must also be capable of ensuring that such protection is preserved.

34. Therefore, the requirements that apply to verification of the genuine use of a mark, within the meaning of Article 15(1) of Regulation No 40/94, are analogous to those concerning the acquisition by a sign of distinctive character through use for the purpose of its registration, within the meaning of Article 7(3) of the regulation.

35. Nevertheless, as pointed out by the German Government, the United Kingdom Government and the European Commission, <u>a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term 'genuine use' within the meaning of Article 15(1).</u>"
(Emphasis added)

17. In *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under section 46(2). He said:

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

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

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v*

EUIPO, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD MEDIA. It took the view that the omission of the word "MEDIA" would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still."

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

19. Insofar as the evidence shows use of the plain word HYDRA, that will clearly be use upon which the registered proprietor can rely. The evidence also shows use of the marks in forms differing from the forms in which they are registered, as follows:

i.	HYDRA X
ii.	HYDRA X
iii.	HYDRA X
iv.	MES HYDRA

20. I bear in mind that the earlier marks are filed as word marks, which protect the words contained in the marks, whatever form, colour or typeface are used.[5] I find their use in the colours and typefaces shown in the variants ‘i.’- ‘ii.’ constitutes use of the word marks as registered. In addition, it is my view that the “HYDRA” element still acts as an indication of origin where it is used in combination with both the stylised ‘X’ in ‘i.’- ‘ii.’ or the plain ‘X’ letter in ‘iii.’, positioned at the end, and the “MES” element, positioned at the beginning, shown in ‘iv’. The addition of these elements does not alter the distinctive character of the marks. I therefore find these forms to be acceptable variants in line with the case law set out in *Colloseum*. However, even if I am wrong in this finding, I am of the view that the additional elements, shown in the above forms, do not sufficiently alter the distinctive character of the registered marks, and therefore use of the above marks constitutes acceptable variant use of the registered marks, in accordance with *Lactalis*, upon which the registered proprietor can rely.

[5] See *LA Superquimica v EUIPO*, Case T-24/17, paragraph 39.

Sufficiency of use

<u>The evidence</u>

21. In her witness statement, Ms Kletti provides the history and background of the registered proprietor, stating that:

> "2. MPDV Mikrolab GmbH was founded in 1977 and is a market leader in its field, providing a range of IT solutions for manufacturing firms. Our innovative, high-quality products and services assist manufacturing firms in improving their production processes, making them more efficient and so allowing the firms to stay ahead of their competition. In particular, the HYDRA X Manufacturing Execution System (MES) allows firms to continuously monitor, control and optimise their production, providing a seamless overview of all resources and allowing them to design their production processes to be as efficient as possible."

22. **Exhibit NK1** contains two screenshots from the registered proprietor's website *mpdv.com* taken from the WayBack Machine Internet archive dated 15 July 2024 and 8 August 2024, respectively, displaying a section on 'Products & Solutions' in relation to 'Manufacturing Execution System (MES): HYDRA X for Process'.

I note from the above screenshot that the MES HYDRA X is described as follows:

> "With the Manufacturing Execution System (MES) HYDRA X for Process, you receive a tailored solution for the requirements of the process industry, focused on Industry 4.0 and complete digitization. Obtain crucial data on the current status of the shop floor to monitor, control, and optimize your production in real time. This modular platform seamlessly integrates optimization, quality, and energy management, is easily scalable, and ready for the cloud. The holistic Production Intelligence approach (PI) is our unique selling proposition, making HYDRA X innovative, cost-effective, and forward-looking for your production requirements.
>
> The platform base allows for easy functional expansion of the MES. By utilizing the Manufacturing Integration Platform (MIP), you can combine all relevant Manufacturing Apps (mApps) for your production. These mApps are assigned to different categories - from Compounding Management to Recipe Management to Process Safety & Integrity, as well as Provisioning Logistics. They offer the flexibility to select precisely the MES functions that are relevant to your individual requirements. This means you always have an overview and can optimally adapt your HYDRA X for Process to the specific needs of your [sic]…"

Further, based on this exhibit, HYDRA X is described as follows:

> "You monitor, control and optimize your production continuously with HYDRA X. You can therefore keep an eye on all resources at all times and design your production processes to be as efficient as possible. Digitization in production is unstoppable. Companies who want to produce efficiently need HYDRA X.
>
> The functional range of HYDRA X goes far beyond that of a classic Manufacturing Execution System (MES) and also includes support

processes such as intralogistics or operator guidance in complex assembly processes. Since HYDRA X is platform-based, it can be easily extended in terms of functionality."

23. **Exhibit NK2** contains partially redacted invoices. The applicant highlighted in its written submissions that the following invoices are dated outside the relevant period: invoice no. 201900580 dated 18 January 2019; invoice no. 197058 dated 31 July 2019; and invoice no. 195253 dated 29 May 2019. At the hearing, Ms Veitch submitted that Exhibit NK2 was provided as a whole in the context of the assessment of genuine use, conceding that the said invoices fall outside the relevant period. Thus, these invoices, which pre-date the relevant period, cannot themselves establish genuine use during it. However, I note that the following invoices are dated within the relevant period in relation to the following goods:

    a. invoice no. 219628 is dated 28 October 2021, addressed to Hadley, regarding 1 X 'SAH-LEG50 key fobs for LEGIC prime systems (pack of 50)' with total price of €405; and 'Handling fee: ID cards and key fobs – The service was provided by the MPDV specialist department in October 2021' with item price €190;

    b. invoice no. 219990 is dated 11 November 2021, addressed to Telford, in relation to 4 X 'SAH-LEG50 key fobs for LEGIC prime systems (pack of 50)' with total price of €1,620; and 'Handling fee: ID cards and key fobs – The service was provided by the MPDV specialist department in November 2021' with item price €190; and

    c. invoice no. 228255 is dated 26 August 2022, addressed to Telford, in relation to 2 X 'SAH-LEG50 key fobs for LEGIC prime systems (pack of 50)' with total price of €810; and 'Handling fee: ID cards and key fobs' with item price €210.

24. **Exhibit NK3** contains offers and quotations to customers. Although the witness does not clarify whether all of these were executed and materialised into invoices, I note that, according to the order confirmation numbers, the following order confirmations align with the corresponding invoices mentioned in the previous paragraph:

    a. no. 202110152 is dated 28 October 2021, addressed to Telford, which appears to be in reference to the proposal no. 211021. As the product description is in German and no translation has been provided, I do not rely on its substantive wording. I note, however, that the order confirmation corresponds to invoice no. 219990, which identifies the goods in English;

    b. no. 202208051 is dated 15 August 2022, addressed to Telford, in relation to 2 X 'SAH-LEG50 key fobs for LEGIC prime systems' with total price €810[6] and 'Handling fee: ID cards and key fobs' with item price €210;

    c. no. 202110512 is dated 20 October 2021, addressed to Telford, in relation to 1 x 'SAH-LEG50 key fobs for LEGIC prime systems' with total price of €405 and 'Handling fee: ID cards and key fobs' with item price €190.

25. I note that the earlier marks are not visible next to the goods on the invoices. On this point, Ms Kletti states that:

    "Although some of the invoices do not directly reference HYDRA, I can confirm the invoices relate to goods which are all individual components or connected to the HYDRA system. For example, one of the functions of HYDRA software is to provide time recording/time management and access control. We provide the necessary

[6] Although one digit of the unit price and total cost have been redacted, I can still verify the unit price by cross-referencing it with the corresponding invoice, which shows the complete figures.

hardware to operate these functions, particularly ID card readers and ID cards, as well as time recording terminals for recording and processing ID card data and access control managers, e.g.: for opening doors. Without this type of hardware, the HYDRA software cannot be operated for these applications. The evidence also shows use in relation to terminals/card readers for access control and the corresponding ID cards. They are necessary to operate the access control function of the HYDRA Software."

26. **Exhibit NK4** consists of a printout of a brochure titled '*Application components for a modular MES system*!' which Ms Kletti states that *"[t]his was in circulation and valid until Spring 2021 and provides a clear indication of the various components of both hardware and software which comprise our HYDRA product*."

27. **Exhibit NK5** consists of the following printouts from the registered proprietor's newsletters:

    a. a printout dated 2021 and titled '*HYDRA X – Build your factory smart'*;

    b. a printout dated September 2019 and titled '*ON THE WAY TO THE PAPERLESS FACTORY*'; and

    c. a printout dated 2020 and titled '*ARTIFICIAL INTELLIGENCE IN MANUFACTURING*'.

28. **Exhibit NK6** includes printouts from various third-party websites demonstrating the following:

    a. a review of Hydra X from *softwareconnect.com*, which is dated 13 August 2024 obtained via WayBack Machine Internet archive. This review offers a brief overview of HYDRA X, formerly known as HYDRA MES, outlining its pros and cons, and key features;

b. an article dated 31 October 2023 and titled '*MPDV has been Positioned as the Technology Leader in the 2023 SPARK Matrix for Manufacturing Execution System (MES)-Discrete by Quadrant Knowledge Solutions'* which appears to be available on *quadrant-solutions.com*;

c. an excerpt from an untitled and undated article. However, I note that Ms McGrath provided Exhibit RMM7, which includes the full article dated 31 March 2019 in the original German and English translation, and titled '*The outlook's looking good!*'. Thus, this material falls outside the relevant period;

d. a blog post from *smartfactory.blog* titled '*GOOD, BETTER, BEST – IN-PRODUCTION INSPECTION WITH HYDRA X*' and dated 20 October 2023.

29. In addition, Ms Kletti provides the following turnover figures in EUR for goods and services bearing the marks since 2019:

year to December 2019	EUR 1.890.952,36
year to December 2020	EUR 3.151.933,88
year to December 2021	EUR 103.554,45
year to December 2022	EUR 28.620
year to December 2023	EUR 227.369,67
year to December 2023	EUR 107.290

30. The witness also provides the following marketing expenditure for the HYDRA brand:

year to December 2019	EUR 945.205,00
year to December 2020	EUR 431.495,00
year to December 2021	separate UK-split figures not available
year to December 2022	separate UK-split figures not available
year to December 2023	separate UK-split figures not available
year to December 2023	separate UK-split figures not available

31. I note that Ms Veitch submitted at the hearing that the second entry labelled ‘year to December 2023’ in the above tables was a typographical error and should read ‘year to December 2024’. Lastly, at the hearing, Ms Veitch explained that the relevant goods are not everyday goods. Instead, she highlighted that these are highly specialised and high-cost goods directed at a specialised relevant public, namely manufacturing plants, and this needs to be taken into account when considering the evidence and the volume of use.

Assessment

32. I have previously set out the legislative provisions under section 46 of the Act relating to proof of use, and the evidential burden on the registered proprietor under section 100. If any question arises in UK proceedings as to the use to which a UK registered trade mark has been put, it is for the proprietor to show what use has been made of the mark(s). Therefore, an application to revoke for non-use places the onus of proof on the registered proprietor to prove the use which has been made of the mark(s). Equally, if the registered proprietor is not able to show genuine use, the onus rests on them to show that there were proper reasons for the non-use.

33. In determining whether there is real commercial exploitation of the marks, the assessment must take into account a number of factors, including the scale and frequency of the use shown, the nature of the use shown, the goods for which use has been shown, the nature of those goods, the market(s) for them, and the geographical extent of the use shown.[7] A finding of genuine use does not depend on economic success or large-scale commercial use;[8] rather, it is concerned with the sort of use that is regarded as “*warranted in the economic sector concerned to maintain or*

[7] See *easyGroup Ltd v Nuclei Ltd & Ors* above.

[8] See *Naazneen Investments Ltd v OHIM*, Case T-250/13 at [49]; and *MFE Marienfelde GmbH v OHIM*, Case T-334/01.

create a share in the market for the goods or services protected by the mark" in the relevant territory during the relevant five-year period.

34. Before proceeding to assess the registered proprietor's evidence, I note that in its written submissions, the applicant submitted that the evidence fails to demonstrate genuine use of the goods, underlining the deficiencies in the evidence, all of which I have taken into account. In addition, I recognise that the printouts in the applicant's Exhibits RMM2, RMM5, and RMM6 bear a print date in May 2025, post-dating the relevant period. Although later evidence may be considered where it casts light backwards on the position during the relevant period, the extracts directly establish only what the websites stated at the time they were captured. Thus, I will not rely on these exhibits alone as proof of the position throughout the relevant period. However, these extracts corroborate the registered proprietor's contemporaneous documents, describing or identifying some goods in the evidence. It is worth noting that the registered proprietor did not file evidence in reply disputing those identifications or any other evidence filed by the applicant. Thus, I will only attach corroborative weight to those exhibits.

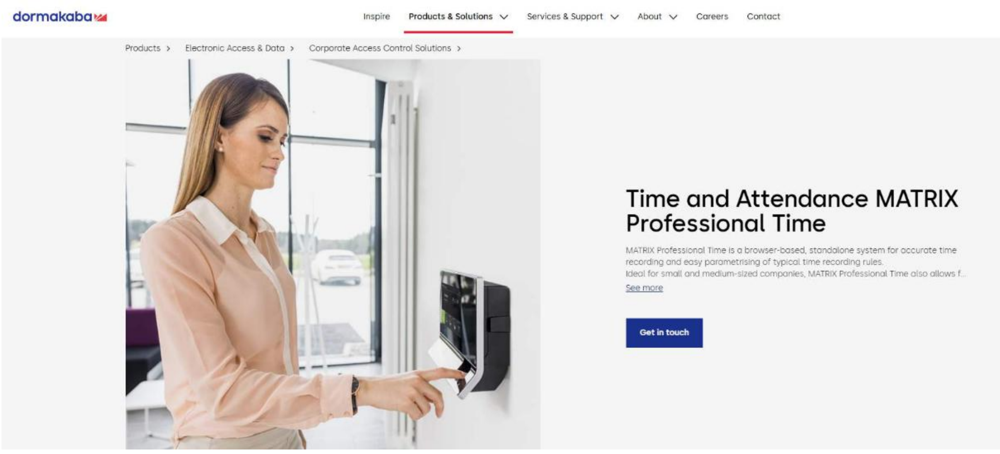
35. Further, in her skeleton argument, Ms Veitch provided a detailed table identifying the goods mentioned in the evidence that show use of the marks. While I have considered the table in my assessment below, I will not reproduce it here.

36. As outlined earlier, the evidence shows that the HYDRA/HYDRA X is a Manufacturing Execution System (MES) composed of various manufacturing software applications (mApps), covering functions such as production orders, machine and process data, quality, and maintenance, with connected hardware used for certain data-collection, time-recording and access-control functions. Although the registered proprietor's software platform connects to various components and hardware, the question is whether HYDRA was used as a trade mark indicating the commercial origin of the registered goods relied upon. On this point, within its witness

statement, the applicant challenged the image provided at paragraph 7 of Ms Kletti's statement (shown below), which depicts a time recording terminal, arguing that it is a 'dormakaba' terminal rather than a HYDRA one.

7. The image below shows a terminal for time recording and access control systems which is operated with HYDRA software and is supplied together with HYDRA software.

In support of this claim, the applicant filed Exhibit RMM5, featuring extracts from the *dormakaba.com* website advertising the same terminal image with the title '*Time and Attendance MATRIX Professional Time'*, as follows:



37. In light of the above, I note that Ms Kletti does not specify in her witness statement that the depicted terminal is a HYDRA branded product. Rather, she explains that it is operated with HYDRA software. I also note that the image presented in Ms Kletti's witness statement appears to be a cropped version of the complete image presented in the applicant's evidence. In addition, Exhibit NK3 indicates that dormakaba security cards, terminals,

and other 'Dorma' hardware "*will be sourced at dormakaba directly […] IMPORTANT: The KIOSK and the Security CARDS have to be purchased at MPDV. Hardware of dormakaba shall be sent to MPDV for configuration*".[9] Consequently, the registered proprietor's evidence shows third party manufacturing and branding of these goods, even where the registered proprietor participates in the supply and configuration of these items. This in fact supports the conclusion that dormakaba identifies the relevant hardware and that HYDRA is used in relation to the software system operating with that hardware. For completeness, I note that the evidence does not show HYDRA functioning as an additional or secondary mark for the terminal itself.

38. Moreover, the registered proprietor's evidence also refers to goods described as ADMITTO-A-USB-Mifare readers, MIFARE ID cards and MIFARE key fobs.[10] I also note that the applicant's Exhibit RMM6 presents extracts from *mifare.net* and *phg.net* websites, where Mifare is described as: "*NXP's well-known brand for a wide range of contactless IC products with a typical read/write distance of 10 cm (4 inches) used in more than 40 different applications worldwide, including contactless payments, transport ticketing and access control*." Further, based on the applicant's evidence, the ADMITTO-A is a PHG-manufactured, USB-connected electronic reader for contactless reading of Mifare and LEGIC Prime, and PHG lists its applications as including access control, time recording, operating data acquisition etc.[11] I reiterate here that the registered proprietor did not file evidence in reply, nor did it challenge the applicant's evidence. Furthermore, the registered proprietor's evidence in Exhibit NK3 identifies "PHG" as the manufacturer of the ADMITTO-A-USB-Mifare reader.[12] Therefore, I conclude that even if such goods were offered or supplied by the registered proprietor for use with the HYDRA system, the evidence

[9] See pages 5 and 8 of Exhibit NK3.

[10] See Exhibit NK2 page 19, and Exhibit NK3 pages 5 and 8.

[11] See Exhibit RMM6 pages 80-81.

[12] See page 8 of Exhibit NK3.

does not establish that HYDRA was used as a trade mark indicating the commercial origin of those goods.

39. Turning to the goods "*terminals for time recording and access control systems; access control systems; compact reader*" (as they appear in Ms Veitch's table in her skeleton argument) listed in offer no. 210915 in Exhibit NK3 (shown below), I note the following:

Offer: 210915_A1_AHB UK for

2. Specifications for data processing equipment and MPDV software

Pos.	No.	Ident.	Name	Single price	Total price
1			**Data processing equipment and accessories**		**18.456,00 €**
1.1			Terminals for time recording and access control systems	Subtotal	8.916,00 €
1.1.1	1	KB-9290R	Access control system 9290 rack version	4.073,00 €	4.073,00 €
1.1.2	1	KB-9230	Access control system 9230 wall housing	1.099,00 €	1.099,00 €
1.1.3	6	KB-9104MRD	Compact reader 9104 IP66	824,00 €	824,00 €
1.2			Terminals for time recording and access control systems	Subtotal	9.540,00 €
1.2.1	1	KB-9290R	Access control system 9290 rack version	4.073,00 €	4.073,00 €
1.2.2	1	KB-9230	Access control system 9230 wall housing	1.099,00 €	1.099,00 €
1.2.3	6	KB-9104MRD	Compact reader 9104 IP66	824,00 €	824,00 €
2			**MPDV Software (HYDRA standard)**		

Exhibit NK3

40. First, the English version of the offer is incomplete. Although it translates the list of goods (including the KB-9290R access-control system 9290 rack version; KB-9230 access-control system 9230 wall housing; and KB-9104MRD compact reader 9104 IP66), it does not translate the "Detailed specifications" section, which I consider to be material in this case. Second, even on the face of the translated material, the headings of the offer distinguish between "Data processing equipment and accessories" and "MPDV Software (HYDRA standard)". Under the former heading, the listed goods do not include HYDRA in any of their product descriptions, and none of them is expressly described as a HYDRA branded product. Thus, the "Detailed specifications" section would have been important in

understanding the nature of the listed goods and the trade mark under which they were offered. Although I note that the word "dormakaba" is visible in the untranslated German text, the mere appearance of that word is insufficient, without a translation of the surrounding text, for me to establish the capacity in which it is employed or to infer any connection between dormakaba and the listed goods. Consequently, I do not consider the translated evidence sufficient to demonstrate use of HYDRA for "*Computer hardware, data processing devices and equipment and accessories*".

41. The invoice evidence[13] shows sales of "*key fobs for LEGIC prime systems*" and "*Handling fee: ID cards and key fobs*"[14] or "*Handling fee: ID cards and key fobs – The service was provided by the MPDV specialist department…*"[15]. I consider the listed "*Handling fee: ID cards and key fobs*" on the invoices to be the accompanying handling service charge for the supply of key fobs (as listed in the invoices), rather than the sale of ID cards per se. This is confirmed by the wording itself, which appears in two of the invoices, namely "*Handling fee: ID cards and key fobs – The **service** was provided by the MPDV specialist department*". Therefore, the handling fee entries do not themselves show use for goods in Class 9.

42. Turning to the invoiced goods "*key fobs for LEGIC prime systems*", the evidence shows the sale of seven packs in total, each containing 50 key fobs, with a total invoiced value of €2,835. Two of these sales took place in 2021, and one occurred in 2022. Although Ms Kletti stated that the invoiced goods are all components or connected to the HYDRA system, she did not specify which items fall under each category, nor did she confirm that every invoiced item carries the HYDRA marks or is manufactured by the registered proprietor. Further, I note that the invoiced key fobs are expressly described as being "*for LEGIC prime systems*". The

[13] See Exhibit NK2.

[14] See paragraphs 20 (c) and 21 (b) and (c).

[15] See paragraph 20 (a) and (b).

applicant's Exhibit RMM6 contains extracts from LEGIC's website that present LEGIC as a separate provider of identification and security system technology, including smartcards, smartcard-integrated circuits, security modules, and related services. This suggests that LEGIC operates a distinct system that the key fobs are designed to work with. However, the reference to LEGIC alone does not, by itself, establish the manufacturer of the key fobs or exclude the possibility that the goods were supplied as components of the wider HYDRA offering. Nevertheless, I attach some significance to the fact that the product descriptions specifically link the key fobs to LEGIC Prime rather than directly attributing the HYDRA marks to them. More importantly, there is no evidence to support that the relevant customer would understand HYDRA as indicating the commercial origin of the key fobs themselves. Given these considerations, the evidence does not establish, with sufficient specificity, that these sales show use of the HYDRA marks for key fobs.

43. If I am wrong on the above, I would nevertheless find the evidence to be insufficient to demonstrate real commercial exploitation. I take into consideration Ms Veitch's oral submissions that the registered goods are highly specialised goods for manufacturing plants and that there is no *de minimis* rule. In addition, I consider that use need not occur throughout every year of the relevant period, and that geographically limited sales may constitute genuine use where they are commercially justified in the relevant sector. However, the proprietor has provided no evidence to identify the size of the market for these goods, the percentage share enjoyed by the registered proprietor, frequency of sales in that market, or the proportion of the registered proprietor's turnover attributable to those goods. The geographical spread of the use throughout the UK is not clear, but based on the evidence, the invoices were addressed only to Hadley and Telford. However, the sales figures for the goods in question are far from overwhelming, amounting to €2,835 in total. In those circumstances, I am unable to find that three invoices (two dated in 2021 and one in 2022) were sufficient to create or maintain a share in the market for key fobs under HYDRA marks.

44. Further, Exhibits NK4 and NK5 contain brochures and newsletters featuring the marks and acceptable variants. Even though the exhibits describe the use of hardware within the HYDRA infrastructure, such as touch-screen devices, external IIoT connector modules, and external interface modules, they do not identify a particular model or product marketed under the HYDRA marks. In fact, the applicant's Exhibit RMM2, which consists of printouts from the registered proprietor's website dated May 2025, provides further context regarding the IIoT connector. In these printouts, the text accompanying the reproduced image below states that it shows "*an I/O system from WAGO*" [16] on which the customer may install the relevant MPDV element. The IIoT connector equipment shown is expressly identified as WAGO equipment, bearing the WAGO and MPDV logos, rather than as HYDRA.

Thanks to the IIoT Connector, manufacturing companies can easily collect machine and process data of all kinds. (Source: MPDV, WAGO)

In conjunction with the above, I also consider Exhibit NK4 where the said IIoT Connectors are generally described as "*inexpensive devices*" and not as a HYDRA branded equipment. In addition, I note that the only visible

[16] See Exhibit RMM2, page 29.

logos on the product appear to be those of MPDV and WAGO, demonstrated as follows:

Alternatively, machine or process data can be accepted from the MES via external modules (so-called IIoT connectors). These interface components offer especially for older machines a great option to automatically collect data:

- Recording of cycles and digital signals using a direct connection to machine sensors
- Transfer of analog measured values, e. g. temperature, pressure, revs or speeds

The inexpensive devices are integrated via LAN or serial interfaces into the MES. They can be modularly expanded and have an easy mounting system and connection options.

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45. Further, in her skeleton argument, Ms Veitch drew my attention to Exhibit NK5 concerning personnel management in a Smart Factory, which states that "*[v]ersatile ID cards may be used to access buildings and to record times and postings on the shop floor.*"[17] Ms Veitch submitted that this material should be read in conjunction with Ms Kletti's narrative evidence that HYDRA cannot perform its time-recording and access-control applications without hardware, i.e. ID cards and ID card readers. However, I note that Exhibit NK5 generally refers to "*versatile ID cards*" without identifying a particular ID card product, its manufacturer, or the mark appearing on it. For completeness, I note that the above refers solely to ID cards, not the invoiced key fobs, and neither the narrative nor documentary evidence states that the key fobs perform the same function as the ID cards. Instead, I keep in mind that the key fob goods are described as being for LEGIC Prime systems. Consequently, without any further evidence establishing the technical function of the key fobs, I cannot infer that they perform the same time-recording or access-control functions as the ID cards described in Exhibit NK5.

[17] See page 7 of Exhibit NK5.

46. For the above reasons, I consider that Exhibits NK4 and NK5 do not clearly identify any of the registered goods in Class 9 under the registered marks, nor is there any corroborating evidence of, for example, sales of touch-screen devices, IIoT connectors, or modules bearing the contested marks during the relevant period.

47. Further, Exhibit NK6 shows use of the marks in an acceptable variant on third party websites (e.g. *softwareconnect.com*). However, I note the use of *.com* domains by those websites does not demonstrate the goods are targeted towards the UK (or the EU) market. In my view, having in mind the case law criteria,[18] the mere fact that the website was accessible to UK/EU consumers is insufficient on its own to establish that the use was directed at customers in the UK or EU, and it is incumbent on the registered proprietor to provide solid evidence, such as the number of unique visits, to support actual use of its trade marks in the UK/EU by way of website use.

48. As to the marketing expenditure figures, I note that these cover only the period between December 2019 and December 2020 for the UK. According to Ms Kletti, the advertising spend encompasses the HYDRA brand without distinguishing between software, hardware, services or the goods in question. Nor is there evidence of the distribution, reach, or scale of use of the marketing and promotional materials, such as those in Exhibits NK4 and NK5, in relation to the registered goods. Thus, I cannot determine whether the evidence shows significant exposure of the marks within the UK (or the EU for the relevant period).

49. Further, although turnover figures were provided from December 2019 to December 2024,[19] they are not broken down by types of goods sold under

[18] See *Lifestyle Equities CV and another (Respondents) v Amazon UK Services Ltd and others* [2024] UKSC 8, at [24] to [31], and *Warner Music UK Ltd v TuneIn Inc.* [2019] EWHC 2923 (Ch), at paragraph 17.

[19] For completeness, no turnover figures were provided for the EU for the period before the IP Completion Day.

the HYDRA marks.[20] There is also no evidence regarding the size of the relevant market or the registered proprietor's market share in the UK (or the EU for the relevant period).

50. I have considered the evidence as a whole, and I note that there are clear deficiencies in the evidence provided by the registered proprietor, which do not, in my view, allow me to make any reasonable inferences necessary in order to find in favour of the registered proprietor. While it is possible for an accumulation of evidence to show use, even if individual items of evidence would on their own be insufficient proof, in my view, the evidence as a whole provided with the witness statement falls short of representing efforts to create and maintain a share of the relevant UK (or the EU) market for the goods relied upon for which use is claimed within the relevant period.

OUTCOME

51. The partial revocation action brought against:

    a. registration 900107714 on the grounds of non-use succeeds under section 46(1)(b) in respect of the following goods:

    Class 9: Computers, data processing equipment, individual calculating installations, computer memories, all the aforementioned goods for operational data acquisition (so far as included in class 9)

    b. registration 801305855 on the grounds of non-use succeeds under section 46(1)(b) in respect of the following goods:

    Class 9: Computers; computer hardware; data processing devices and equipment and accessories [electrical and mechanical]; electric

[20] See the comments of Phillip Johnson, sitting as the Appointed Person, in *W Sternoff LLC v Peter Kertels*, ("*Eros Bodyglide*") BL O/0984/25.

and electronic components; parts and fittings for all the aforesaid goods, included in this class

Consequently, subject to any successful appeal, the above registrations are revoked for these goods only. The effective date of revocation is **29 August 2024**.

52. The unchallenged goods in Class 9, namely "*computer software, all the aforementioned goods for operational data acquisition (so far as included in class 9)*" under registration 900107714 will remain registered.

53. The unchallenged goods in Class 9, namely "*recorded data, especially software and electronic databases; information technology and audiovisual equipment, in particular data storage devices; safety, security, protection and signalling devices, especially access control and alarm monitoring systems; parts and fittings for all the aforesaid goods, included in this class*" and all the unchallenged services in Classes 35 and 42 under registration 801305855, will remain registered.

COSTS

54. As the applicant for revocation has been successful, it is entitled to a contribution towards its costs. Awards of costs are governed by Annex A of Tribunal Practice Notice (TPN) 1/2023. The sum is calculated as follows:

Official fee x2	**£400**
Preparing a statement and considering the other side's statement x2	**£400**[21]

[21] Reduced to reflect that no supporting statements were provided in both TM26(N)s and both counterstatements were particularly short, based on the same wording.

Preparing evidence and considering and commenting on the other side's evidence	**£600**
Preparation of submissions	**£250**[22]
Total	**£1,650**

55. I therefore order MPDV Mikrolab GmbH to pay to PERATECH IP LIMITED the sum of £1,650. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 27th day of August 2026

Dr Stylianos Alexandridis
For the Registrar,
The Comptroller General

[22] Reduced to reflect the length of the submissions.