

O/1051/24

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. 506232
BROUGHT BY THE SUPPORT GROUP (UK) LIMITED**

**TO REVOKE ON THE GROUNDS OF NON-USE
REGISTRATION NO. UK00902989465
FOR THE TRADE MARK:**

EAZY

IN CLASSES 39, 41, AND 42

**OWNED BY
EASYGROUP LTD**

Background and pleadings

1. easyGroup Ltd (“the proprietor”) is the registered proprietor of trade mark registration no. UK00902989465 consisting of the word ‘EAZY’. The trade mark is a comparable mark which was filed on 18 December 2002 and completed its registration procedure on 01 September 2005.¹ It is registered in respect of the following services:

Class 39: *Transportation of goods, passengers and travellers by air; airline and shipping services; airport check-in services; arranging of transportation of goods, passengers and travellers by land and sea; airline services; bus transport services, car transport services, coach services, baggage handling services; cargo handling and freight services; arranging, operating and providing facilities for cruises, tours, excursions and vacations; chartering of aircraft; rental and hire of aircraft, vehicles and boats; storage services, packaging services; rental of storage containers; aircraft parking services; aircraft fuelling services, travel reservation and travel booking services provided by means of the world wide web, information services concerning travel, including information services enabling customers to compare prices of different companies; travel agency and tourist office services; advisory and information services relating to the aforesaid services; information services relating to transportation services, including information services provided on-line from a computer database or the Internet.*

Class 41: *Information relating to entertainment and education, provided on-line from a computer database or the Internet; entertainment services provided on-line from a computer database or the Internet; educational information provided on-line from a computer database or the Internet; entertainment services, education services, publishing services, production, editing and rental of sound and video recordings and films, organising games and competitions, instructional services, rental of consumer domestic electric and electronic goods, namely, rental of amusement machines, audio and visual apparatus and*

¹ The proprietor’s mark is a comparable trade mark based on a pre-existing EUTM. On 1 January 2021, in accordance with Article 54 of the Withdrawal Agreement between the UK and the European Union, the UK IPO created comparable UK trade marks for all right holders with existing EUTMs and IRs designating the EU. As a result, the proprietor’s mark has the same filing and registration date as the earlier EUTM.

equipment, camcorders, compact disc players and compact discs, fruit machines, cassette players, cassette recorders, cassette tapes, audio tapes, video cameras, video cassettes, video discs, video tapes, CD-Roms, radio sets, television sets and computer monitors, rental of toys, games and playthings; providing training; sporting and cultural activities, gymnasium services.

Class 42: *Non-business professional consultancy; meteorological information services; consultancy, development, advice, assistance, analysis, design, evaluation and programming services relating to computer software, firmware, hardware and information technology; provision of access to computers, namely, computer rental and leasing access time to a computer database (other than by Internet services providers); rental of consumer domestic electric and electronic goods, namely, rental of computers, computer hardware, computer software, computer apparatus and equipment; design, drawing and commissioned writing, all for the compilation of web pages on the Internet; posting, creating and maintaining websites for others; leasing access time to a computer database, Internet café services, namely, renting computers and leasing access time to computers; consultancy and advice relating to the evaluation, choosing and implementation of computer software, firmware, hardware, information technology and of data-processing systems; rental and licensing of computer software, firmware and hardware; provision of information relating to technical matters, legal matters, information technology, and intellectual property; scientific and technological services and research and design relating thereto, industrial analysis and research services, legal services; including but not limited to, all the aforesaid services provided via telecommunications networks, by online delivery and by way of the Internet and the world wide web.*

2. On 29 June 2023, The Support Group (UK) Limited (“the applicant”) applied to revoke the proprietor’s mark in full. The applicant seeks revocation of the proprietor’s registration 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 five-year period following the date of completion of the registration procedure, namely 02 September 2005 to 01 September 2010 (“the first relevant period”). Revocation is therefore sought from 02 September 2010. Revocation is also sought under Section 46(1)(b) in respect of the time periods 5 January 2011 to 4 January 2016 (“the second relevant period”), 5 January 2017 to 4 January 2022 (“the third relevant period”) and 26 June 2018 to 25 June 2023 (“the fourth relevant period”). Revocation is therefore sought from 5 January 2016, 5 January 2022 and 26 June 2023 respectively.

4. The proprietor filed a counterstatement wherein it defended all of the services subject to the application. In doing so, the proprietor claims to have put its mark to genuine use in the UK. Further, the proprietor points out that the present application is one of many (in total 18) made by the applicant in these proceedings against trade marks owned by the proprietor. The proprietor states that it intends to defend such actions robustly.

5. The applicant is represented by Hansel Henson Limited, and the proprietor is represented by Kilburn & Strode LLP. Only the proprietor filed evidence in these proceedings. It also filed written submissions dated 07 May 2024. No hearing was requested and both parties filed written submissions in lieu. This decision is taken following a careful consideration of the papers.

6. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, Section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK’s withdrawal from the EU.

EVIDENCE

7. The proprietor’s evidence came in the form of the witness statement of Ryan Edward Pixton dated 03 May 2024. Mr Pixton is a Chartered Trade Mark Attorney at Kilburn & Strode LLP, the legal representatives for the proprietor in these proceedings.

8. Mr Pixton's evidence is only a vehicle for introducing one exhibits (REP1). Aside from introducing and describing the content of the exhibit, Mr Pixton's evidence contains no narrative explaining the relevance of the exhibit for the purpose of demonstrating genuine use of the proprietor's trade mark for the services subject to these proceedings. I do not intend to summarise the evidence or submissions of the parties in full here. However, I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

PRELIMINARY ISSUE

9. I note that in its counterstatement, the proprietor made reference to the fact that there are other actions brought by the applicant in these proceedings against other trade mark registrations owned by the proprietor.

10. As far as I am concerned, I case managed these proceedings along with 12 other cases, consolidating 10 cases in four groups (on the basis that the revocation/invalidity actions related to different registrations for identical marks).² However, in 3 instances, I considered that it was not appropriate to actually consolidate the cases, the present case being one of them. The evidence in each case is individual to each trade mark and different in detail as a result, but there is some overlap across the 13 cases I have case managed insofar as the proprietor relies on the same argument that it owns a large family of trade marks. Therefore, whilst I consider that some efficiencies of effort would be possible by myself ruling the determination of the cases I have case managed - hence I have decided to retain all those cases for a decision - each decision will be made based on the evidence filed in each case, and the determination of the relevant issues in one case will not rule the determination of the other cases.³

DECISION

11. Section 46 of the Act states:

² Two cases are based on Section 3(1)(b), (c) and (d), the others (including the present one) are all revocation actions based on non-use.

³ Two groups of consolidated cases are also subject to other revocation proceedings. Depending on the outcome of the other proceedings, it might not be necessary to issue a decision on those cases.

“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”.

12. Given that the proprietor’s mark is a comparable mark, paragraph 8 of part 1, schedule 2A is relevant. It reads:

“8.— Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)

(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the "five-year period") has expired before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 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 sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM ; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union”.

13. Section 100 is also relevant, which reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

14. In *easyGroup Ltd v Nuclei Ltd & Ors* [2023] EWCA Civ 1247, Arnold LJ summarised the law relating to genuine use as follows:

“105. The principles applicable to determining whether there has been genuine use of a trade mark have been considered by the CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, 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 Bunderversvereinigung 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], Case C-609/11 *Centrotherm Systemtechnik GmbH v Centrotherm Clean Solutions GmbH & Co KG* [EU:C:2013:592], 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], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles 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]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32].

[...]

107. [...] The General Court of the European Union has repeatedly held that genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned: see e.g. *Case T-78/19 Lidl Stiftung & Co KG v European Union Intellectual Property Office* [EU:C:2020:166] at [25]. It has also repeatedly held that the smaller the

commercial volume of the exploitation of the mark, the more necessary it is for the proprietor to produce additional evidence to dispel any doubts as to the genuineness of its use: see e.g. *Lidl* at [33].”

15. 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.⁴

16. As I have set out above, the proprietor’s mark is a comparable mark based on an earlier EU Trade Mark (“EUTM”). This means that use of that mark in the EU prior to (and including) IP Completion Day (being 31 December 2020) is relevant to the present assessment.⁵ By virtue of being a Member State prior to this date, the UK still forms part of the relevant territory of the EU. From 1 January 2021 onwards, however, the relevant territory is the UK only.

17. I remind myself that there are four relevant periods for these proceedings. Those are 02 September 2005 to 01 September 2010 (the first relevant period), 5 January 2011 to 4 January 2016 (the second relevant period), 5 January 2017 to 4 January 2022 (the third relevant period) and 26 June 2018 to 25 June 2023 (the fourth relevant period). While the relevant periods differ, Section 46(3) of the Act (which is reproduced above) states that the registration of a trade mark shall not be revoked if genuine use is resumed or commented prior to a period of three months before the date of the application for revocation. Therefore, it can be said that so long as used is provided for the lattermost relevant period (but not the earlier relevant periods), the mark will survive revocation in respect of all relevant periods based on the later use. In its submissions in lieu, the proprietor refers specifically to Section 46(3), stating that “*the Relevant Period for the purpose of these proceedings shall be 29 June 2018 – 28 June 2023, as the application for revocation was filed on 29 June 2023*”. The proprietor’s approach is therefore that the mark has been used during the last five-year period – although, I note, there is a difference of a few days between the period claimed by the applicant and that reported by the proprietor - and the application for revocation should

⁴ *Jumpman*, Case BL O/222/16

⁵ See paragraph 4 of Tribunal Practice Notice 2/2020

be dismissed based on the most recent alleged use. However, as it will be seen, the evidence filed by proprietor is even later than the last five-year period.

THE PROPRIETOR'S CONCESSION

18. Although in its defence the proprietor stated that the intention was to defend all of the services covered by the registration, in its written submissions of 7 May 2024 the proprietor stated that, having reviewed the available evidence, it submits evidence of use that relates to some of the registered services in class 39, namely those underlined and listed below:

Class 39: Transportation of goods, passengers and travellers by air; airline and shipping services; airport check-in services; arranging of transportation of goods, passengers and travellers by land and sea; airline services; bus transport services, car transport services, coach services, baggage handling services; cargo handling and freight services; arranging, operating and providing facilities for cruises, tours, excursions and vacations; chartering of aircraft; rental and hire of aircraft, vehicles and boats; storage services, packaging services; rental of storage containers; aircraft parking services; aircraft fuelling services, travel reservation and travel booking services provided by means of the world wide web, information services concerning travel, including information services enabling customers to compare prices of different companies; travel agency and tourist office services; advisory and information services relating to the aforesaid services; information services relating to transportation services, including information services provided on-line from a computer database or the Internet.

19. In its submissions in lieu, the proprietor refers to the above services as “the Relevant Services” and submits that “EAZY was used on the market throughout the UK in relation to the Relevant Services” and that “the Proprietor has made genuine use of EAZY as a trade mark (i.e. to guarantee the origin of the Relevant Services), in the course of trade” requesting that (a) the present revocation action be refused **insofar as it relates to the Relevant Services** and (b) the registration at issue (no. UK00902989465) be retained **for the Relevant Services**.

20. In its submissions in lieu, the applicant contended that although the proprietor did not apply to amend its defence, the written submissions of 7 May 2024 amount to an admission that the mark 'EAZY' has not been used, and should be revoked, for services other than the relevant services. I agree. The proprietor's position is clearly stated in both the written submissions of 7 May 2024 and the submissions in lieu, and there is no requirement to amend the pleadings for a defence to be abandoned. Hence, I conclude that the proprietor's defence in relation to the registered services other than the relevant services has been **implicitly abandoned** insofar as the proprietor (a) did not explicitly concede that there has been no genuine use of the mark for these services (b) but clearly identified the relevant services as being those in relation to which the revocation action should be refused. As a result, the proprietor's mark is to be revoked for the following (no longer defended) services with effect from the earliest date claimed, namely 02 September 2010:

Class 39: *shipping services; airport check-in services; arranging of transportation of goods by land and sea; baggage handling services; chartering of aircraft; storage services, packaging services; rental of storage containers; aircraft parking services; aircraft fuelling services.*

Class 41: *Information relating to entertainment and education, provided on-line from a computer database or the Internet; entertainment services provided on-line from a computer database or the Internet; educational information provided on-line from a computer database or the Internet; entertainment services, education services, publishing services, production, editing and rental of sound and video recordings and films, organising games and competitions, instructional services, rental of consumer domestic electric and electronic goods, namely, rental of amusement machines, audio and visual apparatus and equipment, camcorders, compact disc players and compact discs, fruit machines, cassette players, cassette recorders, cassette tapes, audio tapes, video cameras, video cassettes, video discs, video tapes, CD-Roms, radio sets, television sets and computer monitors, rental of toys, games and playthings; providing training; sporting and cultural activities, gymnasium services.*

Class 42: *Non-business professional consultancy; meteorological information services; consultancy, development, advice, assistance, analysis, design, evaluation and programming services relating to computer software, firmware, hardware and information technology; provision of access to computers, namely, computer rental and leasing access time to a computer database (other than by Internet services providers); rental of consumer domestic electric and electronic goods, namely, rental of computers, computer hardware, computer software, computer apparatus and equipment; design, drawing and commissioned writing, all for the compilation of web pages on the Internet; posting, creating and maintaining websites for others; leasing access time to a computer database, Internet café services, namely, renting computers and leasing access time to computers; consultancy and advice relating to the evaluation, choosing and implementation of computer software, firmware, hardware, information technology and of data-processing systems; rental and licensing of computer software, firmware and hardware; provision of information relating to technical matters, legal matters, information technology, and intellectual property; scientific and technological services and research and design relating thereto, industrial analysis and research services, legal services; including but not limited to, all the aforesaid services provided via telecommunications networks, by online delivery and by way of the Internet and the world wide web.*

21. I now turn to the evidence.

Genuine use

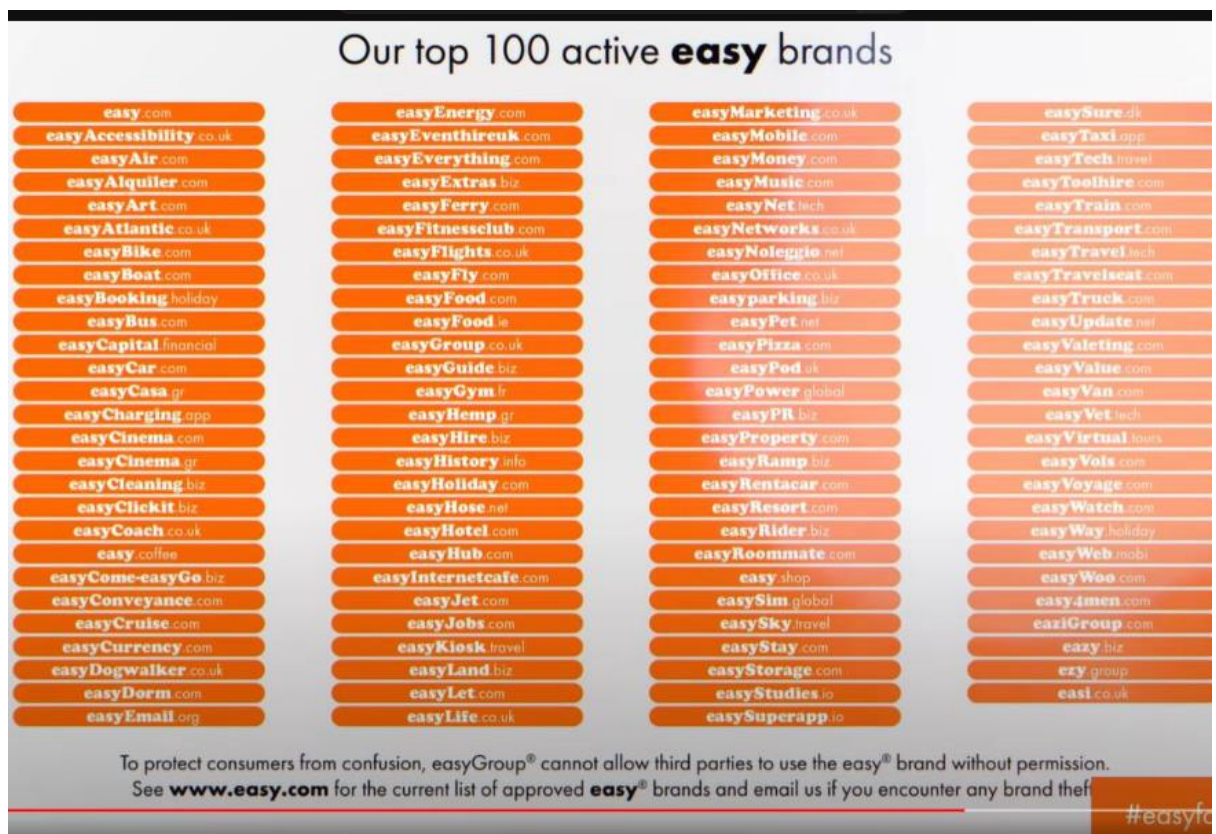
22. The first thing to note in relation to the proprietor's evidence is that it comes from its legal representatives. That does not mean that Mr Pixton is not duly authorised to file evidence on behalf of the proprietor. What it means is that the evidence given by Mr Pixton - who is not an officer of the proprietor – is based on what he has been told by the proprietor as he cannot have direct access to (and first-hand knowledge of) the proprietor's company records. In his opening paragraph, Mr Pixton acknowledges this fact and states that the information contained in his witness statement is either known

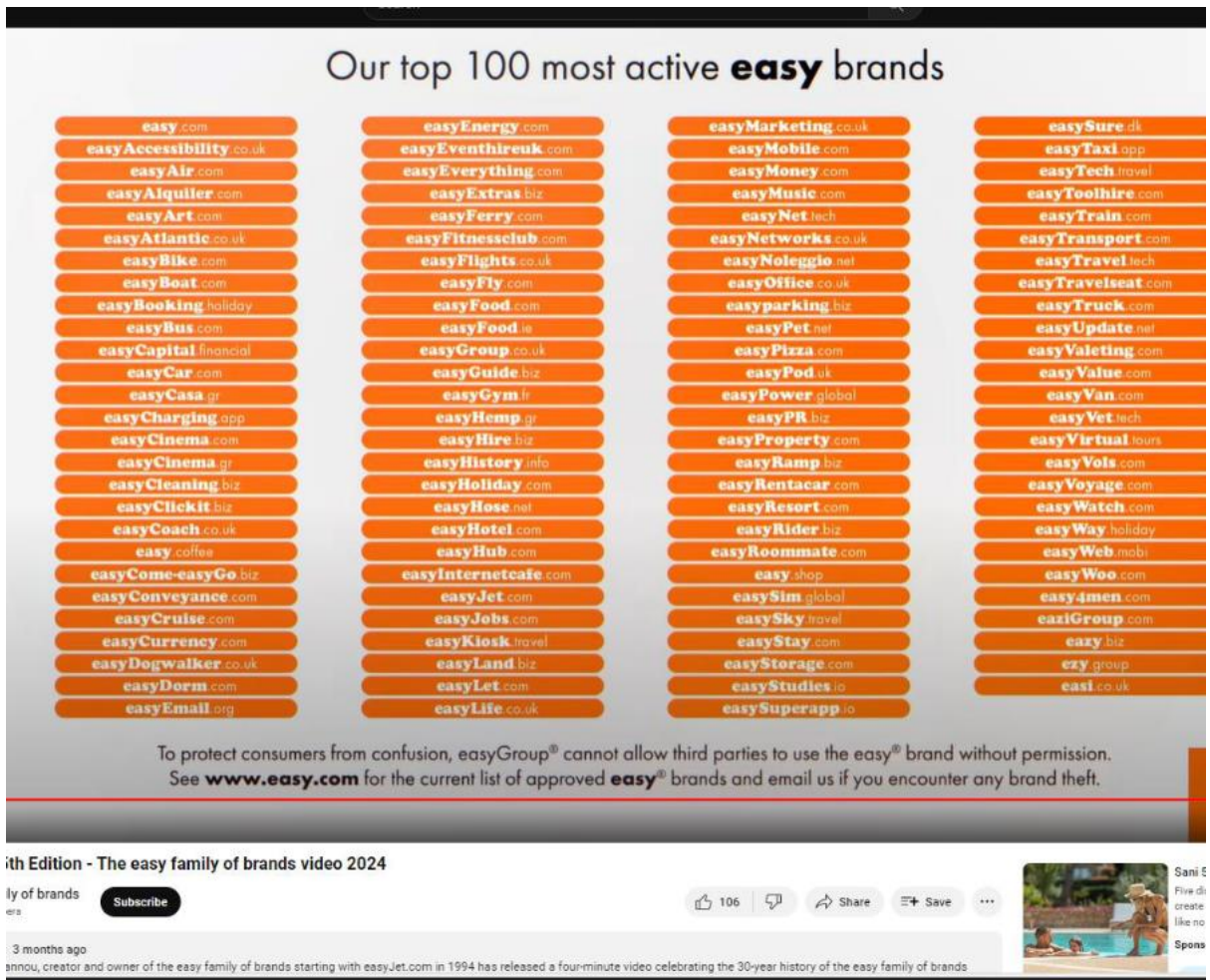
to him personally, or is derived from the records of his firm to which he has full access, or from other sources which are identified, or has been conveyed to him by his client.

23. Having clarified the above, Mr Pixton introduces just one exhibit (Exhibit REP 1) which contains two screenshots from videos posted on YouTube and which he describes as follows:

“Now produced and shown to me as Exhibit REP1 are stills relating to easy as shown on the ‘Sir Stelios on creating the easy family of brands and giving back to society’, and the 5th edition of the easyHistory YouTube videos. These stills were taken on 02 May 2024, and show that the videos were viewed 3 million and 14.8 million times respectively.”

24. For the sake of completeness, I reproduce the two screenshots below:





25. As it can be seen, the screenshots show the alleged “Top 100 active easy brands” and “Top 100 most active easy brands”. The trade mark “**easy.biz**” appears as the third one from the bottom of the fourth column.

26. The content of REP1 reproduces evidence filed in another case I have retained (506236), although in that case the proprietor also filed some additional evidence. However, as the applicant correctly pointed out in both cases, the number of viewers flagged up by the proprietor refer to 2 months and 3 months prior to the date when the screenshots were taken (02 May 2024), which is outside the most recent five-year period.

27. That is the totality of the evidence filed by the proprietor. Indeed, in a revocation action based on allegations of non-use, one would expect the proprietor of the mark

under attack to file, at least, evidence of sales figures and invoices showing sales of goods and services. None of this has been provided in the present case.

28. In *Awareness Limited v Plymouth City Council*, Case BL O/236/13, Mr Daniel Alexander Q.C. as the Appointed Person stated that:

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

and further at paragraph 28:

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

much narrower range should be critically considered in any draft evidence proposed to be submitted.”

29. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd*, Case BL O/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.”

30. I also note Mr Alexander’s comments in *Guccio Gucci SPA v Gerry Weber International AG*.⁶ 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). [...] 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”.”

31. The key question in this case is whether there has been **genuine use** of the trade mark ‘EAZY’ in connection with the **relevant services**. The proprietor contends that the mark has been put to genuine use during the period 29 June 2018 – 28 June 2023. The applicant submits that the evidence taken as a whole does not demonstrate genuine use, since it is not sufficient to prove any use of the mark in connection with the registered services.

32. The peculiarity of the present case is that the proprietor claims to be the owner of a large family of trade marks and to have made genuine use of ‘EAZY’ as one of the trade marks which makes up the family. This is a common underlying theme of the proprietor’s submissions in all the cases I have retained. One aspect of the proprietor’s case, as I understand it, is that (a) the average consumer will know, from the family of marks that the proprietor alleges to exist, that the mark ‘EAZY’ is associated with the proprietor’s ‘EASY’ brand and (b) this association means that ‘EAZY’ can, and does, function as a badge of origin. In this connection, the proprietor states (emphasis added):

“The Proprietor of the EAZY mark is also the owner of a large family of brands, the common denominator of which is that the word easy is conjoined to another

⁶ Case BL O/424/14.

word so as to form a neologism. The Proprietor's business model includes licensing the use of its mark to licensees, spanning across a variety of industries, including cleaning products, airline and hotel services, as well as dog walking. Each licensee, irrespective of the industry, is expected to follow the easyGroup brand guidelines and terms of use.

In order to promote its goods and services, the Proprietor **regularly promotes the existence of a family of brands** under the easy mark. The benefits of doing this include:

- i. to **educate consumers** that easy plus another word element indicates a product or service of the proprietor;
- ii. to **educate consumers** that the easy family of brands extends across many marks and many industries; and
- iii. to **cross-sell other goods and services** offered by the group.

[...]

Exhibit REP1 shows stills from YouTube videos of the proprietor, which showcase the easy family of brands. These stills were taken on 02 May 2024, and show that the videos were viewed 3 million and 14.8 million times respectively. It is clear that the EAZY mark will have been seen by many consumers, who will have been educated that EAZY is part of the easy family of brands.

EAZY is phonetically identical to EASY and it is also visually highly similar. Consumers would expect EAZY to be offered by easyGroup as part of the easy family of brands. **It can, and does, function as a badge of origin.**"

33. Further, in its submissions in lieu the proprietor submits that "it is established case law that it is not necessary that the [...] mark be affixed to the goods in order for there to be genuine use of the mark in relation to those goods" and "it is sufficient that the use of the [...] mark establishes a link between that mark and the marketing of the goods" citing the decision of the General Court ("GC") in *Alcohol Countermeasure*

Systems (International) Inc. vs EUIPO - Lion Laboratories Ltd, T-638/15, at paragraph 82.

34. Finally, wrapped up in the proprietor's submissions is an argument that promotional use of a mark is sufficient to be classified as genuine when the evidence demonstrates a serious attempt to acquire a commercial position in the relevant market. The proprietor states:

“Per Minimax (11/03/2003, C-40/01, Minimax, EU:C:2003:145, § 37), use need not always be quantitatively significant for it to be deemed genuine; the Owner only has to demonstrate that it has seriously tried to acquire a commercial position in the relevant market. The trade mark has to be used for goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way.

[...]

According to settled case law, 'genuine use' must be understood to denote use that is not merely token, there is no de minimis threshold for proof of use in revocation matters. The Proprietor must show genuine use of the mark to create or preserve market share, in the relevant period. From the Exhibits (sic), it is clear that the Proprietor has been making genuine efforts to establish a market share under its mark.

*The use is outward-facing, **commercial use to promote its goods and services under the mark EAZY**. The proprietor is not required to show significant commercial volumes or values for goods under its mark, only that it is genuinely seeking to create and preserve market share.”*

35. According to the case-law, there is genuine use of a trade mark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered in order to create or preserve an outlet for those goods and services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark. The analysis of

whether use of a mark is genuine cannot be confined merely to establishing that the mark has been used in the course of trade since that use must also be genuine. Not all proven commercial use can therefore automatically be deemed to constitute genuine use of the mark in question.⁷

36. Genuine use of the mark entails use of the mark on the market for the goods and services protected by that mark. Importantly, use of the mark must relate to goods or services already marketed or which are about to be marketed and for which preparations by the undertaking to secure customers are under way. This includes use in the form of advertising campaigns; however, **the promotion of a trade mark cannot be an end in itself**, as trade marks which are the subject of advertising activities must relate to goods or services already marketed or about to be marketed. In other words, **the owner of a registered trade mark cannot promote the mark independently from the registered goods and services, as the raison d'être of a trade mark is to guarantee the identity of the origin of the goods or services for which it is registered.**

37. The promotion of the trade mark 'EAZY' as part of the proprietor's 'EASY' family of marks in two videos posted on YouTube is the **only** example of use adduced by proprietor. However, as the applicant correctly pointed out in its submissions in lieu, that evidence does not show use of the mark for any goods or services at all.

38. The proprietor's submissions are that (a) it has made outward-facing, commercial use to promote its goods and services under of the mark 'EAZY', (b) the benefit of regularly promoting the existence of a family of brands under the mark 'EASY' include *"cross-selling other goods and services offered by the group"*, (c) consumers *"have been educated that EAZY is part of the easy family of brands"* and (d) given the aural identity between 'EASY' and 'EAZY', consumers *"would expect EAZY to be offered by easyGroup as part of the easy family of brands"* and (e) 'EAZY' can, and does, function as a badge of origin.

⁷ Reber at [32]

39. I must admit that a point which I found particularly difficult to understand is how the evidence filed links the purported use of the mark 'EAZY' as part of the 'EASY' family of marks to any particular services (let alone the relevant services), the lack of turnover and narrative evidence contributing to the opacity of the proprietor's case. In the first decision I have drafted (in revocation no. 506236) I have made some very generous efforts in trying to decrypt the proprietor's case on genuine use and I dealt with potential readings of the proprietor's evidence and submissions. However, that case relates to a different mark. Further, in that case the proprietor had filed more evidence and there was an overlap between the nature of the advertising services covered by the proprietor's registration in class 35 and the claim that the mark subject to revocation had been used on a website designed to advertise the proprietor's family of brands. However, in the present case the evidence filed and the nature of the services at issue are such that it does not require me to deal with those potential arguments. It is not my job to go beyond the evidence filed and the arguments pleaded or formulated by the proprietor.

40. Genuine use of a mark cannot be proved by means of probabilities or presumptions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned.

41. Frankly, the evidence adduced in this case falls way short of any indication that use of the mark 'EAZY' is **real**. There is no evidence of commercial activity or exploitation and, as the applicant pointed out, there is no evidence of consumers accessing the website eazy.biz and receiving a "service"; the evidence does not even show that a fully functioning website was in operation at eazy.biz at any point in time. There are no invoices or other sale records, and no indication of turnover or revenue generated under the mark 'EAZY'. The only example of advertising which has been provided is dated after the most recent five-year period, and there is no indication of how much the proprietor has invested in promoting the mark 'EAZY'.

42. The primary purpose of the YouTube videos from which the screenshots exhibited in evidence were taken appears to be to celebrate the proprietor's family of marks, rather than offering any goods or services to potential consumers, and it has not been explained why the ultimate purchasers of the relevant services would watch those

videos on YouTube and what they would gain from them. In this connection, I note that the videos contain the text *"To protect consumers from confusion easyGroup cannot allow third parties to use the brand without permission. See easy.com for the full list of approved easy brand and email us if you encounter any brand theft"* which suggests a promotional activity aimed at protecting the brands against potential infringement, as opposed to marketing the relevant services.

43. Turnover is of course an indication of the commercial use of a mark, and the absence of information about turnover is a serious lack of key evidence. However, the proprietor's position in this case is even worse, because the evidence does not establish that the mark 'EAZY' has been used in relation to *"goods and services already marketed or about to be marketed"*. In this connection, in the decision cited by the proprietor (T-638/15) the GC found that the presence of the earlier mark on invoices and in articles and advertisements relating to the goods was likely to establish a link between that mark and the marketing of the goods; however, in this case the mark 'EAZY' is only purported to be part of the 'EASY' family of mark, but it is not referred to for the purposes of identifying the relevant services (or indeed, any goods and services). Consequently, the link between the 'EAZY' mark and the marketing of the relevant services is not established.

44. I also note that notwithstanding the proprietor's claim that the mark 'EAZY' is part of the 'EASY' family of marks, there is no evidence that any of the marks allegedly belonging to the family are present on the market. Further, the proprietor's claims that consumers have been educated that the mark 'EAZY' is part of the 'EASY' family of marks and indicates the proprietor's business are wholly unsupported. In this connection, the proprietor did not ask me to take judicial notice of these facts. But even if it did (i) first, I would have refused it, as easy is a common descriptive adjective; (ii) second, the argument seems to be something of a leap as 'EAZY' is not the same as 'EASY' and (iii) third, whilst the existence of a family of marks is relevant in assessing likelihood of confusion, I am not aware of (and I have not been pointed to) any authority saying that the existence of a family of marks, if proven (which in this case is **not**, the evidence only establishing that the proprietor **claims to own a family of marks**) is relevant in assessing genuine use of a trade mark.

45. Lastly, even if the proprietor is right in saying that minimal use can be sufficient in order to be deemed genuine, it is still not enough to get it home. This is because for minimal use to be sufficient it must be **real**, which means warranted in the relevant economic sector to maintain or create a share in the market for the goods or services protected by the mark. Since I found that there is no link or connection between the mark 'EAZY' and the marketing of the relevant services, it cannot be said that the use made by the proprietor is real. The use of the mark 'EAZY' is not use on the market to distinguish the proprietor's services. The fact that the mark 'EAZY' is promoted as belonging to the proprietor's family of 'EASY' marks does not supersede the requirement of genuine use, as a mark which is used as part of a family of marks is still subject to the same conditions regarding genuine use that apply to marks used independently.

46. The proprietor has failed to establish that the mark UK00902989465 has been put to genuine use during any of the relevant periods (or at all). The evidence does not support the conclusion that there has been a real commercial exploitation of the mark on the market for the relevant services. The use shown has no connection with the marketing of the relevant services and, as such, was not warranted in the economic sector concerned to maintain or create a share in the market for the services in question. For the sake of completeness, I should say that even without the concession of **non-use** for the services listed at paragraph 20, I would have made a finding of non-use in relation to them.

47. The proprietor has not pleaded or formulated any submission an argument of "proper reason for non-use" so I do not need to consider anything further.

48. As there is no genuine use of the mark, the registration is revoked.

OUTCOME

49. The application for revocation on the grounds of non-use therefore succeeds under both Sections 46(1)(a) and 46(1)(b). The registration will be revoked in respect of all the goods and services for which it is registered.

50. The effective date of revocation is 01 September 2010, the earliest date requested by the applicant.

COSTS

51. The applicant has been successful and is, therefore, entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the applicant the sum of £1,500, calculated as follows:

Preparing the revocation application and considering the counterstatement:	£400
Considering the evidence	£500
Written submissions:	£400
Official fees:	£200
Total	£1,500

52. I therefore order easyGroup Ltd to pay The Support Group (UK) Limited the sum of £1,500. This sum is to 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 7th day of November 2024

TERESA PERKS
For the Registrar