BL O/0874/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NO. 3189733

IN THE NAME OF EASYPACK/POP DISPLAYS GROUP LIMITED

IN RESPECT OF THE FOLLOWING TRADE MARK:

EASYPACK

IN CLASSES 16, 20, 39 AND 42

AND

AN APPLICATION FOR REVOCATION THEREOF

UNDER NUMBER 508102

BY KILBURN & STRODE LLP

BACKGROUND AND PLEADINGS

1. The UK trade mark ("UKTM") shown on the front page of this decision (UKTM no: 3189733) ("the contested mark") stands registered in the name of Easypack/POP Displays Group Limited ("the proprietor"). It was filed on 6 October 2016 and completed its registration process on 7 April 2017. The mark stands registered for the following goods/services:

Class 16 Cardboard packaging boxes in collapsible form; cardboard packaging boxes in made-up form; packaging containers of card; adhesive packaging or wrapping tape; lining papers for packaging or wrapping; display boxes of cardboard; display banners of paper or cardboard; parts and fittings for the aforesaid goods; all of the foregoing for use as point-of-sale displays or for corrugated transit packaging.

Class 20 Wooden or plastic packaging boxes in collapsible or made-up form for use as point-of-sale displays or corrugated transit packaging; display furniture, frames, panels, boards, racks, racking, stands, cabinets, cases, shelves, trays, tables, units, screens and counters; assembled or folding display units; point of sale and point of purchase displays; non-metallic shop display fittings; non-metallic displays, stands and signage; floor units of cardboard for displaying merchandise; kits of parts for assembly into display stands; parts and fittings for the aforesaid goods.

Class 39 Transport; storage of goods; distribution services; packing and packaging and wrapping services relating to point-of-sale displays or corrugated transit packaging; information, advisory and consultancy services in respect of the aforementioned services.

Class 42 Point of purchase and point of sale display design services; packaging design services relating to point-of-sale displays or corrugated transit packaging; advisory and consultancy services in respect of the aforementioned services.

2. On 22 November 2024, Kilburn & Strode LLP ("the applicant") applied to revoke the contested mark on grounds of non-use in accordance with sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 ("the Act"). Revocation is sought in respect of the specification in its entirety. The periods in respect of which non-use is claimed are 8 April 2017 to 7 April 2022, with an effective date of revocation of **8 April 2022** under section 46(1)(a) ("the first relevant period"), and 22 November 2019 to 21 November 2024, with an effective date of revocation of **22 November 2024** ("the second relevant period"), under section 46(1)(b).

3. The proprietor filed a defence and counterstatement in which it denies the claims against it in their entirety. The proprietor states that it has made genuine use of the contested mark, for the goods/services covered by the registration, within the relevant periods.

4. The proprietor is represented by Barker Brettell LLP, and the applicant is self-represented. Only the proprietor filed evidence in these proceedings. No hearing was requested, however, the proprietor filed written submissions in lieu.

EVIDENCE AND SUBMISSIONS

5. The proprietor's evidence took the form of a witness statement of Mr Christopher Hall dated 3 April 2025, accompanied by exhibits CJEH1 to CJEH14. Mr Hall is the Business Development Director of the proprietor, a position that he has held since 28 October 2010.

6. The proprietor filed written submissions in lieu on 18 August 2025.

7. I have given due consideration to all of the documents filed by both parties but will only refer to the evidence/submissions as appropriate to the extent that it is necessary in my decision.

DECISION

8. Section 46 of the Act is relevant to the revocation proceedings, which states:

“46. - (1) The registration of a trade mark may be revoked on any of the following grounds-

(a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c) […]

(d) […]

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

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

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations

for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) […]

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

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

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

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

9. Section 100 is also relevant, which reads:

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

10. 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.

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 C40/01 *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].

12. 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."

13. What I take from this case law is that there is no requirement to produce any specific form of evidence, but that I must consider what the evidence as a whole shows me, and whether on this basis I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the contested mark.

EVIDENCE OF USE

14. Mr Hall states that the proprietor's company has traded under the name EASYPACK, supplying packaging products and associated services in the UK since 1978. He goes on to explain that in 2009 the proprietor acquired another company and their packaging activities were expanded to include point of purchase packaging. The company is a wholly owned subsidiary of Fencor Packaging Group Limited.

15. Mr Hall states as follows:

> "14. Throughout the relevant period, my Company has manufactured and sold the below listed goods and has rendered the below listed services under its EASYPACK trade mark across the UK:
>
> • Display units, namely:
> • FSDUs (Free Standing Display Units)
> • Quarter Pallet Displays
> • Theatrical Creative Displays
> • Merchandising Units
> • Hod Display Units and Quick Boxes (a style reminiscent of a bricklayer's hod)
> • Celled, Hooked and Waterfall Displays
> • Counter Display and Standees
> • Dump Bins
> • Half and Full Pallet Displays
> • Conventional corrugated cardboard boxes
> • Co-packing services
> • Transport services
> • Design services".[1]

16. I have before me, extracts from the company website, www.easypack.uk.com.[2] I note the following which illustrates the goods and services on offer:

[1] Witness statement of Christopher Hall, para 14
[2] Exhibit CJEH04



The website explains that the proprietor creates cardboard displays which can be used:

> "for sale of a single, focused product or to cater for multi-product merchandising. FSDU's provide additional shelf space, ideal for showcasing products on offer, regular or occasional promotions, Point Of Purchase near the till or in busy, high traffic retail areas".[3]

The following are examples of the proprietor's displays which are taken from the website:

[3] Exhibit CJEH04


£2.20
Ocean Spray
Cranberry Sauce
£1.00
TESCO


TUBBZ
OFFICIALLY LICENSED
#COSPLAYINGDUCKS

I also note that the proprietor provides counter displays, such as the following:



There is also information regarding the services on offer, including project management, design and production. I note that the proprietor's website details design and development services, as well as advice on displays meeting retailer approval and sign-off. I note that some of the goods on offer are flat-packed, whereas others are pre-assembled and there is the option for the goods to be pre-filled.

17. Mr Hall has provided a copy of the proprietor's annual report and financial statement for the year ending 31 March 2024.[4] I note that the company turnover for the year was £9,123,526 and the gross profit was £3,510,859. The 2024 annual report also contains the figures for the year ending 31 March 2023, during which the company turnover for the year was £8,557,700 and the gross profit was £3,743,688. I also have before me a spreadsheet setting out the proprietor's sales under the mark by Month from 2020 to 2024.[5] The figures are broken down into the following categories:

[4] Exhibit CJEH12
[5] Exhibit CJEH13

- **Sales – Display:**

  The design and manufacture of the display products listed at paragraph 13 above
- **Sales – Conventional:**

  The sale of conventional corrugated cardboard boxes
- **Sales – Cop-Packing:**

  The packing of customers' products into our displays
- **Sales – Transport:**

  The transportation/distribution of products and co-packed products to retailers
- **Sales – Conversion:**

  The conversion of board supplied by customers into display products
- **Sales – Factored:**

  Includes items where the manufacture has been subcontracted
- **Sales – Origination:**

  Includes charges for cutting tools and design
- **Sales – Other:**

  Includes sales from incidentals such as waste board

The spreadsheet shows as follows:

EASYPACK/POP DISPLAYS GROUP LIMITED
Sales By Type
November 2020 - October 2024

	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	2020-2021	
	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	% Sales
Sales - Display	£681,415	£624,877	£273,716	£412,725	£595,712	£471,829	£434,704	£465,250	£720,911	£808,074	£726,020	£853,597	£7,068,829	77.8%
Sales - Conventional	£68,632	£46,829	£71,623	£72,323	£60,518	£64,110	£69,317	£47,749	£38,301	£22,715	£36,451	£38,938	£637,505	7.0%
Sales - Co-Packing	£92,630	£15,522		£6,351	£82,829	£10,626	£10,586		£42,518	£1,129	£93,008	£66,876	£422,075	4.6%
Sales - Transport	£125,589	£39,735	£20,718	£17,296	£49,925	£51,202	£28,911	£14,364	£30,830	£41,025	£72,100	£79,743	£571,438	6.3%
Sales - Conversion	£1,554	£1,843	£2,263	£2,045	£2,860	£168	£5,357	£4,772	£953	£7,023	£9,760	£1,054	£39,652	0.4%
Sales - Factored	£55,272	£4,114	£3,230	£11,390	£11,748	£5,032	£8,316	£1,721	£5,759	£1,802	£5,613	£13,975	£127,972	1.4%
Sales - Origination	£13,688	£20,430	£8,253	£13,808	£16,819	£13,882	£15,844	£16,892	£19,668	£30,724	£19,195	£25,376	£214,579	2.4%
Sales - Other		£2,519		£1,756	£1,390			£881					£6,547	0.1%
GROSS SALES	£1,038,779	£755,869	£379,802	£537,694	£821,802	£616,849	£573,035	£551,629	£858,941	£912,492	£962,147	£1,079,559	£9,088,599	100%

	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	2021-2022	
	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	% Sales
Sales - Display	£801,944	£461,270	£344,701	£492,479	£593,504	£357,020	£536,968	£495,773	£511,452	£863,507	£730,851	£845,527	£7,034,996	78.1%
Sales - Conventional	£33,727	£20,665	£34,395	£29,399	£32,451	£27,170	£14,588	£12,620	£26,051	£25,896	£16,305	£52,623	£325,889	3.6%
Sales - Co-Packing	£109,430	£28,778	£5,625	£35,336	£104,243	£1,335	£106,881	£8,528	£26,764	£77,666	£28,949	£82,362	£615,897	6.8%
Sales - Transport	£82,415	£41,264	£17,578	£34,227	£81,398	£39,003	£139,048	£39,270	£38,453	£85,834	£51,941	£83,415	£733,845	8.1%
Sales - Conversion	£1,125	£647	£764	£2,114	£1,083	£583	£1,445	£1,315	£742	£1,509	£577	£1,057	£12,960	0.1%
Sales - Factored	£2,801	£5,077	£3,302	£2,875	£15,461	£2,856	£1,843	£4,598	£88	£7,614	£3,048	£5,775	£55,339	0.6%
Sales - Origination	£11,794	£10,044	£12,633	£16,976	£16,479	£10,824	£17,020	£14,365	£11,576	£38,834	£28,416	£32,519	£221,478	2.5%
Sales - Other			£1,275				£4,367						£5,642	0.1%
GROSS SALES	£1,043,236	£567,745	£420,272	£613,405	£844,618	£438,791	£822,161	£576,468	£615,126	£1,100,859	£860,087	£1,103,277	£9,006,045	100%

	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	2022-2023	
	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	% Sales
Sales - Display	£771,271	£350,387	£350,733	£335,086	£581,872	£384,396	£516,691	£513,157	£520,240	£778,104	£777,344	£916,150	£6,795,429	78.7%
Sales - Conventional	£25,463	£13,226	£35,236	£15,125	£24,481	£23,311	£10,054	£25,184	£27,971	£17,787	£26,495	£17,098	£261,430	3.0%
Sales - Co-Packing	£80,694		£34,345	£15,238	£51,622	£44,721	£24,654	£11,349	£71,297	£29,061	£46,987	£111,563	£521,531	6.0%
Sales - Transport	£90,905	£26,125	£33,189	£22,393	£66,990	£46,298	£48,781	£39,655	£58,104	£75,222	£82,673	£100,332	£690,666	8.0%
Sales - Conversion	£271	£1,757	£1,321	£1,777	£1,844	£845	£1,165	£1,637	£650	£1,468	£237	£1,489	£14,460	0.2%
Sales - Factored	£2,570	£204	£2,311	£1,845	£201	£2,165	£1,856	£180	£21	£813	£1,214	£1,330	£14,711	0.2%
Sales - Origination	£26,403	£12,873	£11,066	£17,921	£31,890	£17,191	£25,643	£19,797	£35,147	£43,992	£45,064	£42,396	£329,383	3.8%
Sales - Other	£840			£1,458						£1,993			£4,291	0.0%
GROSS SALES	£998,416	£404,572	£468,201	£410,842	£758,900	£518,927	£628,843	£610,960	£713,431	£948,440	£980,014	£1,190,357	£8,631,903	100%

	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	2022-2023	
	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	% Sales
Sales - Display	£751,602	£447,720	£535,251	£611,898	£605,561	£501,663	£620,135	£622,183	£865,262	£1,073,210	£943,177	£1,016,107	£8,593,768	80.7%
Sales - Conventional	£20,848	£10,943	£24,822	£19,189	£20,417	£30,080	£30,240	£31,236	£11,034	£14,280	£12,537	£23,698	£249,324	2.3%
Sales - Co-Packing	£29,547	£32,336			£35,626	£54,953	£95,961	£11,763	£37,378	£80,754	£96,572	£126,805	£601,694	5.7%
Sales - Transport	£71,745	£27,407	£41,264	£35,225	£75,261	£56,118	£86,323	£37,733	£61,942	£119,286	£75,676	£105,340	£793,320	7.5%
Sales - Conversion	£1,088	£1,338	£483	£1,453	£1,837	£817	£716	£141	£747	£160			£8,779	0.1%
Sales - Factored	£1,872	£554	£1,854	£2,782	£424	£18,005	£3,071	£779	£774	£1,308	£1,052	£2,931	£35,405	0.3%
Sales - Origination	£31,926	£13,177	£34,339	£23,774	£18,995	£17,481	£20,751	£31,838	£31,965	£61,900	£42,457	£36,548	£365,150	3.4%
Sales - Other						£843							£843	0.0%
GROSS SALES	£908,627	£533,475	£638,011	£694,320	£758,122	£679,960	£857,197	£735,672	£1,009,103	£1,350,897	£1,171,922	£1,311,429	£10,648,282	100%

Page 1 of 1

18. Mr Hall has also provided 37 invoices which are dated between 31 January 2020 and 26 February 2024.[6] I understand that these are a sample of the invoices available. The invoices amount to £523,799.96. All of the invoices display EASYPACK in the header, and sales are made to addresses across the UK. The invoices show various goods which have been sold, including different types of displays (both empty and pre-filled), mop trays, pallet buffers, hooks, sleeves and cutting forms.

19. I also have before me, marketing literature entitled "Bringing Practical Sustainable Innovation to YOUR In-Store Displays" which is also featured on the company website.[7] Mr Hall states:

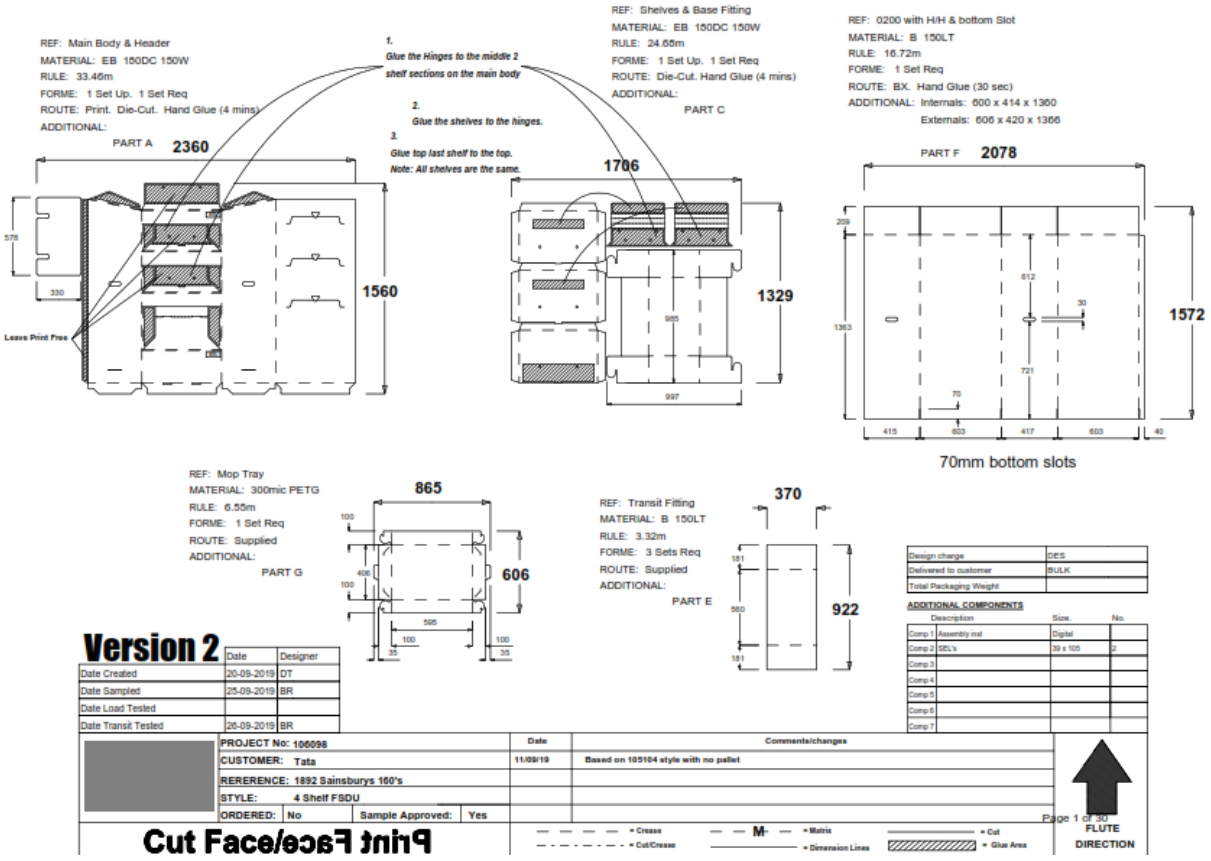
> "This document also explains the range of goods and services provided under the EASYPACK trade mark throughout the relevant period. This document identifies several of my Company's key clients namely, Aldi, Asda, Iceland, Lidl, GSK, Sainsbury's, Cadbury, Costco, P&G, Tesco, Henkel, B&Q, Lego, Diageo, Morrisons and Mug Shot. This document was created in 2016 and refreshed in 2022 and is shared with new contacts and prospective customers".[8]

I note that examples of the creative displays have been provided within the literature, and these refer to winning gold, silver and bronze awards at the POPAI awards in 2019, 2021 and 2022. These awards are based within the UK and Ireland. I also have before me additional literature which Mr Hall states is featured on the company website which was created in 2015 and refreshed in 2019 and is shared with new contacts and customers.[9]

20. I understand that the proprietor also supplies its own specification sheets and cutter guides (which I understand is a precise technical blueprint to show where printed material should be cut and folded).[10] I note that assembly instructions are also provided for flatpack displays, and Mr Hall states that the specification sheets are

[6] Exhibit CJEH14
[7] Exhibit CJEH5
[8] Witness statement of Mr Hall, para 16
[9] Exhibit CJEH6
[10] Exhibit CJEH7

shared with customers if required, and cutter guides are shared with customers if they are going to undertake their own artwork. An example of such a guide is as follows:



21. Mr Hall states that the proprietor has won several POPAI industry awards for its confectionary displays during the relevant periods. The details are as follows:[11]

- Green & Blacks Valentines Theatre – Gold Award 2021
- Cadbury Inventor Theatre Display – Bronze Award 2022
- Cadbury Merlin Sealife Theatre Display – Gold Award 2022
- Cadbury FC WADITB Theatre Display – Silver Award 2023
- Cadbury Merlin Tiger Display – Gold Award 2023

[11] Exhibit CJEH10

FORM OF THE MARK IN USE

22. Before I move on to assess the sufficiency of the evidence, I shall begin by addressing the way in which the contested mark has been used in relation to the relevant goods and services in evidence.

23. In *Colloseum Holdings AG v Levi Strauss & Co.,* Case C-12/12, which concerned the use of one mark with, or as part of, another mark, the Court of Justice of the European Union ("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*, 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.
>
> 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, 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)." (emphasis added)

24. The contested mark is a word only mark presented in upper case. The mark is also shown as follows throughout the evidence:



25. The above variation is a figurative mark in which the word "Easypack" is presented in a bold black font, in title case. This variation also includes the letters POP to the left-hand side, each of which has a different colour background. Underneath the word, "Easypack", is the word "Displays" in a bold black font. I consider that the additional word, "Displays", will be understood as being descriptive of the goods/services on offer which relate to display packaging. The letters, POP, to the left-hand side of the word, will either be considered as meaningless by the average consumer, or will be given its ordinary dictionary meaning, although it might not be clear to the average consumer how that word is relevant for the goods and services in question. I consider that POP will be perceived independently from the words EASYPACK and DISPLAY. I consider that the word "EASYPACK" remains the distinctive and dominant element of the figurative mark, as due to my findings above, it will be the element of the mark that is perceived as denoting the origin of the goods and services. I find that this figurative form is therefore an acceptable variation of the mark and is use upon which the proprietor can rely.

GENUINE USE

Assessment of Evidence

26. With regard to the evidence of use submitted, I must now consider if it sufficiently demonstrates genuine use, whilst reminding myself that use does not have to be quantitively significant to be genuine. The burden is on the registered proprietor to prove that it has used its mark within the relevant periods.

27. Whether the evidence is sufficient for this purpose will depend on whether it demonstrates that there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the UK during the relevant five-year periods. In making this assessment, I am required to consider all relevant factors, including:

- The scale and frequency of the use shown;
- The nature of the use shown;
- The goods for which use has been shown;
- The nature of those goods and the market(s) for them; and
- The geographical extent of the use shown.

28. The evidence before me does have its limitations. There are no details in relation to the size of the relevant market or the share of that market held by goods/services bearing the proprietor's mark, and neither do I have information of the proprietor's marketing activities, aside from some very limited information relating to literature which is available to view on the proprietor's website (although I have no information as to how many people have viewed this). The applicant submits that the proprietor's mark should be revoked due to non-use.

29. The proprietor has provided a selection of invoices relating to sales between 2020 and 2024. These invoices amount to £523,799.96 in total. The proprietor has also provided their total turnover figures for the goods/services which I note are in the millions per annum, being £8,557,700 in 2023 and £9,123,526 in 2024. The proprietor

submits that the above figures relate to sales within the UK, and that the invoices provided represent a sample of those available.

30. The proprietor has provided evidence of the mark on sale and has included images of its displays being used in different outlets within the UK, including major UK supermarkets and retailers. I also have evidence before me of multiple awards that the proprietor has won in respect of its confectionary displays.

31. The proprietor's evidence indicates that it has traded in goods/services bearing the "EASYPACK" mark, and that goods/services, such as packaging, display boxes and point of purchase displays were first available from 1978, and in the current point of sale form from 2009. It is clear from the evidence that this is a long-standing, successful business with high turnover figures, geographical use throughout the UK and customers which include large UK supermarkets and retailers. Despite the fact that I do not have much in the way of marketing information or investment in advertising before me, and there is also no evidence of market share within the relevant periods, I am of the view that the evidence of use, when taken as a whole (and particularly considering the turnover figures provided which are in the millions, continuity and length of use, and sales to major UK supermarkets and retailers), is sufficient to show genuine use of the mark within the UK during the revocation periods claimed by the applicant.

FAIR SPECIFICATION

32. I must now consider whether, or the extent to which, the evidence shows use of the marks at issue in relation to the goods and services relied upon. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*,[12] 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

[12] BL O/345/10

the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned."

33. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal set out the proper approach to partial revocation, 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 subcategories.

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."

34. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch) at [47], the late Carr J pointed out that it is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do; for example, in *Pan World Brands v Tripp Ltd (Extreme Trade Mark)* [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally.

35. I note the opponent's specification is as follows:

Class 16 Cardboard packaging boxes in collapsible form; cardboard packaging boxes in made-up form; packaging containers of card; adhesive packaging or wrapping tape; lining papers for packaging or wrapping; display boxes of cardboard; display banners of paper or cardboard; parts and fittings for the aforesaid goods; all of the foregoing for use as point-of-sale displays or for corrugated transit packaging.

Class 20 Wooden or plastic packaging boxes in collapsible or made-up form for use as point-of-sale displays or corrugated transit packaging; display furniture, frames, panels, boards, racks, racking, stands, cabinets, cases, shelves, trays, tables, units, screens and counters; assembled or folding display units; point of sale and point of purchase displays; non-metallic shop display fittings; non-metallic displays, stands and signage; floor units of cardboard for displaying merchandise; kits of parts for assembly into display stands; parts and fittings for the aforesaid goods.

Class 39 Transport; storage of goods; distribution services; packing and packaging and wrapping services relating to point-of-sale displays or corrugated transit packaging; information, advisory and consultancy services in respect of the aforementioned services.

Class 42 Point of purchase and point of sale display design services; packaging design services relating to point-of-sale displays or corrugated transit packaging; advisory and consultancy services in respect of the aforementioned services.

36. From the evidence it is clear that the proprietor provides goods/services including display boxes of various materials which are used as point of purchase displays, as well as design services for the same, and this is reiterated throughout the evidence. However, the evidence does not extend to some of the specific goods/services that they have within their specification. For example, I do not have any evidence before me that the proprietor provides the class 16 goods including wrapping tape or lining papers, although I accept that they may use the same. Neither do I have any evidence before me that the proprietor sells display furniture in the form of frames, panels, boards, racks, racking, stands, cabinets, cases, shelves, trays, tables, units, screens and counters.

37. I have considered the specification and the use before me, and I am satisfied that the evidence shows use in the form of display units, corrugated cardboard boxes, co-packaging services, transport services, design services, packaging of customers products into the proprietor's display, transportation of the customers co-packed products to retailers and conversion of board supplied by customers into display products. I consider that the below is a fair specification of the goods/services upon which the proprietor may rely:

Class 16 Cardboard packaging boxes in collapsible form; cardboard packaging boxes in made-up form; packaging containers of card; display boxes of cardboard; display banners of paper or cardboard; parts and fittings for the aforesaid goods; all of the foregoing for use as point-of-sale displays or for corrugated transit packaging.

Class 20 Wooden or plastic packaging boxes in collapsible or made-up form for use as point-of-sale displays or corrugated transit packaging; assembled or folding display units; point of sale and point of purchase displays; non-

metallic shop display fittings; non-metallic displays, stands and signage; floor units of cardboard for displaying merchandise; kits of parts for assembly into display stands; parts and fittings for the aforesaid goods.

Class 39 Transport; storage of goods; distribution services; packing and packaging and wrapping services relating to point-of-sale displays or corrugated transit packaging; information, advisory and consultancy services in respect of the aforementioned services.

Class 42 Point of purchase and point of sale display design services; packaging design services relating to point-of-sale displays or corrugated transit packaging; advisory and consultancy services in respect of the aforementioned services.

CONCLUSION

38. This application was brought under section 46(1)(a) and (b) of the Act. I am satisfied that the proprietor has provided evidence sufficient to maintain the registration for those aforementioned goods/services in accordance with the provisions of the Act. The proprietor did not show use for some of the goods in its registration, which are to be revoked from the earliest date from which revocation can take effect, which is the day following the fifth anniversary of completion of the registration procedure of the mark.

39. With effect from **8 April 2022**, UKTM no. 3189733 is partially revoked for the following goods:

Class 16 Adhesive packaging or wrapping tape; lining papers for packaging or wrapping.

Class 20 Display furniture, frames, panels, boards, racks, racking, stands, cabinets, cases, shelves, trays, tables, units, screens and counters.

40. UKTM no. 3189733 shall remain registered for the following terms:

Class 16 Cardboard packaging boxes in collapsible form; cardboard packaging boxes in made-up form; packaging containers of card; display boxes of cardboard; display banners of paper or cardboard; parts and fittings for the aforesaid goods; all of the foregoing for use as point-of-sale displays or for corrugated transit packaging.

Class 20 Wooden or plastic packaging boxes in collapsible or made-up form for use as point-of-sale displays or corrugated transit packaging; assembled or folding display units; point of sale and point of purchase displays; non-metallic shop display fittings; non-metallic displays, stands and signage; floor units of cardboard for displaying merchandise; kits of parts for assembly into display stands; parts and fittings for the aforesaid goods.

Class 39 Transport; storage of goods; distribution services; packing and packaging and wrapping services relating to point-of-sale displays or corrugated transit packaging; information, advisory and consultancy services in respect of the aforementioned services.

Class 42 Point of purchase and point of sale display design services; packaging design services relating to point-of-sale displays or corrugated transit packaging; advisory and consultancy services in respect of the aforementioned services.

COSTS

32. I consider that the proprietor has enjoyed a greater measure of success, and it is therefore entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Note 1/2023. In the circumstances, I award the registered proprietor the sum of £1,200 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a counterstatement & considering the other side's statement:	£250
Preparing evidence:	£600
Preparing submissions-in-lieu:	£350

Total	**£1,200**

41. I therefore order Kilburn & Strode LLP to pay Easypack/POP Displays Group Limited the sum of £1,200. 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 25th day of September 2026

LA Bailey

For the Registrar