

O/773/22

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF

APPLICATIONS NOS. 504128, 504129, 504130 AND 504131

BY LITTLE CHIMNEY LTD

TO REVOKE ON THE GROUNDS OF NON-USE

**TRADE MARK REGISTRATIONS NOS. 3040657, 3029104, 3020256 AND
3092067**

OWNED BY CHIMNI LTD

BACKGROUND AND PLEADINGS

1. Chimni Ltd (“the proprietor”) is the registered proprietor of the trade mark registrations set out below:

UK00003040657 (series of three) (the First CHIMNI mark)

Chimni
chimni
CHIMNI

Filing date: 04 February 2014

Date of entry in register: 09 May 2014

Class 37: *Information services relating to repair or installation, provided on-line from a computer database or the Internet; Construction information; Information services relating to the refurbishment of buildings; Repair information; Property maintenance; Advisory services relating to the renovation of property; Construction of residential properties.*

UK00003029104 (series of two) (the Second CHIMNI mark)

Chimni
CHIMNI

Filing date: 04 November 2013

Date of entry in register: 07 February 2014

Class 42: *House design services, Design services relating to interior decorating for homes, Interior space planning services, Design services relating to residential property, Design services relating to real estate, Planning [design] of buildings, Planning [design] of building extensions, Advisory services relating to architecture, Architecture services for the preparation of architectural plans, Computer aided*

design services relating to architecture, Advisory services relating to planning applications, Local planning authority services.

UK00003020256 (the Third CHIMNI mark)

Chimni

Filing date: 30 August 2013

Date of entry in register: 29 November 2013

Class 36: *Computerised information services relating to real estate; Provision of information relating to property [real estate]; Provision of information relating to real estate; Estate agent services; Domestic property finding services; Management of property; Property portfolio management.*

UK00003092067 (the Fourth CHIMNI mark)



Filing date: 31 January 2015

Date of entry in register: 01 May 2015

Class 36: *Computerised information services relating to real estate; Provision of information relating to property [real estate]; Provision of information relating to real estate; Estate agent services; Domestic property finding services; Management of property; Property portfolio management.*

Class 37: *Information services relating to repair or installation, provided on-line from a computer database or the Internet; Construction information; Information services relating to the refurbishment of buildings; Repair information; Property maintenance; Advisory services relating to the renovation of property; Construction of residential properties.*

Class 42: *House design services, Design services relating to interior decorating for homes, Interior space planning services, Design services relating to residential property, Design services relating to real estate, Planning [design] of buildings, Planning [design] of building extensions, Advisory services relating to architecture, Architecture services for the preparation of architectural plans, Computer aided design services relating to architecture, Advisory services relating to planning applications, Local planning authority services.*

2. On 10 September 2021, Little Chimney Ltd (“the applicant”) sought revocation of the proprietor’s marks on the grounds of non-use based upon Section 46(1)(a) and (b) of the Trade Marks Act 1994 (“the Act”).

3. Revocation is sought under Section 46(1)(a) in respect of the 5-year periods following the date of completion of the registration procedure. These periods are different for each mark and are as follow (“the first relevant periods”):

The First CHIMNI mark: **9 May 2014 – 10 May 2019** with an effective revocation date of 10 May 2019.

The Second CHIMNI mark: **7 February 2014 – 8 February 2019** with an effective revocation date of 8 February 2019.

The Third CHIMNI mark: **29 November 2013 – 30 November 2018** with an effective revocation date of 30 November 2018.

The Fourth CHIMNI mark: **1 May 2015 – 2 May 2020** with an effective revocation date of 2 May 2020.

4. Revocation is also sought under Section 46(1)(b) in respect of the following 5-year time period (“the second relevant periods”):

The First CHIMNI mark: **10 May 2015 – 9 May 2020** and **10 May 2016 – 9 May 2021** with effective revocation dates of 10 May 2020 and 10 May 2021 respectively.

The Second CHIMNI mark: **8 February 2015 – 7 February 2020** and **8 February 2016 – 7 February 2021** with effective revocation dates of 8 February 2020 and 8 February 2021.

The Third CHIMNI mark: **30 November 2014 – 29 November 2019** and **30 November 2015 – 29 November 2020** with effective revocation dates of 30 November 2019 and 30 November 2020.

The Fourth CHIMNI mark: **2 May 2016 – 1 May 2021** with an effective revocation date of 2 May 2021.

5. Revocation is also sought under Section 46(1)(b) in respect of the 5-year time period **10 September 2016 – 9 September 2021** (“the third relevant period”) with revocation being sought from 10 September 2021. That is the same for all of the proprietor’s marks.

6. The proprietor filed defences and counterstatements denying each claim against each of its marks.

7. Only the proprietor filed evidence in these proceedings. This will be summarised to the extent that it is considered appropriate. No hearing was requested, but the applicant filed submissions in lieu dated 6 July 2022.

8. The applicant’s submissions of 6 July 2022 contain some evidence. As the evidence incorporated within the applicant’s submissions in lieu was filed outside the evidence rounds (and the applicant did not seek leave from the Tribunal to file additional evidence) and it is not in proper evidential format, I will disregard it.

9. In these proceedings, the applicant is represented by CMS Cameron McKenna Nabarro Olswang LLP and the proprietor by Keystone Law.

10. 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 on in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

EVIDENCE

11. The proprietor filed evidence in the form of witness statement of Nigel John Walley dated 15 March 2022. Mr Walley is the founder and managing director of the opponent's company. Mr Walley's evidence is accompanied by 50 exhibits (NJW01-50) and includes three videos.

12. I do not intend to reproduce or summarise the evidence here, but will refer to it below, where necessary.

DECISION

13. Section 46 of the Act states:

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

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

(b) 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 (the “variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom

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

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

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

(4) [...]

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from-

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existing at an earlier date, that date”.

14. Section 100 of the Act is also relevant, which reads:

“100. 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.”

15. In *Walton International Ltd & Anor v Verweij Fashion BV* [2018] EWHC 1608 (Ch) Arnold J (as he then was) 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 Bundervsvereinigung Kamaradschaft ‘Feldmarschall Radetsky’* [2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], [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].”

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

17. I am also guided by *Awareness Limited v Plymouth City Council*, Case BL O/236/13, wherein 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.”

[...]

“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.”

18. In addition, in *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, Mr Geoffrey Hobbs Q.C. as the Appointed Person stated that:

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

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or

her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

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

19. It is clear from the case law above, that the onus is on the proprietor to show that it has used the marks during the relevant periods.

What is ‘Chimni’?

20. Mr Walley says that he bought the domain name www.chimni.com in February 2012 and that the website was launched in the same year and has been operated ever since. Mr Walley also says that the opponent’s company was incorporated in 2015.

21. Although I have gone through the evidence and watched the videos, which include an overview of the opponent’s business (NJW-01) and a video about the functionality of <https://www.app.chimni.com> (NJW-02), it is not 100% clear to me what services the proprietor’s business provides under the marks and how the provision of the services generates revenue (if any). This may go some way to explain why, although it is said that the first users of ‘Chimni’ were engaged in 2017, there is no reference to any turnover figures in the evidence filed, a point to which I will return.

22. The difficulty here is that the services in relation to which the mark 'Chimni' has allegedly been used are not traditional services which could be easily categorised. Rather, they are the result of a work carried out by Mr Walley and aimed at developing new digital services for homeowners and professionals working in the property sector. Mr Walley states:

"I originally came up with the idea that became Chimni in 2009, producing sketches for the website and the services I wished to develop. As a result, I began developing the ideas and launched the offering in concept/mock-up form in 2010 and began extensive consumer research using design mock-ups. This work began in 2010."

"Having developed the concept, created the website and made significant progress with the service offering, Chimni was incorporated on 9 March 2015."

"Since 2015 we have also participated in University research programmes to understand how the concept could evolve over time as the property industry increasingly digitises its data and services".

23. The concept to which Mr Walley refers is the digitalisation of data relating to properties. Mr Walley describes 'Chimni' as follows:

"Chimni's service offering is multifaceted but is primarily a secure, cloud-hosted property information account/property logbook (we refer to the records that our website/portal create for each home as a "logbook") which gives homeowners, property managers, estate agents, architects, as well as a variety of organisations (including governmental organisations at both a local and national level), the data and functionality required to manage, investigate, build and repair, design and obtain information generally about a property".

24. The demonstration video provided at NJW-02 shows how the 'Chimni' online platform works. It shows that in order to access the 'Chimni' logbook system, customers must create a 'Chimni' account'. The login page says: **"WELCOME TO CHIMNI PLEASE CREATE A CHIMNI ACCOUNT TO START MANAGING YOUR**

HOME". During the video, the speaker logs in entering his email and password to gain access to his account. The account shows four houses, and the speaker explains that users on the trial have two or more than two houses.

25. Based on the information provided by Mr Walley in his witness statement (including the video evidence), the core functions of the 'Chimni' platform are:

- since 2016, every property logbook that a user sets up in 'Chimni' is given access to digital data about that property. This information is collated into a property 'dashboard' which sits at the heart of a 'Chimni' logbook;
- the platform has since 2016 allowed for both the storage and sharing of property information and documentation, to enable owners to better manage their home. The 'Chimni' system offers homeowners a variety of templated 'project folders' to store information about projects and future plans. The file sharing and storage function also enables architects and tradespeople to share documents on architectural and DIY work directly into these 'Project folders'. This information can then be used and viewed by architects and their clients;
- the information services provided within 'Chimni' includes explanations of the certification and documentation required for building work on domestic properties. This function allows all documents that are uploaded to the 'Chimni' system to be classified correctly. This information is provided within both the 'Chimni' logbook and via the 'Chimni' Wiki linked (which is an online information compendium allegedly linking to separate pages similar to Wikipedia, which the applicant points out, is not demonstrated to work in the video evidence);
- the 'Chimni' logbook service includes a 'timeline history' feature. It allows key events in a property's development to be recorded on a 'timeline' in date order. This function was built into the original software in 2016, launched in 2017 and has been in continuous use by 'Chimni' users ever since.

26. Mr Walley says that the video provided at NJW-01 was published on YouTube on 6 September 2017. He also says that *"all the stated functionality [described in the video] was being used/available for use by **November 2018 (at the latest)**, save for*

the interactive floor plan [...] and the utility dashboard [...], both of which were being actively promoted as at November 2018”.

27. Further, ‘Chimni’ was quoted in two white papers published by Cambridge University. One of the papers from October 2018 describes ‘Chimni’ as follows:

Chimni is a West London based tech company founded in 2014. Its aim is to facilitate housing management for homeowners by providing an online tool in the form of a digital dashboard. The dashboard stores and aggregates data, documents and certificates, and generates management templates, whilst also giving immediate access to account information for bills, utilities and insurance companies.

Chimni also helps homeowners in the process of selling or letting the home, by providing a pre-prepared home management digital tool. This gathers all the house documentation together in online files and provides a full property history without no need for paper documentation. Chimni is currently running a trial with a group of West London estate agents, extending the tool to link homeowners directly into estate agent software. As explained by Teresa Brewer, who works for a letting agency, “The agency world is full of digital innovation but most of it is on the agency and supplier side. This is the first time a system has been produced to help the homeowner get ‘sale ready”.

Number of users, marketing and promotion

28. As I have already said, the services in relation to which the mark ‘Chimni’ has allegedly been used are new types of services. In this connection, Mr Walley states:

“Context when considering this matter is important. ‘Chimni’ was a new form of information service that has not previously existed. ‘Chimni’ needed not only to create, promote, and offer services under the Registrations but to create the relevant market conditions in order for it to do so. By market conditions I mean, creating a market where both potential users, suppliers and partners are aware of the concept, understand its value and have technical systems configured to be able to integrate with it, share data and link services, and the necessary regulatory/legal framework for the offering to work.”

29. Mr Walley says that the first users signing up to the ‘Chimni’ services were recruited in the first quarter of 2017 and that by 10 September 2021 ‘Chimni’ had over a thousand users. He states:

“Since launching to the public in 2017, Chimni has gradually, but consistently signed up new consumer users, with the first users signing up to our services in Q1 of 2017. User acquisition strategy has been gradual and careful as we slowly roll out consumer services and functionality. Every new user has been ‘managed’ onto the service as we test the sign-up and onboarding systems. We have a real focus on obtaining quality users who receive an excellent service. By 10 September 2021 we had well over a thousand users.”

30. Mr Walley also refers to the work undertaken to educate potential consumers and to engage with the government, regulators, trade bodies and potential industry partners in order to ensure that they understood both *“the offering and benefits of the Chimni platform”*. The activities to which Mr Walley refers include the following:

1. Participation to 2 working groups.
2. Presentation of the *“Chimni concept”* to various industry and Government bodies and to the UK Minister of Housing.
3. Engagement with local authorities.
4. Engagement with independent groups.

31. Mr Walley provides an overwhelming amount of evidence as to the above activities beyond all doubt. The impression I get is that most of these activities were analogous to sales pitches targeting potential client groups. However, the material filed does not establish with sufficient clarity that what was being presented and promoted was a finished product which was ready to be adopted and purchased.

32. Rather, the evidence suggests that (a) at the time when Mr Walley engaged with potential users and partners, he had developed the basic concept of an online property management tool and (b) when the tool was launched, the website www.chimni.com allowed potential users to register their interest in order to receive information about ‘Chimni’ and be put on a list to be included in the next group of consumer trials, as shown by the table below which appears on a webpages from 23 April 2017:



33. This takes me back to Mr Walley’s evidence that *“Since launching to the public in 2017, Chimni has gradually, but consistently signed up new consumer users, with the first users signing up to our services in Q1 of 2017”*. The first users to which Mr Walley refers appear therefore to be users selected for consumer trials, rather than paying customers. This may also explain why there are no turnover figures, which, in turn supports the conclusion that the over 1,000 users ‘Chimni’ had between 2017 and 10 September 2021 were users involved in consumer trials. Alternatively, it is possible that users were not charged whilst the system was being tested and developed. In any event, as Mr Walley himself said, for the ‘Chimni’ offer to work the tool needs to be integrated within other technical systems and there is no evidence that this was achieved by the date Mr Walley gave his evidence. In this connection, Mr Walley says:

“In January 2021 Chimni and partner company xBIM (who are a technical BIM specialist) applied for a UK Government InnovateUK ‘SmartGrant’, to support a project to further integrate Chimni’s core functions with a trial version of BIM software hosted with xBim. On 3 September 2021 it was announced that Chimni had won the grant funding from the Government’s InnovateUK program to undertake the project. There is now shown to me an exhibit marked Exhibit NJW-12 which comprises a screenshot of an email confirming the funding. The project is now underway.” (emphasis added)

34. Mr Walley explains that BIM stands for *“Building Information Modelling”* which refers to a new generation of computer aided design software used by architects and developers to help to plan, design and modify buildings. He also refers to other plans

to integrate 'Chimni' with software applications used by local authorities and estate agents. He states:

“Since 2015 we have engaged with Local Authorities to plan for integration of Chimni’s services with council systems covering Planning and Control. This will be crucial for our ability to support renovation and retrofit work on residential property”. (emphasis added)

*“**National Agents:** Chimni used the feedback and results of these trials with local agents to obtain meetings with national estate agent chains. There is now shown to me an exhibit marked Exhibit NJW-41 which comprises copies of emails from national estate agents like [KF and S]. We are currently undertaking projects with both these companies to integrate our systems with theirs to allow smooth exchange of data during property transactions”.* (emphasis added)

35. The white paper published by Cambridge University in October 2018 (mentioned above) also refers to 'Chimni' running a trial with a group of estate agents from London extending the tool to link homeowners directly into estate agent software.

36. The picture painted by the evidence is wholly consistent with 'Chimni' being a new online tool/software whose benefits and applications depend on its functionality being integrated into other systems used by professionals (such as architects, developers and estate agents) and/or local authorities.

37. The conclusion I draw is therefore that Mr Walley created a digital product and then he worked on exploring, developing and promoting practical applications of that product in an attempt to generate a demand in the market.

38. I should also add that both the website and the TV advert shown at NJW-03 appear to target homeowners, as they contain the slogans *“Putting homeowners in control”* and *“Helping homeowners ‘Get their Ducks in a Row”* respectively. Further, the evidence includes various third-party’s references to 'Chimni' being a *“free property logbook”* in which homeowners can store all key documents. An article from The Times dated 16 April 2021 states:

Chimni

A free property logbook in which homeowners can store all key documents, from title deeds to energy performance certificates, whether they are selling, letting or not. There are sections in which to store all the information on DIY or building projects, as well as a space for compiling your home's history (chimni.com).

39. It is possible that 'Chimni' was available free of charge (to homeowners) for trial purposes. Another explanation may be that homeowners were not charged because the functionality was still being developed or because having registered homeowner users made it easier to test the functionality of the system and/or sell the idea to potential partners/licensees, which is where the income would be generated. In this connection, I note Mr Walley's statement that "*Chimni's business services are targeted at estate agents and conveyancers for property sales; property managers; architects and builders for renovations; and architects, housebuilders and property developers for new build property*". The evidence also contains multiple references to licensing, which I have reproduced below:

"In 2013 we began testing our service offering with consumers, trialling the idea with potential industry partners, working with regulatory authorities to show how it improves aspects of the property market, marketing it to consumers and business groups and licensing its use to various individuals, businesses and organisations".

"We launched to users at the end of 2016 with our first users being enrolled in early 2017. I will set out in greater detail what our system is and how we have developed, promoted, marketed and licensed the services to users further below in the section Chimni's Services"

"The evidence referred to above is to my mind clearly relevant to demonstrating the widespread use of the Trade Mark as a trade mark, the creating and maintaining of an outlet for the provision of the Services and the use and licensing of our services" (emphasis added)

40. However, no details of any license agreement have been filed and there is no evidence of 'Chimni' being integrated into systems provided by third parties. The lack of particulars as to the business model the proprietor intended to pursue means that it is not possible to understand whether 'Chimni' would function as a platform providing services all of which would be paid by licensees/partners, or whether homeowners would also be charged once the system was fully developed.

41. Finally, Mr Walley refers to 'Chimni' sponsoring a number of house history events in 2020-2021. He also refers to the fact that in 2016 'Chimni' television historian Mel Backe-Hansen helped the proprietor design a functionality in the 'Chimni' service that enabled the system to capture historic data from archives. He states:

“One area of functionality that has grown in popularity is the ‘House History’ element. This is a study of previous occupants, transactions and changes to homes within the UK. This new popularity has included television programmes devoted to the subject. We decided to target people with this interest as they have been shown to use online systems to build records about their homes. In 2016 Chimni commissioned television historian Mel Backe-Hansen to help us design functionality in our service that could give our real estate information functions the ability to capture historic data from archives and display it alongside current real estate data. We tested the functionality with local history groups in West London and the project was featured in an article in the Property section of The Daily Telegraph newspaper. There is now shown to me an exhibit marked Exhibit NJW-25 which comprises details of the project and related coverage”.

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

Conclusions on the evidence

43. There are several issues with the proprietor's evidence. For example, there are not turnover figures. Lack of actual sale figures is not fatal, however. In *Polfarmex S.A. v EUIPO*, Case T-677/19, the General Court (“GC”) upheld a decision by the EUIPO

Board of Appeal that, despite there being no sales in the relevant period, there had been genuine use in relation to racing cars. The court noted that unlike 'sports cars', the market for racing cars is a small and specialist one. After reviewing the evidence (including cooperation and co-existence agreements, presentation of the cars at sporting events, press articles, brochures, correspondence from a company seeking to purchase a particular model and evidence of orders which were placed but later cancelled), the GC said:

“69. Moreover, the content of all those documents is not disputed by the applicant. Likewise, it should be noted that, in the light of the observations in paragraphs 63 to 68 above, the applicant is not justified in claiming that the goods covered by the contested mark were never actually placed on the market or were never about to be placed on the market. It should be specified that the placing on the market of goods or services also includes circumstances in which that product or service is actually offered for sale, even if it has not yet been sold.

70. It must also be stated that the Board of Appeal, in paragraph 48 of the contested decision, relied on the Court's case-law, which it was fully entitled to consider relevant in the present case. As is apparent from the case-law, it is common knowledge that the market for high-end sports cars with technical specifications that are not intended for normal, everyday road use and the price of which exceeds that of most private use cars is often characterised by relatively low demand, by production to specific order and by the sale of a limited number of vehicles. The Court held that, in such circumstances, the provision of accounting documents setting out sales figures or invoices is not necessary for the purposes of establishing genuine use of the mark in question. Further, the Court noted that publications demonstrated that the mark in question was the subject matter of public discussion in anticipation of a revival of production and sale of a car model bearing the mark in question (see, to that effect, judgment of 15 July 2015, *TVR ITALIA*, T-398/13, EU:T:2015:503, paragraph 57).

71. It follows that, having regard to the specific features of the relevant market, duly taken into account by the Board of Appeal when it relied on the case-law cited in paragraph 70 above, the evidence produced by the intervener shows the existence of various preparatory tasks and advertising efforts in relation to the SYRENA Meluzyna R model. Moreover, it shows, as contended by EUIPO, not only that the car was about to be marketed, but also that it was available to order.

72. Moreover, it should be borne in mind that, contrary to the applicant's claims, it is apparent from the case-law cited in paragraph 41 above that use of the mark can be shown by evidence that the goods at issue are about to be marketed.

73. Accordingly, the Board of Appeal was fully entitled to consider that genuine use of the contested mark had been shown in respect of sports cars. That finding cannot be called into question by the applicant's other arguments."

44. At the centre of the proprietor's claim to have used the mark 'Chimni' are the following facts:

- The website at the domain name www.chimni.com was launched in 2013 and has been operated ever since;
- The first users of the services provided under the mark 'Chimni' were signed up in 2017 and, by 10 September 2021, there were over 1,000 users. The evidence strongly indicates that the only service the proprietor provided up to the date of Mr Walley's witness statement was a **property logbook service** for homeowners whereby users were able to store all key documents about their properties. It also seems that access to the property logbook services was provided free of charge because either (a) it was part of customer trials undertaken to test the functionality of the system and integrate it to other systems run and hosted by potential partners/licensees, including local authorities, estate agents, architects and developers, (b) whilst the 'Chimni' system was being developed and until was fully integrated into other systems

it had limited features/benefits/applications, or (c) having registered homeowner users was important to the proprietor itself because, Mr Walley says, those users can be encouraged to use other functionality;

- The proprietor has carried out various preparatory tasks and advertising efforts during the relevant periods, including efforts to create demand and optimise market conditions to create demand. These efforts include presentations delivered to groups of architects (2015), estate agents (2018) and public bodies including, inter alia, the NLA (New London Architecture) (2015), the CDBB (Cambridge University Centre for Digital Built Britain) (2018), the Government's HBSG (Home Buying and Selling Group) (2019), the RLA (Residential Logbook Association) (2020), the UK Ministry of Housing (23 June 2021), the Law Society and the Conveyancers Association (2019-2021), The IRPM (Institute of Residential Property Managers), local authorities and the University College of London/Bartlett School of Architecture (2019). Further, the proprietor has produced a TV advert which it is said was aired on Sky channels in July 2020 (although there is no corroborating evidence of this, and the rest of the evidence¹ suggests that it was part of an initiative launched by Sky offering 100 SMEs the opportunity to advertise for free). These activities have resulted in some awareness of 'Chimni' as it is shown by copies of articles published on national newspapers, such as The Sunday Times (2020) and The Times (March-April 2021), and specialist magazines targeting architects, estate agents and those involved in the construction and building sector (2019-2021), all of which mention 'Chimni'.

45. Whilst the fact that users have not been charged for the services offered is not fatal to genuine use,² it is incumbent upon the proprietor under Section 100 of the Act to produce evidence which shows that the marks have been genuinely used in relation to the particular services in classes 36, 37 and 42 for which the registrations are sought to be maintained.

¹ NJW 29

² *Silberquelle GmbH v Maselli-Strickmode GmbH*, Case C-495/07

46. The applicant contends that the evidence shows an offering that is not covered by the specifications. It states:

“Hypothetically and without any admission, the evidence may establish at best that the registered proprietor has set up an online system that allows users to store and share data about their property they have collected over time and to organise this data into folders, but it does not show more than this”.

47. In my view, the applicant is bang on with its submission. The only service the proprietor seems to have offered is a **free property logbook service**. Other definitions of the services include a *“digital property logbook”*, *“an (in-development) logbook/dashboard-based home management system”*, a *“property logbook platform”* and an *“online digital dashboard for every home”*. I have reproduced the relevant extracts below:

Nigel Walley - Chairman

Nigel is MD of RLBA founder company Chimni - a provider of digital property logbooks. Nigel has run digital consultancy Decipher for 20 years and his core experience is in digital propositions for consumer media and services.

(The above extract is taken from the Residential Logbook Association (RLBA)'s website and is undated)

To manage my information once it has been produced, I intend to use is **Chimni**. **Chimni** is an (*in development*) log book/dashboard based home management system which will include functionalities such as: Interactive floor plans, an asset registry, and document storage. Thinking back to **my prologue**, **Chimni** appears to fit my methodology perfectly.

(The above extract is said to relate to “Chimni’s participation to the working group ‘BIM4Housing’ in 2014 and is undated)

Leading property logbook platform Chimni seeks £150,000 to fund development

Chimni has been leading successful efforts to persuade Ministers that logbooks are one of the keys to faster and simpler property sales.

(The above extract is taken from an article published on The Negotiator on 6 January 2021)

Chimni was born - a secure online digital 'dashboard' for every home and neighbourhood in the land.

Simple concept

Like all good ideas, the concept is simple. Chimni aims to free householders from the need to store mountains of paperwork, while in the process creating a fascinating historical archive for each house and flat.

(The above extract is taken from an article published on www.lbhf.gov.uk on 12 March 2019)

48. However, whilst digital property logbook - another equivalent term seems to be “*property passports*”³ - may be a new thing, the evidence indicates that it is not something that is exclusive to the proprietor. For example, Mr Walley says that in September 2019 he was invited to set up and chair a working group within the Government’s ‘Home Buying & Selling Group’ (HBSG) to “*further evaluate the potential of property logbooks within the home buying & selling process*”. According to the HBSG’s website⁴ participants to the working group included “*suppliers of property logbook and interested parties from various stakeholders*”. Further, an article from Today’s Conveyancer (dated 3 July 2019) highlights the novelty of the concept of property logbook and the absence of a sector definition⁵. It states:

“The Government have been long term vocal advocates of property log books in the UK and plan to improve the way they are perceived by consumers and the wider property market by creating a standard definition. [...] The Government have argued that it makes sense to have information that accumulates as the property ownership changes and has found the idea of digital logbook to be the answer. Currently, the Government are wary of the effectiveness of logbooks because of the myriad of definitions confusing the market. Hoping to change this, they are working alongside industry experts to create a sector definition and data standard as to what constitute a property logbook”.

³ See NJW-15

⁴ NJW-13

⁵ NJW-31

49. Another article from The Negotiator⁶ (dated 14 December 2020) states that “Property logbooks will go mainstream by 2025”.

Use in relation to the registered services?

50. Before I turn to the question of whether the use shown could be said to be use in relation to the registered services, I should mention that Section 46 of the Act requires genuine use “**in relation to the goods or services for which [the mark] is registered**”. Genuine use must therefore be use of the mark as a trade mark in relation to the goods and services of the registration. This is consistent with the system for the registration of trade marks which requires that the goods or services for which registration is sought or granted shall be specified, in accordance with Section 34 of the Act (this Section establishes that goods and services shall be classified for the purposes of the registration of trade marks according to a prescribed system of classification) and Articles 7 and 8 of the Trade Mark Rules (2008) (these Articles establish that every application shall specify (a) the class in the Nice Classification to which it relates; and (b) the goods or services which are appropriate to the class [...] to enable the registrar and other competent authorities and economic operators to determine the extent of the protection sought and to allow them to be classified in the classes in the Nice Classification).

Assessment

51. The proprietor refers to ‘Chimni’ as an online home management app (as shown below) in its own social media:⁷

Chimni

@chimni

An online home management app giving owners and renters control of their household data and helping them manage their property's digital life! See

[@chimni_wiki](#)

⁶ NJW-31

⁷ NJW-34

52. The word “app” is also used in the domain name app.chimni.com, which hosts the ‘Chimni’ login page (as shown below):⁸



53. In its submissions, the applicant refers to the dictionary definition of logbook as “A log book is a book in which someone records details and events relating to something, for example a journey or period of their life, or a vehicle” and states:

“A property logbook, it would follow, is a place where somebody can record and save details and events relating to their property. An online property logbook is therefore a digital tool which allows a user to store important details about their property. This reflects what the registered proprietor states in NJW-02: “a big part of the Chimni log system is storage of document” and it reflects the words of the small number of users of the system, as mentioned in the extract of their own words at paragraph 6.9, who all mention the storage of property documents”

54. Whilst the dictionary definition provided in the applicant’s submissions constitutes evidence, hearing officers are entitled to rely on dictionary definitions (without evidence being filed). In any event, the dictionary definition supplied by the applicant only reflects the meaning the word ‘logbook’ has been given when used in the context of ‘property logbooks’. I therefore accept the applicant’s submission that an online property logbook is a **digital tool** which allows users to store important details about their property in an electronic format.

55. This raises the question of whether property logbooks – and what the proprietor provides - are web-based software applications, online tools (intended as software applications) or cloud-based management systems. Whatever the answer is, a

⁸ NJW-40

software application would fall in class 9 and none of the proprietor's marks cover software in class 9 (and/or cloud-based management system services in class 42).

56. In his witness statement Mr Walley provides submissions and opinions as to how the evidence demonstrates use of the marks in relation to the registered services. I will consider each specification in turn.

The First CHIMNI mark

57. The First CHIMNI mark is registered for the following services:

Class 37: *Information services relating to repair or installation, provided on-line from a computer database or the Internet; Construction information; Information services relating to the refurbishment of buildings; Repair information; Property maintenance; Advisory services relating to the renovation of property; Construction of residential properties.*

58. In his witness statement Mr Walley states:

“87.1. Exhibit NJW-07 (please see page 20) shows how the core Chimni logbook contains information on construction certification and documentation required for refurbishment, and property maintenance. The Chimni logbook allows a user to categorise documents relating to refurbishment or maintenance, then upload them or to identify certificates/documents they need for a project.

87.2. Exhibit NJW-05 (please see pages 16-17) shows the same information held on the ChimniWiki (web information resource) which is connected via web links to the core Chimni logbook. Please see my previous comments regarding this part of our service.

87.3. Exhibit NJW-45 (please see page 101) shows how we provide a range of services within class 37 to architects and their clients to manage information on repairs, property maintenance and associated advisory and construction services.

87.4. *Exhibit NJW-36 (please see pages 83-84) contains screenshots of Chimni's Twitter feeds, shows that functionality relating to class 37 which has been showcased in Chimni's marketing since 2018.*

87.5. *Exhibit NJW-36 (please see page 85) shows how these features were outlined in the 'Introduction' video that has been available via Chimni's website and YouTube channel since 2017.*

88. *Chimni has continued to develop services and marketing in relation to services covered by Class 37. In May 2020 Chimni began developing and communicating its Retrofit product. This product covers all aspects of the class 37 coverage, including information and advice in relation to repair, installation, construction, refurbishment, property maintenance and renovation. There is now shown to me an exhibit marked Exhibit NJW-47 which comprises screenshots of social media posts and an article by the Green Finance Institute referring to our Retrofit plans."*

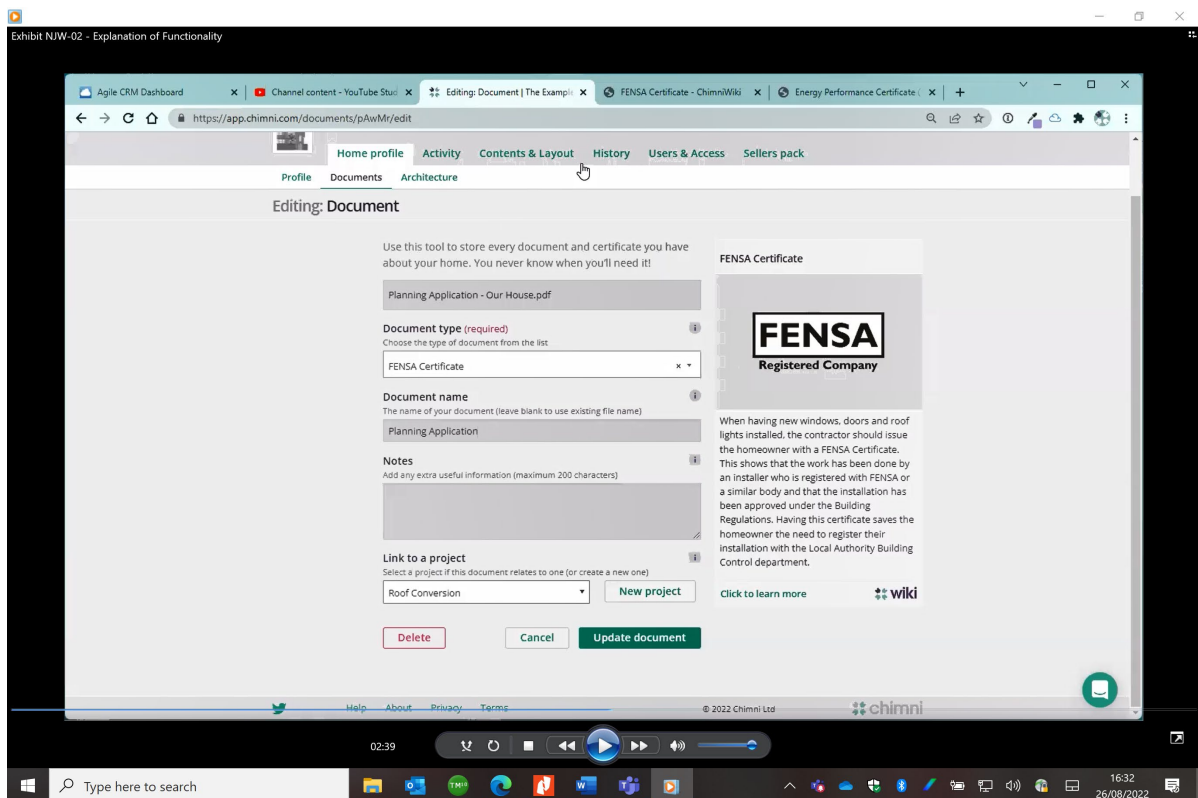
59. According to the Nice Classification system, Class 37 includes mainly services rendered by contractors or subcontractors in the construction or making of permanent buildings sectors, as well as services rendered by persons or organizations engaged in the restoration of objects to their original condition or in their preservation.

60. There is no evidence that the proprietor provides, or has ever provided, *Property maintenance* or *Construction of residential properties services*. These are services which would be provided by builders and that the proprietor clearly does not provide. As regard the provision of *Information services relating to repair or installation, provided on-line from a computer database or the Internet; Construction information; Information services relating to the refurbishment of buildings; Repair information; Advisory services relating to the renovation of property*, the applicant comments are as follows:

"The closest information that the proprietor has presented in respect of these services is a single screenshot showing basic (and unfinished) information about a FENSA certificate on the 'Chimni Wiki'. Not only is a single screenshot

highly unlikely to demonstrate genuine use on its own, it is also undated, and the proprietor's own video evidence at NJW-02 shows that the link between the Chimni logbook and the hyperlink do not work. This means the only person likely to have seen the FENSA certificate page is the proprietor himself. In addition, there is no suggestion within the evidence that the Chimni Wiki service has been marketed or available to users independently of the core services offered, and therefore the proprietor does not appear to have been seeking to create or maintain a market share in this separate service.”

61. Even if I were to accept that the 'Chimni Wiki' feature was built into the system since the proprietor launched the website and/or the first users were recruited in 2017, the information to which Mr Walley refers consists of definitions of various certificates and documents that are provided to users when they upload new documents onto the 'Chimni' system with the view of assisting them to classify the documents correctly. I have reproduced below a screenshot of the video supplied by Mr Walley which explains the functionality of 'Chimni':



62. As it can be seen, the information about the FENSA certificate (which is also included in NJW-07) pops up when the user selects the relevant document, namely the FENSA certificate, from the list available. The information is therefore provided only for classification purposes. It is not provided in an attempt to create a market share for the registered services, namely *Information services relating to repair or installation, provided on-line from a computer database or the Internet; Construction information; Information services relating to the refurbishment of buildings; Repair information; Advisory services relating to the renovation of property.*

63. It is true that Mr Walley also refers throughout the evidence to the Chimni 'Wiki'. He says that Chimni 'Wiki' is "*an online information compendium built to resemble Wikipedia*" and that he considers it "*to be (at least) a computerised information service relating to real estate*". The evidence exhibited at NJW-05 consists of three screenshots from <http://chimni-beta.co.uk/wiki>, evidencing information relating to property and buildings, namely (a) a history of semi-detached houses (this appears to be linked to the category 'Chimni Home Typology', so again it is provided for classification purposes only), (b) information about FENSA certificates and (c) information about Crittal Window. Whilst the pages about FENSA certificates contain information about compliance with Building Regulations, the information is clearly provided with a view of advising the users about how to get everything in order for future sales of the property. The page states "*if you do not get a FENSA certificate when your units are installed, you may find that a future sale is held up and you may to apply to your Local Authority separately for a certificate*". Finally, on the left hand-side of the 'Chimni' page there is the following indices:



A vertical list of blue text links on a light grey background, serving as a navigation menu for the Chimni Wiki. The links are: About Chimni, Building Types, Building Styles, Architectural Periods, Building Components, Maintenance & DIY, Legal & Regulatory, House History, Great House Builders, Books & Media, and Help.

- [About Chimni](#)
- [Building Types](#)
- [Building Styles](#)
- [Architectural Periods](#)
- [Building Components](#)
- [Maintenance & DIY](#)
- [Legal & Regulatory](#)
- [House History](#)
- [Great House Builders](#)
- [Books & Media](#)
- [Help](#)

64. The categories “building types”, “building styles”, “architectural periods”, “building components” and “house history” appear to be generally informative sections. There is no evidence as to what the proprietor provides under the sections “maintenance & DIY” and “legal & regulatory”, for example, there is no evidence that users can access current regulations, construction standards, technical advice and industry news on repair or installation, construction processes, refurbishment of buildings and renovation of property.

65. Finally, Mr Walley contends that *“in May 2020 Chimni began developing and communicating its Retrofit product”* and that *“this product covers all aspects of the class 37 coverage, including information and advice in relation to repair, installation, construction, refurbishment, property maintenance and renovation”*. In his witness statement Mr Walley explains that *“in 2020 Chimni became a key member of the CEEB group working on a new standard for the data homeowners will need when they retrofit their homes to meet new NetZero standards”*. However, there is no explanation as to what the services consist of, what information will be provided and how it will be done. Further, a post from twitter date 16 March 2021 states *“Chimni already hosts property logbooks and is building #Retrofits plans into them”*, which confirms that there has been no use in relation to “retrofits” (whatever this is) until March 2021 and there is no evidence that use commenced before the applications for revocation were filed.

66. Taking all of the above into account my conclusion is therefore that there has been no use of the First CHIMNI mark in relation to the registered services in class 37. The same applies to the class 37 services of the Fourth CHIMNI mark – which are identical to those of the First CHIMNI mark. The First CHIMNI mark will therefore be revoked with effect from five years after its registration date, namely from **10 May 2019**.

The Second CHIMNI mark

67. The Second CHIMNI mark is registered for the following services:

Class 42: *House design services, Design services relating to interior decorating for homes, Interior space planning services, Design services relating to residential property, Design services relating to real estate, Planning [design]*

of buildings, Planning [design] of building extensions, Advisory services relating to architecture, Architecture services for the preparation of architectural plans, Computer aided design services relating to architecture, Advisory services relating to planning applications, Local planning authority services.

68. Mr Walley states:

“Content and functionality related to Class 42 have been present within Chimni since launch of the first live service in 2016, first users being signed up in early 2017. I would also like to emphasise the following:

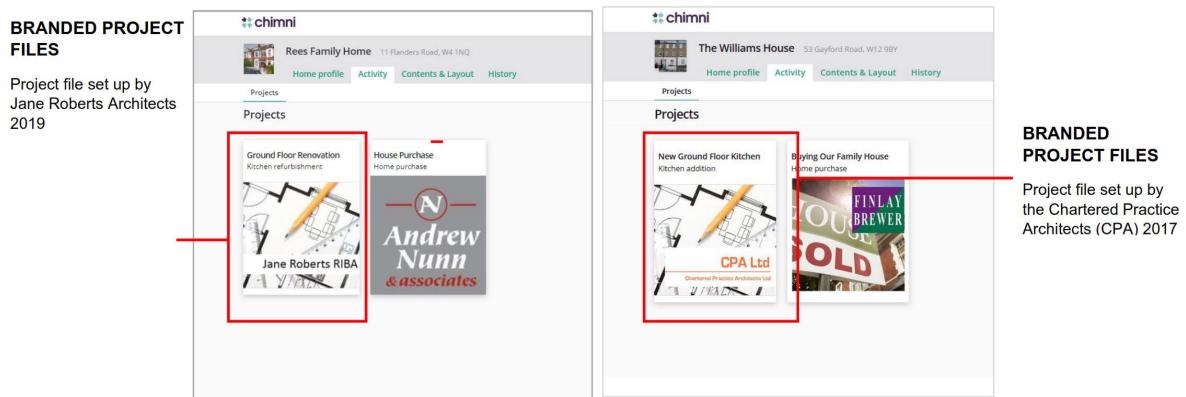
91.1. Exhibit NJW-45 (please see page 101) shows how one of Chimni’s local planning authority services, links within the Chimni logbook and shows how it can connect to the local planning authority site to display planning information relating to a project, and connect the Chimni logbook for any property to the relevant pages on the Local Authority websites containing planning information; and

91.2. Exhibit NJW-48 (please see page 109) shows the floorplan system built into the core Chimni logbook which performs a variety of design and architectural and planning services relation to buildings and building interiors”.

69. The applicant criticises the proprietor’s evidence stating that (a) use of the proprietor’s platform by architects does not amount to the provision of architecture services; (b) the proprietor has not provided any evidence of having made computer aided designs for its users, and the fact that users may be able to upload and view floorplans within the system does not amount to computer aided design services and (c) the proprietor does not provide the services of a local authority planning department, nor does it provide any advice or assistance with the process of planning applications. Its platform may allow users to save links to local authority services, but this does not constitute local planning authority services.

70. I agree with the applicant that there is no evidence of the proprietor offering design services relating to properties and/or architectural services. Mr Walley also states:

“The file sharing and storage function also enables architects and tradespeople to share documents on architectural and DIY work directly into these ‘Project folders’”. The file sharing property appears to consist in the ability of architects and their clients to upload and view documents by using the same username and password, so effectively, the software does not even have a sharing specific function. Exhibit NJW-45 (which is relied upon by Mr Walley) looks like that:



71. It is obvious that the exhibit does not support any of the statements made by Mr Walley, namely that it “shows how one of Chimni’s local planning authority services, links within the Chimni logbook and shows how it can connect to the local planning authority site to display planning information relating to a project and connect the Chimni logbook for any property to the relevant pages on the Local Authority websites containing planning information”. The page only shows two projects uploaded by the architects, which corroborate my conclusion above.

72. Mr Walley also produces copy of a letter dated February 2022 from an architect who has used ‘Chimni’ to share documents with his clients. The main parts of the letter are reproduced below:

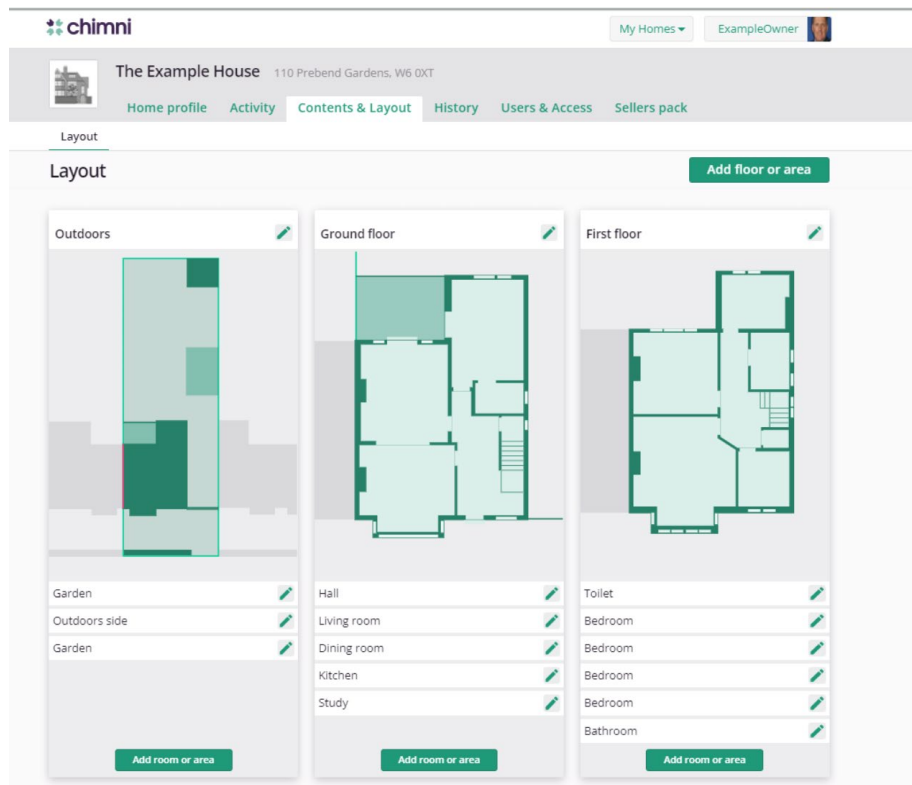
In 2018, I began using Chimni as a project management tool having seen it promoted through a local community website. When I contacted Nigel Walley to ask about the service he asked me to join a Chimni trial being undertaken with a group of architects.

We use Chimni as a way of managing project information with clients and handing over information at the end of a project. At its simplest, this means clients have control of all the statutory consent documents when they wish to sell their property. We also include Local Authority data and documentation and use Chimni to deliver to clients the links to Local Authority websites containing information about their projects.

We understand from the on-going trials that Chimni is attempting to formalise the links with Council systems and that this will enable us to submit planning applications from a client's Chimni account directly into a Local Authority planning services.

73. It is obvious that the proprietor's system does not provide any of the registered services in class 42. Design and planning services are provided by the architects who use 'Chimni' to share information with their clients, not by the proprietor. This is not different from architects sharing designs and plans with their clients via email, but it seems that the additional benefit of using 'Chimni' is that it also provides a place to store plans and consent documents when the property is sold. Equally, the letter exhibited confirms that by February 2022 (which is after the relevant periods) the proprietor was still trying to formalise the links with the local authorities to enable users to submit applications to local authorities through the 'Chimni' system. Although the video evidence shows that the external link to a local authority's website works, (a) the video was created for the purpose of these proceedings, after the filing of the applications for revocation and so it is evidence which does not assist the proprietor and (b) the video shows that 'CHIMNI' provides only a link to an external local authority's website, which does not amount to providing local authorities services (as it is the local authority who provides the services of assessing the application, not the proprietor).

74. Finally, as regard Mr Walley's claim that exhibit "*NJW-48 shows the floorplan system built into the core Chimni logbook which performs a variety of design and architectural and planning services in relation to buildings and building interiors*", the exhibit looks like that:



75. Mr Walley’s statements make no sense and are unclear. In any event, while the above picture shows a layout with editing icons and the option “add room or area” there is nothing in the evidence that confirms that ‘Chimni’ incorporates a function which allow users to amend architectural designs – instead the rest of the evidence point towards the editing and adding options being simply options which allow users to upload new information, plans or documents, for example, a user could add a second floor plan prepared by an architect. In any event, even if the ‘Chimni’ system allowed users to amend architectural designs, that would not amount to the proprietor providing design services. It would still be the architect the subject who provides the design with the proprietor only providing a tool (akin to a software).

76. Taking all of the above into account my conclusion is therefore that there has been no use of the Second CHIMNI mark in relation to the registered services in class 42. The same applies to the class 42 services of the Fourth CHIMNI mark – which are identical to those of the Second CHIMNI mark. The Second CHIMNI mark will therefore be revoked with effect from five years after its registration date, namely **8 February 2019**.

The Third CHIMNI mark

77. The Third CHIMNI mark is registered for the following services:

Class 36: *Computerised information services relating to real estate; Provision of information relating to property [real estate]; Provision of information relating to real estate; Estate agent services; Domestic property finding services; Management of property; Property portfolio management.*

78. Mr Walley states:

“Content and functionality related to Class 36 have been present within Chimni since launch of the first live service in 2016, first users being signed up in early 2017. The material contained in Exhibits NJW-46 and NJW-48 show screenshots of the content and functionality of the Chimni logbook.

94. In addition to the material at Exhibits NJW-07, NJW-08, NJW-45 and NJW-46, there is now shown to me an exhibit marked Exhibit NJW-49 which comprises information and screenshots relating to much of the functionality of the logbook which all demonstrate aspects of the Chimni service in class 36 showing the Chimni information ‘dashboard’ containing address and map information relating to real estate services as well as links to central and local government data related to real estate. In particular, the following pages from Exhibits NJW-49:

94.1. Page 111 shows how to manage property using document storage system in Chimni;

94.2. Page 113 shows the Chimni app linking to real estate data held on the Chimni Wiki (online information compendium);

94.3. Pages 112-114 show multiple functions relating to managing properties;

94.4. Page 115 shows information on real estate styles and typologies; and

94.5. *Pages 112-114 show different functions related to managing properties.*

95. *Since our estate agent trial in 2018 we have delivered and marketed the services in Class 36. I would also like to emphasise the following:*

95.1. *Exhibit NJW-50 (please see page 117) includes screengrabs from 2017 from Chimni's Twitter marketing demonstrating estate agent services;*

95.2. *Exhibit NJW-50 (please see page 118) shows money paid for LinkedIn marketing to support these services;*

95.3. *Exhibit NJW-50 (please see pages 120-121) shows Chimni's estate agent promotions and workshops from 2018 onwards;*

95.4. *Exhibits NJW-41 and NJW-42 show how our initial trial of estate agent services in 2018 continued into active marketing to national estate agency brands in 2020/2021; and*

95.5. *Exhibit NJW-24 and NJW-39 show how Chimni paid to attend conferences and events where we were able to promote our estate agent services to large groups of estate agents and other industry bodies between 2015 and 2021."*

79. The applicant states:

"A digital logbook system is plainly not an information service in class 36. The fact that such a system may contain information does not make it an information service particularly since the evidence shows that the information contained within a logbook is uploaded by the user and not provided by the proprietor. Such system is also not an estate agent or property finding service in class 36, even if estate agents may benefit from using its document storage feature. Such a system also does not constitute the service of property management."

80. Again, the applicant is right. The most the evidence shows is that 'Chimni' has been marketed as a tool which could make property sales easier insofar as having a digital record of the property in the form of a 'Chimni' log would save the estate agent (and the client) time and avoid potential failure. That does not amount to providing any real estate information services (which would involve, for example, providing information with a view of buying and selling houses) or property management services (which involve the manager's oversight of a property on behalf of the property's owner). As the applicant correctly says, the marketing of the proprietor's tool to estate agents does not amount to the provision of estate agency services by the proprietor.

81. Taking all of the above into account my conclusion is that there has been no use of the Third CHIMNI mark in relation to the registered services in class 36. The same applies to the class 36 services of the Fourth CHIMNI mark – which are identical to those of the Third CHIMNI mark. The Third CHIMNI mark will therefore be revoked with effect from five years after its registration date, namely **30 November 2018**.

The Fourth CHIMNI mark

82. Given my finding above, the Fourth CHIMNI mark will be revoked with effect from five years after its registration date, namely **2 May 2020**.

CONCLUSIONS

83. There has been no genuine use of any of the proprietor's marks for the registered services in classes 36, 37 and 42 and there are no proper reasons for non-use.

84. This is a case where professional advice should have been sought before applying to register the marks. Unfortunately, whilst it is clear that the proprietor has tried to do something with the marks which are the subject of these revocation actions, it is equally clear that the specifications of the registered marks bear no relation to what the proprietor has actually done and/or provided, and Mr Walley's attempt to market and promote 'Chimni' beyond what it effectively is (which I must assume to have been made in good faith), has not paid off.

85. Finally, as the applicant correctly points out in its submissions in lieu, even if I had identified genuine use outside the registered classes (for example, for some sort of software in class 9) it would not be appropriate to add a class to the registrations.

86. Likewise, I agree with the applicant that the essence of the services the proprietor seems to provide (if any) is the storage and organisation of information, and that although this is classified as *Electronic data storage services*, in class 42 (a class which is covered by the Second and the Fourth CHIMNI mark), it would not be classified as a sub-category of any of the terms covered by the registered specifications.

87. The four applications for revocation are successful for all of the services for which the proprietor's marks are registered. Each mark will be revoked with effect from five years after its registration date.

COSTS

88. The applicant has been successful and is entitled to an award of costs based on the scale contained in Tribunal Practice Notice 2/2016. I award costs to the applicant as follows:

Official fees:	£800 (£200x4)
Filing the revocations and considering the counterstatements:	£800 (£200x4)
Considering the other party's evidence:	£400
Submissions in lieu:	£300
Total:	£2,300

89. I order Chimni Ltd to pay Little Chimney Ltd the sum of £2,300. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 8th day of September 2022

**Teresa Perks
For the Registrar**