O/1199/25

CONSOLIDATED PROCEEDINGS

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3899855

BY OFF-WHITE LLC

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 445049 BY

CHARLES LE MENESTREL

AND

IN THE MATTER OF TRADE MARK NOS 916077943 & 916077951

IN THE NAME OF CHARLES LE MENESTREL

AND

IN THE MATTER OF THE APPLICATIONS FOR THE REVOCATION THEREOF UNDER NOS. 507054 & 507048 BY

OFF-WHITE LLC

BACKGROUND AND PLEADINGS

1. On 12 April 2023, Off-White LLC ("Off-White") applied to register the following trade mark in the United Kingdom in respect of goods in Classes 9, 14, 18 and 25:

A full specification can be found in Annex A to this decision. It was given the number 3899855 and published for opposition purposes on 13 October 2023.

2. On 4 January 2024, the application was partially opposed by Charles Le Menestrel. The opposition is based on sections 5(1), 5(2)(a), 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 ("the Act") and concerns the goods applied for in Class 14. These are as follows:

> *Class 14*
>
> *Jewelry; bracelets; necklaces; pendants; pins being jewelry; rings; earrings; cufflinks; watches; straps for watches; precious and semi-precious stones; precious metals and their alloys; works of art of precious metal; jewelry cases; jewel cases of precious metal; key chains; key rings; wall clocks.*

3. Under section 5(1), Mr Le Menestrel relies on UK Trade Mark ("UKTM") No. 916077943 ("the 943 mark"), **OW**, which is a comparable mark created pursuant to Article 54 of the Withdrawal Agreement. The mark has the same legal status as if it had been applied for and registered under UK law and retains the original filing dates of the EU Trade Mark ("EUTM") from which it was created.[1] It has a filing date of 23 November 2016 and a registration date of 31 March 2017 and qualifies as an earlier mark under section 6(1)(a) of the Act by virtue of this earlier filing date. It is registered for goods and services in Classes 14 and 37 and under this section Mr Le Menestrel relies on the following goods:

[1] The TM7 gives the number of the mark as UK00916077843, but this appears to be a typographical error.

Class 14

Wristwatches; Chronographs [watches]; Clocks; Clocks and watches, electric; Clocks; watch straps; Jewelry; Jewellery; Precious stones; Precious metals and their alloys, coins; Jewel cases; Works of art of precious metal; Key rings [trinkets or fobs].

Mr Le Menestrel claims that the marks and the goods are identical.

4. Under section 5(2)(a), Mr Le Menestrel also relies on the 943 mark and on all the goods and services for which it stands registered, namely:

Class 14

Modern or antique horological instruments and modern or antique chronometric instruments; Wristwatches; Chronographs [watches]; Chronometers; Stopwatches; Clocks; Atomic clocks; Clocks and watches, electric; Clocks; Alarm clocks; Watch cases, watch straps, watch chains, watch springs or watch glasses; Clock hands; Pendulums [clock- and watchmaking]; Barrels [clock- and watchmaking]; Clock cases; Cases for watches [presentation]; Housings for clocks and watches; Dials for clock and watch making; Movements for clocks and watches; Sundials; Chronoscopes; Control clocks [master clocks]; Jewelry; Jewellery; Precious stones; Precious metals and their alloys, coins; Works of art of precious metal; Jewel cases; Boxes of precious metal; Key rings [trinkets or fobs]; Statues and figurines (statuettes) of precious metal; Medals.

Class 37

Upkeep and repair of watches and horological and chronometric instruments; Providing of information relating to the repair and upkeep of watches and horological and chronometric instruments; Maintenance, cleaning and repair of leather or furs, furniture restoration.

Mr Le Menestrel claims that the goods covered by Class 14 of the application are highly similar to the goods and services for which the 943 mark stands registered. He claims that the marks are identical.

5. Mr Le Menestrel also relies on this mark for his claim under section 5(2)(b) and in addition relies on UKTM No. 916077951 (“the 951 mark”), **O&W**, which is also a

comparable mark, has the same filing and registration dates as the 943 mark and is registered for the same goods and services. He claims that its marks are highly similar to Off-White's application and that the goods covered by Class 14 of that application are identical or highly similar to the goods and services relied on.

6. Under section 5(4)(a), Mr Le Menestrel claims to have used the signs **OW** and **O&W** throughout the UK since 1956 for the same goods and services for which the 943 and 951 marks stand registered. He claims to have built up significant goodwill as a result. He further claims that use of the Off-White's application would constitute a misrepresentation to the public that would damage the goodwill in its business. Consequently, use of the contested marks would be contrary to the law of passing off.

7. Off-White filed a defence and counterstatement denying the claims made and put Mr Le Menestrel to proof of use of his earlier marks and of the claims made under section 5(4)(a). I note here that Off-White denied that Mr Le Menestrel was the owner of any goodwill built up through the use of the signs **OW** and **O&W**.

8. In addition, Off-White stated that it had made applications for revocation of the 943 and 951 marks under section 46(1) of the Act on the grounds of non-use. Both these applications were filed on 26 February 2024. Under section 46(1)(a), Off-White claims that Mr Le Menestrel. has not used either earlier mark within the five-year period following the date of registration and requests revocation with effect from 1 April 2022. Under section 46(1)(b), it claims that Mr Le Menestrel has not used either earlier mark within the following period: 26 February 2019 to 25 February 2024. It requests revocation with effect from 26 February 2024. Mr Le Menestrel filed defences against the applications, denying Off-White's claims.

9. Only Charles Le Menestrel filed evidence. He is the President of the Swiss watch company Ollech & Wajs Precision AG and has held this position since 2017. His witness statement is dated 30 June 2024 and is accompanied by 9 exhibits. It goes to the use made of the earlier marks.

10. Neither side requested a hearing and only Off-White filed written submissions in lieu. These are dated 18 November 2024. In these proceedings, Off-White is represented by Stobbs, while Mr Le Menestrel is represented by HGF Limited. I have taken this decision following a careful consideration of the papers.

RELEVANCE OF EU LAW

11. 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

The Applications for Revocation

12. I shall deal with these first, as the outcome of these actions will determine the goods and services on which Mr Le Menestrel may rely for the purposes of the opposition.

13. Section 46 of the Act is as follows:

> "(1) The registration of a trade mark may be revoked on any of the following grounds-
>
> > (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the 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;
> >
> > …
>
> (2) For the purpose of subsection (1) use of a trade mark includes use in a form (the 'variant form') differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom

includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

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

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

(4) An application for revocation may be made by any person, and may be made either to the registrar or the court, except that–

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(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 were existing at an earlier date, that date."

14. As the earlier marks are comparable marks, paragraph 8 of Part 1, Schedule 2A of the Act is also relevant. It is as follows:

"(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 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."

15. The case law on genuine use was summarised by Arnold LJ in *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247:

"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 *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 Bundersvereinigung 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] and [72]; *Leno* at [55].

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

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

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

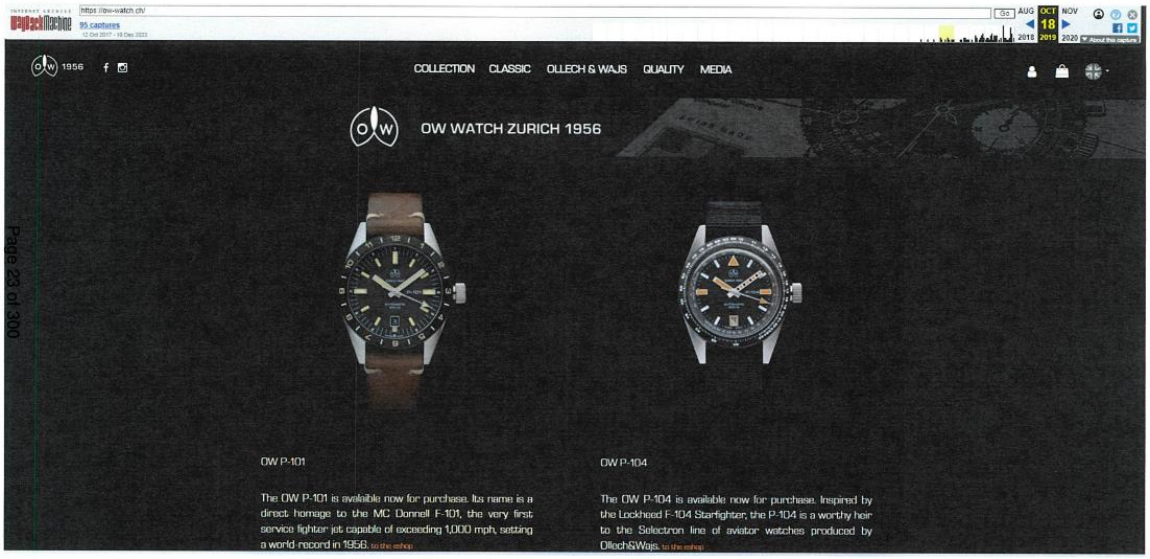
undertaken, having regard to the interests of the proprietor, the opponent and, it should be said the public.'"

16. As Mr Le Menestrel's marks are comparable marks, the relevant territory in which use must be shown is (i) the EU (which then included the UK) for the period from 1 April 2017 to 31 December 2020 and the UK from 1 January 2021 to 31 March 2022 ("the first relevant period") and (ii) the EU (including the UK) for the period from 26 February 2019 to 31 December 2020 and the UK from 1 January 2021 to 25 February 2024 ("the second relevant period").

Mr Le Menestrel's evidence

17. Ollech & Wajs Precision Engineering AG was founded in 1956. While the company began as a distributor of third-party watch brands, it began to market mechanical watches under its own brand in 1959.[2] Mr Le Menestrel describes these as *"tool watches"*, in other words, models that are intended to meet the needs of soldiers, divers, pilots, and so on.[3] The business was passed on to Mr Le Menestrel in 2017.

18. The company's watches are shown on its website, ow-watch.ch. Screenshots from this website can be found in Exhibit CLM3 and they date from 12 October 2017 to 6 December 2022. The following example is dated 18 October 2019:[4]

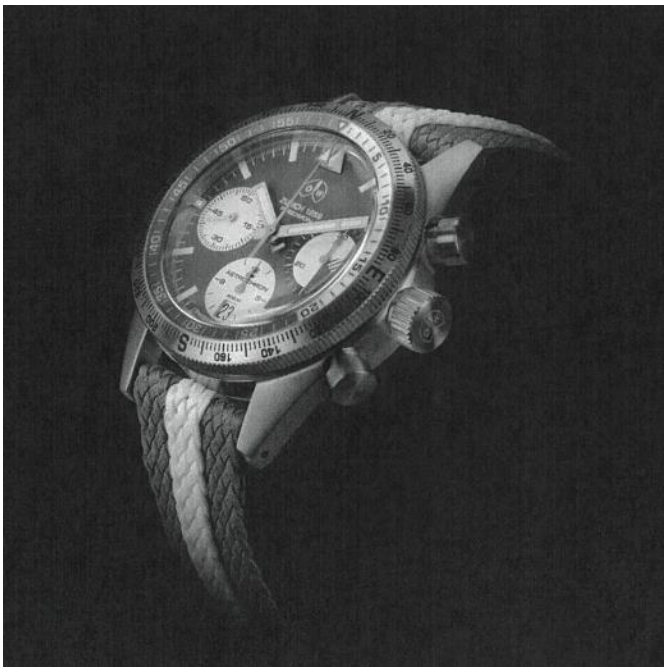


[2] The 1959 date comes from Exhibit CLM7, page 148.
[3] Witness statement, paragraph 2.
[4] Page 23.

19. The letters “OW” can be seen in the heading “OW WATCH ZURICH 1956” and in the names of the individual models. There is also a figurative sign containing the letters, which also appears on the dials of all the watches. These watches include diver’s watches and aviator watches. With the exception of a single screenshot dated 4 September 2018 showing watch straps, there is no evidence of any other goods on the website.

20. Exhibit CLM4 contains further images of watches and promotional material. However, these are either undated or were published before the first relevant period.

21. Exhibit CLM5 contains promotional material about particular watch models. I note from this that all the model names begin with the letters “OW” and that the text of the documents indicates that these models were launched in 2022 or 2023. For most, the prices are given in Swiss francs (CHF), although sterling and US dollar equivalents are quoted in the document relating to the OW Astrochron, which was available to order from 14 April 2023.[5] The information given explains that this is a chronograph watch, which I understand to be a watch that includes a stopwatch function. The image below is taken from this document and shows the figurative sign on the dial and the crown of the watch:



[5] Page 64.

22. The final pages of this exhibit contain project drawings dating from 2019 and 2020. They show different views of the watches, including the backs of the cases and buckles on the straps. The former are marked with the figurative sign and the latter with the text “OWZ 1956”. However, there is nothing to say that the marketed watches resembled these drawings in all particulars.

23. The watches were highlighted on Ollech & Wajs’ social media pages. I have been provided with extracts from Instagram, Facebook and YouTube. The first of these had 17.2k followers, although this is the figure at the date of capture of the screenshot (27 June 2024) and it is not clear where those followers were located. The figurative sign can be seen as the profile picture of the account:[6]

The text of posts (dated between 22 May 2018 and 25 March 2023) refers to the models using the letters “OW”, for instance, on 10 January 2022 there was a post showing a photograph described as *“Details of the OW P-101”*. This post received 526 likes.[7] Mr Le Menestrel’s company had 3.4k followers on Facebook on 27 June 2024. There is a similar pattern of use, with the letters “OW” used for the model names. Posts using these letters are dated from 7 July 2018 to 19 December 2023. Finally, there were 377 subscribers to the YouTube channel at 27 June 2024. A two-part video entitled *“OW 350 CI – at the air base”* was uploaded *“two years ago”* and *“OW-DIVER”* was uploaded *“5 years ago”*.

24. Exhibit CLM7 contains media coverage of Ollech & Wajs and its watches. The articles are largely taken from an online publication called *Monochrome*, which is

[6] Exhibit CLM6, page 84.
[7] Exhibit CLM6, page 86.

described as *"an online magazine dedicated to fine watches"*.[8] They date from 25 July 2019 to 17 August 2023 and provide general commentary on the business, an interview with Mr Le Menestrel and reviews of particular watch models, including the Navichron chronograph. Mr Le Menestrel does not provide any information on the reach of *Monochrome*. There are a further two articles. One is from www.lecalibre.com, entitled "Ollech & Wajs (OW), the rebirth of a Swiss watch brand". It appears to have been published in 2021 and is marked in manuscript as a translation. As it looks like a printout from a website, it may have been machine-translated. The second article is from *Le Petit Poussoir*. It is a review of the Ollech & Wajs OW 8001 watch and a date of June 2023 is just visible in the image on the first page. A French and a translated version have been provided. I consider that this may also have been machine-translated.

25. Exhibit CLM8 contains a selection of invoices, which I have summarised in the table below, removing the ones that fall outside either of the relevant periods:

Date	Location	Watches		Watch straps		Watch bracelets	
		Number	Value, CHF	Number	Value, CHF	Number	Value, CHF
20/12/2018	West Sussex	1	637.50				
15/07/2019	Altrincham	1	887.65				
16/07/2019	Merseyside	1	887.65				
17/07/2019	Farnham	1	980.50				
17/07/2019	Glasgow	1	980.50				
27/07/2019	Berkshire	1	980.50				
11/08/2019	Teignmouth	1	887.65				
11/08/2019	Marlborough	1	710.31			1	0.00
20/08/2019	Loughborough	1	887.65				
02/09/2019	Hertfordshire	2	900.00				
03/09/2019	Greater Manchester	1	887.65				
28/12/2019	Edinburgh	1	1017.64				
08/01/2020	Sutton	1	1351.90				
09/01/2020	York	1	1351.90				
11/01/2020	West Sussex	1	1185.52				
11/01/2020	Teignmouth	1	1351.90				
11/01/2020	Hougton le Spring	1	1481.89				
18/01/2020	Stroud	1	1481.89				
22/04/2020	Derby	1	1481.86				
03/05/2020	London	1	1481.86				
04/05/2020	PA12 postcode	1	1444.75				
24/05/2020	Plymouth	1	1481.89				
14/06/2020	Chelmsford	1	1481.89				
08/09/2020	Hove	1	1110.49				

[8] Exhibit CLM7, page 130.

Date	Location	Watches		Watch straps		Watch bracelets	
		Number	Value, CHF	Number	Value, CHF	Number	Value, CHF
12/10/2020	Stewart's The Watch Company, Leicester	10	6600.00				
27/12/2020	Stewart's	10	6237.00	30	810.00		
14/02/2021	Edinburgh					1	181.99
06/05/2021	Stewart's	10	6390.00	20	1134.00		
16/05/2021	Ilfracombe	1	1696.00				
04/07/2021	Lichfield	1	956.00				
12/09/2021	Portsmouth	1	1596.00				
11/10/2021	Stewart's	4	2350.00	10	220.00		
11/10/2021	Stewart's	2	1050.00				
12/10/2021	Bolton	1	1056.00				
14/03/2022	Stewart's	8	6070.00			10	980.00
13/05/2022	Stewart's	3	2025.00				
16/05/2022	Maidstone	1	1056.00				
23/05/2022	Winchester	1	1696.00				
14/06/2022	Northamptonshire	1	2056.00				
14/06/2022	Worcestershire	1	2056.00				
14/06/2022	Cumbria	1	2056.00				
26/10/2022	Stewart's	4	2612.50	2	41.80		
09/11/2022	Powick	2	1056.00				
28/11/2022	Somerset	1	775.00				
12/12/2022	Northamptonshire	1	2196.00				
16/01/2023	Stewart's	5	3325.00				
01/03/2023	Stewart's	2	1240.00				
15/03/2023	London	1	1296.00			1	0.00
19/04/2023	Stewart's	2	1590.00				
19/04/2023	Somerset	1	795.00				
19/04/2023	Somerset					1	156.00
31/07/2023	Stewart's	2	1440.00			2	0.00
08/09/2023	Stewart's	3	1795.00			2	192.00
22/09/2023	Llanelli	1	1456.00				
06/10/2023	Buckinghamshire			1	22.00		
06/10/2023	Newark	1	2196.00			1	0.00
16/10/2023	London	1	1456.00				

26. There is also an invoice showing the sale of a single dial to a customer in Hove for 10 CHF. This is dated 22 March 2023.

27. The invoices are headed with the following device:

ZURICH 1956

Goods are shown with the model names, e.g. “OW P-101”, “OW Ocean Graph”, “OW Ollech&Wajs P-104”.

28. Many of the invoices appear to be addressed to individuals, but there are several addressed to an undertaking called “Stewart’s The Watch Company”, which is based in Leicester and is shown as having a VAT number. The invoices addressed to this company show sales of 65 watches at a cost of 42,724.50 CHF and 62 straps and 14 bracelets at a cost of 2,205.80 CHF and 980 CHF respectively between 12 October 2020 and 8 September 2023.

29. Exhibit CLM9 contains a screenshot from ow-watch.ch, captured on 2 July 2024. It shows the location of service centres, with a single business, Horologium Limited, providing those services in the UK.

Assessment of use

30. In my summary of the evidence that has been filed, I have referred to a number of different ways in which the letters “O” and “W” appear. The most common of these is the figurative sign that appears on the watches themselves and the website. Section 46(2) provides that use of a mark includes use in a variant form where the differences do not alter the distinctive character of the mark in the form in which it was registered. In *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Professor Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under s. 46(2). He said:

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

contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

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

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

31. Off-White submits that use of the figurative sign is not genuine use of either of Mr Le Menestrel's marks. It points to *"additional figurative elements which affect the distinctive character of the mark 'OW'. The additional curved and oval shaped elements interact with the letters 'O' and 'W' such that they can no longer be perceived independently, but rather form a unit."*[9] Off-White does not explain how the elements form a unit. One of the articles refers to the shape as that of a propeller,[10] but this is not readily apparent to me. It is important to remember that the overall impression of

[9] Written submissions in lieu of a hearing, paragraph 20.
[10] Exhibit CLM7, page 226.

a mark should be judged through the eyes of the average consumer, who, while being reasonably well-informed and reasonably circumspect, does not tend to analyse marks. I take the view that the average consumer will not perceive the figurative element as a propeller.

32. The overall impression of the 943 mark lies in the letters “OW”. In my view, they are likely to be perceived as initials, but it is not readily apparent from the mark itself or the goods and services for which it is registered what those letters might stand for. The inherent distinctive character of the mark is at a medium level. The figurative sign consists of two pointed ovals. In the centre of the left one is the letter “O”; in the centre of the right, is the letter “W”. The two pointed ovals are separated by a thinner oval in the colour of the outline of the larger ovals. In my view, the most distinctive element of this sign is the letters “O” and “W”. I consider that the average consumer is likely to perceive the oval shapes as being merely decorative. Where the figurative sign appears with the text “ZURICH 1956”, those words would be seen as indicating the location of the business and the year that it was established. They have no trade mark significance. Consequently, I find that the figurative sign is an acceptable variant of the 943 mark.

33. The 951 mark consists of the letters “O” and “W” joined by an ampersand. The ampersand would be perceived by the average consumer as having a conjunctive effect, as it means “and”. It therefore joins two separate things, one represented by the letter “O” and the other by the letter “W”. The meaning of the mark is therefore different from that of the two letters “O” and “W” together, without an ampersand. In my view, the figurative sign is not an acceptable variant of the 951 mark. Indeed, the only use that I can find of “O&W” is in one of the articles in CLM7, as an abbreviation for the name of the company Ollech & Wajs. This is use by a third party and does not, to my mind, represent use as a trade mark. I find that Mr Le Menestrel has not shown that genuine use has been made of the 951 mark and it will be revoked with effect from 1 April 2022.

34. Does the evidence show that genuine use has been made of the 943 mark? Off-White’s approach is to criticise each exhibit individually, explaining why, in its submission, it does not demonstrate genuine use. However, I recall that I am required to view the evidence as a whole. The General Court (“GC”) said in *New Yorker SHK*

Jeans GmbH & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Case T-415/09:

> "53. In order to examine whether use of an earlier mark is genuine, an overall assessment must be carried out which takes account of all the relevant factors in the particular case. Genuine use of a trade mark, it is true, cannot be proved by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (*COLORIS*, paragraph 24). However, it cannot be ruled out that an accumulation of items of evidence may allow the necessary facts to be established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts (see, to that effect, judgment of the Court of Justice on 17 April 2008 in Case C-108/07, *Ferrero Deutschland v OHIM*, not published in the ECR, paragraph 36)."

35. At this point, I also note that Mr Le Menestrel, not Ollech & Wajs, is the registered proprietor of the 943 mark. However, as he is the President of Ollech & Wajs, it can be inferred that any use of the mark was made with his consent.

36. For use to be genuine, it must have been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods at issue in the relevant territory during the relevant five-year periods. The EU (including the UK) is the relevant territory for the first 3 years and 9 months of the first relevant period, and the first 22 months of the second relevant period. In *Leno Merken BV v Hagelkruis Beheer BV*, Case C-149/11, the Court of Justice of the European Union ("CJEU") noted that:

> "36. It should, however, be observed that … the territorial scope of the use is not a separate condition for genuine use but one of the factors determining genuine use, which must be included in the overall analysis and examined at the same time as other such factors. In that regard, the phrase 'in the Community' is intended to define the geographical market serving as the reference point for all consideration of whether a Community trade mark has been put to genuine use.

…

50. Whilst there is admittedly some justification for thinking that a Community trade mark should – because it enjoys more extensive territorial protection than a national trade mark – be used in a larger area than the territory of a single Member State in order for the use to be regarded as 'genuine use', it cannot be ruled out that, in certain circumstances, the market for the goods or services for which a Community trade mark has been registered is in fact restricted to the territory of a single Member State. In such a case, use of the Community trade mark on that territory might satisfy the conditions both for genuine use of a Community trade mark and for genuine use of a national mark.

…

55. Since the assessment of whether the use of the trade mark is genuine is carried out by reference to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark serves to create or maintain market shares for the goods or services for which it was registered, it is impossible to determine a priori, and in the abstract, what territorial scope should be chosen in order to determine whether the use of the mark is genuine or not. A *de minimis* rule, which would not allow the national court to appraise all the circumstances of the dispute before it, cannot therefore be laid down (see, by analogy, the order in *La Mer Technology*, paragraphs 25 and 27, and the judgment in *Sunrider v OHIM*, paragraphs 72 and 77)."

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

"228. Since the decision of the Court of Justice in *Leno* there have been a number of decisions of OHIM Boards of Appeal, the General Court and national courts with respect to the question of the geographical extent of the use required for genuine use in the Community. It does not seem to me that a clear picture has yet emerged as to how the broad principles laid down in

Leno are to be applied. It is sufficient for present purposes to refer by way of illustration to two cases which I am aware have attracted comment.

229. In Case T-278/13 *Now Wireless Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* the General Court upheld at [47] the finding of the Board of Appeal that there had been genuine use of the contested mark in relation to the services in issue in London and the Thames Valley. On that basis, the General Court dismissed the applicant's challenge to the Board of Appeal's conclusion that there had been genuine use of the mark in the Community. At first blush, this appears to be a decision to the effect that use in rather less than the whole of one Member State is sufficient to constitute genuine use in the Community. On closer examination, however, it appears that the applicant's argument is not that use within London and the Thames Valley was not sufficient to constitute genuine use in the Community, but rather that the Board of Appeal was wrong to find that the mark had been used in those areas, and that it should have found that the mark had only been used in parts of London: see [42] and [54]-[58]. This stance may have been due to the fact that the applicant was based in Guildford, and thus a finding which still left open the possibility of conversion of the Community trade mark to a national trade mark may not have sufficed for its purposes.

230. In *The Sofa Workshop Ltd v Sofaworks Ltd* [2015] EWHC 1773 (IPEC), [2015] ETMR 37 at [25] His Honour Judge Hacon interpreted *Leno* as establishing that 'genuine use in the Community will in general require use in more than one Member State' but 'an exception to that general requirement arises where the market for the relevant goods or services is restricted to the territory of a single Member State'. On this basis, he went on to hold at [33]-[40] that extensive use of the trade mark in the UK, and one sale in Denmark, was not sufficient to amount to genuine use in the Community. As I understand it, this decision is presently under appeal and it would therefore be inappropriate for me to comment on the merits of the decision. All I will say is that, while I find the thrust of Judge Hacon's analysis of *Leno* persuasive, I would not myself express the applicable principles in

terms of a general rule and an exception to that general rule. Rather, I would prefer to say that the assessment is a multi-factorial one which includes the geographical extent of the use."

38. The GC restated its interpretation of *Leno* in Case T-398/13, *TVR Automotive Ltd v OHIM* (see paragraph 57 of that judgment). This case concerned national (rather than local) use of what was then known as a Community trade mark (now a European Union trade mark ("EUTM")). Consequently, in trade mark opposition and cancellation proceedings the registrar continues to entertain the possibility that use of an EUTM in an area of the Union corresponding to the territory of one Member State may be sufficient to constitute genuine use of an EUTM. This applies even where there are no special factors, such as the market for the goods and/or services being limited to that area of the Union.

39. Mr Le Menestrel has provided me with no information on sales outside the UK and no figures for turnover or marketing expenditure. As the UK was part of the EU until IP completion day, there may in principle be sufficient use in the relevant territory for the period up to 31 December 2020. However, I note that the larger part of the second relevant period is after IP completion day and only UK use is relevant. I have some invoices and these, together with the website screenshots, represent the high point of the evidence. The invoices show sales of 58,796.52 CHF for watches (with 28,679 CHF being accounted for by Stewart's) in the first relevant period and 92,332.52 CHF (with 42,724.50 CHF being accounted for by Stewart's) in the second. The amount recorded for straps is 2,164 CHF in the first relevant period and 2227.80 CHF in the second relevant period. The figures for bracelets are 1161.99 CHF and 1409.99 CHF.

40. Off-White submits that the website was directed to consumers in Switzerland only, on the basis of the domain "ch" and the prices being quoted in Swiss francs. It invites me to disregard this evidence. In *Lifestyle Equities CV & Anor v Amazon UK Services Ltd & Ors* [2024] UKSC 8, at paragraphs 24 to 31, the Supreme Court considered the correct approach to the relevant principles concerning the accessibility of intellectual property on websites and whether this counts as use of that intellectual property in the UK. The cases it reviewed included the decisions of the Court of Appeal in *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 and *Argos Ltd v*

Argos Systems Inc [2018] EWCA Civ 2211. The applicable principles can be summarised as follows:

(a) The mere fact that a website is accessible from the UK is not a sufficient basis for concluding that an advertisement displayed on that website is targeted at consumers in the UK.

(b) The question to be answered is whether the average consumer would consider the website to be directed at them. This calls for a multifactorial assessment of all the circumstances.

(c) It is necessary to look at the acts which are asserted to be use of the trade mark and to focus on whether those acts are targeted at the UK. The scope of the enquiry and the factors which are relevant will vary from case to case. To that extent, the role of the average consumer may differ from case to case.

(d) The issue of targeting must be considered objectively from the perspective of average consumers in the UK.

(e) The average consumer is reasonably well informed and reasonably observant, but the assessment does not call for the application of a statistical test; nor does this person represent a statistical average.

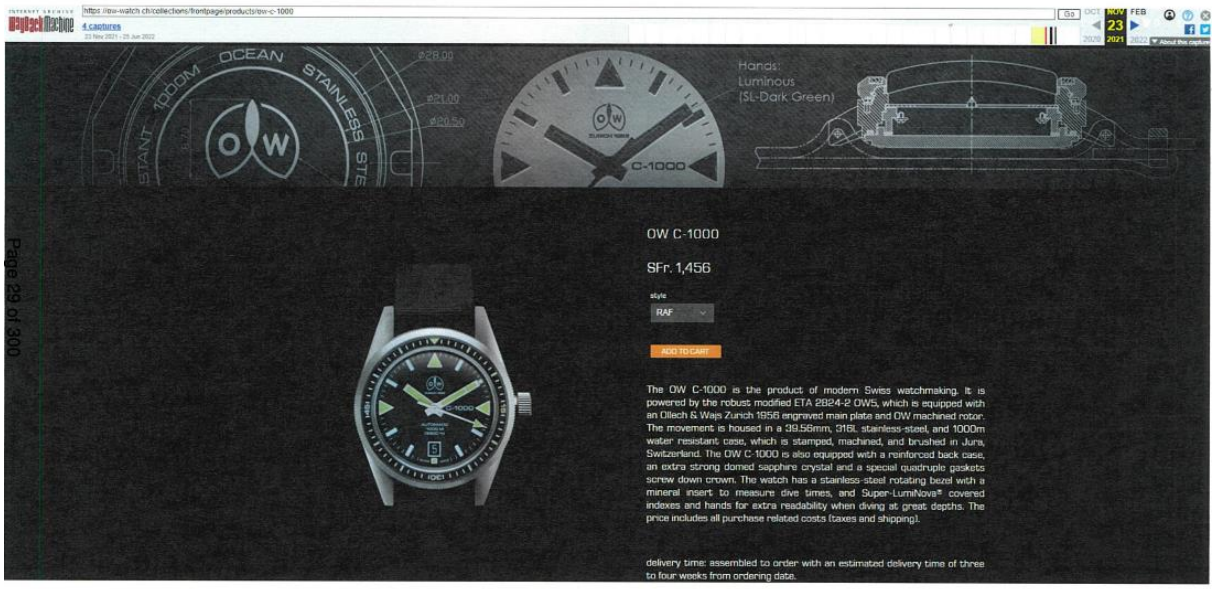
(f) It is enough that a significant portion of the relevant consumers (that is to say, those who are reasonably well informed and circumspect) would consider the website to be directed and targeted at them.

(g) Clear expressions of an intent to solicit custom in the UK (e.g., a clear indication that the trader is willing to dispatch its products to the UK) are a relevant consideration. But a finding that an advertisement is directed at consumers in the UK does not depend upon there being any such clear evidence.

(h) Subjective intention is a relevant factor but it is not necessary to establish that the foreign trader had the subjective intention of targeting consumers in the UK. If, however, such a subjective intention is established, it will be easier to find that, viewed objectively from the perspective of the average consumer, consumers in the UK were targeted.

41. I note that some of the screenshots, such as the one reproduced in paragraph 18 above, contain a Union Jack symbol in the corner. I have magnified that part of the screenshot below:

42. There is no indication of what this symbol means, but I know from my own experience that flags are sometimes used on websites to enable the user to select the appropriate language for them. The text on the screenshot is in English. There are no screenshots showing the locations to which Mr Le Menestrel's company is prepared to ship its goods. However, I remind myself that such indications are not essential. I am prepared to infer that the company does ship goods to customers in other locations, as the following screenshot dated 23 November 2021 states that *"The price includes all purchase related costs (taxes and shipping)."* This information is likely to be of particular relevance to customers outside Switzerland.



43. There is no information on the locations to which the company is prepared to ship its goods. I remind myself that the Supreme Court held that it was not necessary for there to be an explicit expression of a willingness to supply goods to UK consumers. I also note that there are invoices addressed towards individual customers in the UK, but that does not in itself mean that a website was targeted at UK consumers. The website was made available in the English language, but that is the only evidence I have that could contribute to a belief on the part of a UK (or EU) consumer that a website with a Swiss domain might be targeted towards them. This does not, in my view, add up to a sufficient basis for finding that the website is targeted towards consumers in the UK or the EU (including the UK).

44. However, this is not an end of my consideration of genuine use. There is a consistent pattern of sales to a watch dealer (Stewart's The Watch Company). The goods sold are mechanical watches. There is no evidence that Mr Le Menestrel's company produces electric (i.e. battery-powered) watches. I have mentioned chronographs as a particular type of watch. The evidence shows two such models: the OW Astrochron and the OW Navichron. None of the former and only one of the latter appears on any of the invoices to Stewart's; the rest were all purchased by individuals. On the basis of a single sale, I am not prepared to find genuine use for chronographs or stopwatches. I take the view that this pattern of sales to Stewart's is sufficient to show genuine use of the 943 mark in relation to mechanical watches during the second relevant period. The end-consumers would see the mark in use on the dial of the watch. I accept that the sales shown on the invoices are relatively small, but they do cover a large part of the second relevant period and I remind myself that there is no *de minimis* level of sales that must be achieved. Furthermore, I keep in mind that the goods sold under the mark are fairly specialist watches and relatively expensive, and so there will be less demand for them than cheaper, mass-market goods.

45. As the specification for the 943 mark also includes *Watch straps*, I shall consider whether the use that has been shown in the evidence is genuine. There is a single website screenshot dated 4 September 2018. It is not clear whether the figurative sign could have been seen on this screenshot, as it is on others, as it appears that some of the images at the top of the screen have not downloaded. Furthermore, I also note that this was the only capture of the website ow-watch.ch/en/accessory by the Internet

Archive Wayback Machine. I cannot find images elsewhere showing whether, or how, the mark has been used on the straps or on any packaging. The evidence therefore comes down to the sales shown on the invoices. For the first relevant period, these amount to 60 watch straps at a value of 2164.00 CHF. For the second relevant period, these amount to 63 straps at a value of 2227.80 CHF. In the absence of any other evidence, I find that Mr Le Menestrel has not shown that the 943 mark has been genuinely used for these goods as this is, in my view, too small a volume of relatively low-cost items to amount to an attempt to create or maintain a share of the market for watch straps. I remind myself of the comments of Arnold LJ in paragraph 107 of *easyGroup* (quoted in paragraph 15 above), that the smaller the commercial volume of the exploitation of the mark, the more necessary it is to produce additional evidence. I also keep in mind that of the 63 straps sold to Stewart's in the second relevant period, only 14 were of the more expensive watch bracelets and two of these do not appear to have been charged for. I find that Mr Le Menestrel has not shown that the 943 mark has been genuinely used for these goods.

46. I also find that there is no use of the 943 mark shown for any other goods in Class 14.

47. I can deal with the Class 37 services fairly briefly. Mr Le Menestrel has adduced a single exhibit to support the claim to use for these services. This is a screenshot from his company's website showing the location of service and repair centres.[11] There is a single one in the UK: Horologium Limited. The only date on this screenshot is the date of capture, which was 2 July 2024. This is after the end of the second relevant period. However, even if it had been captured earlier, it would not assist Mr Le Menestrel. This is because there is no evidence that services were supplied under the 943 mark.

Framing a fair specification

48. In *Merck*, Kitchin LJ (as he then was) set out the approach to be followed when considering partial revocation of a trade mark. The same approach is relevant when framing a fair specification. He said:

[11] Exhibit CLM9.

“244. As I described in *Maier v Asos*, the approach to be adopted is relatively straightforward (although I readily acknowledge that it may on occasion be difficult to apply) and it is in my view consistent with the earlier decisions of the Court of Appeal to which I referred at paragraph [63]. On reflection, I think it can be expressed more clearly as follows.

245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.

246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other categories.

247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

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

> legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered."

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

> "261. … First, there can be no doubt that an application to register a mark in respect of a broad category of goods or services may be made *partly* in bad faith in so far as the broad description includes distinct sub-categories of goods or services in relation to which the applicant never had any intention to use the mark, whether conditionally or otherwise. In my view, that emerges clearly from the decision of the CJEU in this case. The approach to be adopted in such a case was explored and explained by the Court of Appeal in *Merck KGaA v Merck Sharp & Dohme Corp* [2017] EWCA Civ 1834; [2018] ETMR 10, at paras 241-2491 and, so far as I am aware, that approach has proved workable and appropriate and has stood the test of time, save that it must now be seen in light of the more recent guidance given by the CJEU in, for example: *Ferrari SpA v DU* (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021] Bus LR 106, at paras 36-53. There the CJEU explained, at para 40, that the essential criterion to apply for the purposes of identifying a coherent subcategory of goods or services capable of being viewed independently is their purpose and intended use."

50. While I have found that the mark has been used for mechanical wristwatches, it is my view that a fair specification would include wristwatches generally, in the light of the case law cited above. The purpose and intended use of mechanical and electric watches are the same. *Modern or antique horological instruments and modern or antique chronometric instruments* is a broad term that would include not only watches, but also clocks. On a general level, watches and clocks share the same purpose of timekeeping, but wearability (and hence portability) is an important feature of a watch. A clock is intended to be fixed on a wall or placed on a surface, and not moved from that position. Consequently, I consider it would be fair to limit this term to *Modern or antique horological instruments and modern or antique chronometric instruments, the*

aforementioned goods being watches. I have used the word "watches" rather than "wristwatches" in this limitation, as the purpose and intended use of wristwatches and pocket watches are the same.

51. In my view, a fair specification of the 943 mark is as follows:

> *Class 14*
> *Modern or antique horological instruments and modern or antique chronometric instruments,* ***the aforementioned goods being watches****; Wristwatches.*

52. The specification of the 943 mark will be amended accordingly with effect from 1 April 2022.

The Opposition

Section 5(1)

53. Section 5(1) of the Act is as follows:

> "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."

54. In *SA Société LTJ Diffusion v Sadas Vertbaudet SA*, Case C-291/00, the CJEU 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."

55. The respective marks are shown below:

Off-White's application	Earlier mark (the 943 mark)
	OW

56. The application is a stylised form of the letters O and W, with the left side of the letter "W" threaded through the "O", while the earlier 943 mark is a word mark. The stylisation is a modification that would not go unnoticed by an average consumer. I find that the marks are not identical. The opposition under section 5(1) fails.

Section 5(2)

57. Section 5(2) of the Act is as follows:

> "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."

58. Identity between the marks is a necessary condition for a claim under section 5(2)(a) to be successful. As I have found that the marks are not identical, this claim fails and I shall proceed to assess the opposition under section 5(2)(b). In doing so, I am guided by the following principles, gleaned from the decisions of the CJEU 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 BV* (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-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them they have kept in their 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 greater 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; and

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 goods

59. It is settled case law that I must make my comparison of the goods on the basis of all relevant factors. These include the nature of the goods, their purpose, their users and method of use, the trade channels through which they reach the market, and whether they are in competition with each other or are complementary: see *Canon*, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281 at [296]. As the GC said in *Boston Scientific Ltd v OHIM*, Case T-325/06, goods (and services) are complementary when

> "82. … there is a close connection between them in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking."

60. The goods to be compared are shown in the table below:

Off-White's goods	**Earlier goods**
Class 14 *Jewelry; bracelets; necklaces; pendants; pins being jewelry; rings; earrings; cufflinks; watches; straps for watches; precious and semi-precious stones; precious metals and their alloys; works of art of precious metal; jewelry cases; jewel cases of precious*	*Class 14* *Modern or antique horological instruments and modern or antique chronometric instruments, the aforementioned goods being watches; Wristwatches.*

Off-White's goods	Earlier goods
metal; key chains; key rings; wall clocks.	

61. Off-White's *Watches* is a broader term that includes Mr Le Menestrel's *Wristwatches*. The GC said in *Gérard Meric v OHIM*, Case T-133/05, that in such circumstances the goods were to be considered as identical. I make such a finding here.

62. Where appropriate I shall group the remaining goods together, as permitted in *SEPARODE Trade Mark*, BL O-399-10: see paragraph 5. The first of these groups is *Jewelry; bracelets; necklaces; pendants; pins being jewelry; rings; earrings.* The purpose of Off-White's goods is to adorn the person, while the primary purpose of Mr Le Menestrel's *Wristwatches* is to tell the time, although I accept that they may also have an aesthetic appeal. I find that there is some limited similarity in purpose. There is also some similarity in nature, as both jewellery and watches may be made from the same materials, such as precious metals. However, watches contain mechanical or electronic components that are not present in jewellery. The parties' goods are likely to be targeted towards the same users and sold through the same trade channels, as jewellers often sell watches alongside jewellery. In addition, the same undertaking may produce both watches and jewellery. Given the difference in primary purpose, I do not find competition between them, nor do I find any complementarity. Taking all these factors into account, I find that the goods are similar to a medium degree. In the case of bracelets, the degree of similarity may be slightly higher, as the parties' goods share the same method of use, both being worn on the wrist, and there will be a greater degree of similarity in physical nature between bracelet watches and bracelets than between watches and other items of jewellery.

63. The same rationale applies to a comparison of Off-White's *Cufflinks* with *Wristwatches*. The primary purpose of cufflinks is to fasten a cuff, although they are likely also to be decorative. I consider that they will also be sold by the same retailers, such as jewellers, to the same users, and be produced by some of the same undertakings. Any degree of similarity in physical nature is confined to the materials

from which the goods are made. I do not find any competition or complementarity. In my view, the goods are similar to a medium degree.

64. Off-White's *Straps for watches* are complementary to Mr Le Menestrel's *Wristwatches*, as the watch is essential for use of the strap and the average consumer is likely to believe that a watch manufacturer will produce straps to fit its watches. There is some similarity in physical nature, as the straps may be made from the same materials as the watch case. In addition, wristwatches are usually sold with a strap and, in my view, the average consumer would understand the term "wristwatch" to refer to the whole article, including the strap. The trade channels and users are likely to be the same. The goods are not in competition. Taking these factors into account, I find that the goods are similar to a medium to high degree.

65. The next group is *Precious and semi-precious stones; precious metals and their alloys*. These are the materials used to make jewellery, but they may also be used in making watches. In *Les Éditions Albert René v OHIM*, Case T-336/03, the GC said:

> "61. The mere fact that a particular good is used as a part, element of component of another does not suffice in itself to show that the finished goods containing these components are similar since, in particular, their nature, intended purpose and the customers for these goods may be completely different."

66. In my view, the parties' goods overlap in user and retail outlets, as some jewellers sell precious and semi-precious stones and precious metals as well as watches. They differ in nature, with the watches being finished goods, and also in purpose and method of use. The goods are neither complementary nor in competition. I find that there is a very low degree of similarity between the goods.

67. I shall now compare *Works of art of precious metal* to *Wristwatches*. The purpose of Off-White's goods is to provide aesthetic pleasure to the viewer and to decorate interior and exterior spaces. I do not see that there is any similarity in purpose. The method of use of the goods is different. I consider there to be some overlap in user. I have no evidence to suggest that the parties' goods are sold in the same outlets. There is some similarity in physical nature, as the watches may also be made of precious metals. However, in all other respects, the goods do not share any physical

resemblance. For example, I have already referred to the additional mechanical or electronic components of watches and in my view these are unlikely to be parts of works of art. I do not find the goods to be in competition or complementary. I find them to be dissimilar.

68. Off-White's *Jewelry cases; jewel cases of precious metal* differ in purpose from Mr Le Menestrel's *Wristwatches*. There will be some overlap in trade channels and the parties' goods will all be sold to the same users. Their method of use is different. They share a physical nature to the extent that both parties' goods may be made from precious metals, but the similarity ends there. They are not in competition or complementary. I find that they are similar to a very low degree.

69. I now consider the opposed *Key chains* and *key rings*. To my knowledge, these goods are not typically sold by the same retailers as Mr Le Menestrel's *Wristwatches*, and I have no evidence before me to suggest otherwise. Consequently, I do not find any overlap in trade channels. The method of use and purpose of the goods is different. They may be made of the same materials, such as precious or semi-precious metals, and so there may be an overlap in physical nature. However, this is at a general level. Many different goods can be made of precious or semi-precious metals and sold to members of the general public without a likelihood of confusion. There is no complementarity or competition. I find the goods to be dissimilar.

70. Off-White's final term is *Wall clocks*. They clearly overlap in purpose with Mr Le Menestrel's *Wristwatches* and there is also some overlap in physical nature, user and trade channels. They may also be produced by the same undertakings. The method of use will be different as watches are worn, while wall clocks, as the name suggests, are attached to a wall. The goods are not complementary, and I do not consider that there is any competition between them, as the portability of a wristwatch is a key feature of those goods. I find that they are similar to a medium degree.

71. Where there is no similarity between the goods, there can be no likelihood of confusion under section 5(2)(b) of the Act. Therefore, the opposition under this ground fails in respect of *Works of art of precious metal; key chains; key rings.*

Average consumer and the purchasing process

72. The average consumer is deemed to be reasonably well informed and reasonably circumspect: see *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), paragraph 60. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: see *Lloyd Schuhfabrik Meyer*, paragraph 26.

73. The average consumer for the goods will be a member of the general public, although *Precious and semi-precious stones; precious metals and their alloys* are more likely to be purchased by tradespeople, such as jewellery manufacturers. The level of attention paid by a professional purchaser is likely to be higher than that paid by a member of the general public. I shall therefore focus on the latter type of consumer. The price of the goods is likely to vary, from the relatively inexpensive to the highly costly, and the goods are unlikely to be everyday purchases. Even where the cost is comparatively low, the average consumer will consider factors such as the appearance of the goods, the materials from which they are made, and any special features. Consequently, I take the view that they will pay at least a medium degree of attention during the purchasing process, although this may rise if the goods are being bought for a special occasion or as a gift.

74. The average consumer is likely to purchase the goods from a retail outlet, either by self-selection or by asking a member of staff for them. The latter method is likely to be employed in the case of expensive watches, where there is a risk of theft, but in such circumstances the consumer will inspect the goods before purchasing and see any marks that have been placed on the goods themselves or presentation boxes. The average consumer may also have done some research, for example on the internet, before making the purchase. Where goods are cheaper, they may be self-selected from shelves or from websites and catalogues, but the average consumer may still seek assistance from sales staff. Consequently, I find that the visual aspect of the mark will dominate the selection process, but that there may also be an aural component.

Comparison of marks

75. It is clear from *SABEL* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo* that:

> "34. … it is necessary to ascertain in each individual case, the overall impression made on the target public by the sign for which the registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

76. Artificial dissection of the marks would therefore be wrong, although it is necessary for me to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

77. The respective marks are shown below:

Off-White's application	**Earlier mark**
	OW

78. In paragraph 32 of my decision, I found that the overall impression of Mr Le Menestrel's mark lies in the letters "OW" and that they are likely to be perceived as initials. There is nothing else that can contribute to the overall impression.

79. Turning now to the contested application, I find that the letters "OW" are the dominant and more distinctive element of the mark, and the stylisation makes a smaller contribution to the overall impression of the mark.

80. The sole point of visual difference between the marks is the stylisation. Given the respective roles played by the letters and the stylisation of the application, I find that the marks are visually highly similar. I consider that the marks would be articulated in the same way and so find that they are aurally identical.

81. The letters of the marks do not appear to have any descriptive or allusive meaning in the context of the goods at issue. It is my view that the average consumer will perceive them to be initials and so I find that the marks have no conceptual content beyond the letters themselves. I note that it has not been argued that the average consumer would perceive them as meaning an expression of pain or discomfort. I think this would be an unlikely reading of a brand name for these goods.

Distinctive character of the earlier mark

82. Distinctive character is a measure of how strongly a mark distinguishes the goods or services of one undertaking from those of others. The factors that I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer*:

> "23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered, the market share held by the mark, how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark, the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking, and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

83. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of the mark can be enhanced by the use that has been made of it.

84. I have already found that the inherent distinctive character of the mark is at a medium level. I shall not repeat my summary of the evidence here, but I remind myself that it does not show the share of the market held by the mark, turnover figures or indicate the extent to which the mark has been exposed to the relevant public in the UK. Consequently, I find that the inherent distinctive character of the mark has not been enhanced through use.

Conclusions on likelihood of confusion

85. Making an assessment of the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer of the goods at issue and determining whether they are likely to be confused. When doing this, I am required to bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture of them that they have in their mind. This means that the global assessment emulates what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark. The courts have not said what weight should be attached to each of the factors or provided a formula that can be applied to any set of circumstances. However, I am required to take account of the interdependency principle, i.e. that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or vice versa.

86. There are two types of confusion: direct and indirect. In *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, Mr Iain Purvis QC, sitting as the Appointed Person, explained that:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but

analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI', etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

87. In *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ commented that:

"12. This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition."

88. Earlier in my decision, I found that:

a) The opposed goods that are still in play are either identical to Mr Le Menestrel's goods or similar to them to a degree ranging from high to very low;

b) The average consumer of the goods is a member of the general public, although *Precious and semi-precious stones; precious metals and their alloys* are more likely to be purchased by tradespeople;

c) The level of attention paid will be medium, although this may be higher if the goods are being bought for a special occasion or as a gift;

d) The purchasing process will be largely visual, although there are some instances where the aural element will be significant;

e) The marks are visually highly similar, aurally identical and have no conceptual content beyond the letters themselves; and

f) Mr Le Menestrel's mark has a medium degree of inherent distinctive character which has not been enhanced through use.

89. Even where the goods are similar to a very low degree, it is my view that the average consumer who is prone to imperfect recollection is likely to mistake one mark for the other, as the only difference between them is the stylisation. I find that there is a likelihood of direct confusion.

90. Should the average consumer recognise that Off-White's mark has a different stylisation, it is my view that there is a likelihood of indirect confusion. Consumers are accustomed to seeing marks appearing in different stylisations, as they are refreshed. They would, in my view, assume that both marks belong to the same undertaking.

91. The opposition is successful under section 5(2)(b) in respect of the following goods:

Class 14

Jewelry; bracelets; necklaces; pendants; pins being jewelry; rings; earrings; cufflinks; watches; straps for watches; precious and semi-precious stones; precious metals and their alloys; jewelry cases; jewel cases of precious metal; wall clocks.

Section 5(4)(a)

92. Section 5(4)(a) of the Act states that:

> "A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented–
>
> > (a) by virtue of any rule or law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, where the condition in subsection 4(A) is met
> >
> > …"

93. Subsection 4(A) is as follows:

> "The condition mentioned in subsection (4)(a) is that the rights to the unregistered trade mark or other sign were acquired prior to the date of application for registration of the trade mark or date of the priority claimed for that application."

94. In *Reckitt & Colman Products Limited v Borden Inc. & Ors* [1990] RPC 341, HL, Lord Oliver of Aylmerton described the 'classical trinity' that must be proved in order to reach a finding of passing off at [406]:

> "First, he must establish a goodwill or reputation attached to the goods or services which he supplies in the mind of the purchasing public by association with the identifying 'get-up' (whether it consists simply of a brand name or a trade description, or the individual features of labelling or packaging) under which his particular goods or services are offered to the public, such that the get-up is recognised by the public as distinctive specifically of the plaintiff's goods or services. Secondly, he must demonstrate a misrepresentation by the defendant to the public (whether or not intentional) leading or likely to lead the public to believe that the goods or services offered by him are the goods or services of the plaintiff. Thirdly, he must demonstrate that he suffers or, in a quia timet action, that he is likely to suffer damage by reason of the erroneous belief engendered by the defendant's misrepresentation that the source of the defendant's goods or services is the same as the source of those offered by the plaintiff."

Relevant date

95. In *Maier & Anor v ASOS plc & Anor* [2015] EWCA Civ 220, Kitchin LJ (as he then was) said:

> "165. … Under the English law of passing off, the relevant date for determining whether a claimant has established the necessary reputation or goodwill is the date of the commencement of the conduct complained of (see, for example, *Cadbury-Schweppes Pty Ltd v The Pub Squash Co Ltd* [1981] RPC 429). The jurisprudence of the General Court and that of OHIM is not entirely clear as to how this should be taken into consideration under Article 8(4) (compare, for example, T-114/07 and T-115/07 *Last Minute Network Ltd* and Case R 784/2010-2 *Sun Capital Partners Inc*). In my judgment the matter should be addressed in the following way. The party opposing the application or the registration must show that, as at the date of application (or the priority date, if earlier), a normal and fair use of the [contested] trade mark would have amounted to passing off. But if the [contested] trade mark has in fact been used from an earlier date then that is a matter which must be taken into account, for the opponent must show that he had the necessary goodwill and reputation to render that use actionable on the date that it began."

96. Off-White has made no claim to have used the opposed mark before the date of the application (12 April 2023) and so this is the relevant date for the purposes of assessing this ground.

Goodwill

97. Mr Le Menestrel must show that he had goodwill in a business at the relevant date and that the signs relied upon, **OW** and **O&W**, are associated with, or distinctive of, that business.

98. The concept of goodwill was considered by the House of Lords in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 at [224]:

> "What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantages of the good name, reputation and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has the power of attraction sufficient to bring customers home to the source from which it emanates."

99. It is important to keep in mind that the goodwill is in the business and, absent any contractual agreement to the contrary, is generally owned by the undertaking that the customers perceive as being responsible for the trade: see *Scandecor Development AB v Scandecor Marketing AB* [2002] FSR 7. In this case, that is Ollech & Wajs, the company of which Mr Le Menestrel is President. Off-White denied that Mr Le Menestrel owned any goodwill and put him to proof of this claim. Exhibit CLM1 contains an extract of the Commercial Register of the canton of Zurich which, according to Mr Le Menestrel, confirms his position. This is dated 12 December 2023 and does indeed state that Mr Le Menestrel is president of the board of directors of Ollech & Wajs Precision AG. There is, however, no evidence that any goodwill arising from the activities of Ollech & Wajs is owned by Mr Le Menestrel himself. I find that he does not have standing to bring this claim and therefore dismiss it.

OUTCOME OF THE PROCEEDINGS

100. The revocation application against UKTM No. 916077943 is partially successful. Subject to a successful appeal, it is revoked in respect of the following goods and services with effect from 1 April 2022:

> *Class 14*
> *Chronographs [watches]; Chronometers; Stopwatches; Clocks; Atomic clocks; Clocks and watches, electric; Clocks; Alarm clocks; Watch cases, watch straps, watch chains, watch springs or watch glasses; Clock hands; Pendulums [clock- and watchmaking]; Barrels [clock- and watchmaking]; Clock cases; Cases for watches [presentation]; Housings for clocks and watches; Dials for clock and*

watch making; Movements for clocks and watches; Sundials; Chronoscopes; Control clocks [master clocks]; Jewelry; Jewellery; Precious stones; Precious metals and their alloys, coins; Works of art of precious metal; Jewel cases; Boxes of precious metal; Key rings [trinkets or fobs]; Statues and figurines (statuettes) of precious metal; Medals.

Class 37

Upkeep and repair of watches and horological and chronometric instruments; Providing of information relating to the repair and upkeep of watches and horological and chronometric instruments; Maintenance, cleaning and repair of leather or furs, furniture restoration.

101. It remains registered for the following goods:

Class 14

Modern or antique horological instruments and modern or antique chronometric instruments, the aforementioned goods being watches; Wristwatches.

102. The revocation action against UKTM No. 916077951 is wholly successful and, subject to a successful appeal, the mark is revoked in its entirety with effect from 1 April 2022.

103. The partial opposition against Application No. 3899855 is partially successful and registration is refused for the following goods:

Class 14

Jewelry; bracelets; necklaces; pendants; pins being jewelry; rings; earrings; cufflinks; watches; straps for watches; precious and semi-precious stones; precious metals and their alloys; jewelry cases; jewel cases of precious metal; wall clocks.

104. Subject to a successful appeal, Application No. 3899855 may proceed to registration for all the goods in Classes 9, 18 and 25, and the following goods in Class 14:

Works of art of precious metal; key chains; key rings.

COSTS

105. Both parties have had some success in these consolidated proceedings and so I order that they bear their own costs.

Dated this 22nd day of December 2025

Clare Boucher
For the Registrar,
Comptroller-General

Annex A: Specification of UKTM(A) 3899855

Class 9

Recorded and downloadable media, computer software, blank digital or analogue recording and storage media; eyewear, namely, eyeglasses, sunglasses and eyeglass frames and lenses and eyewear accessories, namely, cases and holders; swim goggles; glasses; sunglasses; boxes (cases) for glasses; cases for sunglasses; spectacle frames; eyeglass frames; lenses (eyewear); holders for eyewear; eyewear pouches; eyeglass cords; eyeglass chains; eyeglass shields; eyeglass lanyards; parts for spectacles; telephones; mobile phones; smartphones; videophones; tablet PCs; personal digital assistants; portable sound, video and multimedia players; computer; laptops; signal whistles; sport whistles; whistle alarms; magnetic compasses; compasses for measuring; directional compasses; protective helmets; protective face masks for the prevention of accident or injury; dust masks; protective industrial face shields; protective work gloves; safety goggles; bags adapted for laptops, laptop sleeves and carrying cases; cases, covers, holders and stands for use with handheld digital electronic devices, namely, mobile phones, smartphones, videophones, tablets, personal digital assistants, portable sound, video and multimedia players; grips, stands, and mounts for handheld electronic devices, namely, mobile phones, smartphones, videophones, tablets, personal digital assistants, portable sound, video and multimedia players; earbuds and cases for earbuds; cases for earphones; blank USB flash drives; hands-free kits, straps, wrist straps and neck straps for mobile phones, smartphones, videophones, tablets, personal digital assistants, portable sound, video and multimedia players; chargers for phones, mobile phones, smartphones, videophones, tablets, personal digital assistants, portable sound, video and multimedia players; batteries for phones, mobile phones, smartphones, videophones, tablets, personal digital assistants, portable sound, video and multimedia players; electronic apparatus for recording, reproducing, processing and transmitting sound, images or data; headphones; loudspeakers; bags adapted for laptops; sleeves for laptops; laptop carrying cases; batteries for laptops; chargers for laptops; smartwatches; connected bracelets (measuring instruments); watches and bracelets with monitoring functions and data reporting relating to physical fitness, training and activity; electronic book readers; protective helmets; breathing masks other than for artificial respiration; anti-pollution masks for respiratory protection; face

shields, other than for medical purposes; protective face masks not for medical purposes; safety glasses for protecting the eyes; mouth guards for sports; computers and computer peripheral devices; computer hardware; wearable computer hardware; USB hardware; virtual reality hardware; USB cables; electrical cables; audio cable; virtual reality glasses; chargers; wireless chargers; remote controllers; motion sensors; simulation apparatus; image scanners; image processors; audio speakers; stands for mobile electronic devices; audio receivers; audio transmitters; head-mounted video display; electric sensors; telecommunications equipment; cameras; batteries; video display hardware; computer software applications, downloadable; computer software applications; interface software; utility software; platform software; computer application software for use with wearable computer devices; authentication software; simulation software; downloadable software for gesture recognition, object tracking, motion control, and content visualization; downloadable software for creating and managing smart contracts; computer application software for use in connection with configuring and controlling wearable computer hardware and wearable computer peripherals; computer operating systems; downloadable software for searching, locating, compiling, indexing, correlating, navigating, obtaining, downloading, receiving, encoding, decoding, playing, storing and organizing text, data, images, graphics, audio and video on a global computer network; databases; computer databases; computer database servers; interactive databases; computer software for accessing databases; computer software for database management; graphic art software; graphics software; computer software for organizing and viewing digital images and photographs; data processing software for graphic representations; downloadable computer software for blockchain technology; computer gaming software; computer hardware for games and gaming; downloadable video game software; interactive video game programs; joysticks for use with computers, other than for video games; software programs for video games; virtual reality software for playing virtual reality games; virtual reality software; virtual reality headsets; virtual reality goggles; virtual reality glasses; virtual server software; virtual reality [VR] cinemas; virtual reality hardware, namely, headsets, glasses, and controllers for engaging in virtual reality experiences and playing virtual reality games; virtual reality [VR] motion simulators; downloadable software for operating, configuring, and managing virtual reality headsets and controllers; augmented reality computer hardware; augmented reality game software; augmented reality software; augmented

reality software for use in mobile devices; augmented reality hardware, namely, headsets, glasses, and controllers for engaging in augmented reality experiences and playing augmented reality games; media content; downloadable image files; downloadable videos; audio visual recordings; computer application software for providing information in the fields of fashion, the arts and lifestyle; computer application software for enabling users to search, access and view digital online content in the fields of fashion, the arts and lifestyle, and to purchase retail goods; downloadable computer software in relation to virtual goods namely, clothing, apparel, footwear, headwear, eyewear, sunglasses, bags, fashion accessories, textile goods, furniture and furnishings, homeware, art, toys, games, jewellery, cosmetics, cosmetic tools, perfume, beauty, skin and hair care products, paper goods and stationery for use in online virtual worlds; computer software relating to downloadable virtual goods being virtual clothing, apparel, footwear, headwear, eyewear, sunglasses, bags, fashion accessories, textile goods, furniture and furnishings, homeware, art, toys, games, jewellery, cosmetics, cosmetic tools, perfume, beauty, skin and hair care products, paper goods and stationery for use in online virtual worlds; computer software relating to downloadable virtual goods being virtual clothing, apparel, footwear, headwear, eyewear, sunglasses, bags, fashion accessories, textile goods, furniture and furnishings, homeware, art, toys, games, jewellery, cosmetics, cosmetic tools, perfume, beauty, skin and hair care products, paper goods and stationery for use in virtual reality games; digital signs; motion pictures; collaboration software platforms [software]; collaboration software; communication, networking and social networking software; e-commerce software; 3D computer graphics software; 3D fashion software; software for a digital showroom; 3D animation software; Downloadable computer software being virtual goods namely, eyewear, headphones, sunglasses, cosmetics, clothing, headgear, footwear, jewellery and watches to be worn in a virtual world; downloadable digital media; downloadable computer software; downloadable digital media, namely, digital collectibles created with blockchain-based software technology and smart contracts; downloadable software for viewing non-fungible tokens (NFTs); downloadable software for use in electronically storing, sending, receiving, accepting and transmitting non-fungible tokens (NFTs); downloadable software to enable the uploading, posting, showing, displaying and sharing of information in the fields of virtual communities, electronic gaming and entertainment via global communication networks or other communications networks with third parties; downloadable software

featuring virtual currency, namely, computer programs featuring in-game tokens and currency for use in online web and mobile video games; downloadable software for users to search, browse, view, and purchase virtual goods, namely, digital art and non-fungible tokens (NFTs); downloadable software for use in creating virtual environments; downloadable software for use in participating in virtual environments; downloadable software for processing images, graphics, audio, video, and text; apparatus for reproduction of images; software for processing digital images; software for generating virtual images; computer application software for streaming audio-visual media content via the internet; computer programs and software for image processing used for mobile phones; downloadable software for creating, editing, uploading, downloading, accessing, viewing, posting, displaying, tagging, blogging, streaming, linking, annotating, indicating sentiment about, commenting on, interacting with, embedding, and sharing or otherwise providing electronic media, images, video, audio, audio-visual content, data, and information via the internet and communication networks; media streaming software; video streaming devices; computer application software for streaming audio-visual media content via the internet; downloadable maps; downloadable electronic maps; augmented reality software for creating maps; computer software platforms for social networking; software for social networking; application software for social networking services via internet; software for creating, managing, and interacting with an online community; downloadable software for use in facilitating voice over internet protocol (VOIP) calls, phone calls, video calls, text messages, instant message and online social networking services; software in relation to sale and purchase of digital media and art, images, sculptures, models, renderings, photographs, videos, or audio recordings, including non-fungible tokens (NFTs); Downloadable digital files authenticated by non-fungible tokens (NFTs); Downloadable digital files authenticated by non-fungible tokens (NFTs) relating with digital art, images, sculptures, models, renderings, photographs, videos, or audio recordings; Downloadable computer software namely digital tokens based on blockchain technology; Downloadable computer software namely digital art, images, sculptures, models, renderings, photographs, videos, or audio recordings; downloadable cryptographic keys for receiving and spending cryptocurrency; software for processing electronic payments to and from others; apparatus and instruments for processing images; online payment software; computer software relating to the handling of financial transactions; downloadable computer software for managing cryptocurrency

transactions using blockchain technology; downloadable computer software for blockchain technology; apparatus for electronic payment processing; payment software; downloadable computer software for use as a cryptocurrency wallet; cryptocurrency hardware wallet; downloadable computer software for use as a digital wallet; downloadable software for electronic wallet services; downloadable e-wallets; downloadable software for use with digital currency, crypto currency and virtual currency; downloadable software for use in managing portfolios of digital currency, virtual currency, cryptocurrency, digital and blockchain assets, digitized assets, digital tokens, crypto tokens and utility tokens; downloadable software for sending, receiving, accepting, buying, selling, storing, transmitting, trading and exchanging digital currency, virtual currency, cryptocurrency, digital and blockchain assets, digitized assets, digital tokens, crypto tokens and utility tokens; downloadable software for managing and validating digital currency, virtual currency, cryptocurrency, digital asset, blockchain asset, digitized asset, digital token, crypto token and utility token transactions; downloadable software used in auditing digital currency, virtual currency, cryptocurrency, digital and blockchain assets, digitized assets, digital tokens, crypto tokens and utility tokens; downloadable software for use in payments, purchases, and investments using digital currency, virtual currency, cryptocurrency, digital and blockchain assets, digitized assets, digital tokens, crypto tokens and utility tokens; downloadable software for managing payment and exchange transactions; downloadable software for use as an application programming interface (API); application programming interface (API) for computer software for developing and creating virtual reality, augmented reality and mixed reality experiences; application programming interface (API) for computer software which facilitates online services for social networking and for data retrieval, upload, download, access and management; downloadable graphic design templates; development tool programs; virtual reality models; computer software for the design, creation, and modification of designs, models, characters, avatars, environments, digital overlays, skins; downloadable computer software for the creation, production and modification of digital animated and non-animated designs and characters, avatars, digital overlays and skins for access and use in online environments, virtual online environments, and extended reality virtual environments; downloadable multimedia files containing artwork authenticated by non-fungible tokens (NFTs); parts and fitting for the aforesaid goods.

Class 14

Jewelry; bracelets; necklaces; pendants; pins being jewelry; rings; earrings; cufflinks; watches; straps for watches; precious and semi-precious stones; precious metals and their alloys; works of art of precious metal; jewelry cases; jewel cases of precious metal; key chains; key rings; wall clocks.

Class 18

Leather and imitations of leather; animal skins and hides; luggage and carrying bags; handbags; tote bags; purses; clutches; cosmetics bags sold empty; reusable shopping bags; wallets; backpacks; fanny packs; briefcases; attaché cases; travel bags; trunks being luggage; luggage; all purpose carry bags; Umbrellas and parasols; satchels; school book bags; knapsacks; makeup cases sold empty; unfitted vanity cases; credit card holders; business card cases; briefcase-type portfolio cases; gym bags; beach bags; sport bags; toiletry bags sold empty; clothing for pets; leather boxes; fur; walking sticks; whips; harness; saddlery; collars for animals; leashes for animals; parts and fittings for the aforesaid; all aforementioned goods not for the alpine sports sector and not for the Nordic sports sector.

Class 25

Clothing, footwear, headwear; bottoms as clothing; tops as clothing; hosiery; sleepwear; neckwear; waist belts; swimwear; underwear; foundation garments; fashion face masks in the nature of balaclavas; knit face masks being headwear; cloth face mask being headwear; jackets; sweatshirts; sweaters; vests; coats; blazers; suits; pants; jeans; shorts; shirts; dresses; skirts; scarves; shawls; socks; stockings; suspenders; gloves; bathrobes; sleeping masks; wristbands as clothing; sweatbands; headbands; head wraps; bandanas; caps being headwear; hats; visors being headwear; all aforementioned goods not for the alpine sports sector and not for the Nordic sports sector.