

**O/0346/23**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF REGISTRATION NO. 3113482**

**IN THE NAME OF CURVE UK LIMITED**

**FOR THE TRADE MARK:**

**Curve**

**IN CLASSES 9, 16, 35 & 36**

**AND**

**AN APPLICATION FOR REVOCATION THEREOF**

**UNDER NO. 503864**

**BY**

**SWISS STAKE GMBH**

## Background and pleadings

1. Curve UK Limited (“the Proprietor”) is the registered proprietor of trade mark registration no. 3113482 for the mark:

## Curve

2. The trade mark was filed on 16 June 2015 and registered on 11 December 2015. It is registered in respect of the following goods and services:

**Class 9:** Magnetically encoded credit cards; Credit cards; Credit cards [encoded]; Credit cards [magnetic]; Magnetic credit cards; Credit card encoding machines [computer peripherals]; Magnetic payment cards; none of the aforesaid goods being branded or promoted in respect of sports, physical fitness or gymnasium based activities.

**Class 16:** Credit cards without magnetic coding; none of the aforesaid goods being branded or promoted in respect of sports, physical fitness or gymnasium based activities.

**Class 35:** Loyalty card services; Loyalty card services; Credit card registration services; none of the aforesaid services being branded or promoted in respect of sports, physical fitness or gymnasium based activities.

**Class 36:** Credit and cash card services; Bank card, credit card, debit card and electronic payment card services; Credit card validation services; Cash replacement rendered by credit card; Credit card protection and registry services; Credit card transaction processing services; Credit card verification; Electronic wallet services (payment services); Processing payments made by charge cards; Processing of payments for banks; Processing of payments in relation to charge cards; Processing of payments in relation to credit cards; Financial management of reimbursement payments for others; Electronic wallet services (payment services); Credit card validation services; Credit card transaction processing

services; Credit card verification; Debit card validation services; Bank card, credit card, debit card and electronic payment card services; Payment administration services; Payment processing; Remote payment services; Credit card payment processing; Electronic wallet services (payment services); Payment and receipt of money as agents; Payment transaction card services; Credit card and payment card services; none of the aforesaid services being branded or promoted in respect of sports, physical fitness or gymnasium based activities.

3. Swiss Stake GmbH (“the applicant”) filed a notice of revocation on 25 November 2021, seeking full revocation of the trade mark registration. The application for revocation is based on Section 46(1)(a) of the 1994 Trade Marks Act (“the Act”) on the basis of non-use in the five years following registration. The date of revocation sought is 12 December 2020.
4. The Proprietor defended its registration, claiming use of the mark on all of the goods and services covered under the mark during the relevant period, which is 11 December 2015 to 11 December 2020. The Proprietor provided evidence of use of its mark and in response the Applicant provided confidential and non-confidential written submissions.
5. A Hearing was requested and was held remotely on 18 January 2023 at which the Proprietor was represented by Mr Phillip Johnson of counsel, instructed by Locke Lord (UK) LLP. The Applicant was represented by Ms Beth Collett of counsel, instructed by Harbottle & Lewis LLP.

### **Evidence**

6. The Proprietor’s evidence comprises a witness statement of Shachar Bialick along with Exhibits SB1-SB23, two videos, and a confidential schedule. This evidence includes information that is subject to a confidentiality order. I do not intend summarise the Proprietor’s evidence in great detail here but have carefully examined and analysed all of that information, and the Applicant’s responses, and will bring that analysis to bear in my deliberations and final decision.

7. In his Witness Statement Mr Bialick states that he is the CEO (Chief Executive Officer) and founder of Curve OS Limited, which was incorporated on 2 April 2015 and authorised as an Electronic Money Institution by the Financial Conduct Authority (FCA) on 9 December 2019.
8. In his Witness Statement, Mr Bialick states that: *“Curve operates as, and is developing an ever more inclusive, over-the-top banking platform, that connects and allows customers to spend, send, see and save, across their various financial services, regardless of their provider, all in one place, at their fingertips. The products and services offered under the word mark Curve comprise a bundle of interrelated payment, card, payment services and financial services built around the Curve platform, which includes the Curve App and the Curve Card. These services relate to the storage, validation, verification, and processing of various funding sources (e.g. payment cards including credit, debit, charge, prepaid and other payment cards, financial accounts such as bank accounts, business accounts, crypto accounts, etc.) are all part of our broader payments processing and financial services that enable customers to move their money between people, entities and funding sources and access related payment services.”*
9. Mr Bialick states that the Curve Card was first issued to beta customers in the UK in February 2016 together with the Curve App. It was launched and became available to the general public in February 2018 and has built up a significant customer base, with more than 3 million customers signing up across the UK and the EEA.
10. The Proprietor’s Confidential schedule provides a number of tables that include information on the following: The total number of Curve’s UK resident customers between 2016 and 2021; the gross value of transactions processed on the Curve Card and App across 2016 – 2020; the number of annual transactions for 2016 – 2020; the number of distinct Curve Cards issued in those years; the number of Go Back in Time transactions between 2019 and 2020; the number of refunds processed; the number of loyalty cards added in the Curve system in 2020; the numbers of debit and credit cards added as funding cards verified in the Curve

system between 2016 and 2020 and the number of customer claims using the Curve Customer Protection Policy.

11. I note that **Exhibit SB-002** provides several images of Curve cards with Mastercard logos. The Curve mark can be seen clearly on some of these cards. Some of the cards appear to be encoded cards. It can be seen that at times there is use of a figurative logo in combination with CURVE or in place of the word. Example images of the cards and the figurative logo provided under that Exhibit are as follows:





Exhibit SB-005 provides an extract from Twitter which looks like this:

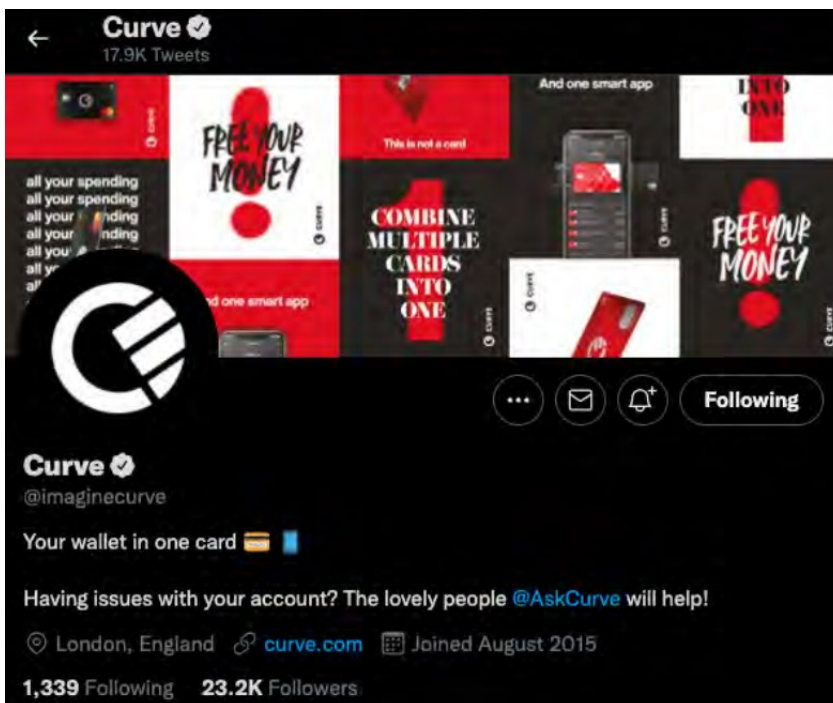


Exhibit SB-006C provides further social media images including the following:

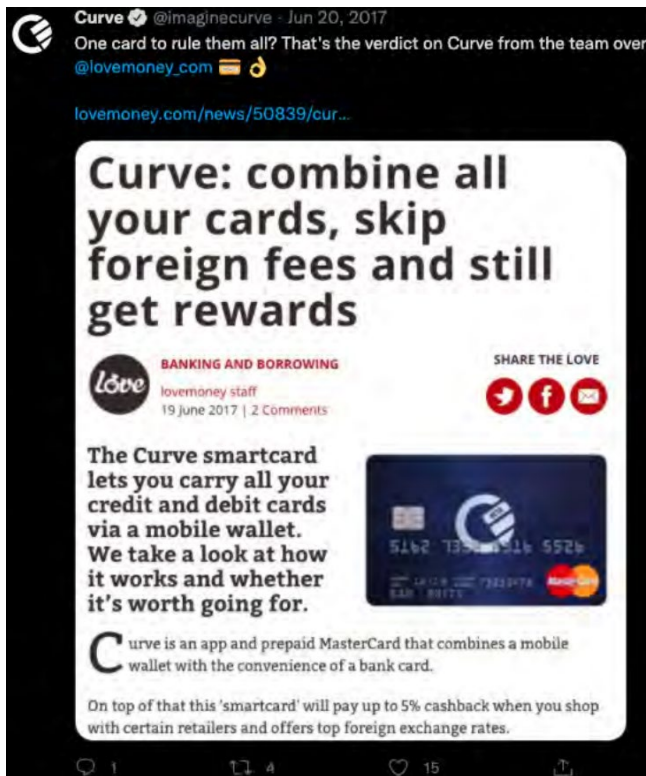


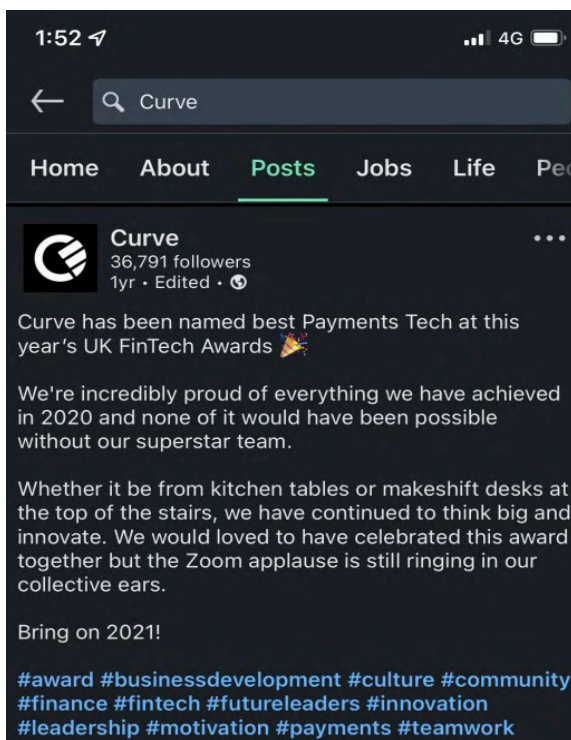
Exhibit SB-006G provides further examples of social media use of the Curve brand, including the following:



Further social media use of the Curve brand name is provided under **Exhibit SB-006H:**



**Exhibit SB-006R** also provides information about the Proprietors business and use of the Curve name as follows:



## Legislation

12. Section 46(1) of the Act states that:

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



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

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

(c) [...]

(d) [...]

(2) For the purpose of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered 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 to the registrar or to 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 existed at an earlier date, that date.”

Section 100 is also relevant, which reads:

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

13. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to EU trade mark law.

14. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J summarised the law relating to genuine use as follows:

“114.....The CJEU has considered what amounts to “genuine use” of a trade mark in a series of cases: Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, *La Mer* (cited above), Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bunderversammlung 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], [2013] ETMR 16, Case C-609/11 P *Centrotherm*

*Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR, 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] and Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434], [2017] Bus LR 1795.

115. The principles established by these cases 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]; *Leno* at [29]; *Centrotherm* at [71]; *Reber* at [29].

(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]; *Leno* at [29]; *Centrotherm* at [71]. Accordingly, affixing of a trade mark on goods as a label of quality is not genuine use unless it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality: *Gözze* at [43]-[51].

(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] and [22]. 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]; *Reber* at [29].

(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]; *Leno* at [29]-[30], [56]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34].

(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 [76]-[77]; *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].”

## **Genuine Use**

15. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.<sup>1</sup>
16. The Applicant provided written submissions rebutting the evidence and witness statement of the Proprietor. I have considered all of those submissions carefully and do not intend to summarise them to any great degree here.
17. It is noted that the Applicant now concedes that the Proprietor has used the contested mark in the provision of: 'Electronic wallet services (payment services)', in Class 36.<sup>2</sup>
18. During the Hearing, Ms Collett, on behalf of the Applicant, stated that the Proprietor had not met the standard of proof to show use in relation to the rest of the specification. She claimed that many of the figures provided were unsubstantiated. She suggested that there were issues around who actually provides the Proprietor's services, insofar as they are being provided. She also asserted that some of the services provided by the Proprietor appeared to be expressly third party, particularly the loyalty card services; and she suggested that there was a regulatory point to be considered, as to who is actually entitled to provide some of the services in contention.
19. Ms Collett referred to the *RASTA PASTA* decision, on which Mr Johnson has relied.<sup>3</sup> Ms Collett asserted that in that decision, Mr Johnson sitting as the Appointed Person, found that the UK IPO Hearing Officer was right "*to accept the sales figures based on the report from the licensee. It would be absurd to require trade mark proprietors to evidence every single sale made, particularly on a case like this where it is claimed that over 100,000 sales were made. Accordingly, even where other evidence is filed such as sample invoices, at some point any court or tribunal will need to rely on tables, spreadsheets or similar in order to set out the total value and number of those sales*".

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<sup>1</sup> *New Yorker SHK Jeans GmbH & Co KG v OHIM*, T-415/09

<sup>2</sup> Paragraph 5 of Ms Collett's skeleton arguments.

<sup>3</sup> BL O/750/21

20. Ms Collett told me that she agreed with that conclusion but claimed that in the matter at hand, the Proprietor had provided no evidence of sales, no corroborating documentation or reports relating to the alleged figures.

21. Referencing the comments of Daniel Alexander KC, sitting as the Appointed Person in *Awareness Limited v Plymouth City Council*,<sup>4</sup> Ms Collett went on to say “...as Mr. Alexander has made clear, the burden is on the Proprietor to substantiate the evidence they have provided. This is not, as we say, a report from a licensee ... There is no Excel spreadsheet, this is just numbers that have been manually typed into a table in a witness statement. It makes it impossible to challenge by the applicant, save the more general criticisms I am making now, and it is wholly unsatisfactory for the purposes of maintaining a monopoly right. So, it is not the same as RASTA PASTA, we do not have a report.”

22. Ms Collett referred me to *Guccio Gucci*<sup>5</sup>; *Dosenbach-Ochsner* and *Awareness Limited* and asserted that “...it must be correct to follow the approach as confirmed by Mr. Hobbs KC (*Dosenbach*) or Mr. Alexander KC (*Extreme*). ...you are absolutely entitled to expect the evidence to be corroborated by documentation given the scope, the alleged scope, of the Proprietor's business, the fact they were legally represented at all times when it prepared evidence, there was a month when they were not but that was well after the evidence had been prepared and given the importance of maintaining a monopoly right. ... do not be swayed by the fact that the figures in theory might sound impressive, but actually consider them in light of all of the other comments we have made on the evidence and the fact that you cannot corroborate them.”

23. Ms Collett submitted that Mr Johnson “...also makes reference to the “mere puff” of the advertising and he says “come on, it is just marketing; people understand it is just marketing. Disregard it as what it is”. We say well, no, actually because in circumstances such as these where one is dealing with a highly regulated industry and important goods and services (being financial basis), actually consumers do rely on that mere puff and they trust that it is accurate, so statements such as “we

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<sup>4</sup> BL O/236/13

<sup>5</sup> BL O/424/14

*are not a credit card" and "we are not a bank", consumers say "oh okay" and they trust that because the consumer understands how highly controlled advertising, particularly in respect of financial services, is in the United Kingdom."*

24. Ms Collett also argued that: *"...prototypes of the cards are shown and we say okay that would be fine were there then any actual use of the cards shown. The evidence you have on that is there are some cards, none of which have any names on, none of which detail expiry dates or actual card numbers, even blanked out or redacted card numbers. ... you do not have any evidence of actual cards other than those figures, the unsubstantiated figures. My learned friend says it is actually fine if an exhibit is dated in a witness statement and not on the document itself, and that is at paragraph 10 of his skeleton argument. We agree with that, of course, but we say actually quite a lot of these exhibits are not even dated in the witness statement."*

25. In response, Mr Johnson stated: *"My learned friend was quite right in referring to and accepting the decision in RASTA PASTA in terms of tables being prepared and indeed you will be aware, sir, of many times in cases when you are substantiating goodwill or reputation it is necessary to have a table of sales in a witness statement and they are usually accepted. If a company says "we have sold X thousand units" that evidence is accepted because that is evidence of what they sold from somebody who has given a statement of truth. If a party wants to challenge that they have to come to court and get that person to court and cross examine them on that point. They cannot just say it is unsubstantiated"*.

26. Mr Johnson also claimed that: *"When considering genuine use it is our submission that it is necessary to consider the product or services which are being provided. When looking at the goods or services that are being provided it is necessary to look at what sort of information or what sort of evidence could be provided. One of the things that is quite difficult for a Proprietor in this case is the main service is an app. It has an accompanying credit card but it is an app and when the app is updated, new services are added to the app but the app more or less looks the same as before"*. He went on to say: *"what is important is what can be shown to demonstrate use. Here we have explained how it works, we have provided the*

*figures, we have provided where those figures come from and we provide them in a way which makes them very easily accessible for the tribunal.”*

27. Mr Johnson also provided detailed submissions tying the various contested goods and services to the evidence provided by his client. I do not intend to summarise these submissions here, but I have considered all of that information very carefully in my deliberations and during my assessment of the Proprietor’s evidence of use.

28. Having carefully considered the Proprietor’s evidence and the written/oral submissions from both parties, I refer back to the findings in *Walton* in respect of genuine and actual use of a trade mark. In particular that 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. The use must be more than merely token. All of the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including the nature of the goods or services and the characteristics of the market concerned. 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; and there is no *de minimis* rule.

29. As set out above, I have highlighted some elements of the evidence that support use of the contested mark during the relevant period.

30. On balance and taking account of all of the evidence before me, I am satisfied that the Proprietor has shown genuine use of the contested mark in trade during the relevant period. I do not however, accept that the evidence has established use in respect of all of the goods and services protected under the contested registration. I must therefore consider the scope of that use and decide on what amounts to a fair specification.

### **Fair Specification**



31. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*, BL O/345/10, Mr Geoffrey Hobbs Q.C. as the Appointed Person summed up the law as being:

“In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose, the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned.”

32. In *Property Renaissance Ltd (t/a Titanic Spa) v Stanley Dock Hotel Ltd (t/a Titanic Hotel Liverpool) & Ors* [2016] EWHC 3103 (Ch), Mr Justice Carr summed up the law relating to partial revocation as follows.

“iii) Where the trade mark proprietor has made genuine use of the mark in respect of some goods or services covered by the general wording of the specification, and not others, it is necessary for the court to arrive at a fair specification in the circumstance, which may require amendment; *Thomas Pink Ltd v Victoria's Secret UK Ltd* [2014] EWHC 2631 (Ch) ("Thomas Pink") at [52].

iv) In cases of partial revocation, pursuant to section 46(5) of the Trade Marks Act 1994, the question is how would the average consumer fairly describe the services in relation to which the trade mark has been used; *Thomas Pink* at [53].

v) It is not the task of the court to describe the use made by the trade mark proprietor in the narrowest possible terms unless that is what the average consumer would do. For example, in *Pan World Brands v Tripp Ltd* (Extreme Trade Mark) [2008] RPC 2 it was held that use in relation to holdalls justified a registration for luggage generally; *Thomas Pink* at [53].

vi) A trade mark proprietor should not be allowed to monopolise the use of a trade mark in relation to a general category of goods or services simply because he has used it in relation to a few. Conversely, a proprietor cannot reasonably be expected to use a mark in relation to all possible variations of the particular goods or services covered by the registration. *Maier v Asos Plc* [2015] EWCA Civ 220 ("Asos") at [56] and [60].

vii) In some cases, it may be possible to identify subcategories of goods or services within a general term which are capable of being viewed independently. In such cases, use in relation to only one subcategory will not constitute use in relation to all other subcategories. On the other hand, protection must not be cut down to those precise goods or services in relation to which the mark has been used. This would be to strip the proprietor of protection for all goods or services which the average consumer would consider to belong to the same group or category as those for which the mark has been used and which are not in substance different from them; *Mundipharma AG v OHIM* (Case T-256/04) ECR II-449; EU:T:2007:46.”

33. The Proprietor’s evidence shows use of the contested mark on financial payment cards like those supplied by banks and credit card companies. The evidence supports use of the contested mark on such goods and such goods that appear, by way of images of the reverse of the cards, to be encoded. The Proprietor has made clear throughout its evidence that the focus of the CURVE brand by way of the Curve app, is to provide its customers with a range of convenient and effective electronic payment services by using the app and the cards that it supplies to its customers. The Proprietor has shown no evidence of business activity or trade in areas such as loyalty schemes; cash replacement services; processing of payments for banks or credit card validation services.

34. I have taken note of the submissions of Mr Johnson very carefully, particularly his comments as to how many of the goods and services of his client connect in the broader sense. Whilst I appreciate those submissions, I agree with the comments of Ms Collett regarding the lack of corroboration of the evidence, in respect of many of the contested goods and services. Taking note of the findings in *Mundipharma AG*, I have considered the issue of overly restrictive limitations to specifications and the possibility of subcategories within a broader or more general term. I conclude however that the Proprietor has established itself in evidence only as a provider and facilitator of electronic payment services, and closely linked or ancillary goods, i.e. the cards and encoded cards required by a customer to use those payment services. I remind myself that the Applicant has accepted that the Proprietor has used its Curve mark on ‘*Electronic wallet services (payment services)*’ in class 36.

35. Therefore, having considered the evidence in this matter carefully, I find that the Proprietor has shown no evidence of use of the CURVE mark in respect of the following goods and services for which the mark is registered:

**Class 9:** Credit card encoding machines [computer peripherals].

**Class 35:** Loyalty card services; Credit card registration services; none of the aforesaid services being branded or promoted in respect of sports, physical fitness or gymnasium based activities.

**Class 36:** Credit card validation services; Cash replacement rendered by credit card; Credit card protection and registry services; Credit card verification; Processing of payments for banks; Financial management of reimbursement payments for others; Credit card validation services; Credit card verification; Debit card validation services; none of the aforesaid services being branded or promoted in respect of sports, physical fitness or gymnasium based activities.

36. I conclude therefore that a fair specification, and one which the Proprietor has established genuine use of the contested mark on, is:

**Class 9:** Magnetically encoded credit cards; Credit cards; Credit cards [encoded]; Credit cards [magnetic]; Magnetic credit cards; Magnetic payment cards; none of the aforesaid goods being branded or promoted in respect of sports, physical fitness or gymnasium-based activities.

**Class 16:** Credit cards without magnetic coding; none of the aforesaid goods being branded or promoted in respect of sports, physical fitness or gymnasium-based activities.

**Class 36:** Credit and cash card services; Bank card, credit card, debit card and electronic payment card services; Remote payment services; Electronic wallet services (payment services); Payment and receipt of money as agents; Payment transaction card services; Credit card and payment card services;

Credit card transaction processing services; Processing payments made by charge cards; Processing of payments in relation to charge cards; Processing of payments in relation to credit cards; Credit card transaction processing services; Payment administration services; Payment processing; Credit card payment processing; none of the aforesaid services being branded or promoted in respect of sports, physical fitness or gymnasium based activities.

### **Conclusion**

37. The revocation action has succeeded in part. Registration No. 3113482 will remain on the register, but only for the goods and services set out above under paragraph 36.

38. As to the date from which the rights of the Proprietor shall be deemed to have ceased in respect of those goods and services that are revoked, in line with section 46(6)(a), the above changes are effective from 12 December 2020.

### **Costs**

39. As both parties have achieved some measure of success in this matter, I decline to make an award of costs. I direct that both parties should bear their own costs.

**Dated this 6<sup>th</sup> day of April 2023**

**Andrew Feldon**

**For the Registrar**

**The Comptroller-General**