

BL O/0819/25

THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK NUMBER 903,784,436 IN THE NAME OF EASYGROUP LTD

AND IN THE MATTER OF THE APPLICATION FOR REVOCATION UNDER NO 506,004 IN THE NAME OF CHRISTOPHER CLARK

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF SUZANNE HITCHINGS (O/126/25) DATED 12 FEBRUARY 2025

DECISION

Introduction

1. This is an appeal from the decision of Suzanne Hitchings, for the Registrar, dated 12 February 2025 (O/126/25). Christopher Clark applied to revoke EasyGroup Ltd's trade mark (No 903,784,436) on the grounds of non-use. His application was successful in its entirety and the mark was revoked with effect from 31 August 2010. EasyGroup appeals in respect of some of the services only.
2. EasyGroup is the registered proprietor of the following trade mark:



3. The appeal is confined to the following services in Class 39: "Transport, travel arrangement; provision of information and advice relating to travel and all of the aforesaid". In short, EasyGroup submits that the Hearing Officer erred because it had in fact used the mark in relation to each and every one of those services.
4. The Respondent made an application to admit further evidence on appeal but, for reasons that will become apparent, I do not need to consider the application.

Standard of appeal

5. The standard of appeal is by way of review. Neither surprise at a Hearing Officer's conclusion nor a belief that the Hearing Officer has reached the wrong decision will suffice to justify interference in this sort of appeal. Before that is warranted, it is necessary for me to be satisfied that there was a distinct and material error of principle

in the decision in question or that the Hearing Officer's findings were rationally insupportable. The principles to be applied were summarised by Joanna Smith J in *Axogen Corporation v Aviv Scientific Ltd* [2022] EWHC 95 (Ch), [24] and in terms of evaluative decisions the Supreme Court's guidance in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8, [49] where it stated that:

...on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.

6. When considering this appeal, and applying these principles, it is important to remember the high bar set.

The relevant services

7. Mr Pixton, for the Appellant, submits that the relevant services in this appeal "Transport, travel arrangement; provision of information and advice relating to travel and all of the aforesaid" can be broken down into five sub-categories: (i) transport; (ii) travel arrangement; (iii) provision of information and advice relating to travel; (iv) provision of information and advice relating to transport; and (v) provision of information and advice relating to travel arrangement.

Hearing Officer's findings

8. The Hearing Officer made the relevant findings in relation to both the use and meaning of the specification in Decision, [33] and [34]:

...To my mind, a travel company is one which provides transportation, by whatever means, often in conjunction with accommodation, as well as providing information and advice relating thereto. I accept that it may also offer the booking of tickets for events and activities as a supplementary service, rather than as a fundamental characteristic of the travel service. Even given that the booking platform offers the booking of tours, I interpret the service as making the booking on behalf of the customer and the tour provider, and I would not expect the tour (and therefore the transport itself) to be provided under the mark. Neither, in my view, would the average consumer consider that the booking of tours could be understood as performing the service of "travel arrangement" or "provision of information and advice relating to travel" per se.

It is clear from the evidence that "easyGuide" has been used on a web-based booking platform between 2019 to at least April 2022 by an authorised third party and that through the website, the user may book tickets for a variety of activities, such as excursions and seats for shows. However, I do not consider this to encompass any of the disputed services in class 39, being "*Transport; packaging and storage of goods; travel arrangement; provision of information and advice relating to travel and all of the aforesaid*".

Provision of information and advice relating to travel

9. While Mr Pixton does not quite put it this way, his strongest case and the majority of the submissions during the hearing were concerned with the term "travel" in the provision of "information and advice relating to travel". He submits that this term should include all the information about activities a person might undertake when in another city or country. In other words, contrary to the Hearing Officer's findings, travel goes further than getting from A to B.

10. I entirely accept that the word “travel” in the context of people taking time to “go travelling” or describing their “travels” is not confined to time they sit on the plane or train. It involves all the experiences they enjoyed (or did not enjoy) during their time away from home.
11. It is also my view that when people are making a decision whether to go to a city or to a country they will seek out information regarding the things that they might be able to do in that city or country, including the attractions and activities that might be undertaken. I accept that that this might be described as “travel” advice in everyday language.
12. However, this is not the end of the matter. It is my view that the Explanatory Note to Class 39 can provide guidance as to the proper scope of these words in the trade mark context. It is not controversial that the Nice Classification can be used to resolve ambiguities in the meaning of words included in the specification: *Pathway IP Sarl v Easygroup Ltd* [2018] EWHC 3608 (Ch), [2019] FSR 8 at [104] and also see the detailed discussion by David Stone, sitting as a deputy High Court judge, in *Multi-Access Ltd v Guangzhou Wong Lo Kat Great Health Business Development Co Ltd* [2019] EWHC 3357 (Ch), [2020] ETMR 22, [66] to [86]. Indeed, in *HYDRA* (O/1203/24), [11], I specifically relied on the Explanatory Notes to aid with interpreting words in the specification.
13. Accordingly, I now turn to the Explanatory Note for Class 39 of the Nice Classification (8th Version, which was the version in effect when the mark was filed):
- Explanatory Note**
 Class 39 includes mainly services rendered in transporting people or goods from one place to another (by rail, road, water, air or pipeline) and services necessarily connected with such transport, as well as services relating to the storing of goods in a warehouse or other building for their preservation or guarding.
- This Class includes, in particular:
 ...
 • services consisting of information about journeys or the transport of goods by brokers and tourist agencies, information relating to tariffs, timetables and methods of transport;
 ...
- This Class does not include, in particular:
 • services relating to advertising transport undertakings such as the distribution of prospectuses or advertising on the radio (Cl. 35);
 ...
 • services relating to reservation of rooms in a hotel by travel agents or brokers (Cl. 43)
14. The current version of the Nice Classification (2025) also states that Class 39 does not include “conducting guided tours (Cl. 41)”. There is no reason to suppose that the classification of guided tours was not the same in 2005 as it is in 2025.
15. The Explanatory Note accords very closely with the view of the Hearing Officer in this case. For instance, if the booking of rooms by travel agents does not fall within Class 39 it is difficult to see how the more day-to-day activities one might undertake while

“travelling” would be covered by “travel” in Class 39. Indeed, the difficulty with travel information covering the activities one might undertake in a particular city while “travelling” is that it is another form of the “whole supermarket” argument: see *Delta Air Lines, Inc v Ontro Ltd* [2021] RPC 21, [47]. By this it is meant that advising on almost anything would fall within the meaning of the term “advising on travel services” because a person can do almost anything when travelling.

16. Accordingly, I uphold the Hearing Officer’s narrow construction of the term “information and advice relating to travel” and, similarly, the finding that the mark has not been used in relation to “the provision of information and advice relating to travel”.

Other services

17. The height of Mr Pixton’s argument in relation to “transport” services was that there was evidence before the Hearing Officer that hop-on hop-off tours were available through the App provided by EasyGuide. A hop-on hop-off tour is a “guided tour” which happens to use a bus. Guided tours would normally fall within Class 41 and so logically a bus guided tour would not fall within the meaning of “transportation” in Class 39. In any event, the only bus tour seemed to be one conducted by the cartoon character Shrek and this was within the attraction itself. This is not transportation services and neither is providing an App to book tickets for the “provision of information and advice relating to transportation”.
18. For the reasons outlined above, providing information on attractions is not within the meaning of making “travel arrangements” or providing “information and advice” about the same.
19. I therefore dismiss the appeal in relation to all five services.

Conclusion

20. As I have dismissed the appeal, the Hearing Officer’s decision to revoke the mark in its entirety is upheld.
21. Mr Clark, as a litigant-in-person, would have been entitled to £19 per hour for the time he spent drafting the written submissions. However, as he has provided no such indication, I make no order as to costs.

PHILLIP JOHNSON
THE APPOINTED PERSON
8 September 2025

Representation

For the Appellant: Ryan Picton of Kilburn & Strode LLP

For the Respondent: Christopher Clark (litigant-in-person) (written submissions only)