BL O/1101/24

TRADE MARKS ACT 1994

IN THE MATTER OF
UK TRADE MARK REGISTRATION No. 3757659
IN THE NAME OF
MOVEGA REMOVALS LTD
FOR THE TRADE MARK:

IN CLASSES 35 and 39

-AND-

AN APPLICATION FOR A DECLARATION OF THE INVALIDITY THEREOF
UNDER No. 506378
BY
EUROPEAN MOVING LIMITED (MALTA)

Background and pleadings

1. MOVEGA REMOVALS LTD (**"the Proprietor"**) is the registered proprietor of the UK trade mark shown on the cover page of this decision. The trade mark was filed on 22 February 2022 (claiming a priority date of 11 February 2022 from its European Union Trade Mark No. 18652744) and completed its registration procedure on 20 May 2022. It is registered in respect of the following services in Classes 35 and 39:

> Class 35
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> Business management of logistics for others; Business intermediary services relating to the matching of various professionals with clients; Commercial intermediation services.
>
> Class 39
>
> Transportation logistics; Transportation and delivery of goods; Freight and cargo transportation and removal services; Services for the arranging of transportation; Road transport services; Services for arranging transportation by road; Storage and delivery of goods; Storage of packages.

2. European Moving Limited (Malta) (**"the Applicant"**), has applied to have the Proprietor's mark declared invalid under section 47 of the Trade Marks Act 1994 (**"the Act"**). The application is based on sections 5(1), 5(2)(a) and 5(2)(b) of the Act (as detailed below) and is directed against all of the services for which the mark is registered.

3. On 23 January 2023, the Applicant filed its application of invalidity (Form TM26(I)). There were several deficiencies with the Applicant's form and statement of grounds, in particular:

(1) the Applicant had sought to invalidate two of the Proprietor's marks, namely UK trade mark number 3757663 and 3757659. Given that trade mark number 3757663 was the first number the Applicant had listed on the form, the Registry recorded the Form TM26(I) against that registration, and allocated it proceedings number 505757.[1] Since it is not permissible to file a single form to apply to invalidate multiple trade mark registrations (rather, only one form per

[1] These proceedings have since been deemed withdrawn.

mark is permitted), the Applicant was informed that if it also wished to seek to invalidate the second mark, then it would be required to file an additional Form TM26(I) and pay the appropriate fee.[2]

(2) the Applicant had indicated in the Form TM26(I) that it wished to rely on its comparable trade mark (EU)[3], namely UK trade mark registration number 918053668 (a figurative mark containing the wording 'European Moving Man & Van Exchange'). However, in its statement of grounds accompanying its form it had additionally referenced its UK trade mark registration number 918053698 (a figurative mark containing the wording 'APP A VAN'), also a comparable trade mark (EU). The Registry informed the Applicant that if it also wished to rely on the latter, then it would be required to complete the relevant supplementary pages to accompany its Form TM26(I).[4]

4. Following various exchanges of correspondence with the Registry between January 2023 and June 2023 (in which the Applicant made amendments to the application, including amendments to the statement of case, the removal of representative details,[5] and an amendment of the Applicant's contact details[6]) the Applicant ultimately did not elect to file any supplementary pages to confirm its additional reliance on UK trade mark registration number 918053698 (the 'APP A VAN' mark). Consequently, as set out in the Registry's official letter to the Applicant dated 3 August 2023, the Registry proceeded solely on the basis of the Applicant's reliance on its registered UK trade mark number 918053668 (the 'European Moving Man & Van Exchange' mark), not least because it was the only earlier trade mark indicated in the Form TM26(I),[7] and it

[2] As per the Registry's official letter dated 7 March 2023 – sent under proceedings number 505757.
[3] Following the end of the transition period of the UK's withdrawal from the EU, all EU trade marks ("EUTM") registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A 'comparable trade mark (EU)' retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.
[4] As per the Registry's official letter dated 7 March 2023 – sent under proceedings number 505757. I note that section A of Form TM26(I) even states that *"you must use a separate sheet for each earlier mark, so copy this sheet as many times as you need"*.
[5] Which had initially erroneously included the Proprietor's representatives; were then amended to include the name Daniel Blanche; and finally all representative details were removed.
[6] Which had initially erroneously included the Proprietor's contact details; and were ultimately amended to the Applicant's address in Malta (being a company registered in Malta), with a contact email address of 'movega@movega-removals.co.uk'. I note that in accordance with Tribunal Practice Note 2/2020 the address in Malta was accepted as a suitable address for service.
[7] Under sections A and B of the form.

appeared that the 'APP A VAN' mark was being referenced to provide background information.[8]

5. Furthermore, the Applicant did not file a second Form TM26(I) to also direct a claim against UK registered trade mark number 3757659 (i.e. the mark that was listed second on its Form TM26(I) filed on 23 January 2023), rather, on 24 March 2023, the Applicant confirmed that it was electing to alternatively direct its claim solely against that second mark (being the trade mark on the cover page of this decision). This amendment therefore led to the creation of separate proceedings under number 506378 i.e. the proceedings subject of this decision.[9] The other proceedings against UK trade mark number 3757663 (proceedings number 505757) were consequently deemed withdrawn.

6. Therefore, the present proceedings relate to an application to invalidate the Proprietor's UK trade mark registration number 3757659, and in these proceedings the Applicant relies solely on its comparable trade mark (EU) shown below, UK trade mark registration number 918053668, which was filed on 18 April 2019 and became registered on 22 August 2019.

7. It is registered in respect of services in Classes 39 and 42, which are set out below. The Applicant relies on all the services for which its mark is registered.

> Class 39
>
> Agency services for arranging the transportation of goods; Advisory services relating to the transportation of goods; Transportation; Moving van transport; Removal services [moving services]; Information relating to transport services; Removal services; Furniture moving; Porterage; Removal of office equipment;

[8] The reasoning provided by the Registry for this approach was communicated to the Applicant in the Registry's official letter dated 3 August 2023 – sent under the present proceedings, number 506378.
[9] Which was confirmed in the Registry's official letter dated 3 August 2023.

Removal of household goods; Removal of personal effects; Providing information relating to removal services; Packaging services; Packaging articles for transportation; Rental of packing or wrapping machines and apparatus; Pallet packaging services; Packing and packaging services; Wrapping and packaging services; Packaging and storage services; Packaging clothing articles for transportation; Shipping; Freight shipping; Shipping agency; Shipping services; Parcel shipping services; Shipping of cargo; Arranging for the shipping of cargo; Messenger courier services; Courier services for the transportation of cargo.

Class 42

Platform as a Service [PaaS]; Hosting platforms on the Internet; Development of computer platforms; Programming of software for Internet platforms; Software as a service [SaaS]; Rental of computer software; Hiring of computer firmware; Rental of web servers; Rental of memory space for websites; Rental of a database server (to third parties); Rental of operating software for accessing and using a cloud computing network; Software development, programming and implementation; Hosting services, software as a service, and rental of software; Computer services for the analysis of data; Maintenance of computer software; Design of computer machine and computer software for commercial analysis and reporting; Computer software consultancy; Updating of computer software; Computer software design.

8. By virtue of its earlier filing date, the trade mark upon which the Applicant relies qualifies as an earlier trade mark pursuant to section 6 of the Act. As it had not been registered for five years or more at the filing date of the application for invalidation, the earlier mark is not subject to the use conditions set out in section 47(2A) of the Act as modified by paragraph 9 of Schedule 2A of the Act.

9. The claim for invalidation was initially based on the following sections of the Act:

- 5(1)
- 5(2)(a)
- 5(2)(b)
- 5(3)
- 5(4)(a)
- 3(6)
- Section 3 ‘other grounds’ (which were not specified by the Applicant)
- 56
- 5(4)(b)

10. Despite the amendments made by the Applicant to its pleadings, the Registry was still of the view that some of the pleadings were not adequately particularised, such that in its letter to the Applicant of 3 August 2023, the Registry issued a preliminary view that *"all grounds other than sections 5(1), 5(2)(a), 5(2)(b) and 5(3) should be struck out from the proceedings as insufficient information has been provided."*[10] This is because parties must know in detail the case they have to answer or the basis on which an attack is defended/accepted.[11] In this regard I note the following comments of Mr Geoffrey Hobbs K.C. sitting as the Appointed Person in *Demon Ale*:[12]

> "Considerations of justice, fairness, efficiency and economy combine to make it necessary for the pleadings of the parties in Registry proceedings to provide a focussed statement of the grounds upon which they intend to maintain that the Tribunal should or should not do what it has been asked to do".

11. The Registry's official letter of 3 August 2023 gave the Applicant an option to be heard in the event that it wished to challenge the preliminary view, and set out directions for the Applicant to amend the Form TM26(I) in line with the preliminary view if no hearing was requested.

12. No challenge was made to the preliminary view, no hearing was requested, and no amended Form TM26(I) was received by the Registry. Consequently, on 8 September 2023 the Registry wrote to the Applicant to confirm that the preliminary view was being upheld,[13] enclosing a copy of the Form TM26(I), which the Registry had amended in accordance with the preliminary view, (**"the 8 September Letter"**). The amended form was therefore served on the Proprietor.

13. The Proprietor filed a Form TM8 defence and counterstatement on 19 September 2023.[14] In its counterstatement the Proprietor conceded that the Applicant's Class 39 *"may be considered to cover services* […] *that are similar or identical to the*

[10] For example, the statement of case alluded to an employment contract dispute; and amongst other things, alleged the theft of algorithms and a database purported to have been created by the Applicant.
[11] *NASA* [2000] RPC 21.
[12] [2000] RPC 345.
[13] Sent to the Applicant's email address included in its latest Form TM26(I) filed on 26 June 2023 i.e. 'movega@movega-removals.co.uk', being the email address chosen by the Applicant for the purposes of these proceedings.
[14] Which the Proprietor duly copied to the Applicant's email address: 'movega@movega-removals.co.uk'.

[Proprietor's] *services* […] *in Class 39"*. However, it denied that the marks are identical, and it denied that they are similar. In addition, it requested that the Applicant provide evidence to support its claims under section 5(3) of the Act.

14. The Proprietor's Form TM8 was served on the Applicant on 6 October 2023, and the evidence rounds were set.[15] The Applicant did not file any evidence by the 6 December 2023 deadline, neither did it request additional time in which to file evidence. The Registry therefore issued a preliminary view that the application would be deemed withdrawn in respect of section 5(3) of the Act.

15. The preliminary view was issued in accordance with Rule 42(4) of the Trade Mark Rules 2008 which provides that section 5(3) is a ground which is dependent on evidence to support and substantiate the claim being made, and failure to file evidence in respect of this ground will result in an applicant being deemed to have withdrawn the invalidation based on this ground i.e. without evidence, this claim cannot proceed since the reputation of a mark cannot be proven with a bare assertion. The Applicant made no challenge to the preliminary view, therefore the section 5(3) claim was deemed withdrawn and the proceedings continued solely in respect of claims under sections 5(1), 5(2)(a) and 5(2)(b) of the Act.[16]

16. Only the Proprietor elected to file submissions during the evidence rounds and neither party filed evidence. The Proprietor requested a hearing at the conclusion of the evidence rounds. A hearing was duly appointed and, in its official letter dated 22 May 2024 notifying the parties of the date of the hearing, the Registry gave a deadline of 2 July 2024 by which the parties should file submissions if they so whished.[17]

[15] The TM8 was sent to the Applicant using the email correspondence address held on file being 'movega@movega-removals.co.uk'.
[16] The Applicant was notified of this in the Registry's official letter dated 19 January 2024 which was sent by post (to the Applicant's address in Malta); and by email (to 'movega@movega-removals.co.uk'). However, the email bounced-back, being returned undelivered. The Registry re-sent the letter on 25 January 2024 by email (again to 'movega@movega-removals.co.uk') – the second attempt did not result in a bounce-back, therefore it was treated by the Registry as having been transmitted successfully.
[17] The parties were notified on 22 May 2024 that a hearing had been appointed to be held on 4 July 2024. The notification was sent to the Applicant by email, using the email correspondence address held on file being 'movega@movega-removals.co.uk'.

17. A hearing took place before me on 4 July 2024 by videoconference, at which the Proprietor was represented by Mr Abdulmalik Lawal of Franks & Co Limited. The Proprietor filed skeleton arguments in advance of the hearing. The Applicant has no representative on record and has represented itself throughout the proceedings via one of its shareholders, Mr Daniel Blanche (a litigant in person), however the Applicant did not attend the hearing and did not file any submissions in lieu of attendance.

18. I make my decision following a careful consideration of the papers before me,[18] and the oral submissions made by the Proprietor's representative at the hearing.

Preliminary Issue

The Applicant's claim that it had not been in receipt of the Registry's correspondence

Background

19. I have already noted in the background and pleadings section of this decision that prior to the proceedings having been served on the Proprietor, the Applicant made several amendments to its Form TM26(I). These amendments included the following:

(1) the removal of representative details - which had initially erroneously included the Proprietor's representatives; were then amended to include the name Daniel Blanche with an email address of 'd.blanche@appavan.eu' (as per the amended TM26(I) filed on 9 February 2023); and finally all representative details were removed (as per the TM26(I)s filed on both the 24 March 2023 and 26 June 2023); and

(2) the amendment of the Applicant's contact details. These included amendments to the email correspondence address. It is noted the email address was amended several times by the Applicant, from its originally erroneous inclusion of the Proprietor's address in the Form TM26(I) filed on 23 January 2023, to 'd.blanche@appavan.eu' (as per the amended Form TM26(I) filed on 9 February 2023), then it was amended to 'db@appavan.eu' (as per the

[18] Including the TM26(I) as amended in line with the Registry's implementation of its preliminary views.

amended Form TM26(I) filed on 24 March 2023) and finally, it was amended to 'movega@movega-removals.co.uk' (as per the last amended Form TM26(I) filed by the Applicant on 26 June 2023).[19]

20. Given that the Applicant had removed the representative details, all correspondence would by default revert to being sent to the Applicant itself, using the postal and email contact details provided for the Applicant in the Form TM26(I) (which, as I have mentioned, was last amended by the Applicant as at 26 June 2023). In its official letter of 3 August 2023 (which I have previously referenced), the Registry wrote the following (my emphasis for clarity):[20]

> "It is noted on the amended form TM26I [filed on 26 June 2023] you have removed reference to a representative in box 4, therefore all correspondence would be sent to 'movega@movega-removals.co.uk', as your email was sent from 'd.blanche@appavan.eu' as per the original TM26I, I am sending this letter to both emails. Please can you confirm where you wish correspondence to be sent. If you wish for correspondence to be sent to 'd.blanche@appavan.eu' you will need to recomplete box 4 as previous forms show. **If you wish for correspondence to be sent to 'movega@movega-removals.co.uk', no action is required."**

21. The Applicant made no request to amend the contact email address in these proceedings, consequently the Registry continued to correspond with the Applicant using the 'movega@movega-removals.co.uk' email address provided.[21]

The Applicant's email dated 10 June 2024

22. Following the Registry's 22 May 2024 letter to the parties notifying them of the date for the substantive hearing, the Registry wrote to the parties again on 10 June 2024,

[19] These Form TM26(I)s were all filed under proceedings number 505757. It is the final amended form, filed on 26 June 2023, that led to the creation of the current proceedings, under number 506378, thus the details captured in that form were the details carried forward to the proceedings number 506378, as confirmed in the Registry's 3 August 2023 letter to the Applicant.
[20] It is noted that the Form TM26(I) filed on 26 June 2023 was sent from the 'd.blanche@appavan.eu' email address.
[21] Which was in any event the address provided by the Applicant in its latest Form TM26(I), it being a form which was accompanied by a statement of truth signed by Mr Blanche i.e. stating that the facts provided in the form are true.

this time providing information to facilitate a smooth running of the hearing. The letter was emailed to the Applicant's email address 'movega@movega-removals.co.uk'. In an email of the same date, a reply was received by the Registry from Mr Blanche (the reply having come from the 'movega@movega-removals.co.uk' address) stating, inter alia, that he had not received any correspondence from the Registry either by letter or by email since 3 December 2023, and that the Registry's 10 June 2024 letter was found in the Applicant's 'junk mail'. He made reference to a *"correct UK address (as we already sent in the forms and you acknowledged in 2023)."* He also requested copies of the Registry's correspondence.

23. The Registry replied on 12 June 2024 by email and post,[22] resending the requested correspondence, re-confirming the date and time of the main hearing should the Applicant choose to attend and also re-confirming the deadline of 2 July 2024 for the filing of submissions. No response was received from the Applicant. Despite a lack of response, the Registry nevertheless emailed the Applicant (on the 2 July 2024 and again on 3 July 2024) the joining details for the hearing videoconference in the event that the Applicant chose to attend on the day.[23] No response was received and the hearing went ahead as scheduled.

<u>The alleged Tribunal correspondence dated 3 December 2023, and unrelated opposition proceedings</u>

24. No correspondence was sent from the Registry on the present invalidation proceedings on 3 December 2023, let alone anything in December 2023, and no 'forms' other than the Form TM26(I) application for invalidation of a trade mark, have been filed by the Applicant in these proceedings.

25. On 26 June 2023, Mr Blanche elected to remove representative details from the Applicant's Form TM26(I) and has not recorded anything to the contrary on the record for these invalidation proceedings since, thus, as I have previously mentioned, all correspondence reverted to being sent to the Applicant itself. Therefore, as set out in the Form TM26(I) which was last amended by Mr Blanche on the aforementioned date,

[22] Sent to the Applicant's addresses held on record for these proceedings (as provided by the Form TM26(I) filed by Mr Blanche on 26 June 2023), namely the 'movega@movega-removals.co.uk' email address and the registered address for service in Malta.
[23] The emails were sent to the email address on file i.e. 'movega@movega-removals.co.uk'.

the email correspondence address for European Moving Limited (Malta) is 'movega@movega-removals.co.uk' and the only postal address entered on the TM26(I) is an address in Malta. These are therefore the addresses held on record in these proceedings and are the addresses the Registry has been using to correspond with the Applicant for the purpose of these proceedings.

26. When filing its Form TM26(I), the Applicant had inserted UK trade mark application number 3740709 (shown below) into section 5 of the form, designated for information about 'related proceedings' (the trade mark application has since been deemed withdrawn).

27. Although this application does not constitute 'related proceedings' according to the meaning intended by section 5 of Form TM26(I), I note that the application was opposed by MOVEGA REMOVALS LTD,[24] being the Proprietor in the present invalidation proceedings, and that Mr Blanche is the representative on record for the trade mark applicant (UK registered company 'MOVEGA (UK) LIMITED'[25]).

28. Having reviewed the Registry's records, I note that 'MOVEGA (UK) LIMITED' has the same email address as 'European Moving Limited (Malta)', namely 'movega@movega-removals.co.uk' (for ease of reference I have included the addresses held on record for 'MOVEGA (UK) LIMITED' and 'European Moving Limited (Malta)' in Annex 1 of this decision, as well as the representative details held on record for 'MOVEGA (UK) LIMITED').

29. I note that the contact details for trade mark application number 3740709 held in the name of 'MOVEGA (UK) LIMITED' were provided by Mr Blanche *"in 2023"* by the filing of Form TM16 to record a change of ownership, dated 27 June 2023 (which coincidentally is the day after he filed the latest amended version of the Applicant's

[24] Opposition number 432242.
[25] Previous names having been recorded on the Register as 'MOVEGA REMOVALS LIMITED' and 'NEVENA DANIELOVA ZHELEVA LIMITED'.

Form TM26(I)). I also note that in those opposition proceedings Mr Blanche had subsequently filed a Form TM55 (notice of appeal to the Appointed Person) dated 10 November 2023 and was received by the Registry on 24 November 2023. The email address Mr Blanche provided in that form was also 'movega@movega-removals.co.uk' and the email address used by him when corresponding with the Registry in relation to the filing of that form was 'movega@movega-removals.co.uk'.

30. I have been able to ascertain that it is in those separate opposition proceedings that the Registry wrote to Mr Blanche on 3 December 2023,[26] in his capacity as the representative for MOVEGA (UK) LIMITED. It is therefore apparent that Mr Blanche has conflated the present invalidation proceedings with the separate opposition proceedings.

31. It also appears that this is not the only time during these proceedings that Mr Blanche has conflated the separate opposition proceedings with these invalidation proceedings. For example, on 19 September 2023 (the same date the Proprietor filed its Form TM8 with the Registry defending the invalidation claim, copying it to the Applicant), Mr Blanche emailed the Registry stating that he had already filed his 'Form TM8'. It could be that he was referring to the separate opposition proceedings in which he was required (as the representative for MOVEGA (UK) LIMITED) to file a Form TM8 to defend the opposition.

32. Whilst his response appears misguided, it nonetheless confirms that the 'movega@movega-removals.co.uk' email address was functioning and that he was in receipt of the '8 September Letter'.[27] This is because Mr Blanche's 19 September 2023 email was actually sent in reply to the '8 September Letter', as it not only included the Registry's 8 September email in the email chain, but also retained the Registry's original reference - which was that of these invalidation proceedings. I include Mr Blanche's email of 19 September 2023 (and related chain) in Annex 2 of this decision for ease of reference.

[26] Via email sent to 'dblanche68@googlemail.com' and 'movega@movega-removals.co.uk' – those being the email addresses held on record for the opposition case (see Annex 1 of this decision).
[27] i.e. the letter confirming that the preliminary view to strike out all grounds other than sections 5(1), 5(2)(a), 5(2)(b) and 5(3) of the Act.

Delivery of email and postal correspondence

33. In accordance with Rule 79 of the Trade Mark Rules 2008, the delivery of any document/communication by electronic means is deemed to be effected immediately upon transmission of the communication (unless the contrary is proved).

34. Email correspondence that is filtered through to junk mail is still email correspondence that has been successfully transmitted. Therefore, an email that is filtered to junk mail is not tantamount to email correspondence that has failed to deliver, which is different.[28] Consequently, the responsibility lies with the Applicant (as with any party to proceedings) to periodically check the settings of its electronic inbox to ensure that the Registry's emails are not being filtered to 'junk mail', and the responsibility lies with the Applicant to periodically check its junk mail folder so it doesn't miss any emails, especially as certain email inboxes can be set up to periodically delete junk mail. A failure and/or omission to properly manage an email inbox, resulting in a person not having seen an email that was successfully transmitted to them, does not negate the fact that the email was transmitted.

35. The Applicant provided the email address 'movega@movega-removals.co.uk' to be used by the Registry to correspond with it. It was told (on 3 August 2023) that if it wished the Registry to continue to correspond with it using that address, then it need not take any action – it did not take any action. Mr Blanche has stated that he found the Registry's email of 10 June 2024 sent to 'movega@movega-removals.co.uk' in the 'junk mail' folder. However, the fact that he was able to retrieve it means that the email was successfully transmitted, which goes to the point I have previously stated about emails being filtered to junk mail are still emails that were successfully transmitted, and to my point about management of email inboxes and junk mail settings.

36. With regard to postal correspondence, I note that in order to comply with section 7 of the Interpretation Act 1978, a postal letter is deemed to have been sent by properly addressing the letter, paying the postage and sending that letter to the relevant

[28] On the invalidation case file, there are only two instances of correspondence sent by email to 'movega@movega-removals.co.uk' which were returned undelivered (dated 19 January 2024 – which was re-sent on 25 January 2024; and 21 February 2024). In both instances, the Registry also sent the correspondence to the Applicant's chosen registered address for service in Malta.

address (unless the contrary is proved).[29] The Registry's postal letters were sent to the Applicant to its recorded address in Malta,[30] and postage was duly paid by the Registry, thus complying with the 1978 Act.

Conclusions

37. These proceedings have been significantly reduced in scope, from a multitude of grounds which were originally pleaded under the Act, to just three grounds. I have already noted that the Registry confirmed the implementation of its preliminary view to strike out all claims other than sections 5(1), 5(2)(a), 5(2)(b) and 5(3) in the '8 September Letter' – which the Applicant had received; following which, the Applicant was informed on 6 October 2023 of its deadline to file evidence by 6 December 2023.[31] Taking all the foregoing into account, it is clear that the Applicant can be deemed to have been in receipt of official correspondence from the Registry notifying it (on both occasions) that the scope of its claim had been reduced; and it can be deemed to have been in receipt of the Registry's letter setting the deadline of 6 December 2023 to file evidence to support its section 5(3) claim.

38. Therefore, since the Applicant was in receipt of the '8 September Letter', and can at least be deemed to have been appropriately notified of its opportunity to contend the Registry's preliminary view to strike out the section 5(3) claim (and the subsequent implementation of that preliminary view), I am satisfied that the only claim the Proprietor had to respond to was that of a claim for invalidation under section 47 of the Act based on sections 5(1), 5(2)(a) and 5(2)(b) only. The parties were therefore ready to proceed on that basis and the hearing duly went ahead.

39. As a matter of completeness I note that, for reasons that will become apparent later in my decision, even if the Applicant had adduced evidence to support its claim based on section 5(3), and such evidence satisfactorily established that the earlier

[29] Proof of delivery of postal correspondence is not required - see the comments of Amanda Michaels sitting as the Appointed Person in Case BL O/0051/23, paragraph 29.
[30] The address having satisfied the provisions of Tribunal Practice Note 2/2020 as a suitable address for service.
[31] The 6 October 2023 notification date obviously predates the 3 December 2023 (the 3 December 2023 being the last date Mr Blanche states he received correspondence from the Registry).

trade mark relied on has a reputation, it would make no difference to the outcome of the proceedings and I will return to this point again at the end of my decision.

Assimilated law

40. 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.

DECISION

Legislation

41. Sections 5(1), 5(2)(a) and 5(2)(b) of the Act have application in invalidation proceedings pursuant to section 47(2) of the Act. The relevant provisions of the Act are as follows:

> Section 47
>
> "(2) […] the registration of a trade mark may be declared invalid on the ground
>
> > (a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain [...] unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.
>
> […]
>
> (5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.
>
> […]
>
> (6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made:
>
> Provided that this shall not affect transactions past and closed."

Sections 5(1), 5(2)(a) and 5(2)(b)

"5(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier trade mark is protected.

5(2) A trade mark shall not be registered if because-

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

Claim under sections 5(1) and 5(2)(a)

Identity of the marks

42. The respective trade marks are shown below:

Applicant's mark	Proprietor's mark
european moving Man & Van Exchange	MOVEGA REMOVALS COMPANY

43. It is a prerequisite of sections 5(1) and 5(2)(a) that the trade marks are identical. In *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, the Court of Justice of the European Union held that:

> "54... a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer."

44. The Proprietor's trade mark does not reproduce any of the elements present in the Applicant's trade mark. The difference between them is so significant that it is unequivocally self-evident that they are not identical.

45. As both section 5(1) and section 5(2)(a) of the Act require the marks to be identical, the Applicant's claims under these grounds falls at the first hurdle.

46. The claim for invalidation based upon sections 5(1) and 5(2)(a) therefore fails.

Claim under section 5(2)(b)

Case law

47. I am guided by the following principles which are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG,* Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the

imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of services

48. It is a requirement of section 5(2)(b) of the Act that the competing services be identical or similar to each other.

49. In *Gérard Meric v Office for Harmonisation in the Internal Market,*[32] ("***Meric***"), the General Court held to the effect that goods can be considered identical when the goods designated by the earlier mark are included in a more general category designated by the trade mark application, and vice versa (this principle equally applies to services).

50. I have already noted from the outset that in its counterstatement, the Proprietor conceded that the Applicant's Class 39 *"may be considered to cover services* […] *that are similar or identical to the* [Proprietor's] *services* […] *in Class 39"*. Mr Lawal reiterated this at the hearing. I agree with this assessment. Indeed, I find that at the very least, some of the competing services in the respective Class 39 specifications are identical, either because the terms themselves are identical, for example, both specifications share the same term *"removal services"*; or they are identical on the principle outlined in *Meric,* for example, the Applicant's specification contains the broad term *"transportation"* which encompasses the Proprietor's *"Transportation logistics; Transportation* […] *of goods; Freight and cargo transportation* […]*; Services for the arranging of transportation; Road transport services; Services for arranging transportation by road".*

51. Consequently, I will proceed on the basis that at least some of the services are identical.

Comparison of the marks

52. It is a prerequisite of section 5(2)(b) of the Act that the competing marks have some degree of similarity.

53. I have already set out the principles gleaned from established case law with regard to comparing competing marks visually, aurally and conceptually, whilst having regard to the overall impressions created by the trade marks, and bearing in mind their

[32] Case T- 133/05

distinctive and dominant components;[33] and in light of that overall impression and all factors relevant to the circumstances of the case, it is then necessary to assess the likelihood of confusion from the viewpoint of the average consumer of the relevant services at hand, and determine whether they are likely to be confused.[34]

54. The Proprietor submits the following, which I consider to be a fair assessment of the overall impression of the competing marks and adopt it as my assessment:[35]

> "20. The Proprietor's mark is a figurative mark, and consists of the words MOVEGA REMOVAL COMPANY, with a box in a red circle representing the letter 'O' of the term 'MOVEGA', and the term 'MOVEGA' being more prominent than the terms "REMOVALS" and "COMPANY".
>
> 21. The mark of the Cancellation Applicant is a figurative mark as well. The mark consists of the word elements "european", "moving", "Man", "&", "Van" and "Exchange", with the word elements "european" and "moving" being more prominent than the other word elements. The mark also includes 4 inwardly pointing arrows, with the diagonally opposite arrows being the same colour (either red or blue). In this case, the top left and bottom right arrows being red, and the top right and bottom left arrows being blue. The terms "european" and "moving" are also sandwiched between the upwardly facing arrows and the downwardly facing arrows on separate lines."

I conclude that the marks have different overall impressions.

55. With regard to a visual similarity, the Proprietor submits that:[36]

> "12. The only similarity between the marks arises from the use of the string "mov" in "MOVEGA" and "REMOVALS" in the Registration and in "moving" in the Cancellation Applicant's mark respectively."

56. Whilst I appreciate the Proprietor's diligence in attempting to point out a potential visual similarity, I bear in mind that it is necessary to take into account the distinctive

[33] See in particular *Sabel BV v. Puma AG*, Case C-251/95, paragraph 23.
[34] *Bimbo SA v OHIM*, Case C-591/12P, paragraph 34.
[35] Proprietor's TM8 and Counterstatement dated 19 September 2023.
[36] Proprietor's submissions dated 6 March 2024.

and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks. It would be wrong therefore to artificially dissect the trade marks since the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The fact that the competing marks coincide with regard to the string "mov" is negligible, and not sufficient for a finding of visual, nor aural similarity, particularly when bearing in mind that the competing marks have disparate overall impressions. The marks are therefore visually and aurally dissimilar.

57. With regard to a conceptual comparison, whilst I bear in mind that both marks allude to the services for which they are registered, and that (based on my finding that at least some of the respective services are identical) the parties operate in the same sector of trade, that is not sufficient for a finding that marks are conceptually similar, again bearing in mind that the marks have disparate overall impressions, and that they contain different words and different figurative elements. The marks are therefore conceptually different to each other.

58. Since some similarity between the marks is essential, it follows therefore that a finding of no similarity between the marks means that there is no likelihood of confusion to be considered. As a consequence, the application for invalidation must also fail under section 5(2)(b) of the Act.

59. As a matter of completeness I note that even an average consumer paying the lowest degree of attention when selecting identical services, would determine that the marks are not similar, and therefore would not be confused as to the trade origin of those services.

Final remarks

60. Returning to my earlier point in relation to a claim for invalidation based on section 5(3) of the Act,[37] I note that it is a prerequisite of section 5(3) that the contested trade mark be identical with, or similar to, an earlier trade mark. Therefore, even if the Applicant had established that its earlier mark has a reputation (through the filing of

[37] See my paragraph 39.

satisfactory evidence), a claim under section 5(3) of the Act would have also failed since the contested mark is neither identical nor similar to the Applicant's earlier mark.

OUTCOME

61. The application to have UK trade mark registration number 3757659 declared invalid under section 47 of the Act, based on sections 5(1), 5(2)(a) and 5(2)(b) of the Act fails in its entirety. Subject to any appeal against my decision, the contested mark will remain registered.

COSTS

62. The Proprietor has been successful and is entitled to a contribution towards its costs, based on the scale published in Tribunal Practice Notice No. 2/2016. In the circumstances, I award the Proprietor the sum of £1,400, which has been calculated as follows:

Preparation of the Notice of Defence and Counterstatement	£200
Preparing written submissions	£200
Preparing for and attending a hearing	£1,000
TOTAL	**£1,400**

63. I therefore order European Moving Limited (Malta) to pay MOVEGA REMOVALS LTD, the sum of **£1,400**. The 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 20th day of November 2024

Daniela Ferrari

For the Registrar

Annex 1

Addresses

Trade Mark Application No. 3740709 and the opposition thereto under No. 432242	
Trade Mark Record:	
Owner's details MOVEGA (UK) LIMITED *Postal address:* Folkestone, UK *Email address:* **movega@movega-removals.co.uk**	Representative's details **Daniel Peter Blanche** *Postal address:* Folkestone, UK *Email address:* d.blanche@appavan.eu
Opposition Record:	
Owner's details MOVEGA (UK) LIMITED *Postal address:* Folkestone, UK *Email address:* **movega@movega-removals.co.uk**	Representative's details **Daniel Peter Blanche** *Postal address:* Folkestone, UK *Email address:* dblanche68@googlemail.com
Invalidation proceedings No. 506378	
Invalidation applicant's details European Moving Limited (Malta) *Postal address:* Birkirkara, Malta *Email address:* **movega@movega-removals.co.uk**	Representative's details NONE PROVIDED

Annex 2

Email from Mr Blanche dated 19 September 2023

From: Daniel Blanche <dblanche68@googlemail.com>
Sent: 19 September 2023 11:42
To: Tribunalsection
Cc: Movega Removals Limited; Daniel Blanche @ App A Van
Subject: Re: Trade Mark Correspondence from the Intellectual Property Office (IPO) Cancellation No: CA000506378 Trade Mark No: UK00003757659

You don't often get email from dblanche68@googlemail.com. Learn why this is important

Hello,

You are mistaken, we already filed a TM8 and Counter-Statement months ago ?

Kind Regards

Daniel

We're raising money for 4x4's for Ukraine - Click here :)

On Mon, 11 Sept 2023 at 13:31, Movega Removals Limited <movega@movega-removals.co.uk> wrote:

Kind Regards

Daniel Blanche

We're Crowdfunding 4x4's for Ukraine

From: IPO <no-reply@ipo.gov.uk>
Sent: Friday, September 8, 2023 12:37:49 PM
To: Movega Removals Limited <movega@movega-removals.co.uk>
Subject: Trade Mark Correspondence from the Intellectual Property Office (IPO) Cancellation No: CA000506378 Trade Mark No: UK00003757659

Dear European Moving Limited (Malta),

Please read the attached letter which contains important information about your trade mark. To reply, use the 'Please click here to reply' hyperlink in the attached letter.

IMPORTANT:Do not reply to this email account as it is not monitored. Any emails sent to this address will not be treated as a reply to us and we will not process any correspondence sent to it.

Please help us improve our services by taking a few minutes to complete our satisfaction survey.
www.ipo.gov.uk/satisfaction

Yours faithfully

Intellectual Property Office

I have highlighted the email chain above for ease of reference. It is noted that albeit the 19 September reply was not sent from the 'movega@movega-removals.co.uk' email address (it was sent from a 'googlemail' address in Mr Blanche's name – i.e. the address Mr Blanche had provided for the Registry to correspond with him as representative in the opposition proceedings – see Annex 1 of this decision), Mr Blanche most notably put the 'movega@movega-removals.co.uk' address in copy, thus demonstrating that the address was being used by him. The chain also shows that on 11 September 2023, Mr Blanche used the 'movega@mevega-removals.co.uk' address to send an email (which appears to be him forwarding the Registry's '8 September Letter to himself).