BL O/0970/26

TRADE MARKS ACT 1994

IN THE MATTER OF REGISTRATION NO. UK00901699792

IN THE NAME OF EASYGROUP LTD FOR

EASY

IN CLASSES 5, 39 & 42

AND AN APPLICATION FOR REVOCATION ON THE GROUND OF NON-USE

UNDER NO. 506235

AND AN APPLICATION FOR A DECLARATION OF INVALIDITY

UNDER NO. 506233

BY THE SUPPORT GROUP (UK) LIMITED

DECISION

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1. This is an appeal against a successful application for revocation for non-use under s.46(1)(a) Trade Marks Act 1994 ("the Act"). There is also a related finding of invalidity for lack of distinctiveness which follows from the finding of non-use.

2. The Appellant is the well-known easyGroup Limited. On this appeal I am concerned with its trade mark EASY in the following classes (following voluntary partial surrender), filed on 9 June 200 and registered on 13 July 2006:

   Class 35: Commercial administration and management of the licensing of goods and services, including the administration and management of brand licences; provision of general business organisation, administration and management support, business administration and management services to licensees of goods or services.

   Class 39: Transportation of luggage, passengers and travellers by air; arranging of transportation of luggage, passengers and travellers by land; airline services.

   Class 42: Hotel services.

3. The applicant for revocation and Respondent is The Support Group (UK) Limited. It is apparently currently engaged in multiple sets of trade mark proceedings against easyGroup Limited. The relevant period of non-use with which I am concerned is 14 July 2006 to 13 July 2011.

4. In addition to the revocation action The Support Group (UK) Limited also brought an application for invalidity under ss.3(1)(b) and (c) of the Act on the grounds that the mark EASY is descriptive and lacks distinctiveness. easyGroup Limited defends that by arguing that its mark had acquired enhanced distinctiveness through use.

5. In a decision based on the papers and dated 20 May 2026 the Hearing Officer, Teresa Pinto, found that there had been no genuine use of the mark EASY for the above services and revoked it for non-use as of 14 July 2011. As a consequence of her finding of non-use she also held that the mark could not have any acquired distinctiveness and so the application for invalidation also succeeded.

6. Before me, the Appellant challenges the findings of non-use, and argues that if it is right about that, the mark will also have acquired enhanced distinctiveness.

7. The case turns on whether the Appellant's extensive use of "easy" as part of its family of other marks (easyJet, easyHotel, easyGym etc.) amounts to use of the mark EASY *solus*.

8. At a hearing before me held on 27 October 2026 the Appellant was represented by Ben Longstaff instructed by Kilburn & Strode LLP. The Respondent was represented by David Hansel of Hansel Henson Limited.

Standard of Appeal

9. This is now well established. The principles are set out in the well-known cases of *Axogen v Aviv Scientific* [2022] EWHC 95 (Ch), *Lifestyle Equities v Amazon* [2024] UKSC 8 and *Iconix v Dream Pairs* [2025] UKSC 25. I summarised the approach in SOCIAL WORK NEWS (O/0050/24) at [13]:

> To paraphrase, an appeal should only be allowed where the decision of the lower court was "wrong". Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible". In the case of a multifactorial assessment and in the absence of a distinct error of principle, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere.

10. I have sought to apply those principles. It is not enough that a different tribunal might have reached a different conclusion; I must be satisfied that the Hearing Officer was wrong in the conclusions she reached.

The Decision on non-use

11. The relevant part of the Decision for the purposes of this appeal begins at §38. After recording the Respondent's submission that use of the proprietor's family of marks did not amount to use of EASY *solus*, the Hearing Officer turned to the evidence about the family of marks adduced by Sir Stelios Haji-Ioannou, the founder and director of the proprietor (§40). There was very limited use of the mark EASY alone (§41), but that was not in relation to the relevant services, and the Appellant does not press those uses before me. The Hearing Officer also referred to secondary evidence from the Museum of Brands which confirmed the primary material (§§42-43). She concluded on the evidence at §44 (to which there is no challenge before me) (emphasis added):

> 44. Second, whilst I accept that the proprietor's 'easyJet' brand is the name of a well-known airline, **I do not accept that there is widespread knowledge of other trade marks belonging to the 'easy' family of brands**. I say this because it is not clear from the evidence filed what the extent of use of each brand is in the context of the relevant goods and services and there is no indication of the number of UK visitors to the website www.easy.com (whose purpose is effectively to promote the proprietor's 'EASY' family of brands).

12. The crux of the decision on non-use comes at §45. Here the Hearing Officer explained (emphasis added):

> 45. Third, even if I were to accept that the relevant public is familiar with the proprietor's 'EASY'-family of brands (which I do not), that would not assist the proprietor. This is because:
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> a. **Use of a trade mark belonging to the 'EASY'-family of brands (i.e. 'EASY'-plus another word which is descriptive of the goods and services in relation to which the mark is used) is not the same as use of the trade mark 'EASY' *solus* in relation to which genuine use must be established.**
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> b. The fact that the proprietor might have created a 'EASY' family of brands (by registering and using hundreds of trade marks which revolve around the same business model of using a trade mark made up of the word 'EASY' plus another word which is descriptive of the goods and services and is presented in the same get-up) does not create a separate entity in relation to which genuine use must be assessed. In this connection, I think the opponent's case suffers from a fundamental misconception. Whilst the concept of a family of marks is relevant for assessing the likelihood of confusion (and for this purpose it is possible to establish the existence of a family of marks in trade mark proceedings) when the issue to be decided is about genuine use, use must be assessed in relation to each mark which is part of the family of marks. There is no concept of assessing genuine use in relation to a family of marks, because a family of marks is not a registered right, and neither the

legislation nor the case law refers to a family of marks as being relevant for the assessment of genuine use.

13. Next, the Hearing Officer recorded the submission made in evidence that "*each use of an EASY brand with the EASY family of brands constitutes use not only of that brand but also compound use of EASY itself…*". She went on to cite from the decision of Appointed Person Phillip Johnson in *Lactalis McLelland v Arla Foods AMBA* BL O/265/22 in relation to the correct approach to the test under s.46(2) of the Act, which I reproduce below:

> (2) For the purposes 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)…

14. No criticism was made of the summary of the law by Mr Johnson. The alleged mistake made by the Hearing Officer was to apply the wrong test and conflate this approach with her decision about the use of EASY *solus*. The Hearing Officer continued:

> 48. Applying the above principles, I reject the submission that use of the word 'EASY' within a trade mark belonging to the 'EASY' family of brands constitutes use not only of that trade mark, but also of 'easy' *solus*. In other words, I reject the submission that use of 'easy' as a prefix amounts to use of 'easy' *solus*. In this connection, the reference made by Sir Stelios Haji-loannou to use of 'easy' as a prefix within trade marks belonging to the 'easy' family of marks is the crux of the proprietor's case. This is because, as Sir Stelios Haji-loannou himself explained in his evidence, in the business model he has adopted, he has built a family of brands based on trade marks incorporating the prefix 'easy' and a word which is descriptive of the goods and services in relation to which the marks are meant to be used. In asking whether use of 'easy' as a prefix is an acceptable variant of 'easy' *solus*, the question is whether the distinctiveness of 'easy' *solus* has been altered.
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> 49. In answering that question, I think it is important to consider that 'easy' is a common English word which has the potential of conveying a message about the goods and services being accessible and affordable; consequently, this element is, in itself, of no or low in distinctiveness. Further, I consider that the distinctiveness of the 'easy' family of marks lies not in the word 'easy' alone, but in that word in combination with a descriptive word. As I have said, the proprietor does not use 'easy' *solus* as a house mark but as a prefix; even looking at the proprietor primary brand 'easyJet', easy' and 'Jet' are either descriptive or weakly distinctive, but in combination they make a distinctive mark. In other words, what makes the proprietor's trade marks

> (and family of brands) distinctive is not the use of 'easy' *solus*, but the use of 'easy' as a prefix followed by a descriptive word (as well as the get-up). It follows from this that use of 'easy' as a prefix followed by a descriptive word cannot amount to use of 'easy' *solus*, because it alters the distinctive character of 'easy' *solus*.

15. She accordingly upheld the application for revocation.

16. As a check, she went on to review other parts of the evidence (§§51-58), upon which nothing turns on this appeal. At §§60-63 she then expressed some "final remarks" on the non-use attack. These do not add to the substance of her decision.

The Appeal on non-use

17. At the hearing Mr Longstaff focussed his attack on two aspects of the Hearing Officer's Decision. First, he said she was wrong to require use of the mark *solus* and that instead she should have held "prefix" use as counting as genuine use. Second, she erred in her application of the s.46(2) test and should have found that, nevertheless, use of EASY in combination with e.g. Jet or Hotel amounted to use of a legitimate variant form. Neither of these points are apparent on the face of the Appellant's TM55, but the Respondent indicated that it was content to proceed as if they were.

18. As to the first point, Mr Longstaff argued succinctly that the second half of the combination in each case (e.g. easyJet, easyHotel) is typically a simple descriptive word explaining the goods or services under the brand in question. As such, EASY is placed right before that descriptive word, doing the work as a badge of origin. He drew an analogy with the use of Tesco in "Tesco Online Shopping" and submitted that if the space had been omitted (e.g. TescoOnline,) there would be no basis to say that the mark no longer serves as a badge of origin on its own but is reduced to a mere prefix forming part of indivisible whole.

19. There are a number of problems with that submission.

20. First, it was no part of the Appellant's case on appeal that EASY possessed any inherent distinctive character. Mr Longstaff argued that that concession was only made as part of the invalidity attack (it being conceded that the Appellant needed to rely on acquired distinctiveness rather than any inherent distinctive character). That is strictly correct, but it feeds into the analysis of non-use as now put by the Appellant. The Hearing Officer found that EASY is of low or no distinctiveness (§49). She was plainly entitled to do so.

21. As a result, it is pure and unsupported assertion by the Appellant that EASY is doing the work as a badge of origin in easyJet etc. As always, the mark should be assessed as a whole and the Hearing Officer rejected the contention that the evidence supported findings about the family of brands (§44). Plainly, as the Respondent pointed out, there is a huge difference between a laudatory word such as EASY and a made-up word such as TESCO, so the analogy suggested by Mr Longstaff quickly breaks down. Although Mr Longstaff submitted that "Jet" etc. was (also) descriptive, he unsurprisingly backed off any suggestion that the combination of features in e.g. easyJet was not distinctive. The upshot is that neither separate part of the combination word easyJet is distinctive, but overall the word may possess distinctive character. Added to this is the fact that easyJet is also used as a device mark.

22. Importantly, the fact that easyJet etc may have distinctive character does not mean that either "easy" or "jet" on their own are seen as any more than descriptive. Nor does it mean that the use of easyJet amounts to the use of EASY *solus*.

23. The Appellant cited no authority in its favour on this point. It did refer to *easyGroup Limited v Premier Inn Hotels Limited* [2025] EWHC 2229 (Ch), a decision of Deputy Judge Lance Ashworth KC. In that decision the proprietor failed in its claim of trade mark infringement of various marks shown below by the use by Premier Inn of signs using the term REST EASY. I am told that the proprietor has not appealed the decision.

The Registered Marks	**Signs Complained of**	**UKTM used as signs complained of**
EASYHOTEL easyHotel (a word mark series of two) ("the **easyHotel UKTM**")		
 (a device mark series of two) ("the **easy UKTM**")		
Rest Easy Apartments ("the **Rest Easy Apartments UKTM**")	REST EASY	

24. Notwithstanding the overall outcome, I was referred to §171 where the Deputy Judge held:

> 171. I therefore accept Mr Malynicz's submission that it is possible for the easy UKTM to have acquired distinctiveness if it has been used as part of easyJet or easyHotel for the services for which it has been registered. Whether or not it has been used as alleged and even if it has whether it has acquired distinctiveness depend on the evidence in the case.

25. Mr Longstaff sought to suggest that this meant that the Hearing Officer had fallen into error in rejecting the contention as a matter of principle that use of easyJet amounted to use of EASY.

26. I do not think the Hearing Officer was making a finding of principle; she was making a finding of fact based on the evidence in this case. See §45(a) of the Decision quoted above (the Appellant did not suggest that §45(b) added to the substance of the decision in §45(a)).

27. Moreover, a careful reading of the *Premier Inn* case demonstrates that, if anything, it supports the findings of the Hearing Officer and not the Appellant in this case.

28. Note that in the *Premier Inn* case, the easy mark relied upon was the device mark shown above. With that in mind it is necessary to read §§168-169 of the judgment (emphasis added):

> 168. Mr Malynicz also seeks to derive support for his proposition in relation to an easyGroup case, *W3 v. easyGroup Ltd.* [2018] EWHC 7 (Ch); [2018] ETMR 40. For the purposes of this part of his submissions, it is to be noted that **the trade mark that Arnold J (as he then was) was considering was the word mark EASY, not the easy UKTM in stylised form which is the mark in this case**. **Arnold J held that the word EASY denoted a quality or characteristic of the services and therefore was invalid unless the trade mark had acquired a distinctive character through use**. The judge recorded at [174] easyGroup's contention that EASY had acquired a distinctive character in two ways: first as a result of the use of EASY as part of easyGroup's other trade marks, and in particular EASYJET and EASY.COM; and second, as a result of the use of EASY on its own. At [176] he considered the use of EASY as part of easyGroup's other trade marks, holding that there could be no doubt that there had been extensive use of "easy-" prefixed trade marks by easyGroup and its licensees. The responsive submission was that there had been no significant use of such trade marks in relation to the relevant services. Arnold J, however, held (in respect of an earlier date than the Relevant Start Date in this case) at [180]-[181] that easyGroup had demonstrated use of a number of its

trade marks in relation to both "advertising" and "temporary accommodation" and in the case of easyJet the scale of use had been substantial, particularly in relation to temporary accommodation. He also held that there had been substantial use of easyHotel in relation to temporary accommodation. **However, he rejected easyGroup's submission that the similarities in form in which easyGroup's trade marks had been used had contributed to the acquisition of distinctive character by the EASY trade mark**, on the basis that the easyGroup brand licences and brand manual ensured that licensees used their marks in the stylised form of Cooper Black font printed in white on orange. He said: "**I have no difficulty in accepting that a significant proportion of consumers of both advertising and temporary accommodation in the UK had come, by October 2017, to perceive signs having these characteristics as being imbued with trade mark character even if the second word was descriptive of the service being provided (as in easyHotel). It does not follow that such consumers would have the same reaction to the word EASY on its own and regardless of font and colour". He went on to hold that the use of EASY on its own did not evidence that it was capable of having distinctive character. He therefore held that easyGroup had not established that EASY as a word mark had acquired a distinctive character in relation to advertising or temporary accommodation.**

169. Mr Malynicz says that despite the Judge finding against easyGroup on the facts, he did not hold that as a matter of principle it was not open to easyGroup to argue that EASY had acquired a distinctive character as a result of it being used as part of the easyJet and easyHotel marks. **Quite the contrary, he submits that Arnold J clearly accepted it was open to easyGroup to establish enhanced distinctiveness in this way. It was merely because it was a word mark and not the stylised mark that the claim failed. In my judgment, this analysis is correct. It is no doubt not a coincidence that it was only following that judgment that easyGroup registered the easy UKTM i.e. the stylised form.**

29. So whilst the acceptance by the Deputy Judge of the point in §171 was no doubt right as a matter of principle and consistent with the decision of Arnold J., it was made in the context of findings of fact in the other case where the mark EASY was not held to have become distinctive as a result of the use of the easy family of marks.

30. I do not place reliance on the factual findings of Arnold J. in the *W3* case (and nor did the Hearing Officer) as I do not know what evidence or arguments were before him. However, I do place reliance on the fact that Arnold J. and the Deputy Judge both treated the findings as findings of fact in the same way that I have characterised the findings of the Hearing Officer. See also the Deputy Judge at §174 – "*Accordingly, I hold that when "easyJet" appears in the stylised form, it can be use*

of the easy UKTM. That does not mean it necessarily is use; rather that depends on the evidence".

31. Note that on the evidence in that case the Deputy Judge in fact rejected the notion that the EASY device marks had any reputation or enhanced distinctiveness as a result of the use of other marks within the easy family of marks (e.g. §189). Again, whilst I do not know what evidence or arguments were before the Deputy Judge, the outcome of that case is not inconsistent with the decision of the Hearing Officer.

32. Drawing all this together, I can find no error in the findings of the Hearing Officer. She was entitled to hold on the facts that the uses of easyJet etc in the materials before her did not amount to use of the mark EASY *solus*.

33. Turning to the second ground of appeal, and s.46(2), it is said that the Hearing Officer erred in her assessment of combination use and whether that amounted to use in variant form which did not alter distinctive character.

34. Two specific criticisms were made. First, that the Hearing Officer did not take into account the guidance in *Specsavers International v Asda Stores* [2014] EWCA Civ 1294. In particular, Mr Longstaff placed reliance on §22 of the decision of Kitchin LJ (upon the return of the case from its reference to the CJEU):

> 22. Reverting now to the particular issue before us, in my judgment it follows from all of the foregoing that the national court is required to consider the use which has been made and to ask itself whether the differences between the form in which the mark has been used and that in which it is registered do not change the distinctive character of the mark as registered. In carrying out that exercise the court may ask whether the use relied upon is such that the trade mark as registered (here the Wordless logo mark) serves to identify the goods or services as those of a particular undertaking (here the Specsavers group). Put another way, if the mark as registered (here the Wordless logo mark) is used only as part of a composite mark (here the Shaded logo mark), the use must be such that the mark as registered is itself perceived as indicative of the origin of the goods or services. Moreover, it is permissible to take into consideration that the mark has always been used in a particular colour in so far as this affects how the mark is perceived by the average consumer.

35. To paraphrase and insert the facts of the present case (emphasis added): the question is whether the use relied upon is such that the EASY mark serves to identify the services as those of easyGroup. Put another way, if the EASY mark is used only as part of a composite mark (here the easyJet, easyHotel etc marks), the use must be such that the EASY mark **is itself** perceived as indicative of the origin of the

services. Further, as §23 of Kitchin LJ's judgment records, consideration must be given to all of the use that has been made of the composite mark and to the perception of the average consumer.

36. Mr Longstaff submitted that the Hearing Officer failed to address this. Moreover, he said that the Hearing Officer wrongly segued from her considerations about the use of EASY *solu*s (in §46) into the application of s.46(2) (in §47). I do not think there is anything in this latter point given that it is accepted that she went on to consider the s.46(s) point in §§48-49, especially as no criticism was made of the summary of the law.

37. The point of greater substance that he made was to suggest that the Hearing Officer had performed the wrong comparison and had failed to follow the guidance of Kitchin LJ. He pointed to §49 where the Hearing Officer noted that what made the proprietor's trade marks (and family of brands) distinctive is not the use of 'easy' *solus*, but the use of 'easy' as a prefix followed by a descriptive word (as well as the get-up). He said that this was the wrong way round – the Hearing Officer should have been asking herself whether the use of easyJet etc made EASY indicative of origin.

38. If this was all that the Hearing Officer had found, there might have been something in the point. But it was not. It ignores the clear findings made in the previous paragraph where she observed "*I reject the submission that use of the word 'EASY' within a trade mark belonging to the 'EASY' family of brands constitutes use not only of that trade mark, but also of 'easy'* solus." This is the correct way round to apply the test according to *Specsavers* – to consider whether use of the variant amounts to use of the registered mark as an indication of origin. Moreover, in accordance with s.46(2) it was irrelevant to the Hearing Officer that the easy family of marks was also registered.

39. Further, it is apparent from the earlier parts of the Decision that the Hearing Officer did consider all of the evidence relating to the use of the easy family of marks, as required to under the guidance from the CJEU in *Specsavers* and recorded by Kitchin LJ in §23. Accordingly, it is clear from the contents of §§48 and 49 taken together that the Hearing Officer had determined that use of the family of marks did not amount to use differing in elements which do not alter the distinctive character of EASY as registered. She applied the right test in the right way and she was entitled to reach the conclusion she did.

40. Mr Longstaff referred me to a EUIPO cancellation division decision No. C 68 628 dated 27.22.2025 involving the EU equivalent of the EASY mark in which the division refused to revoke the mark across the board for non-use based on the application of the EUTMR equivalent of s. 46(2). Just as is the case for the *W3* decision, I do not know precisely what evidence or arguments were deployed by the different applicant for revocation in that case. Further, there are obvious differences in the way the division approached the question, which do not apply here. For example, on p.17 of the decision the division noted: "*considering that the EUTM* [EASY] *is registered, it enjoys a presumption of validity and therefore is considered to have a minimum degree of distinctiveness*". This seems to be a bootstraps approach which is contrary to the position on this appeal (noted above) and the existence of the application for invalidity which was also upheld by the Hearing Officer.

41. At its highest the EUIPO decision shows that a different tribunal applying the same law may have come to a different decision to the Hearing Officer on a different day. As against that, the decisions of Arnold J. in *W3* and Deputy Judge Lance Ashworth KC in *Premier Inn* refute any suggestion that the decision of the Hearing Officer was irrational. Reverting to first principles, none of these decisions can alter my primary view that the Hearing Officer was entitled to reach the decision she did for the reasons she gave and made no error of law in so doing. I therefore dismiss the appeal against the finding of non-use.

42. As the non-use appeal has failed, it was agreed that the appeal against the finding of no acquired distinctiveness must also fail and there is no need for me to discuss this further.

Costs

43. Below, the Hearing Officer awarded The Support Group (UK) Limited £2200.

44. For consideration of the (minimalist) grounds of appeal and preparation for and attendance at the hearing before me, I award The Support Group (UK) Limited the additional sums of £250 and £900 respectively.

45. Therefore I order that the total sum of £3450 be paid by easyGroup Limited to The Support Group (UK) Limited by 4pm on 19th November 2026.

Thomas Mitcheson KC
The Appointed Person
28 October 2026