

BL O/0123/23

TRADE MARKS ACT 1994

**IN THE MATTER OF
TRADE MARK APPLICATION NO. 3697826
BY HERTZ SYSTEM, INC.**

TO REGISTER THE TRADE MARK:

HERTZ. LET'S GO.

IN CLASSES 35 AND 39

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 429819
BY DELEBILFONDEN LETSGO**

Background and Pleadings

1. On 21 September 2021, Hertz System, Inc. (“the applicant”) applied to register in the UK the trade mark shown on the cover page of this decision, under number 3697826 (“the contested mark”). The contested mark was published in the Trade Marks Journal for opposition purposes on 08 October 2021, in respect of the following services:

Class 35 Customer loyalty programs for vehicle rentals.

Class 39 Vehicle rental services.

2. On 04 January 2022, DELEBILFONDEN LETSGO (“the opponent”) filed a notice of opposition, opposing the application in full under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opponent relies upon its comparable United Kingdom trade mark (“UKTM”) number 910186856,¹ ‘LetsGo’ (“the earlier mark”). The earlier mark was filed on 10 August 2011, and became registered on 02 February 2012, in respect of the following services:

Class 35 Administration of car-sharing and car-pooling schemes.

Class 39 Providing of car-sharing and car-pooling schemes; Providing of mobility solutions; car rental and leasing services; Bicycle rental.

3. In its notice of opposition, the opponent claims that the marks are sufficiently similar and that the respective services are identical and similar, resulting in a likelihood of confusion. In accordance with section 6A of the Act, the earlier mark is subject to proof of use; the opponent made a statement of use in relation to the services relied upon.

¹ On 1 January 2021, the UK left the EU. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing EUTM. As a result of the opponent’s EUTM number 010186856 being registered as at the end of the Implementation Period, a comparable UK trade mark was automatically created. The comparable UK mark is now recorded on the UK trade mark register, has the same legal status as if it had been applied for and registered under UK law, and the original EUTM filing date remains.

4. In its counterstatement the applicant denies that the marks are confusingly similar but admits that some of the services at issue do coincide. The applicant requested that the opponent provide proof of use of all services relied upon.

5. The applicant is represented by Ladas & Parry LLP; the opponent is represented by Otello Law Firm. The opponent submitted evidence and written submissions. The applicant filed evidence under witness statements and written submissions. Neither party requested a hearing. Only the applicant filed written submissions in lieu. This decision is taken following a careful review of the papers before me.

EVIDENCE AND SUBMISSIONS

6. On 3 June 2022, the opponent filed evidence in the form of the statement of use of Mr Martin Hoffgaard Rasmussen, and his corresponding nine exhibits (Exhibit 1 - Exhibit 9). Mr Martin Hoffgaard Rasmussen, a legal attorney at Otello Law Firm, is the legal representative for Delebilfonden LetsGo, the opponent company. The opponent also filed written submissions, dated 4 October 2022.

7. On 3 August 2022, the applicant filed evidence in the form of the witness statement of Mr Graham Farrington, a chartered trade mark attorney and partner in Ladas & Parry LLP, along with one exhibit (Exhibit GF1); and the witness statement of Mr John Finch, Vice President of Legal & Corporate Affairs at Hertz Europe Limited, along with three exhibits (Exhibits JF1 - JF3). The applicant also filed written submissions in lieu, dated 25 November 2022.

8. I have considered the evidence and submissions of both parties and will refer to them, where necessary, during this decision.

DECISION

Relevance of EU law

9. 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 Trade Marks Act relied on in these proceedings are derived from an EU Directive and, therefore, this decision continues to make reference to the trade mark case law of the EU courts.

Proof of use

10. I will begin by assessing whether there has been genuine use of the earlier mark. The relevant statutory provisions are as follows:

“6A (1) This section applies where-

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark of a kind falling within section 6(1)(a), (b) or (ba) in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was complete before the start of the relevant period.

(1A) In this section “the relevant period” means the period of 5 years ending with the date of the application for registration mentioned in subsection (1)(a) or (where applicable) the date of the priority claimed for that application.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if –

- (a) within the relevant period the earlier trade mark has 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, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non- use.

(4) For these purposes –

(a) 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

(b) 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.

(5)-(5A) [Repealed]

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.”

11. As the earlier mark is a comparable mark, paragraph 7 of Part 1, Schedule 2A of the Act is also relevant. It reads:

“7.— (1) Section 6A applies where an earlier trade mark is a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the relevant period referred to in section 6A(3)(a) (the “five-year period”) has expired before IP completion day—

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in section 6A(3) and (4) to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before IP completion day —

(a) the references in section 6A(3) and (6) to the earlier trade mark are to be treated as references to the corresponding EUTM ; and

(b) the references in section 6A to the United Kingdom include the European Union”.

12. Accordingly, for the purposes of assessing proof of use, the earlier mark will be treated as an EUTM for the part of the relevant period before IP completion day and, as such, use in the EU may be sufficient.

13. Section 100 of the Act 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.”

14. Consequently, the onus is upon the opponent to prove that genuine use of the registered trade mark was made within the relevant territory in the relevant period, and in respect of the services as registered.

Relevant case law

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 Court of Justice of the European Union (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*, 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 Bundesvereinigung 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 Behher 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. Pursuant to section 6A of the Act, the relevant period for assessing whether there has been genuine use of the earlier mark is the five-year period ending with the date of the application in issue, namely 22 September 2016 to 21 September 2021.

17. In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander QC (as he then was) 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.”

18. I also note Mr Alexander’s comments in *Guccio Gucci SPA v Gerry Weber International AG*.² Although the case concerned revocation proceedings, the principle is the same for proof of use in opposition actions. He stated:

“The Registrar says that it is important that a party puts its best case up front – with the emphasis both on “best case” (properly backed up with credible exhibits, invoices, advertisements and so on) and “up front” (that is to say in the first round of evidence). Again, he is right. If a party does not do so, it runs a serious risk of having a potentially valuable trade mark right revoked, even where that mark may well have been widely used, simply as a result of a procedural error. [...] The rule is not just “use it or lose it” but (the less catchy, if more reliable) “use it – and file the best evidence first time round – or lose it”.”

19. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL 0/404/13, Mr Geoffrey Hobbs QC (as he then was) 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:

² Case BL 0/424/14

“[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 on 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.”

20. Accordingly, whilst there is no requirement to produce any specific form of evidence, I must consider what the evidence as a whole shows me and whether on this basis I can reasonably be satisfied on the balance of probabilities that there has been genuine use of the mark.

Form of the mark

21. The opponent’s registration is for the word only mark ‘LetsGo’. Where the opponent has used its registration as registered, that will clearly be use on which the

opponent can rely. In addition, the opponent has also used its registration in the following ways:



22. Section 6A(4)(a) of the Act enables an opponent to rely on use of a mark “in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered”. In *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, the Court of Justice of the European Union (“CJEU”) found that “use of a mark, in its literal sense, generally encompasses both its independent use and its use as part of another mark taken as a whole or in conjunction with that other mark”, but that “a registered trade mark that is used only as part of a composite mark or in conjunction with another mark must continue to be perceived as indicative of the origin of the product at issue for that use to be covered by the term ‘genuine use’ within the meaning of Article 15(1)”.

23. In *Nirvana Trade Mark*, BL O/262/06, Mr Richard Arnold Q.C. (as he then was), sitting as the Appointed Person, summarised the test under section 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.”

24. Although this case was decided before the judgment of the CJEU in *Colloseum*, 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.

25. As the registered trade mark is in word only format the distinctive character of the mark resides in the words ‘LetsGo’. As shown above, with the exception of ‘mark 1’, (as numbered above), the signs presented as trade marks in the opponent’s evidence are figurative, incorporating devices, colours and stylised fonts. Furthermore, in the case of marks 3, 4 and 5, as shown above, these marks include additional wording, namely ‘BIL NÅR DU VIL’ and ‘FLEET SYSTEMS’. However, I bear in mind that as the registered trade mark is a word mark, fair and notional use of the mark allows it to take on a different presentation, such as a different colour, font or letter case,³ and therefore, on this basis, in accordance with *Colloseum*, I consider marks 1 and 6, as shown above, are examples of use of the opponent’s registration as registered.

26. Whilst I acknowledge that the registration is for the words ‘LetsGo’ and there is use of these words in a different letter case (mark 1), and with a figurative device and the additional elements ‘.dk’ (mark 6), I am of the view that the mark as registered will still be perceived as indicative of the origin of the services. Furthermore, I find that in accordance with *Nirvana* (cited above), the differences in the presentation of marks 1 and 6, does not affect the distinctive character of the registered mark given that overall, they will still be perceived as the two words ‘lets go’. As such, I find that the distinctive character of the registered words is not affected by presenting them in a different letter case, font, or adding the figurative element or the element ‘.dk’ (indicating the country code for Denmark). Accordingly, I find that marks 1 and 6, shown above, are acceptable variants of the opponent’s registration.

³ *Bentley Motors Limited v Bentley 1962 Limited* (BL O/158/17).

27. However, with regards to marks 2, 3, 4 and 5, as shown above, I find that the stylisation is such that consumers may not recognise that there is an 'S' in the mark, but rather they will perceive this element as merely an extension of a heavily stylised letter 't'. Therefore, consumers may well perceive the words in the marks as 'let go' rather than 'lets go'. Accordingly, I find that the stylisation of the letter 'S' alters the distinctive character of the registered mark 'LetsGo'. This is because there is a conceptual difference between the words 'let go' and the words 'lets go'. The concept of the former is *to set free; to release one's hold or grip*, whereas the latter, whilst not grammatically correct, is short for 'let us go' meaning to *express a wish, request, or suggestion to depart; to tell someone to go or work faster*. Consequently, I find that the stylisation in marks 2, 3, 4 and 5, affects the distinctive character of the registered mark 'LetsGo' and therefore the opponent cannot rely upon use of these marks as use of the registered mark.

Genuine use

28. Whether the use shown is sufficient will depend on whether there has been real commercial exploitation of the UKTM, in the course of trade, sufficient to create or maintain a market for the services at issue during the relevant five-year period. Given that the earlier mark is a comparable mark, the relevant territory during the five-year period is the UK, though use in the EU before IP completion day may be sufficient. In making the assessment, I am required to consider all relevant factors, including:

- i) The scale and frequency of the use shown;
- ii) The nature of the use shown;
- iii) The services for which use has been shown;
- iv) The nature of those services and the market(s) for them; and
- v) The geographical extent of the use shown.

29. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each individual piece of evidence shows use by itself.⁴

⁴ *New Yorker SHK Jeans GmbH & Co KG v OHIM*, Case T-415/09

30. The opponent claims to have used its earlier mark 'LetsGo' in relation to the following services:

Class 35 Administration of car-sharing and car-pooling schemes.

Class 39 Providing of car-sharing and car-pooling schemes; Providing of mobility solutions; car rental and leasing services; Bicycle rental.

31. In his statement of use Mr Martin Hoffgaard Rasmussen submits that the earlier mark has been used on all the services relied upon in Denmark and the UK, during the relevant period.

32. Exhibit 1 contains screenshots taken from 'The Wayback Machine', (a digital archive website). The screenshots relate to the opponent's website, 'www.letsgo.dk' and date from 27/10/2016 to 18/05/2019. The screenshots show the opponent's mark, and variants of it, in use in relation to *car reservation and carsharing* services available in Copenhagen, Aarhus, Odense and eight other Danish cities.

33. Exhibits 2, 3 and 4 contain social media posts, all of which are in Danish without any accompanying translations. Therefore, it is not possible to establish with any certainty what use is being demonstrated.

34. Exhibits 5, 6, 7 and 8 contain invoices (44 in total), purportedly relating to the opponent's services. The dates on the invoices range from 03/05/2016 to 03/03/2020. However, the details on 35 of the invoices are in Danish which have not been translated. The prices on these invoices are in Danish Krone. With regards to the remaining 9 invoices, some of the data shown is in English, however they do not appear to specifically mention any of the opponent's services at issue and as such, are far too vague for me to ascertain with any certainty, which, if any of the opponent's services relied upon are referred to in the invoices. The prices shown on 4 of the invoices are in Euros, and on the remaining 5 invoices the prices are shown in Danish Krone.

35. As the earlier mark is a comparable mark the opponent is entitled to show use in the EU prior to IP completion day. I bear in mind that use of an EUTM in an area of the Union corresponding to the territory of one Member State may be sufficient to constitute genuine use of an EUTM, even where there are no special factors, such as the market for the services being limited to that area of the Union.⁵

36. In its submissions,⁶ the applicant criticises the opponent's evidence as follows:

“The evidence consists of nine exhibits and these have to be considered individually.

Exhibit 1 shows examples from a Danish website over a period of years. It appears to refer only to car-sharing. The pages do not show the mark in the form that it is registered.

Exhibit 2 shows examples of various Facebook page entries and none of these shows the mark relied on itself or the mark in use other than a stylized version of the Opponent's mark differing from the mark relied on in the opposition that appears in photographs on the side of vehicles. The Facebook pages are in Danish and have not been translated into English. It is therefore impossible to tell how these pages might relate to use of the mark that is relied upon.

Exhibit 3 shows examples of Facebook pages [sic] and again these are in Danish with no translation. Photographs show a stylized logo that is similar to the mark that is registered but is not the mark. It is not possible to tell from this exhibit how the mark that is relied upon has been used.

Exhibit 4 faces the same criticism as for Exhibits 2 and 3 that it is in Danish and only shows a stylized mark applied to cars in photographs so it does not indicate which services are being provided by reference to the mark that is relied upon.

⁵ *TVR Automotive Ltd v OHIM* T-398/13

⁶ Written submissions in lieu

Exhibits 5 to 9 are invoices taken from years 2016 to 2020. The invoices are principally in Danish with occasional English language words but it is not possible to ascertain from these documents without translation to what services they relate. It is suggested in the Statement that these show use for all of the services that are relied upon other than bicycle rental but without some translation or further explanation of the contents of the invoices it is difficult to ascertain what services are alleged to have been provided. It would appear that all the invoices are in Danish Krone. There is no explanation as to the conversion rate of this currency into sterling amounts so that the value of any of the services can be calculated. In the Statement it is suggested that the invoices are an excerpt of the total amount of invoices sent in the relevant period but there is no evidence of values of services rendered. The trade mark relied on by the Opponent does not appear on the invoices. The mark shown is a stylized logo, so the evidence does not show use of the registration. At question 6 of the statement there is a list of alleged bookings made in a five year period but there is no supporting evidence of where this information is taken from so it is impossible to work out where these figures have come from and whether they are accurate.

[...]

It would appear from the limited information that has been made available that the mark that is being used is not the mark that is registered and a substantial amount of the use if not most of it seems to be in relation to car sharing or car-pooling. There is no breakdown as to whether the activities relate to car rental. The Opponent has not in any of its submissions explained the nature of the services it provides. Car-pooling and car sharing are quite different and separate activities from car rental. Bicycle rental services have not been provided as the Opponent accepts.

The Opponent seems to maintain that the services of provision of mobility solutions have been provided but there is no explanation of what those are and no indication of how use for those services is shown in the evidence. The Opponent's registration in class 35 covers administration of car-sharing and

car-pooling schemes. None of the Opponent's evidence is directed to show how much administration services are provided.

[...]

The Applicant's position is that the evidence of use that has been filed is wholly inadequate to make out the case of the Opponent. There does not appear to be any evidence of use of the mark that is relied on, and the evidence is unclear as to which of the registered services it is claimed it demonstrates use for. Where there is no evidence of use those services must be rejected from consideration."

37. On balance, I agree with the applicant's points outlined above. It is important to recall that the onus is on the opponent to provide 'sufficiently solid' evidence in order to prove use. However, I find that there are numerous deficiencies within the opponent's evidence provided. Specifically, the majority of the exhibits have been submitted in Danish without any accompanying translations, and where English is present, it fails to adequately identify the services at issue.

38. In addition, the opponent has not submitted any turnover figures or figures relating to the promotion of the services at issue under the registered 'LetsGo' mark.

39. Furthermore, whilst Exhibit 1 refers to reservation and carsharing services, there is insufficient information in the screenshots for me to ascertain with any certainty, whether they are intended to demonstrate use of the opponent's *administration of car-sharing* in Class 35 or *providing of car-sharing schemes* in Class 39.

40. Whilst I acknowledge that the use of a mark does not have to be quantitatively significant to be genuine, the only possible evidence of any sales within the relevant period takes the form of 44 invoices, 35 of which are presented in Danish without any accompanying translations, and the remaining 9 invoices, which are partly presented in English, do not specifically mention any of the opponent's services relied upon.

41. Consequently, I find that the opponent's evidence is insufficiently solid to adequately demonstrate that there has been genuine use of the mark 'LetsGo' in relation to the services upon which the opponent relies. If the mark had been put to genuine use on the services relied on in the EU and the UK, within the relevant period, then it should not have been a difficult matter for the opponent to show it. However, it did not. Furthermore, even if my findings on the variant use of the marks is wrong, the evidence would still not have been sufficient to demonstrate genuine use.

Conclusion

42. The opponent has failed to establish genuine use of its earlier mark within the relevant period. The opposition falls at the first hurdle and is dismissed accordingly. Subject to appeal, the application will proceed to registration.

Costs

43. The applicant has been successful and is entitled to a contribution towards its costs in line with the scale set out in Tribunal Practice Notice 2/2016. I award the applicant the sum of £1,100, as a contribution towards the cost of proceedings, calculated as follows:

| | |
|--|---------------|
| Considering the Notice of Opposition and preparing a counterstatement | £200 |
| Preparing evidence and considering the other side's evidence | £600 |
| Preparing submissions in lieu of a hearing | £300 |
| Total | £1,100 |

44. I therefore order DELEBILFONDEN LETSGO to pay Hertz System, Inc., the sum of £1,100. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 3rd day of February 2023

**Sam Congreve
For the Registrar**