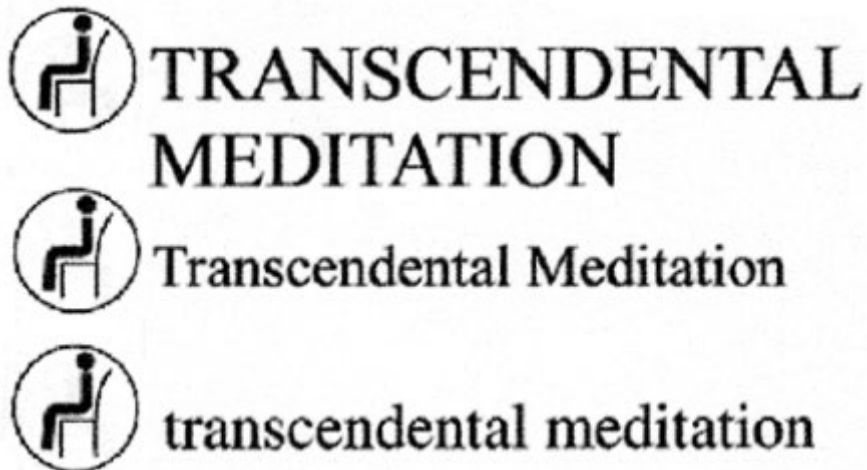


O/752/18

TRADE MARKS ACT 1994

IN THE MATTER OF:

**APPLICATION NO 501538 BY MAHARISHI FOUNDATION
TO REVOKE
TRADE MARK REGISTRATION NO. 2490120**



(SERIES OF THREE)

IN CLASSES 9, 16 AND 41

IN THE NAME OF THE MEDITATION TRUST

Background and pleadings

Pleadings

1) The Meditation Trust is the registered proprietor of trade mark registration No 2490120 consisting of the trade mark (series of three) present on the first page ('the mark'). The trade mark was filed on 12 June 2008 and completed its registration procedure on 7 November 2008. It includes the disclaimer: "Registration of these marks shall give no right to the exclusive use of the words "Transcendental Meditation"" and is registered in respect of the following goods/services:

Class 9: Sound and video recordings in the form of, discs, cassettes, CDs, DVDs, CD ROMs, laser discs and tapes; cinematographic films, television programmes and films, computer software, audio recordings, video recordings, images, text, and information provided via telecommunications networks, by on-line delivery and by way of the Internet; publications in electronic form supplied on-line, from databases or from facilities provided on the Internet (including websites); all the aforesaid goods relating to transcendental meditation.

Class 16: Books and printed publications; teaching and instructional materials; CD and DVD inlays; catalogues, writing instruments; all the aforesaid goods relating to transcendental meditation.

Class 41: Teaching of meditation practices; education services relating to meditation; provision of meditation training; production and distribution of sound and video recordings, production of radio and television programmes, films and documentaries; advisory, consultancy and information services relating to all of these; all the aforesaid relating to transcendental meditation.

2) On 30 January 2017, Maharishi Foundation ('the applicant') filed an application to revoke the registration claiming that it had not been put to genuine use for a period

of five years or more. The claims for revocation are based on section 46(1)(a) and (b) of the Trade Marks Act 1994 ('the Act').

Background

3) On 23 April 2018 a hearing took place before a different hearing officer, Mrs Judi Pike. Both parties attended the hearing with the applicant being represented by Ms Grazyna Poplawska, of Burges Salmon LLP and the proprietor was represented by Mr Colin Beckley, one of the proprietor's directors. Mrs Pike subsequently issued her decision¹ on 14 May 2018. The findings she reached in respect of the registration, the subject of this revocation action, have no bearing on my decision apart from trade mark registration no. 2490121 being revoked in its entirety with effect from 17 January 2014. That registration is not the subject of this revocation and the uncontested conclusion reached will be confirmed at the end of this decision.

4) Turning back to the registration at hand (no. 2490120), it became apparent after the decision was issued that it contained an erroneous exhibit. More specifically, exhibit RM-7 to the witness statement of Mr Beckley was a full letter containing various information when it should have only been a copy of the letterhead, as follows:



5) Mr Beckley had mistakenly submitted the 'full' letters with the Registry but sent a copy of the letterhead to the applicant and kept the same for his records. Since Mrs Pike's decision included a copy of the erroneous version of exhibit RM7, it was identified by the applicant who notified the Registry. Mrs Pike subsequently set her decision aside for it be decided again before a different hearing officer. To agree how the case should proceed, I appointed a Case Management Conference ('CMC') and directed as follows, 1) a new main hearing should be appointed (as requested by the

¹ BL O-287-18

applicant), 2) no further evidence shall be admitted into proceedings, and 3) Exhibit RM-7 remains in the proceedings but is presented as above.

6) In view of the above, I shall now turn to the decision and confirm that the details previously contained within exhibit RM7 have no bearing on this decision.

Relevant dates, evidence and submissions

7) The applicant seeks to revoke the registration under sections 46(1)(a) and (b) of the Act on the following grounds:

Section	Relevant five year period	Effective revocation date
46(1)(a)	8 November 2008 – 7 November 2013	8 November 2013
46(1)(b)	30 January 2012 – 29 January 2017	30 January 2017

8) Only the registered proprietor filed evidence in these proceedings. This will be summarised to the extent that it is considered appropriate/necessary. Only the applicant filed written submissions which will not be summarised but will be referred to as and where appropriate during this decision.

Hearing

9) A hearing took place on 13 September 2018. The applicant was represented by Mr Jeremy Dickerson of Burges Salmon LLP and present in the Newport office and the proprietor was represented via video-link from London by Mr Colin Beckley, who is one of the proprietor's directors.

EVIDENCE SUMMARY

Proprietor's evidence

10) The proprietor's evidence consists of three witness statements and various exhibits. Some of the witness statements cross reference to other exhibits. Therefore, I shall summarise the evidence as a whole referring to individual witness statements and exhibits where applicable.

11) The first witness statement is from Mr Colin Beckley who is the founder and Director of the Meditation Trust 'which began trading (i.e. teaching Transcendental Meditation) in 2006'. He states that he has been continuously involved as the head of The Meditation Trust until June 2017 when he became Director of Teaching.

12) He states that "the business of the Meditation Trust has been and continues to be to teach persons to practice a meditation technique known as "Transcendental Meditation", and to promote this technique, and educate the public about its benefits." He also states that the technique is typically practised whilst sitting in a chair.

13) Mr Beckley states that the first use of the mark on the internet was prior to 18 August 2010. To demonstrate this, exhibit CJB1 to the witness statement consists of 25 website screenshots obtained via the Wayback Machine from the proprietor's website, meditationtrust.com. The earliest screenshot is dated 18 August 2010 and the latest is 17 May 2014 with many of them dated 2011, 2012 and 2013. I duplicate below the earliest (18 August 2010) and latest (17 May 2014) which demonstrates that have remained largely the same:

Low cost TM courses - 1 x

Secure | https://web.archive.org/web/20100618220204/http://www.meditationtrust.com:80/

INTERNET ARCHIVE
waybackmachine

90 captures
16 Jul 2009 - 7 Oct 2017

Go MAY AUG SEP
18
2009 2010 2011 About this capture

REGISTERED CHARITABLE TRUST
INDEPENDENT TEACHERS OF AUTHENTIC TRANSCENDENTAL MEDITATION

home
suggested course fees
TM course outline
course venues & dates
contact us
brief introduction to TM
benefits of TM
TM in the media
our students say
FAQs
the yoga tradition
about the Trust
already learned?

Welcome to The Meditation Trust

Wouldn't it be wonderful if the most advanced form of meditation was the simplest? Well, it is!

And with the Meditation Trust, whose objective is to make this powerful yoga technique available to everyone at a price they can afford, **Transcendental Meditation (TM)** is available at the lowest prices in Europe - **(UP TO 50% OFF UK standard fees and far more off European standard fees).**

Highly experienced, professional teachers trained by Maharishi Mahesh Yogi offer expert guidance in this simple, effortless meditation which brings wide-ranging, integrative results more quickly and more profoundly than concentration, visualisation or mindfulness. Individual instruction followed by three group sessions, over 3 consecutive days, leaves you with a valuable skill. Further guidance, **FREE FOR LIFE**, ensures complete satisfaction, because TM automatically works for everyone, regardless of age, background, belief or ability.

Since its foundation in 2000, the Trust has experienced overwhelming demand for **TM courses**. Founder and Director Colin Beckley alone has taught several thousands of people to meditate, and weekend retreats for those who have learned are always fully booked way in advance. More than 50% of our new students come on referral from past students. The expansion of the Meditation Trust with more teachers from The Maharishi Foundation means that we are now able to offer courses in new locations in England, Scotland, Wales and Ireland.

We also offer corporate and private courses at special locations and in other countries by arrangement.

Contact us for a FREE INFORMATION PACK including our Introductory Brochure or if you would like to ask questions.

Low cost TM courses - 1 x

Secure | https://web.archive.org/web/20140517185602/http://meditationtrust.com/

INTERNET ARCHIVE
waybackmachine

90 captures
16 Jul 2009 - 7 Oct 2017

Go FEB MAY JUN
17
2012 2014 2015 About this capture

REGISTERED CHARITABLE TRUST
INDEPENDENT TEACHERS OF AUTHENTIC TRANSCENDENTAL MEDITATION

HOME
SUGGESTED COURSE FEE
TM COURSE OUTLINE
COURSE VENUE AND DATES
CONTACT US
BRIEF INTRODUCTION TO TM
BENEFITS OF TM
TM IN THE MEDIA
OUR STUDENTS SAY
FAQs
THE YOGA TRADITION
ABOUT THE TRUST
ALREADY LEARNED?
SUPPORT YOUR TRUST

Transcendental Meditation: welcome to The Meditation Trust

Wouldn't it be wonderful if the most advanced form of meditation was the simplest? Well, it is!

And with the Meditation Trust, whose objective is to make this powerful yoga technique available to everyone at a price they can afford, **Transcendental Meditation (TM)** is available at the lowest prices in Europe - **(Up to 50% OFF fees elsewhere in UK and far more off European rates).**

Highly experienced, professional teachers trained by Maharishi Mahesh Yogi offer expert guidance in this simple, effortless meditation which brings wide-ranging, integrative results more quickly and more profoundly than concentration, visualisation or mindfulness. Individual instruction followed by three group sessions, over 3 consecutive days, leaves you with a valuable skill. Further guidance, **FREE FOR LIFE**, ensures complete satisfaction, because Transcendental Meditation automatically works for everyone, regardless of age, background, belief or ability.

Since its foundation in 2000, the Trust has experienced overwhelming demand for **Transcendental Meditation courses**. Founder and Director Colin Beckley alone has taught several thousands of people to meditate, and weekend retreats for those who have learned are always fully booked way in advance. More than 50% of our new students come on referral from past students. The expansion of the Meditation Trust means that we are now able to offer courses in new locations in England, Scotland, Wales and Ireland.

We also offer corporate and private courses at special locations and in other countries by arrangement.

Contact us for a FREE INFORMATION PACK including our Introductory Brochure or if you would like to ask questions.

Meditation Trust
facebook

14) The words 'INDEPENDENT TEACHERS OF AUTHENTIC TRANSCENDENTAL MEDITATION' are at the top of the page alongside a circular device containing a stick man type image of a person sitting on a chair. The device appears to the right and below the word 'MEDITATION'. As can be seen from the text, which does not appear to have been changed for the years that it has been live, it offers courses in Transcendental Meditation 'in new locations in England, Scotland, Wales and Ireland.' Mr Beckley states that between 2008 and 2011 the proprietor had four teachers of Transcendental Meditation who taught in many locations in Britain, but generally focussed on the area where they resided.

15) Mr Beckley states that use of the "word 'Independent' is a reference to us not being affiliated or associated with the global organization and 'Movement' of which the Applicant forms a part, and that also teaches 'Transcendental Meditation'" and that:

"13. In deciding to use this Mark on our website, I placed one of its elements, the "man-in-a chair" image, to the right side of the other element, rather than the left side. Prior to doing this, I got some advice over the phone from a male person at the IPO, which I understood to mean that such a minor movement of one of the trademark elements would not be wrong, or mean we were not using our Mark. I do not recall exactly the words he used to explain these points but I believe the substance was much the same as the information I recently found on the IPO website:

"What if I have used the mark in a slightly different form to the way in which it was registered?"

Use of the mark in a form which does not alter its distinctive character (as compared to the form in which it was registered) qualifies as used of the registered mark. So minor variations, such as using a mark registered in block capitals in upper or lower case and/or in any normal typeface will make no difference. Similarly, using a mark registered in black and white in particular colour(s) makes no difference."

16) The witness statement also includes submissions about the variant use of the mark. I shall not summarise these here but shall keep them in mind when considering this issue.

17) Exhibit CJB2 comprises of numerous pages from the proprietor's website between 2011 and 2013. They include the same yellow border and heading as above at paragraph 12. The pages include details of meditation retreat dates throughout 2011, 2012 plus June, July and September of 2013. The retreats are advertised as costing between £175 and £230 each for the dates in 2011 and £400 for the Siddhi course in 2013. There are seven available weekend and week long 'retreat dates' throughout 2011 and 2012. There are also three dates available in June, July and September of 2013.

18) Mr Beckley provides the following sales figures which he claims to be 'Annual sales of the goods/services class 41 before the date of application'. To substantiate these figures he provides excerpts from the proprietor's accounts for the years 2009 to 2015². It is noted that the accounts show The Meditation Trust as being a registered charity.

Year	Amount
2009	£211,430
2010	£224,303
2011	£193,159
2012	£207,690
2013	£332,342
2014	£292,677
2015	£249,882
2016	£308,127

19) Mr Beckley states that 'Over 80% of our revenues are for teaching the basic course of Transcendental Meditation and the remaining revenues are for advances courses.'

20) Mr Beckley also provides 'annual amounts spent on advertising and marketing before the date of application were as follows'. During the hearing it was stated that

² Exhibit CJB-4

the figures include 'Everything involved in bringing the thing to the market, all overheads i.e. trainer wages, social media, flyers, etc':

Year	Advertising (£)	Marketing (£)
2009	4,418	182,517
2010	2,912	206,761
2011	3,918	167,295
2012	2,397	176,958
2013	6,869	285,322
2014	12,111	245,796
2015	7,854	193,601
2016	12,835	270,029

21) The proprietor also submits a witness statement from Ms Rachel Mason who is a director of the printing company Lanes (South East) Limited ('Lanes'), a position she has held since 2011. She states that Lanes have been supplying the Meditation Trust with flyers, brochures and headed notepaper 'for well over 10 years'. She states that:

'The earliest date that our records show the supply of these goods to the Meditation Trust bearing the trademarks 'Transcendental Meditation' and 'TM' in conjunction with the 'man on the chair' motif for use in the United Kingdom by the applicant was in 2009.'

22) Ms Mason states that the mark first appeared on books and printed publications from 1 May 2009. To substantiate this claim she provides invoice numbers and dates but does not exhibit the invoices. However, exhibit CJB-3 to Mr Beckley's witness statement consists of three invoices, all from Ms Mason's company. They are all addressed to 'The Meditation trust' and are dated 10 January 2014, 24 October 2012 and 1 May 2009 for 5,000 brochures costing £1,180, 2,000 brochures costing £790 and a further 5,000 brochures for £1,030. Mr Beckley states that the proprietor buys the brochures in bulk and then when they are running low he orders more so that they do not run out. However, in more recent times they have issued email versions of the brochure rather than paper copies.

23) Exhibits RM1 to RM6 to Ms Mason's witness statement include 4 flyers and one brochure. Since there are only 6 flyers I have reproduced the front covers at annex A but also include some of the headings of the brochures below. Exhibit RM6 also contains general educational articles, one headed 'The Benefits of Regular Meditation'. It is also noted that:



(exhibit RM6)



(exhibit RM2)

24) The final witness statement is from Frances Stewart who is the director of Greenshift Communications Ltd. This is a company which distributes flyers. Mr Stewart confirms that the company has distributed an average of 30,000 flyers per annum on behalf of the proprietor since 2002. The witness statement also confirms that Mr Stewart recognises flyers filed under exhibits RM1 to RM5 and that Greenshift Communications Ltd has distributed these since 2010.

Legislation

25) Section 46(1) of the Act states that:

“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.”

26) 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.”

Case law

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

“217. *The law with respect to genuine use* . 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 Laboratoires 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. An important preliminary point to which Prof Annand draws attention in her decision is that, whereas the English versions of Articles 10(1) and 12(1) of the Directive and Articles 15(1) and 51(1)(a) of the Regulation use the word “genuine”, other language versions use words which convey a somewhat different connotation: for example, “ernsthaft” (German), “efectivo” (Spanish), “sérieux” (French), “effettivo” (Italian), “normaal” (Dutch) and “sério/séria” (Portuguese). As the Court of Justice noted in *Ansul* at [35], there is a similar difference in language in what is now recital (9) of the Directive.

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 Radetzky-Orden v Bundesvereinigung Kameradschaft 'Feldmarschall Radetzky'* [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

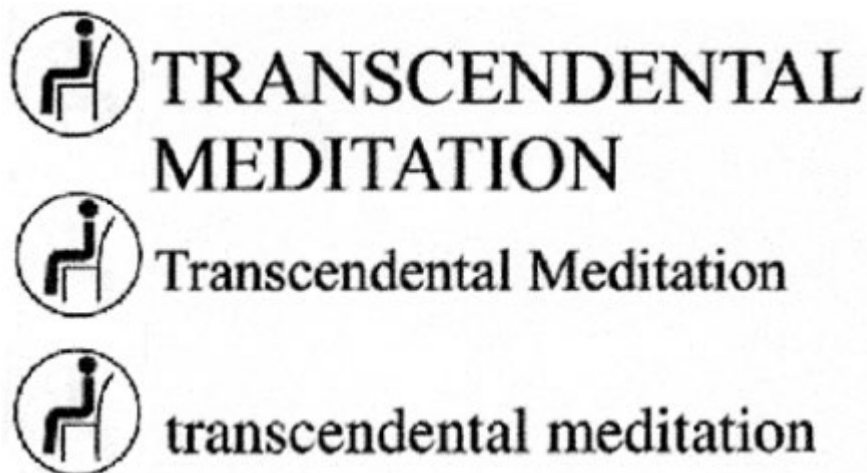
the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [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].”

DECISION

28) I shall begin my assessment by reminding myself of the mark, the relevant periods and the goods and services for which the proprietor must provide genuine use:



Registration:

Relevant periods:

Section	Relevant five year period	Effective revocation date
46(1)(a)	8 November 2008 – 7 November 2013	8 November 2013
46(1)(b)	30 January 2012 – 29 January 2017	30 January 2017

Goods and services: *Class 9: Sound and video recordings in the form of, discs, cassettes, CDs, DVDs, CD ROMs, laser discs and tapes; cinematographic films, television programmes and films, computer software, audio recordings, video recordings, images, text, and information provided via telecommunications networks, by on-line delivery and by way of the Internet; publications in electronic form supplied on-line, from databases or from facilities provided on the Internet (including websites); all the aforesaid goods relating to transcendental meditation.*

Class 16: Books and printed publications; teaching and instructional materials; CD and DVD inlays; catalogues, writing instruments; all the aforesaid goods relating to transcendental meditation.

Class 41: Teaching of meditation practices; education services relating to meditation; provision of meditation training; production and distribution of sound and video recordings, production of radio and television programmes, films and documentaries; advisory, consultancy and information services relating to all of these; all the aforesaid relating to transcendental meditation.

29) The applicant is generally critical of the evidence filed but focusses on three specific areas. I shall address these in turn but in summary they are: 1) there is insufficient use of the mark, 2) no genuine use of the mark in the form in which it is registered, and 3) any use (which it maintains is insufficient) is not consistent with the essential function of a trade mark.

Insufficient use

30) The applicant submits that the evidence is full of mere assertions rather than clear and cogent evidence which is necessary in order to defend a non-use action. In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander Q.C. as the Appointed Person stated that:

“22. The burden lies on the registered proprietor to prove use..... However, it is not strictly necessary to exhibit any particular kind of documentation, but if it is likely that such material would exist and little or none is provided, a tribunal will be justified in rejecting the evidence as insufficiently solid. That is all the more so since the nature and extent of use is likely to be particularly well known to the proprietor itself. A tribunal is entitled to be sceptical of a case of use if, notwithstanding the ease with which it could have been convincingly demonstrated, the material actually provided is inconclusive. By the time the tribunal (which in many cases will be the Hearing Officer in the first instance) comes to take its final decision, the evidence must be sufficiently solid and specific to enable the evaluation of the scope of protection to which the proprietor is legitimately entitled to be properly and fairly undertaken, having regard to the interests of the proprietor, the opponent and, it should be said, the public.”

and further at paragraph 28:

“28. I can understand the rationale for the evidence being as it was but suggest that, for the future, if a broad class, such as “tuition services”, is sought to be defended on the basis of narrow use within the category (such as for classes of a particular kind) the evidence should not state that the mark has been used in relation to “tuition services” even by compendious reference to the trade mark specification. The evidence should make it clear, with precision, what specific use there has been and explain why, if the use has only been narrow, why a broader category is nonetheless appropriate for the specification. Broad statements purporting to verify use over a wide range by reference to the wording of a trade mark specification when supportable only in respect of a much narrower range should be critically considered in any draft evidence proposed to be submitted.”

31) I do agree that the evidence is not well marshalled and it is important for me to bear in mind the guidance provided by Mr Alexander QC in the case listed above. In fact, there is no evidence of sound or video recordings such as discs, cassettes, DVDs, etc. Further, there is no evidence of any such goods which are covered by its class 9 goods.

32) In assessing genuine use, I must appreciate the evidence globally, which includes looking at the evidential picture as a whole, not what each individual piece of evidence shows by itself³. In *Reber*, the Court of Justice of the European Union (“CJEU”) also said that it is not the case that every proven commercial use of a mark may automatically be deemed to constitute genuine use.

33) The proprietor has provided annual turnover figures which range from around £207,000 in 2012 to approximately £308,000 in 2016. These cover the relevant period. Mr Beckley’s unchallenged witness statement states that the majority (over 80%) of the turnover related to teaching the basic Transcendental Meditation and the remaining revenues are for the advanced courses. When compared with the financial accounts it is shown that the registered charity was not profitable, though this is not necessary for a finding of genuine use. Further, the mere fact that the proprietor is a non-profit making charity does not preclude it (having considered all the factors set out in the *London Taxi* case listed above) from being able to make genuine use of its trade mark registration⁴. The evidence does include website print outs referring to weekend and week-long meditation retreats costing around £200 for numerous dates in 2011, 2012 and 2013. The evidence also demonstrates educational information (exhibit RM6 refers), relating to meditation.

34) Mr Dickerson argued that whilst there is evidence that a number of flyers were produced, this is insufficient information to show how these were used in commerce. However, there is an uncontested witness statement from a distributor (Frances Stewart of Greenshift Communications Ltd) that around 30,000 flyers per annum were distributed on the proprietor’s behalf throughout the relevant period. Further,

³ Case T-415/09, *New Yorker SHK Jeans GmbH & Co KG v OHIM*, GC.

⁴ As stated in the CJEU in *Verein* [17-20]

Ms Mason (the producer of the flyers) confirmed that the flyers included ‘the trademarks ‘Transcendental Meditation’ and ‘TM’ in conjunction with the ‘man on the chair’ motif for use in the United Kingdom’. Therefore, I accept that the flyers were produced and distributed during the relevant period and are evidence of advertising some of the goods and services in order to secure customers.

35) Taking all of the above into account, I find that the evidence establishes use which is neither sham or token. Therefore, the applicant’s first argument that there is insufficient use is dismissed.

36) Whilst I found that the proprietor has demonstrated sufficient use, I also find that it has not used its registration in respect of all the goods that it is registered for. Therefore, I must determine what is a suitable list of goods and services. 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.”

37) Further, 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."

38) As I have previously stated, there is no evidence of use on any of the class 9 goods. Therefore, I find that the following to be a fair specification:

Class 16: Books and printed publications; all the aforesaid goods relating to transcendental meditation.

Class 41: Teaching of meditation practices; education services relating to meditation; provision of meditation training; advisory, consultancy and information services relating to all of these; all the aforesaid relating to transcendental meditation.

No genuine use of the marks in the form in which they are registered

39) It is clear from the evidence and not challenged by the proprietor that there are no examples of use in an identical way as registered. The evidence shows that the man in a chair device is after the words rather than before it. Mr Beckley states that prior to placing the mark on his website he decided to put the device to the right of the words but prior to doing so he spoke to somebody at the IPO. In his witness statement summarised above he included the guidance provided on the IPO website. Having reviewed the guidance and discussing the matter with the IPO he took the view that he could proceed on this basis.

40) The applicant states that it is difficult to pinpoint a precise and consistent example of use of the components together since, it argues, that the use varies from exhibit to exhibit. However, it argues that the examples tend to share 3 characteristics: 1), it states that the man on the chair device is to the right of the words, 2) the device is usually at a 90-degree angle from the final word and in a different colour, and 3) the device is considerably smaller. Accordingly, it argues that the device in the registration is in a predominant position and the use made of it is so different to what is registered for that it is not an acceptable variant. It is worth noting at this stage that both the applicant and proprietor state that the words 'Transcendental Meditation' isare descriptive. Further, as highlighted by Mr Dickerson during the hearing, the mark is the subject of the disclaimer that "Registration of these marks shall give no right to the exclusive use of the words "Transcendental Meditation"". .

41) In *Nirvana Trade Mark*, BL O/262/06, Mr Richard Arnold Q.C. (as he then was) as the Appointed Person summarised the test under s.46(2) of the Act as follows:

"33. The first question [in a case of this kind] is what sign was presented as the trade mark on the goods and in the marketing materials during the relevant period...

34. The second question is whether that sign differs from the registered trade mark in elements which do not alter the latter's distinctive character. As can be seen from the discussion above, this second question breaks down in the sub-questions, (a) what is the distinctive character of the registered trade mark, (b) what are the differences between the mark used and the registered trade mark and (c) do the differences identified in (b) alter the distinctive character identified in (a)? An affirmative answer to the second question does not depend upon the average consumer not registering the differences at all."

42) Although this case was decided before the judgment of the CJEU in *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, it remains sound law so far as the question is whether the use of a mark in a different form constitutes genuine use of the mark as registered. The later judgment of the CJEU must also be taken into account where the mark is used as registered, but as part of a composite mark.

43) Firstly, I do not accept the applicant's argument that placing the device to the right of the words rather than the left (as registered) alters the distinctive character of the mark. Given the admission by both parties that the words Transcendental Meditation are descriptive (supported by the disclaimer), the distinctiveness of the mark does reside with the device. The device always appears to the right of the words and in some instances slightly above (see the website prints at exhibit CJB1 and brochures at exhibits RM-2 and RM-6). The applicant did draw attention to the size of the device as used is smaller, when in context with the letter font size, than as registered. However, since the device is the distinctive element of the mark, I do not consider the difference to alter the distinctive character.

44) I also acknowledge the applicant's argument that the mark is occasionally used in conjunction with the words 'Independent Teachers of...' or with a rose device. However, I find that the use made of the mark constitutes use in an acceptable form

which differs in elements which do not alter the distinctive character of the mark as registered.

Use is not an essential function of the mark

45) The applicant also argues that use of the registration is not consistent with the essential function of the 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. In essence, the applicant states that the words 'Transcendental Meditation' together with the device of a man in a chair (bearing in mind this is how this particular type of meditation is carried out) are used in a descriptive manner. The CJEU has stated that the essential function of a trade mark is:

“.. to enable the public concerned to distinguish the product or service from others which have another commercial origin, and to conclude that all the goods or services bearing it have originated under the control of the proprietor of the trade mark to whom responsibility for their quality can be attributed⁵.”

46) It was clear during the hearing that both parties consider the words to be descriptive of a type of meditation. However, I must assess the registration (series of three) as a whole and in doing so I am of the view that the registration is inherently distinctive. However, the question is not whether it could be used as a trade mark for the registered goods, but whether it has been used as a trade mark. Therefore, I must assess the nature of the use of the mark.

47) The applicant argues that the marks are not used in a prominent way which attracts the consumer's attention. More specifically it essentially argues that 1) the words and device are used in a descriptive manner, 2) they are used as a strapline, 3) there is no consistence in size, proximity, etc in the use of the mark, 4) the device is 'hardly noticeable', 5) no use of the device between October 2015 and November 2016, 6) sometimes the mark appears with a rose device.

⁵ Paragraph 47 of the CJEU's judgment in *Philips v Remington*, Case C-299/99

48) Some of the arguments raised in support of the registration not being consistent with the essential function of the mark are similar to those argued in support that the use is in a differing unacceptable form. Nevertheless, I have considered the use of the registration and the nature of the use and dismiss the applicant's argument. Firstly, whilst I consider the mark as registered to be inherently distinctive the question is whether the use made of the mark is consistent with the essential function which is to guarantee the identity the origin of the goods or services. As I have already stated, the registration has been used in an acceptable variant manner. The size and proximity of the device does differ. However, the mark is always used in a prominent manner at the top of the brochures, etc and does indicate the origin of the goods and services. This is consistent with the essential function of a trade mark.

49) In view of the above, I reject the applicant's argument that the use made of the mark is not consistent with the essential function of the mark.

Conclusion

50) Under section 46(6)(b) of the Act, trade mark registration no. 2490120 is revoked from 8 November 2013 in respect of:

Class 9: Sound and video recordings in the form of, discs, cassettes, CDs, DVDs, CD ROMs, laser discs and tapes; cinematographic films, television programmes and films, computer software, audio recordings, video recordings, images, text, and information provided via telecommunications networks, by on-line delivery and by way of the Internet; publications in electronic form supplied on-line, from databases or from facilities provided on the Internet (including websites); all the aforesaid goods relating to transcendental meditation.

Class 16: Teaching and instructional materials; CD and DVD inlays; catalogues, writing instruments; all the aforesaid goods relating to transcendental meditation.

Class 41: Teaching of meditation practices; education services relating to meditation; provision of meditation training; advisory, consultancy and information services relating to all of these; all the aforesaid relating to transcendental meditation.

51) It shall remain registered for the following goods and services.

Class 16: Books and printed publications; all the aforesaid goods relating to transcendental meditation.

Class 41: Teaching of meditation practices; education services relating to meditation; provision of meditation training; advisory, consultancy and information services relating to all of these; all the aforesaid relating to transcendental meditation.

52) Following the uncontested conclusion reached in the earlier decision, trade mark registration no. 2490121 is revoked in full with effect from 17 January 2014.

COSTS

53) The applicant for revocation has been entirely successful with its revocation claim against trade mark registration no. 2490121 and it has been largely successful against no. 2490120. Therefore, it is entitled to a contribution towards its costs. As I have outlined at paragraphs 3 and 6 I outlined that following the erroneous exhibit it was necessary for the original decision to be set aside, attend a CMC and have another substantive hearing (which the applicant requested). I begin by acknowledging that the error by Mr Beckley was purely accidental. However, I must also acknowledge that the applicant has been put to additional costs which it may not, otherwise, have incurred.

54) It was well established that the 'Tribunal has the ability to award costs off the scale, approaching full compensation, to deal proportionately with wider breaches of

rules, delaying tactics or other unreasonable behaviour⁶. This discretion is to 'commensurate with the extra expenditure a party has incurred as the result of unreasonable behaviour on the part of the other side.' In the circumstance I do not consider the proprietor's error to warrant an award of costs off the scale. There were no wider breaches of rules, delaying tactics or other unreasonable behaviour. It was simply an error. Notwithstanding this, I do consider the applicant should be entitled to a contribution to its costs for the additional time spent, and that these should be at the upper limit of the published scale of costs.

55) In view of the above, I award the applicant for revocation the sum of £2100 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official fees	£400
Preparing the applications for revocation	£200
Considering the proprietor's evidence and filing written submissions	£500
Attendance at the hearings and CMC	£1000
Total	£2100

⁶ Trade Marks Work Manual

56) I therefore order The Meditation Trust to pay Maharishi Foundation the sum of £2100. The above sum should be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 26th day of November 2018

Mark King
For the Registrar,
The Comptroller-General

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Reduced risk of Heart
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Reduced risk of Heart
Disease

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But that knowledge already exists in the ancient Vedas of India, the basis of Ayur-Veda (the 'Science of Life'), the world's most ancient system of natural healthcare and personal development. This includes a full explanation of what stress is and how it arises and provides in the Yoga system the means for its elimination and the resolution of all problems.

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Because of this confusion of cause and effect it didn't work for all but a few prepared to give up normal activity. Meditation was for a long time relegated to the fringes of everyday life, and for active people became substituted by visualisation and other mildly relaxing techniques.

In the 1950's, however, a major revival of interest in meditation began when Maharishi Mahesh Yogi, a disciple of the renowned spiritual leader Swami Brahmananda Saraswati, travelled throughout India and around the world several times to re-establish the original understanding of meditation.

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Maharishi Mahesh Yogi

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