O/1145/24

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

**IN THE MATTER OF REGISTRATION NOS.
3198635 AND 916952161
BY DR. CURTIS N. RHODES, JR.**

FOR THE TRADE MARKS:

MOORES ROWLAND

AND

Moores Rowland

IN CLASSES 35, 36 AND 45

AND

**APPLICATIONS FOR REVOCATION
UNDER NOS. 505550 AND 505551**

Background and pleadings

1. Dr. Curtis N. Rhodes, Jr. ("**the proprietor**") is the registered proprietor of the following trade marks:

> UK registration no. 3198635
> **MOORES ROWLAND**
> Filing date: 24 November 2016
> Registration date: 17 February 2017
> **"**(**The first registered mark**")
>
> UK registration no. 916952161[1]
> **Moores Rowland**
> Filing date: 5 July 2017
> Registration date: 23 October 2017
> ("**The second registered mark**")

2. Both marks are registered in respect of the following services:

> Class 35: Advertising / publicity; book-keeping / accounting; business management assistance; business inquiries; business auditing; business management and organization consultancy; business management consultancy; business efficiency expert services; business appraisals; business investigations; business organization consultancy; business research; advisory services for business management; professional business consultancy; business management of reimbursement programmes for others / business management of reimbursement programs for others; commercial administration of the licensing of the goods and services of others; cost price analysis; data search in computer files for others; economic forecasting; employment agency

[1] The second registered mark was initially registered at the European Union Intellectual Property Office (EUIPO). On 1 January 2021, the UK left the EU. 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 EUTM. As a result of the earlier mark being registered as an EUTM, at the end of the Implementation Period, it was automatically converted to a comparable UK trade mark. The comparable UK mark is now recorded on the UK trade mark register and has the same legal status as if it had been applied for and registered under UK law, and the original filing date remains.

services; import-export agency services; invoicing; layout services for advertising purposes; market studies; marketing research; negotiation and conclusion of commercial transactions for third parties; organization of exhibitions for commercial or advertising purposes; outsourced administrative management for companies; outsourcing services [business assistance]; payroll preparation; personnel management consultancy; personnel recruitment; secretarial services; tax preparation; tax filing services.

Class 36: Actuarial services; business liquidation services, financial; capital investment; charitable fund raising; credit bureau services; debt advisory services; arranging finance for construction projects; financial customs brokerage services; financial evaluation [insurance, banking, real estate]; financial management; financial analysis; financial consultancy; financial information; financial sponsorship; financing services; fiscal valuation; insurance consultancy; insurance information; investment of funds; repair costs evaluation [financial appraisal]; retirement payment services.

Class 45: Arbitration services; intellectual property consultancy; legal document preparation services; legal administration of licences; licensing of intellectual property; licensing of computer software [legal services]; litigation services; mediation; security consultancy.

3. On 10 November 2022 PT MRI Indonesia ("**the applicant**") applied to revoke the proprietor's marks on the grounds under section 46(1)(a) of the Trade Marks Act 1994 ("**the Act**"), that the marks have not been put to genuine use in the 5-year periods following their registration dates ("**the relevant periods**"), namely:

The first registered mark: 18 February 2017 - 17 February 2022. Revocation is therefore sought from **18 February 2022.**

The second registered mark: 24 October 2017 - 23 October 2022. Revocation is therefore sought from **24 October 2022.**

4. The applicant's revocation claims are directed against all the services for which the marks are registered.

5. The proprietor filed counterstatements defending its registered marks for all the services for which they are registered, in respect of which it claims its marks have been used.

6. On 31 January 2023 the revocation proceedings were consolidated pursuant to Rule 62(1)(g) of the Trade Marks Rules 2008.

7. The proprietor is represented by Taylor Wessing LLP and the applicant is represented by Murgitroyd and Company.

8. Both parties filed evidence in these proceedings. This will be summarised to the extent that it is considered appropriate. No hearing was requested, however the applicant elected to file submissions in lieu. This decision is taken following a careful consideration of the papers.

Evidence

9. The proprietor filed its evidence in chief in the form of a witness statement of Dr Curtis N. Rhodes Jr. dated 31 March 2023 together with exhibits CNR1 to CNR11. Dr Rhodes is the proprietor of both registered marks. The evidence seeks to demonstrate that the contested marks have been put to genuine use throughout the relevant 5-year periods.

10. The applicant's evidence is in the form of the following three witness statements:

- James Kallman the Chief Operating Officer and Senior Advisor at PT MRI Indonesia, together with exhibit JK1 dated 9 June 2023;
- Robin Stevens a Chartered Accountant who worked within Moores Rowland International Limited (UK) between June 1985 and April 2007, together with exhibits RS1 and RS2 dated 31 May 2023;

- Eleanor Coates a Trade Mark Attorney at Murgitroyd and Company, together with exhibits EC1 to EC8 dated 27 July 2023.

11. The proprietor's evidence in reply consists of a further witness statement from Dr Rhodes dated 20 November 2023 along with exhibits CNR(2)-1 to CNR(2)-9.

12. I have given due consideration to all of the documents filed by both parties and will refer to the evidence to the extent that it is necessary in my decision.

Preliminary remarks

13. Part of the applicant's evidence relates to the background of the UK companies MRI Moores Rowland and Moores Rowland International, and of the applicant's own historic use of its "Moores Rowland" trade mark registrations - Nos. UK00002180429 and UK00002222602. Both companies were dissolved in 2018 and the trade mark registrations were not renewed and subsequently lapsed. When the UK companies ceased to trade, it left a network of companies across the world using the "Moores Rowland" name. The cancellation applicant claims to be one of the largest network members in Asia. The witness statements of James Kallman and Robin Stevens state that they are not aware of the proprietor as having any connection to the original "Moores Rowland" companies, the underlying business or the partners or members.

14. Whilst this evidence provides useful context on the matter, it is not wholly relevant to the proceedings before me. This decision will determine solely the applicant's non-use revocation action, i.e., whether the proprietor has shown that it has made genuine use of the trade marks, in accordance with the relevant case law. The applicant's claims do not give rise to considerations of residual goodwill, or of bad faith, which factors play no part in this decision.

DECISION

Relevance of EU Law

15. 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.

Legislation

16. Section 46 of the Act 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) […]
>
> (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".

17. Given that the second registered mark is a comparable mark, paragraph 8 of part 1, schedule 2A is relevant. It reads:

"8.— Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)

(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the "five-year period") has expired before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union.

(3) Where [IP completion day]2 falls within the five-year period, in respect of that part of the five-year period which falls before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM ; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union".

18. 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."

Relevant case law

19. 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].”

20. Proven use of a mark which fails to establish that "the commercial exploitation of the mark is real" because the use would not be "viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services protected by the mark" is not, therefore, genuine use. [2]

21. In *Awareness Ltd v Plymouth City Council* [2013] RPC 24 Daniel Alexander QC (as he then was) 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. The burden lies on the registered proprietor to prove use..... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public."
>
> and further at paragraph 28:
>
> "28. ..... I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as "tuition services", is sought to be defended on the basis of narrow use within the category (such as for

[2] *Jumpman,* Case BL O/222/16

classes of a particular kind) the evidence should not state that the mark has been used in relation to "tuition services" even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted."

22. Furthermore, 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) as the Appointed Person stated that:

"21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller-General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

> [24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not 'show' (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

23. 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 mark.

My approach

24. The first registered mark is a word-only mark for "MOORES ROWLAND", whereas the second registered mark is a word-only mark for "Moores Rowland". The presentation of the respective marks in upper case and title face does not create a point of difference of any significance between the marks, since the registration of word-only marks provides protection for the words themselves, irrespective of whether they are presented in upper, lower or title case. I also note that the marks are registered for identical services in classes 35, 36 and 45 and the relevant 5-year periods of alleged non-use significantly overlap. With this in mind, I intend to carry out my assessment of the evidence in respect of both marks together.

Evidence of use

25. The proprietor explains that in 2016, a group of professionals - auditors, accountants, engineers and management consultants - from the UK, US and the Middle East sought

to create an international association network for professionals to share experience, know-how, skills and cross-border work. The company Moores Rowland Limited was incorporated to cover the UK-focused part of this association network. I note from the evidence provided that Moores Rowland Limited was incorporated in the UK on 26 May 2017.

26. It is further elaborated that by virtue of a memorandum of understanding between Moores Rowland Limited and Moores Rowland International Limited ("**MRI UAE**"),[3] MRI UAE manages and administrates the membership scheme for providing services under the MOORES ROWLAND/Moores Rowland marks throughout the world.

27. The proprietor claims that he is an advisor to the Board of Moores Rowland Limited. He states that the first and second registered marks are held by him on trust for Moores Rowland Limited and that he has granted them an exclusive licence to use the first and second registered marks in the UK. He states that this also includes permission to sub-license them to MRI UAE and the UK members of the association network.

28. The proprietor states that their mission is to bring together professional auditors, accountants, tax experts and other financial services providers to assist them in their growth and expansion. The proprietor adds that in 2020 and 2021, over 500 emails were sent to potential members in the UK, Europe and USA. Whilst I note the proprietor's evidence, I keep in mind that these emails were intended to attract network members, not customers.

29. The proprietor states that its UK-based network members are Amori Ltd and Dolmen Development UK. The proprietor has provided Name Use Agreements and Member Firm Agreements between these companies and Moores Rowland Limited and MRI UAE.[4]

[3] I note that the Moores Rowland International Limited that the proprietor refers to is a UAE registered company.
[4] See exhibits CNR6 and CNR7

30. The proprietor claims that Amori Ltd has made use of the Moores Rowland mark however, he states has been unable to obtain any documentary evidence from Amori Ltd to support this use because they have refused to release information that they consider to be commercially sensitive and/or confidential.

31. In relation to the use made by Dolmen Development UK, the proprietor has provided a letter from Dolmen Development UK dated 6 November 2023 at exhibit CNR(2)-1. The pertinent points of the letter are reproduced below:

> To **Moores Rowland International**,
>
> We are writing this letter with immense gratitude to express our sincere appreciation for selecting us as your esteemed full member firm.
>
> Throughout our membership, we have proudly utilized the Moores Rowland Service Mark in various impactful ways, demonstrating our commitment to the brand's reputation:
>
> **1. Prominent Brand Visibility:** We prominently featured the Moores Rowland Logo on our website, serving as a visible testament to our association with your esteemed organization. This not only enhances our credibility but also reflects our dedication to upholding the highest standards of excellence.
>
> **2. Professional Email Signature:** In all our electronic communications, including email signatures, we prominently displayed the Moores Rowland Logo. This subtle yet powerful gesture emphasizes our affiliation and reinforces the trust that clients and partners place in the Moores Rowland brand.
>
> **3. Client Communication:** As a testament to our global presence and affiliation with Moores Rowland, we have consistently referenced the Moores Rowland brand name when communicating with our clients. By doing so, we aim to underscore our international reach and the extensive resources and expertise at our disposal.

32. The network also includes Monoya Consultancy Services Ltd, based in Cyprus and RM Coches based in Spain. A copy of the Name Use Agreement between these companies, Moores Rowland Limited and Moores Rowland International Limited is provided in exhibit CNR(2)-1. Exhibit CNR(2)-1 also includes a letter dated 22 June 2023 from Monoya outlining how they have used the Moores Rowland mark. This is now reproduced below:

Attention Dr. Curtis Rhodes

We came with this letter to thank you for appointing us as your full member firm since June 2019 till today.

We are sorry to inform you that due to the economic situation, we decided to liquidate our company as of this year.

Moreover, we ensure you that during being your member firm in Cyprus we benefited from your international brand name until our liquidation.

During our membership, we were using Moores Rowland Service Mark in the following ways:

- We mentioned Moores Rowland Logo on our website,
- We mentioned Moores Rowland Logo in our email signature,
- We mentioned Moores Rowland brand name to our clients as a way to show our global existence.

We mentioned Moores Rowland to our clients to show our credentials in several services related to:

- Holding companies
- Private Equity Structure
- Special Limited Partnership
- Special Purpose Acquisition Companies (SPACs)
- Cooperative company working as a public limited company
- Capital Raising Solutions
- Debt Issuance
- Start-ups
- Private Placement
- Merger & Acquisition / Due Diligence
- Corporate Actions & Activities
- Company Re-domiciliation
- E-Commerce Solutions
- Corporate Structure Intellectual Property Management
- Permanent Establishment
- Transfer Pricing
- Double Tax Treaties
- Corporate Services
- Company Incorporation and Set-up
- Company Domiciliation and Administration
- Accounting, Legal, Corporate and Tax Advisory
- Supply Chain Management
- Payroll Services

During our activities we displayed Moores Rowland Mark on the entrance of our offices in Nicosia Cyprus, and we were using the brand in our country, Cyprus, EU.

33. A similar letter is also provided in exhibit CNR(2)-1 from RM Coches dated 24 August 2023. This is now reproduced below:

To whom it may concern

Kindly note that we became members of Moores Rowland International in July 2021.

Aligning with Moores Rowland gave us a competitive advantage among our competitors.

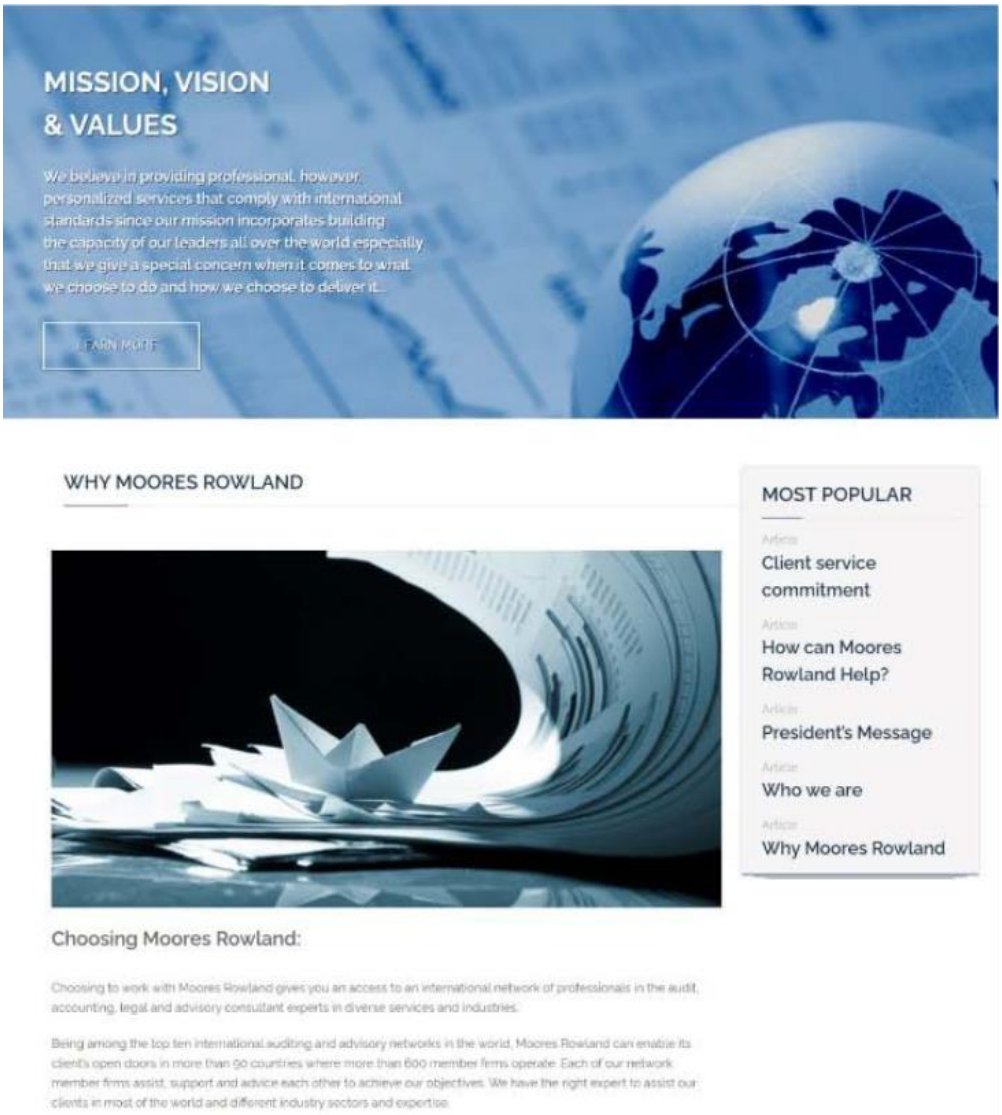
We ensure you that we use Moores Rowland Brand name in our country in the following ways and services:

- We mention Moores Rowland Logo in our email signature,
- We mention Moores Rowland brand name to our clients as a way to show our global existence.
- We mention Moores Rowland to our clients to show our credentials in professional services related to:

- Corporate Structure
- Cooperative company working as a public limited company
- Capital Raising Solutions
- Debt Issuance
- Start-ups
- Intellectual Property Management
- Permanent Establishment
- Accounting, Legal, Corporate and Tax Advisory
- Payroll Services

34. The proprietor states that both companies have now gone into liquidation and as such, he has been unable to collate any documents from these companies that would support the use that has been described in the letters. It would clearly have been beneficial for the proprietor to reproduce such documents. In order to prove genuine use, it is insufficient merely to state that the marks have been used - the proprietor has to provide evidence to substantiate this. As it stands, the letters from the network members claiming to have used the marks are not only hearsay evidence, but the content is put in vague and general terms such that it is impossible to form from them any significant conclusion about the extent of use.

35. The proprietor states that on 28 October 2016, the domain name www.mooresrowland.co was registered by their network member, Amori Ltd. Exhibit CNR3 provides screen printouts from the website from July 2020 to August 2022. An example dated 13 August 2020 is shown below:



36. I note that the website mentions several services covered by the trade mark – “an international network of professionals in the audit, accounting, legal and advisory consultant experts in diverse services and industries” (sic). However, the webpage does not show exactly what services were marketed through the website, or when and where they were marketed. The evidence is of little assistance in showing genuine use of the mark. Exhibit CNR4 includes details of the number of hits to the proprietor’s website from UK based visitors between April 2022 to January 2023. The figures show an average of 10,000 hits per month. This evidence too is of little assistance, since no other information is provided such as the volume of business generated as a result of visiting the website, where and of what nature.

37. The proprietor explains that Moores Rowland publish research papers on their website relating to professional services topics such as “how to improve your revenues” and “risk management”. A schedule of the publications is provided in exhibit CNR2, which lists videos that have been shared via Instagram and WhatsApp and research papers published on the Moores Rowland website. The publication dates of the videos and research papers are between 2017 and 2022. There is no further information provided such as the content of such publications, or the number of views for the videos or articles however, even if the proprietor could provide such information, it would not assist them as the provision of online non-downloadable publications and the provision of online videos are services proper to class 41. These are not services for which the marks are registered and are therefore irrelevant to my assessment of genuine use.

38. The proprietor confirms that since 2017, Moores Rowland has provided training sessions to all members in the UK and the EU. The training sessions include topics such as “Leadership”, “Implementation of IFRS 9 in the banking sector” and “Financial institutions”. Exhibit CNR5 reproduces a copy of the training schedule which lists training sessions that have taken place via Zoom or Skype between 2017 to 2022. I note that there were ten attendees for each of the sessions, four of which were attendees from the EU and six of which were attendees from the UK. The proprietor further provides screenshots of four video clips of training published on its social media platforms at exhibit CNR(2)-8. The screenshots all display the “Moores Rowland” mark but they are undated and it is unclear how many views each video has received. I note that the proprietor states they are in the process of enhancing the network’s social media presence and as a result they have not to date been tracking the public’s engagement with their social media accounts. The services the proprietor describes in these exhibits are the provision of training sessions and provision of online videos. These services are proper to class 41 and are not services covered by the registered mark. As such, this evidence is not relevant to my assessment of genuine use.

39. It is claimed that MRI UAE has spent over £60,000 between 2017 and 2022 promoting its services via social media. Exhibit CNR(2)-9 includes invoices from the years 2017 to 2022 showing MRI UAE being invoiced for “social media services” from a company

based in Egypt. The invoices are calculated in US dollars, and it is unclear what "social media services" entails either in content, channels or territorial target and reach, as the proprietor has not elaborated any further.

40. In terms of social media presence, the proprietor has provided printouts from MRI UAE's Facebook page as of August 2022.[5] The printout shows that the Facebook page has two followers and lists its page as a "financial service". The proprietor also claims that they regularly post marketing videos via the MRI UAE Instagram page. I note from the printout provided that as of June 2022, the Instagram page had 91 followers (locations unknown).[6] An undated printout of the MRI UAE TikTok page is also in evidence,[7] which shows that the page has three followers. Undated printouts of the MRI UAE LinkedIn account are also provided showing that MRI UAE has 1,400 followers.

41. As regards the revenue of Moores Rowland Limited, the applicant claims that it is a dormant company because no financial transactions of significance have taken place. In support of this, the applicant has filed extracts from Companies House[8] showing that Moores Rowland Limited has filed dormant accounts stating that it has £100 in cash and assets for the years 2018, 2020, 2021, 2022 and 2023. In response to this the proprietor claims that its focus has been to build a network and sign-up members. They go on to explain that such activities have been hampered by the interruption to businesses caused by the Covid-19 pandemic and consequently, they are still in the building phase of their operation and are working to identify and encourage members to join the network. They state that this explains why Companies House records do not show any financial activity.

42. That concludes my summary of the proprietor's evidence to the extent that I consider it necessary.

[5] See exhibit CNR8
[6] See exhibit CNR9
[7] See exhibit CNR10
[8] Se exhibit EC1

Assessment of genuine use

43. Whether the evidence is sufficient for this purpose will depend on whether there it demonstrates that there has been real commercial exploitation of the marks, in the course of trade, sufficient to create or maintain a market for the goods at issue in the relevant territory during the relevant five-year period. In making 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 and services for which use has been shown;
- The nature of those goods/services and the market(s) for them; and
- The geographical extent of the use shown.

44. I have carefully considered the evidence provided by the opponent and whether this meets the requirements for genuine use as per *easyGroup*, set out earlier in this decision. I am also mindful of the guidance from the *Dosenbach-Ochsner* and *Awareness* appeal cases emphasising the need to consider what the evidence fails to "show" and what might reasonably have been conclusively shown. In my analysis above, I have highlighted numerous shortcomings in the evidence.

45. The proprietor has filed a fairly substantial amount of evidence; however, it is clear from the evidence summary that a great deal of the evidence focuses on irrelevant matters such as evidence of domain name ownership or evidence of use for services that are not protected by the registered marks. This evidence does not assist me in demonstrating use of the marks and gives no indication as to the provision of the services. Copies of Name Use Agreements, could potentially be relevant for showing use with consent, but the content of the evidence in this case does not establish with sufficient clarity or rigour how others may have used the mark, even with the consent of the proprietor.

46. If the proprietor were using the "Moores Rowland" marks, then one would have expected it to supply evidence such as copies of invoices, details of turnover

generated under the trade marks, dated samples of advertisements. No such evidence has been provided. In line with the findings in my previous paragraph, the type of use described (using the Moores Rowland logo on their website, email signature and mentioning "Moores Rowland" to clients) does not demonstrate that the proprietor or network members have used the marks for its registered services.

47. In some cases, advertising might still be sufficient to establish genuine use, as the judge pointed out in *easyGroup*;[9] however, such an outcome would require specific evidence such as evidence of advertising campaigns. Instead, the proprietor has made broad statements that are not demonstrative of any of the registered services. Considering that the advertising invoices are for "social media services", the evidence provided of the proprietor's social media pages does not sufficiently demonstrate any evidence of advertising campaigns for the registered services.

48. Taking the above into account, I find that the proprietor has failed to discharge the burden placed on them to provide sufficiently solid evidence of genuine use in the EU or UK in respect of any of the services for which the two trade marks are registered.

OUTCOME

49. The revocation actions succeed in full under section 46(1)(a) of the Act. The trade marks shall be revoked in full, with an effective revocation date of 18 February 2022 for the first registered mark and 24 October 2022 for the second registered mark.

COSTS

50. The applicant for revocation has been successful and is entitled to a contribution towards its costs in line with the scale set out in Tribunal Practice Notice 2/2016. In the circumstances I award the applicant for revocation the sum of £1800 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official fees (x2):	£400

[9] (see Arnold LJ's summary in *easyGroup Ltd v Nuclei Ltd & Orsat* point 4)

Filing applications for revocation & considering the counterstatements:	£400
Considering proprietor's evidence & preparing response:	£700[10]
Preparing submissions in lieu:	£300
Total:	**£1800**

51. I therefore order Dr. Curtis N. Rhodes, Jr. to pay PT MRI Indonesia the sum of £1800. The above sum should be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this day of 29th November 2024

Catrin Williams

For the Registrar

[10] Whilst I noted in this decision that part of the applicant's evidence was not relevant to these proceedings, the proprietor filed a substantial amount of evidence for the applicant to consider and respond to, hence an award above the minimal scale of £500.