

O-254-17

TRADE MARKS ACT 1994

**APPLICATION NO 501280 BY BENOIT BOURDAIRE
TO REVOKE TRADE MARK REGISTRATION NO 1528257**

SPEEDWELL

OWNED BY SPEEDWELL PERFORMANCE CONVERSIONS LTD

Background and pleadings

1. SPEEDWELL is a registered trade mark (number 1528257) owned by Speedwell Performance Conversions Ltd ("the proprietor"). It is registered in Class 12 for "Motor land vehicles and parts and fittings therefor; all included in Class 12, but not including chains for vehicle wheels." Having been filed on 1 March 1993, the trade mark completed the registration procedure on 24 March 1995. Benoit Bourdaire has applied to have the trade mark registration revoked under sections 46(1)(a) and (b) of the Trade Marks Act ("the Act") on the following grounds:

(i) under section 46(1)(a) that there was no genuine use made of it in the first five years following the completion of the registration process; i.e. from 25 March 1995 to 24 March 2000, with an effective revocation date of 25 March 2000; and

(ii) under section 46(1)(b) that there was no genuine use made of it between 27 April 2011 and 26 April 2016, with an effective revocation date of 27 April 2016.

2. Mr Bourdaire states:

A search of the internet under the name Speedwell Performance Conversions reveals no current website, although there are a few articles relating to the history of a company under that name (see Annex 1). There is nothing to suggest that the registered proprietor of the mark is currently using the mark in the UK or indeed has used the mark at all in the UK (or indeed anywhere else) since the registration date.

A search of Companies House shows that the registered proprietor has essentially no assets (the capital of the business is £2, according to annual statements of capital filed 2014-2016). Further the registered proprietor company is inactive, and has been ever since its incorporation, and is shown as "dormant" in accounts filed at Companies House from 1994 to 2016 (see Annex 2).

In short, all available evidence points to the fact that the mark is not in use in the UK in relation to relevant goods (or indeed any goods whatsoever), whether by the registered proprietor or with the consent of the registered proprietor. Accordingly revocation of the registration under Section 46(1)(a) and/or 46(1)(b) is requested.

The statutory form which Mr Bourdaire filed on 29 July 2016 indicates that he did not notify the proprietor that the application for revocation would be made.

3. The proprietor filed a defence and counterstatement, denying the claims. The following statement was made by Mr John Adair, who filed the defence and counterstatement:

To correct the false assumptions and mis-information in the applicant's notice, I have listed here my use of the name and mark 'Speedwell'. I acquired the interest of the company in 1980 and started using the name and trade mark in connection with my business 'Heritage Garage' later 'Transverse Cars'.

After registering the trade mark in 1992, I manufactured cars, namely the Speedwell Sprint and Speedwell Countryman, producing over 40 examples. I also manufactured and marketed a range of car tuning accessories. I spent much time and money on marketing to rebuild the brand for the Classic Mini market and turnover peaked at around £500,000 p.a.

I exported to Japan and granted a licence to my main importer 'British Garage Dinky' to use the Speedwell name and mark. Dinky and his nominated sub-dealers, still market Speedwell products.

I ceased trading in 2002 when the value of sterling became too high to sustain a viable rate of exports and interest in the Mini was reducing due to the launch of the new BMW Mini. To help the Japanese dealers, I sent them enough stock to last until I would be able to start trading again. Since 2002 I have been in salaried employment.

I am due to retire shortly and I have been making business plans to re-launch Speedwell in 2017. I have set aside £20,000 capital and have already started making some parts. The value of sterling is now at a low level and interest in the classic Mini and other old cars, such as the Austin A35 which are relevant to Speedwell's illustrious past, is on the increase. To this end, it would be very disappointing if the applicant who has had no earlier interest in the name or made any contact with me, could now prevent me from fulfilling my plans.

4. Mr Bourdaire is professionally represented, whilst the proprietor represents itself. Both parties filed evidence and Mr Bourdaire filed written submissions. Neither party has chosen to be heard and neither party filed written submissions in lieu of a hearing.

Proprietor's evidence

5. Mr Adair has filed evidence for the proprietor. His witness statement is dated 8 December 2016.

6. Mr Adair states that he is the proprietor's director and that the trade mark Speedwell was first used in the UK by his business partnership, Heritage Garage and, later, by Transverse Cars in 1992. Mr Adair refers to himself as the owner of the mark and that he granted a free licence to his businesses to use the mark. He states that he designed a new logo, based on an earlier version, although this is not further explained.

7. Mr Adair states that the mark was used from 1992 on motor vehicle accessories, namely gear lever knobs, gear lever extensions, car seats, throttle pedal extensions, instruments, badges, decals and cylinder head conversions. From 1994, the mark was used on motor vehicle conversions, namely "Speedwell Sprint (25 units), Speedwell 1300 Super Traveller and Countryman (35 units) and Speedwell Spark (2 units)". Also from 1994, Mr Adair states that he granted free licence for use of the mark to Naoki Ishizuka of Dinky Inc., and his sub-agents, also giving Mr Ishizuka permission to register the mark in Japan. From 1999, Mr Adair states that he granted a free licence to Keith Dodd of Mini Spares Ltd to use the mark on car seats, gear knobs, gear extensions, badges and decals. No licences are in evidence.

8. Mr Adair states that Transverse Cars stopped trading in 2002 and that he granted a free licence to his former business partner, Colin Bird, to continue using the mark to build and supply vehicle conversions in his new business, Caburn Classics. Mr Adair states that the mark was used by Caburn Classics until 2011.

9. Mr Adair states that 'considerable' investment was made between 1992 and 2000 in respect of product development, advertising and packaging but that, owing to the lapse of time, no invoices are now available. He states that he believes the total figure to have been around £80,000 to £100,000.

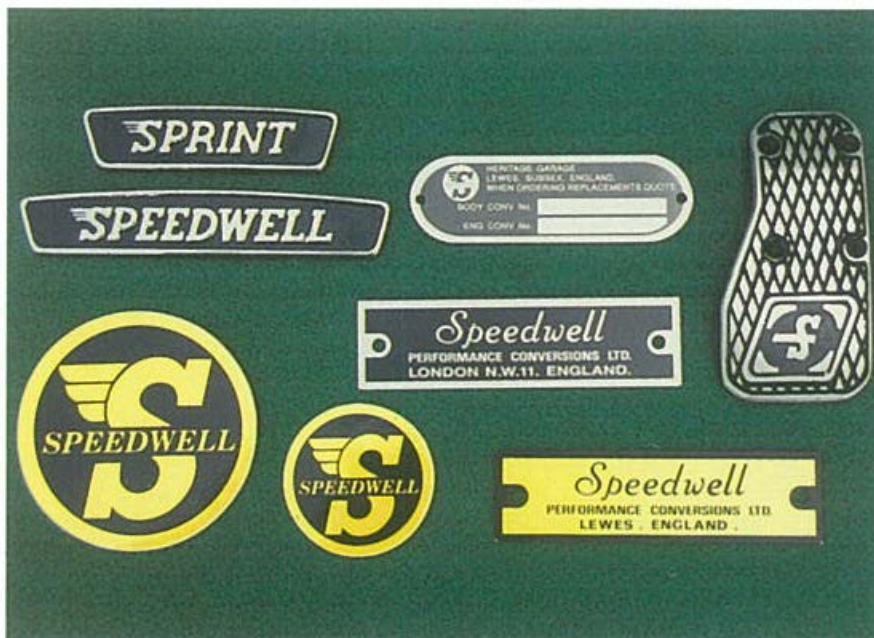
10. Mr Adair states:

"I ceased trading in 2002 because of the economic conditions prevailing at the time and the consequent reduced demand. However, I considered this situation to be temporary and in the light of renewed interest in the mark and the classic cars that are relevant to the Speedwell name, it remains my intention to restart the business using the Speedwell name in 2017.

Before ceasing, I was able to ensure that the majority of clients had adequate stocks of parts to continue selling them for some years ahead and that future orders for vehicle conversions using the mark would be completed by Caburn Classics.

I am due to retire from my current employment next year and I have put aside capital and made plans for re-launching the range. Initially the focus will be on parts and accessories but vehicle conversions will become a priority shortly after. After 25 years involvement with the mark, it would be very disappointing to lose the registration to someone without any previous history or association.”

11. Mr Adair describes Exhibits SPC1 and SPC2 as product catalogues. Exhibit SPC1 is undated, but textual references appear to date it to the mid-1990s. The catalogue is primarily about the Speedwell Sprint, which was a modified Mini, originally created in 1965. The catalogue explains that what is on offer is a revival of the original Speedwell Sprint, using new or old Minis (as they were in the 1990s) as donor cars to be converted. The back page of the catalogue shows a logo form, a word form of the mark with slight stylisation, and a word-only form, as shown below, in relation to engines, instrumentation, gear knobs and extensions, badges, keyrings, plates and decals:



12. Exhibit SPC3 is described as a copy of Minispares' current accessory web page showing products displaying the mark. Apart from a badge, the trade marks used on the goods, where they can be seen, appear to be in the form of the S used in the logo form. The description beneath each item refers to 'Speedwell'. The page bears a copyright date of 2004.

13. Exhibits SPC4 and SPC5 are described as current copies of Speedwell products on the web pages of Dinky Inc., sourced from the UK. The page forming Exhibit SPC4 has been translated, using the Google translate service, and shows an estate version of the old style Mini. The web address shows that the website is Japanese. Exhibit SPC5, from the same website (also translated) shows the logo form of the mark in relation to tank aprons, keyrings, badges and stickers.

14. Exhibit SPC6 is described as comprising two Heritage Garage advertisements for Speedwell Mini conversions. These show use of the word form and logo forms of the mark. They are not dated; the contact details give landline telephone and fax numbers, but no email address, website address or mobile number, which suggests that the advertisement is from some time ago.

Mr Bourdairé's evidence

15. Mr Bourdairé has filed a witness statement dated 17 February 2017. He states that he first became involved in the classic car trade in 2001 and became interested in the SPEEDWELL trade mark in 2011. Mr Bourdairé states that, since 2011, he has made diligent enquiries into the use of the mark by the proprietor. He states that, subsequent to 2001, he has never been able to find any evidence or indication of use of the mark by the proprietor.

16. Mr Bourdairé states that the proprietor has no UK social media presence. He exhibits Companies House records relating to Speedwell Performance Conversions Limited (Exhibit BB1), showing that the proprietor has been dormant since its incorporation in 1994 and that its capital amounts to £2. Mr Bourdairé states that he has attended numerous trade shows and spoken to many different people who are

active in the automotive trade in the UK, and that nobody was aware of any use of the SPEEDWELL trade mark after 2001. He adduces three witness statements (dated within February 2017) to support this. It is unnecessary to give further details about this evidence.

Mr Bourdaire's written submissions

17. I have read but will not give a summary of Mr Bourdaire's written submissions which address perceived shortcomings in the proprietor's evidence. However, I note here that the content of the submissions affects the scope of the application, as it was originally pleaded. The statutory application form claims that the mark should be revoked under sections 46(1)(a) and (b) of the Act. However, the concluding sentence of the written submissions, filed with Mr Bourdaire's evidence, says:

“Accordingly, we request that the registration be cancelled on the grounds of non-use under section 46(1)(b) of the Act, and request an award of costs.”

At various points in the written submissions, reference is made to there being no genuine use of the mark after April 2011, and to there being no use within the claimed section 46(1)(b) period. Where the relevant period is referred to, it is always in the singular. There are no references to the section 46(1)(a) period.

18. The written submissions were filed after Mr Bourdaire had seen the proprietor's evidence. Taking that fact and the points referred to in the paragraph above together, I conclude that the scope of these proceedings are restricted to the pleaded claim under section 46(1)(b) of the Act, and I proceed upon that basis.

Revocation decision

19. Section 46 of the Act states:

“(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) that, in consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a product or service for which it is registered;

(d) that in consequence of the use made of it by the proprietor or with his consent in relation to the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

(2) For the purposes 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 either 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.”

20. In *The London Taxi Corporation Limited v Frazer-Nash Research Limited & Anor*, [2016] EWHC 52, Arnold J. summarised the case law on genuine use of trade marks:

“217. In *Stichting BDO v BDO Unibank Inc* [2013] EWHC 418 (Ch), [2013] FSR 35 I set out at [51] a helpful summary by Anna Carboni sitting as the Appointed Person in *SANT AMBROEUS Trade Mark* [2010] RPC 28 at [42] of the jurisprudence of the CJEU in 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 and Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759 (to which I added references to Case C-416/04 P *Sunrider Corp v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237). I also referred at [52] to the judgment of the CJEU in Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [2013] ETMR 16 on the question of the territorial extent of the use. Since then the CJEU has issued a reasoned Order in 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 that Order has been persuasively analysed by Professor Ruth Annand sitting as the Appointed Person in *SdS InvestCorp AG v Memory Opticians Ltd* (O/528/15).

[218] ...

219. I would now summarise the principles for the assessment of whether there has been genuine use of a trade mark established by the case law of the Court of Justice, which also includes Case C-442/07 *Verein Radetsky-Order v Bunderversvereinigung Kamaradschaft 'Feldmarschall Radetsky'* [2008] ECR I-9223 and Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], [2014] ETMR 7, 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].

(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].

(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].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of

creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

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

21. The onus is on the proprietor to show use because Section 100 of the Act states:

“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.”

22. In *Plymouth Life Centre*, O/236/13 Mr Daniel Alexander QC, sitting as the appointed person, observed that:

“20. Providing evidence of use is not unduly difficult. If an undertaking is sitting on a registered trade mark, it is good practice in any event from time to time to review the material that it has to prove use of it.

...

The burden lies on the registered proprietor to prove use..... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly

demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

23. I bear in mind that the genuine use provision is not there to assess economic success or large-scale commercial use¹, and even minimal use may qualify as genuine use if it is the sort of use that is appropriate in the economic sector concerned for preserving or creating market share for the relevant goods or services.

24. Recital 9 to Directive 2008/95/EC explains the purpose of articles 10 and 12 of the Directive, which are implemented in the UK through sections 46(1)(a) and (b) of the Act:

“In order to reduce the total number of trade marks registered and protected in the Community and, consequently, the number of conflicts which arise between them, it is essential to require that registered trade marks must actually be used or, if not used, be subject to revocation for non-use”.

25. It has admitted that the proprietor, of which Mr Adair is the controlling mind, has not used the mark since Mr Adair ceased trading in 2002. Mr Adair states that Caburn Classics then used the mark. Firstly, there is no evidence of that but, more to the point, use by Caburn Classics cannot assist in proving use during the section 46(1)(b) period because Mr Adair states that Caburn Classics used the mark until 2011, which is the beginning of the five year section 46(1)(b) period during which it was claimed that there was no genuine use of the mark.

26. The gap between 2002 and 27 April 2016 is some 14 years. To put this into perspective, proprietors have five years in which to make genuine use of their mark

¹ GC, Case T-334/01 *MFE Marienfelde GmbH v OHIM*.

after registration of the mark; 2002 to 2016 is almost three times that. Mr Adair states that he considered the situation to be temporary and that he plans to restart the business using the Speedwell name in 2017. There has been no formal pleading of proper reasons for non-use but, even if there had been, a hiatus of this magnitude, because of prevailing economic conditions and reduced demand, would not qualify as proper reasons for non-use. This is because such matters are seen as part of the natural ebb and flow of commerce².

27. Nor does Mr Adair's intention to re-launch the business in 2017 qualify as genuine use in the sense that there are preparations for use of the mark. In *Healey Sports Cars Switzerland Limited v Jensen Cars Limited* [2014] EWHC 24 (Pat), Mr Henry Carr Q.C. sitting as a Deputy Judge of the High Court stated that:

“12. Healey submitted [from a summary of the case law of the CJEU] that genuine use was to be contrasted with token use. Use which was not token, in the sense that it was not done merely to preserve the rights conferred by the registration was genuine and satisfied the statutory test.

13. In my judgment, acts which were not done merely to preserve the rights conferred by the registration may nonetheless be insufficient to constitute use within the meaning of section 46(1)(a). This is clear from the requirement to take all relevant facts and circumstances into account. It is also clear from [37] of *Ansul*, which the Hearing Officer cited at [31] of his Decision:

“Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns.””

And:

² See *Armin Häupl v Lidl Stiftung & Co. KG*, Case C-246/05, CJEU.
Page 14 of 18

“25. The Hearing Officer also referred to the press reports which picked up the press release at paragraph 20. He was clearly aware of the press interest in the development of the new Jensen Interceptor. However, these press reports were not use of the mark by Healey, and could not be relied on as such.

26. I agree with the Hearing Officer that the question of whether goods are “about to be marketed” is to be decided in the context of the economic sector concerned, and that some goods will take longer to develop than others. I also agree that the press release and website, which were published a few days before expiry of the five year period and enabled no more than initial interest in a future development to be registered, did not show that the goods were about to be marketed.”

28. In the present case, there are not even any press releases, advertisements or websites in operation to show that the goods are about to be marketed.

29. The product catalogues (Exhibits SPC1 and SPC2) were produced well before the relevant period (27 April 2011 to 26 April 2016), so cannot be used to show genuine use within the relevant period. Exhibit SPC6, the Heritage Garage advertisement, clearly dates from prior to 2002, and Mr Adair has stated that his businesses ceased trading in 2002. Apart from the fact that the Dinky Inc. pages (Exhibits SPC4 and SPC5) are from after the relevant period, they are clearly not aimed at the UK market because they have been translated from Japanese. In joined Cases C-585/08 and C-144/09, *Pammer v Reederei Karl Schlüter GmbH & Co. KG and Hotel Alpenhof GesmbH v Heller*, the CJEU interpreted the national court as asking, in essence, “*on the basis of what criteria a trader whose activity is presented on its website or on that of an intermediary can be considered to be ‘directing’ its activity to the Member State of the consumer's domicile ..., and second, whether the fact that those sites can be consulted on the internet is sufficient for that activity to be regarded as such*”. The court held that it was not sufficient for this purpose that a website was accessible from the consumer’s Member State. Rather, “*the trader must have manifested its intention to establish commercial relations with consumers from one or more other Member States, including that of the consumer's*

domicile". In making this assessment national courts had to evaluate "all clear expressions of the intention to solicit the custom of that state's customers". Such a clear expression could include actual mention of the fact that it is offering its services or goods "in one or more Member States designated by name" or payments to "the operator of a search engine in order to facilitate access to the trader's site by consumers domiciled in various member states". Finally, the court concluded:

"The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists."

30. The Dinky Inc. evidence shows that the website from which the pages have been printed is Japanese. There is no English-language version and no choice of currency, sterling or otherwise. The website is solely aimed at the Japanese market. Exhibits SPC4 and SPC5 do not assist the proprietor's case.

31. That leaves the Minispares 'current' accessory web page (Exhibit SPC3). This exhibit does not help for two reasons. Firstly, it shows what is 'currently' (i.e. at the time Mr Adair made his witness statement) available, so dates from after the relevant period for showing use of the mark. The copyright date of 2004 simply shows that the website was created in 2004. Secondly, this is the website of a third party.

There is no information about how Minispare obtained the goods, so it cannot show that the sales were by the proprietor or with its consent.

32. Taking into account all the circumstances of the case, the proprietor has not shown that there has been genuine use of the mark (or proper reasons for non-use) within the section 46(1)(b) period. Trade mark registrations cannot be sat upon for many years because this is contrary to the policy outlined in paragraph 24, above. The essential function performed by a trade mark is that it enables consumers to distinguish the goods and services of one undertaking from another. If a mark is not being used, it cannot do this job. It also hinders other traders who are in a position to commercialise goods and services using the same or similar mark, thereby harming commerce and innovation. If marks which their owners are not using because of unfavourable economic conditions were allowed to remain registered indefinitely, UK and international trade would grind to a halt. Explaining the public interest behind an earlier version of the 9th Recital, Justice Jacob (as he then was) stated, in *La Mer* [2002] E.T.M.R. 34 (paragraph 19):

“There is an obvious strong public interest in unused trade marks not being retained on the registers of national trade mark offices. They simply clog up the register and constitute a pointless hazard or obstacle for later traders who are trying actually to trade with the same or similar marks. They are abandoned vessels in the shipping lanes of trade.”

Outcome

33. In accordance with section 46(6)(b) of the Act, trade mark registration 1528257 is revoked with effect from 27 April 2016.

Costs

34. Mr Bourdairé has been successful and is entitled to a contribution to his costs on the basis of the published scale of costs (Tribunal Practice Notice 2/2016):

Preparing the application for revocation	£200
Official filing fee	£200
Considering the proprietor's evidence and filing evidence	£500
Preparation of written submissions	£300
Total	£1200

35. I order Speedwell Performance Conversions Ltd to pay Benoit Bourdaire the sum of £1200 which, in the absence of an appeal, should be paid within fourteen days of the expiry of the appeal period.

Dated this 25TH day of May 2017

Judi Pike
For the Registrar,
the Comptroller-General