

O/1053/24

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS. 506245 AND 506246
BROUGHT BY THE SUPPORT GROUP (UK) LIMITED

TO REVOKE ON THE GROUNDS OF NON-USE
REGISTRATION NOS. UK00002321978 AND UK00903033917
IN RESPECT OF THE TRADE MARKS:

EASYSERVICES

easyServices

easyServices

(SERIES OF 3)

IN CLASSES 36, 37, 38, 40 AND 41

AND

EASYSERVICES

IN CLASSES 36, 37, 38, 40 AND 41

OWNED BY
EASYGROUP LTD

Background and pleadings

1. Trade mark no. UK00002321978 (the figurative mark) and no. UK00903033917 (the word mark) for the trade marks shown on the cover page of this decision each stand registered in the UK in the name of easyGroup Limited (“the proprietor”). The applications for registration of both marks were filed on 27 January 2003.¹ The figurative mark was registered on 26 September 2003, whereas the word mark was registered on 07 March 2005. Both marks are registered in respect of the same services being those listed below:

Class 36: *Insurance; financial affairs; monetary affairs; real estate affairs; banking, banking services; rental of offices, leasing of office space, letting of office space; advice and consultancy relating to the aforesaid services.*

Class 37: *Building construction; repair; installation services.*

Class 38: *Communication, telecommunication, broadcasting and message transmission services; provision of access to the Internet; Internet services, namely, providing user access to the Internet (service providers), providing telecommunications connections to the Internet or databases, telecommunication of information (including web pages), computer programmes and other data; advisory and arrangement services relating to all the aforesaid; 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.*

Class 40: *Treatment of materials.*

Class 41: *Education; providing of training; entertainment; sporting and cultural activities; publishing services, production, editing and rental of sound and video*

¹The proprietor’s word 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 EUTM and IRs designating the EU. As a result, the proprietor’s mark has the same filing and registration dates as the earlier EUTM.

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,² rental of toys, games and playthings; providing training; sporting and cultural activities, gymnasium services.

2. On 29 June 2023, The Support Group (UK) Limited (“the applicant”) applied to revoke the proprietor’s marks in full. The applicant seeks revocation of the proprietor’s registrations 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 on which the marks were registered, namely 27 September 2003 to 26 September 2008 (“the first relevant period for the figurative mark”) and 08 March 2005 to 07 March 2010 (“the first relevant period for the word mark”). Revocation is therefore sought from 27 September 2008 and 8 March 2010 respectively. Revocation is also sought under Section 46(1)(b) in respect of the following time periods (identically pleaded in relation to both marks): 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 counterstatements wherein it defended all of the services subject to the applications. In doing so, the proprietor claims to have put its marks to genuine use in the UK. Further, the proprietor points out that the present applications are two 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.

² Computer monitor is the only term which appears in the figurative mark but not in the word mark.

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 seven exhibits being those labelled REP1-REP7. Aside from introducing and describing the content of the exhibits, Mr Pixton's evidence contains no narrative explaining the relevance of each exhibit for the purpose of demonstrating genuine use of the proprietor's trade mark for all 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 11 other cases, consolidating 10 cases in four groups (on the basis that the revocation/invalidity actions related to different registrations for identical marks) the present two cases having been consolidated in one group.³ However, in 3 instances, I considered that it was not appropriate to actually consolidate the cases. 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.⁴

DECISION

11. Section 46 of the Act states:

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

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

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

³ 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.

⁴ 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.

(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 in 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 word 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.⁵

16. As I have set out above, the proprietor’s word mark is a comparable mark based on an earlier EU Trade Mark (“EUTM”). This means that use of that mark in the EU

⁵ *Jumpman*, Case BL O/222/16

prior to (and including) IP Completion Day (being 31 December 2020) is relevant to the present assessment.⁶ 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 five relevant periods for these proceedings. Those are 27 September 2003 to 26 September 2008 (the first relevant period for the figurative mark), 08 March 2005 to 07 March 2010 (the first relevant period for the word mark), 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 marks have 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 be dismissed based on the alleged most recent use. As it will be seen, this approach is reflected in the evidence filed.

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 registrations, the written submissions dated 7 May 2024 accompanying the proprietor’s evidence state that the evidence filed relates “*to class 41, in particular:*

⁶ See paragraph 4 of Tribunal Practice Notice 2/2020

Class 41: *entertainment; sporting and cultural activities, organising games and competitions, sporting and cultural activities, gymnasium services.*”

19. Although the word “*in particular*” does not exclude that the evidence might relate to services other than those specifically listed, the proprietor further clarifies that it “**does not seek to offer evidence pertaining to the other services**”.

20. In its submissions in lieu, the proprietor refers to the above services as “*the Relevant Services*” and submits that “*EASYSERVICES was used on the market throughout the relevant territory, and throughout the relevant period in relation to the Relevant Services*” requesting that (a) the present revocation actions be refused **insofar as they relate to the Relevant Services** and (b) the registrations at issue (nos. UK00002321978 and UK00903033917) be retained **for the Relevant Services**.

21. In its submissions in lieu, the applicant contended that although the proprietor did not apply to amend its defences, the written submissions of 7 May 2024 amount to an admission that the marks at issue have 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 marks for these services (b) but clearly identified the relevant services as being those in relation to which the revocation actions should be refused. As a result, the proprietor’s marks are to be revoked for the following (no longer defended) services with effect from the earliest dates claimed, namely 27 September 2008 (for the figurative mark) and 8 March 2010 (for the word mark) respectively:

Class 36: *Insurance; financial affairs; monetary affairs; real estate affairs; banking, banking services; rental of offices, leasing of office space, letting of office space; advice and consultancy relating to the aforesaid services.*

Class 37: *Building construction; repair; installation services.*

Class 38: *Communication, telecommunication, broadcasting and message transmission services; provision of access to the Internet; Internet services, namely, providing user access to the Internet (service providers), providing telecommunications connections to the Internet or databases, telecommunication of information (including web pages), computer programmes and other data; advisory and arrangement services relating to all the aforesaid; 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.*

Class 40: *Treatment of materials.*

Class 41: *Education; providing of training; publishing services, production, editing and rental of sound and video recordings and films, 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,⁷ rental of toys, games and playthings; providing training.*

22. Before I turn to the evidence, I should clarify that while the marks differ, they are very highly similar so I will only refer to them as one mark, being 'EASYSERVICES'.

Genuine use

23. 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

⁷ Computer monitor is the only term which appears in the figurative mark but not in the word mark.

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. Having clarified the above, Mr Pixton introduces the following exhibits:

Exhibit REP 1-2: These two exhibits are described by Mr Pixton as “*brand license agreements*” between the proprietor (as the licensor) and “*easyWoo, formerly easyTribe*” (as the licensee). Mr Pixton states that the proprietor licenses use of the marks at issue in these proceedings to a company called easyWoo Ltd. The documents exhibited are a license agreement dated 25 September 2021 (REP 1) and an addendum dated 26 August 2022 (REP 2). Aside from pointing out that “*The agreement states that a 1% of all revenue of the Licensee is payable as royalty to [the proprietor]*”, Mr Pixton makes no further comments.

In its submission of 7 May 2024, the proprietor comments on the relevance of these exhibits in the following terms (emphasis added):

*“Exhibit REP1 contains a copy of a licence agreement dated 25 September 2021 between [the proprietor] and a licensee. **That agreement concerns the trade mark easyTribe.** It is included to lay out the history of the second addendum agreement at Exhibit REP2, dated 26 August 2022 between the same parties. In this agreement, at paragraphs 12 and 13, **the parties agree to develop a secondary project under the name easyServices, to be used at the website easyServices.co.uk.** The project is described as “**the marketplace of other self-employed service providers**” and to be a spin-off of easyWoo. easyWoo is described in the same agreement as replacement name for easyTribe under the terms of the agreement at Exhibit REP1. easyTribe (and mutatis mutandis easyWoo) is described at paragraph 4 of the agreement at Exhibit REP1 as “a mobile app or application that will act as a platform to facilitate the introduction of people mainly in the target group 20-40 years old that want to meet in the online world but also in the physical world because they feel they belong to the same tribe. The users of the platform will be offered the opportunity to meet and or date online and offline and also*

*offered social and psychological and lifestyle support services for a fee. Events in the physical world will be organized via subcontractors for their benefit against the payment of a fee. Introductions will be made by the platform to the users for them to use certain establishments in the physical world that can create a community feeling such [as] restaurants and gym and group travel". These exhibits outline the **nature of the use, the place and the time**".*

The heading of the license is "*BRAND LICENCE AGREEMENT 25 September 2021 **For the easyTribe brand***" and, as Mr Pixton himself acknowledges, it concerns the licensing of the trade mark 'easyTribe'. The license is granted within what appears to be a venture agreement in relation to a project as the document contains a clause about the webpage and the software to be used being developed by the licensee in the 18 months following the agreement, and a clause about the licensee committing to invest and raise funds. The addendum of 26 August 2022 is a document with which the parties agree to amend the agreement of 25 September 2021 and replace the previous brand name 'easyTribe' with the brand name 'easyWoo'. Insofar as it is relevant for the purpose of this decision, the only references to the trade mark 'EASYSERVICES' are in clauses 12 and 13 of the addendum dated 26 August 2022 which state as follows (emphasis added):

*"12. The Parties also agree to develop a **secondary project** under the name easyServices. The domain used for this project will be www.easyservices.co.uk. The same software and algorithm used for easyWoo will be used for the marketplace of other self-employed service providers. The secondary project will be a spin-off of easyWoo. The new project will only include the directory listing within easyWoo.*

easyServices as a stand alone will be launched within a year after the launch of easyWoo.

13) The Licensor owns the EU trade mark no: 003033917 for easyServices. [...] There will be a [...] fee of [...] for use of this additional

brand and all revenues will be subject to the same royalty arrangement as easyWoo.”

Given that clause 11 states that “*The Parties agree that easyWoo will have a soft launch date on September 15th in Cyprus*”, the launch of “easyServices” within a year after the launch of ‘easyWoo’ would have been on or before 15 September 2023 which is after the most recent five-year period of 26 June 2018 - 25 June 2023. However, there is no evidence of the project under the mark ‘easyServices’ being implemented.

Exhibit REP 3: Mr Pixton describes the content of this exhibit as “*invoices from 06 December 2021 to 27 February 2023 which show the royalty commission paid to [the proprietor] during this time under the agreements in Exhibit REP1 and Exhibit REP2.*”

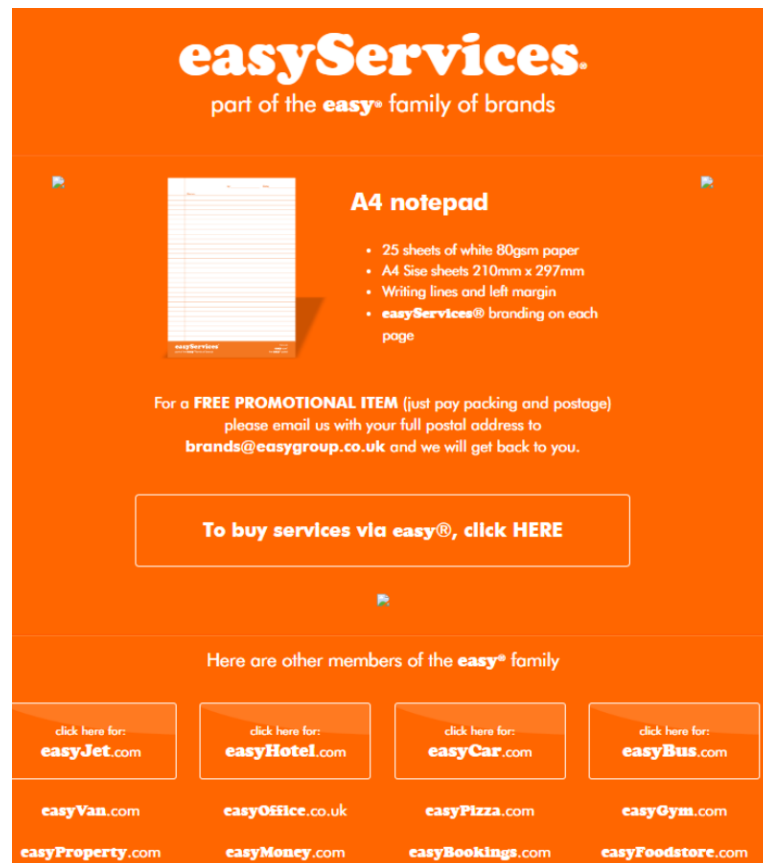
Since the royalty commission envisaged under the original agreement of 25 September 2021 is about a different brand, namely ‘easyTribe’, any commission paid up until 26 August 2022 (when the addendum containing a reference to the mark ‘EASYSERVICES’ was signed) cannot relate to the mark ‘EASYSERVICES’ and it is not pertinent.

There are only four invoices dated after 26 August 2022 which refer to the addendum however, there is no reference to the mark ‘EASYSERVICES’ in any of them.

Further, the first invoice dated 31 August 2022 is a payment from the licensee to the proprietor in consideration of the change from ‘easyTribe’ to ‘easyWoo’. The second invoice dated 22 December 2022 is payment of the minimum royalty which the parties agreed the licensee would pay “*until funding is secured*” indicating no funds had been secured until that date. The other two invoices dated 7 and 27 February 2023 are for larger amounts, but they only refer to money paid under clauses 15 and 16 of the original agreement and clause 4 of the addendum, which refer to a new minimum royalty applicable, but always in relation to the licensing of the trade mark ‘easyWoo’.

It seems therefore that all of the invoices exhibited relate to money paid by the licensee to the proprietor in relation to the licensing of the marks 'easyTribe' and 'easyWoo'. None of the invoices relate, in fact, to money paid in accordance with clause 12 of the addendum, which is the only clause that regulates the fees and royalties to be paid by the licensee to the proprietor for the use of the brand 'EASYSERVICES'.

Exhibit REP 4: This exhibit consists of copies of pages from the Wayback machine at web.archive.org showing the landing page of the website easyservices.co.uk as it appeared on various dates in 2016, 2017, 2018 and 2022. Up until December 2018 the page appeared as follows:



From January to October 2022, it looked as follows:

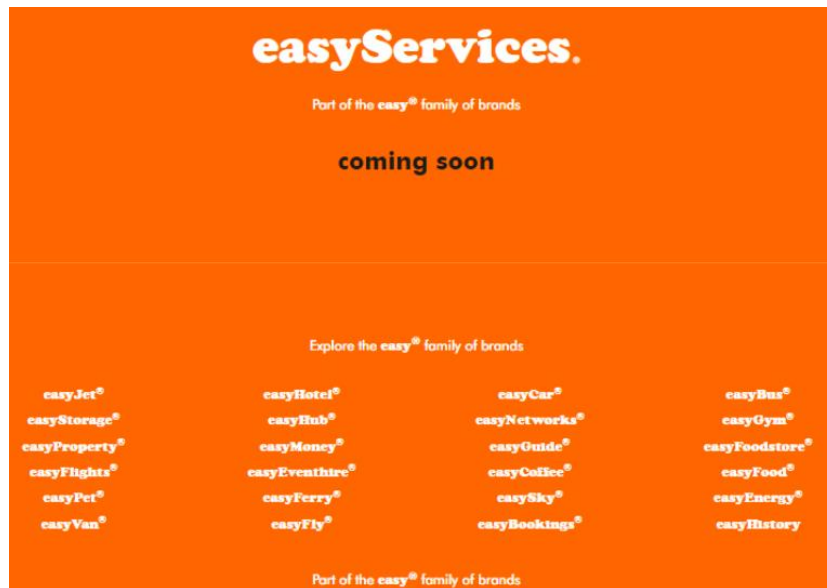


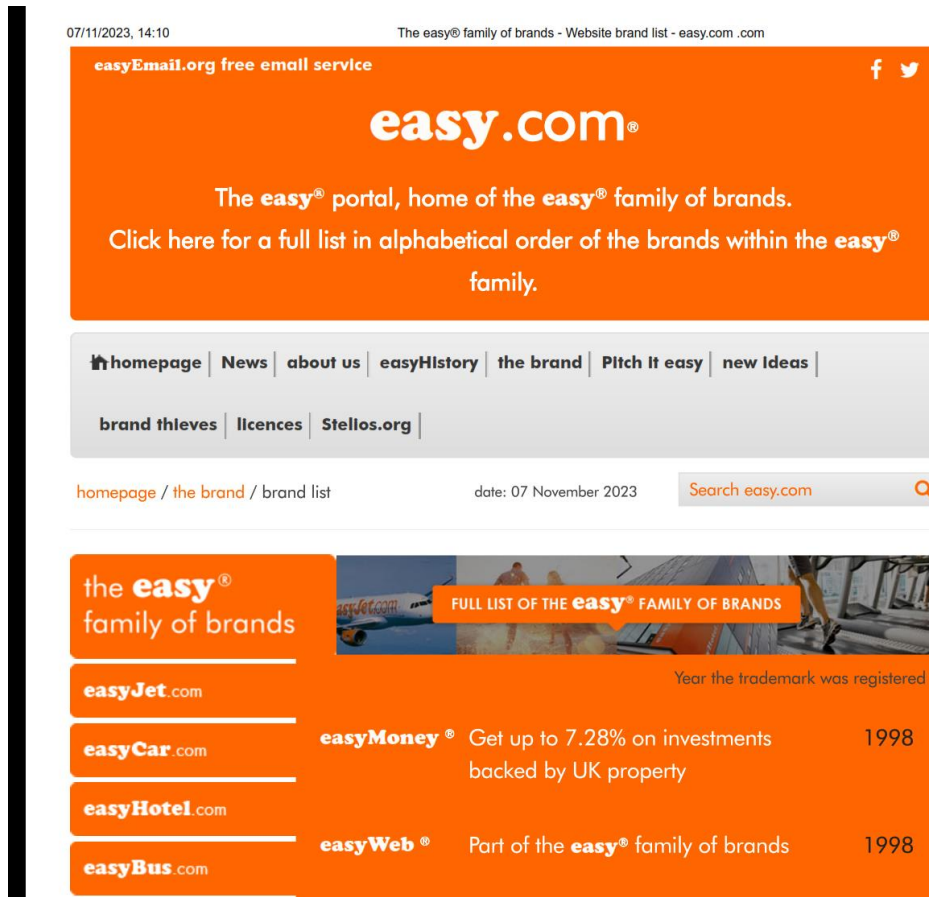
Exhibit REP5: Mr Pixton states that this exhibit contains extracts from a Google Analytics report for easyservices.co.uk for the period 30 June 2022 – 30 June 2023. In its submissions of 7 May 2024, the proprietor states as follows:

“The data shows that the website was accessed by 375 unique users across the period, with over 50% of them coming from the UK. On page 3 of this exhibit, one can see that the vast majority of these users arrived at the page either from an Organic search or by directly entering the address. This shows the success of the proprietor in promoting the mark and ties in with the promotional activity seen in the other exhibits.”

The report shows that between August 2022 and June 2023 easyservices.co.uk was accessed by only 197 users from the UK and that 99.2% of the users were new visitors as opposed to 0.8% being returning visitors. The average session duration was 9 seconds and, as the applicant entirely correctly pointed out, the bounce rate – which, the applicant states, is the percentage of visitors who neither click on an internal link, nor navigate to another page, nor stay on the website for over 10 seconds – was 91.27%, indicating a high percentage of disengaged users.

Exhibit REP 6: Mr Pixton states that this exhibit contains an extract from the website ‘easy.com’ dated 7 November 2023 (after the most recent five-year

period) which shows a full list the brands under the easyGroup family of brands and includes 'easyServices'. In its submissions of 7 May 2024, the proprietor states: "The individual brand is strengthened by its use alongside other similar brands in the family". The first page of the website is reproduced below:



The exhibit contains 11 webpages listing over 150 brands incorporating the word "easy" which are claimed to belong to the "easy family of brands". The brands listed appear to be registered trade marks and the year in which each mark was registered is also specified. The trade mark 'easyServices' appears only once on page 3 and the date the mark was registered is shown as 2003 as it can be seen from below:

easyTravelseat .com	easyContainer ® Part of the easy ® family of brands	2002
easyFlights .co.uk	easyStorage ® Part of the easy ® family of brands	2002
easyGreece .tours	easyGym ® Low cost gym memberships without the contract	2002
easyFly .co.uk	easyTruck ® Part of the easy ® family of brands	2002
easySky .co.uk	easyBus ® Low-cost airport transfers	2002
easyFood .co.uk	easyDrivingschool ® Part of the easy ® family of brands	2002
easyPR .biz	easyOffice ® Low-cost office space solutions.	2002
easyHemp .gr	easyFitness ® Part of the easy ® family of brands	2002
easyGreek .gr	easi ® Part of the easy ® family of brands	2002
easyConveyance .com	eazi ® Part of the easy ® family of brands	2002
easyOffice .co.uk	easyServices ® Part of the easy ® family of brands	2003
easyPizza .com	easyProducts ® Part of the easy ® family of brands	2003
easyCruise .com	easyGoods ® Part of the easy ® family of brands	2003
easyFoodstore .com		
easyMobile .com		
easyBookings .com		
easyCurrency .com		

Exhibit REP 7: This exhibit contains an **undated** image of what is described as “an easyVan advertising the easyGroup family of brands, which includes easyServices”. There is no emphasis on the trade mark ‘easyServices’ and the oval around it does not appear to be part of the original advertisement but looks like something that has been drawn with a pencil for the purpose of facilitating the identification of the mark within the evidence:



As the applicant's correctly pointed out, no details are provided at all in relation to this van, and there is no evidence to show that this van was being used as a promotional tool during the relevant period (or at all).

24. 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.

25. 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.”

26. 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.”

27. I also note Mr Alexander’s comments in *Guccio Gucci SPA v Gerry Weber International AG*.⁸ 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”.”

⁸ Case BL O/424/14.

28. The key question in this case is whether there has been **genuine use** of the trade mark 'EASYSERVICES' 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 use of the mark in connection with the registered services.

29. 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 'EASYSERVICES' 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 is that the 'EASYSERVICES' brand is strengthened by its inclusion alongside other brands in the family. In this connection, the proprietor states (emphasis added):

"The Proprietor of the EASYSERVICES marks is also the owner of a large family of brands, the common denominator of which is that the word easy conjoined to another 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.*

*At Exhibit REP6, is a list of the brands belonging to the easy family of brands, including EASYSERVICES [...]. **The EASYSERVICES brand is strengthened by its inclusion alongside other brands in the family.***

30. 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.

31. 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, particularly in the form of advertising campaigns. The Proprietor’s advertising efforts can also be seen at Exhibit REP7, where it promoted its easy family of brands including easyServices in a prominent manner on the side of its delivery vans. That is a common method of promotion for brand owners, and reaches a large (if unquantifiable) number of consumers.

The Proprietor has also submitted Google analytics data in Exhibit REP5 for the website easyservices.co.uk from August 2022 to June 2023, which is within the relevant period. The data shows that the website was accessed by 375 unique users across this period, with over 50% of them coming from the UK. On page 4 of the Exhibit, it can be seen that over 316 of those users arrived at

the page by directly entering the address. This shows the success of the proprietor in promoting the mark.

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, 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 EASYSERVICES. 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.”

32. 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.⁹

33. 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.

⁹ Reber at [32]

In other words, **the owner of a registered trade mark cannot promote the mark independently from the 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.**

34. Whilst the evidence showing the landing page of the website easyservices.co.uk is dated within the most recent five-year period, as the applicant correctly pointed out in its submissions in lieu, the proprietor has failed to provide any evidence of use for any goods or services at all. In this connection, it is significant that in its submissions in lieu, the proprietor states that ***“the consistent use of EASYSERVICES as part of the family can be seen at Exhibit REP4, which contains extracts from the Proprietor’s website at easyservices.co.uk”*** and that *“the proprietor has maintained an active website at this address for several years”*. This suggests that the primary purpose of the evidence relating to website easyservices.co.uk is to demonstrate that the proprietor has promoted the mark ‘EASYSERVICES’ as part of its ‘EASY’ family of marks. However, as I have said earlier, the promotion of a trade mark **independently** from the registered goods and services is not compatible with the trade mark's function as an indication of origin. The proprietor’s approach appears to conflate the consideration that the mark ‘EASYSERVICES’ has been promoted as belonging to the ‘EASY’ family of marks with the question of whether there had been in the relevant period genuine use of that mark in relation to the registered services. That approach is wrong in law and is not very helpful. For this reason, showing that the proprietor has maintained an active website at easyservices.co.uk does not really assist the proprietor’s case further because it does not prove that the mark ‘EAYSERVICES’ has been used in relation to the services for which it is registered. In particular, whilst a page might have been maintained at easyservices.co.uk, there is nothing in the evidence which is capable of proving that during any of the relevant periods a fully functioning website was in operation at that domain name, and that the registered services were available to be purchased through that website. On the contrary, all the pages exhibited appear to be holding pages as the text **“coming soon”** suggests that a full website was being built or under construction, whereas the offer of a A4 notepad as a promotional item is outside the specification of the trade mark registration. It follows that since the evidence does not establish that the website easyservices.co.uk has been used to promote or sell any of the registered services under the mark

'EASYSERVICES', that use is not relevant, because it is not genuine. A further consequence of this is that since the website easyservices.co.uk has not been used for the purpose of maintaining or creating a share of the market for the registered services, the evidence about the number of visitors becomes redundant (and, in any event, is minimal).

35. 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 'EASYSERVICES' as part of the 'EASY' family of marks (on easyservices.co.uk, easy.com and on a van) 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.

36. Admittedly, the evidence filed in this case includes some invoices, however, as it will be recalled, they do not relate to the mark at issue or, indeed, to any of the services for which that mark is registered. In its submissions in lieu, the proprietor states that the invoices involve the mark 'EASYSERVICES' as well as 'EASYWOO', but that assertion is misconceived, as none of the invoices relate to money paid in accordance with clause 12 of the addendum, which is the only clause that regulates the fees and royalties to be paid by the licensee to the proprietor for the use of the mark 'EASYSERVICES'.

37. Whilst the proprietor might have signed a written agreement licensing the use of the mark 'EASYSERVICES', consent is not the same as **use with consent**. The onus is on the proprietor to show use. The evidence does not satisfy the condition of showing that the mark has been used with the consent of the proprietor in connection with the registered services; in particular, there is nothing to indicate that after the agreement was signed, the licensee used the mark 'EASYSERVICES' in relation to the marketing of services falling within the meaning of the registered (or relevant) services. Significantly, the only possible reference to the nature of the services contained in the addendum is that contained in clause 12 which refers briefly to "*the marketplace of other self-employed service providers*" and does not appear to cover the registered (or relevant) services.

38. 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. In the case 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 'EASYSERVICES' is either purported to be part of the 'EASY' family of mark, or is referred to in a license agreement but not for the purposes of identifying any of the services for which the mark is registered. Consequently, the link between the 'EASYSERVICES' mark and the marketing of the registered services is not established.

39. Likewise, the primary purpose of the website easy.com is clearly promoting the proprietor's family of marks, rather than offering any goods or services for sale, and it has not been explained why the ultimate purchaser of the relevant services would visit this website in order to get information about the proprietor's "*full list of brands in the EASY family of brand*". Instead, the website seems to be directed to potential licensees as indicated by the header "*Pitch it easy*", "*New Ideas*", "*Brand Thieves*" and "*Licenses*".

40. I also note that notwithstanding the proprietor's claim that 'EASYSERVICES' 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 'EASYSERVICES' 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 and (ii) second, 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 on marks, if proven (which in this case is **not**, the evidence only establishing that the proprietor **claims to owns a family of marks**) is relevant in assessing genuine use of a trade mark.

41. 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. In the present case, there is a serious paucity of evidence about the proprietor.

42. 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 between the mark 'EASYSERVICES' and the marketing of the registered (or relevant) services, it cannot be said that the use made by the proprietor is real. The use of the mark 'EASYSERVICES' is not use on the market to distinguish the proprietor's services. The fact that the mark 'EASYSERVICES' 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.

43. The proprietor has failed to establish that the marks UK00002321978 and UK00903033917 have 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 21, I would have made a finding of non-use in relation to them.

44. 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.

45. As there is no genuine use of the mark, the registrations are revoked.

OUTCOME

46. The applications for revocation on the grounds of non-use therefore succeed under both Sections 46(1)(a) and 46(1)(b). The registrations will be revoked in respect of all the services for which they are registered.

47. The effective dates of revocations are 27 September 2008 (for the figurative mark) and 8 March 2010 (for the word mark), the earliest dates requested by the applicant.

COSTS

48. 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 sum of £2,100, calculated as follows:

Preparing the revocation application and considering the counterstatement:	£800
Considering the evidence	£500
Written submissions:	£400
Official fees:	£400
Total	£2,100

49. I therefore order easyGroup Ltd to pay The Support Group (UK) Limited the sum of £2,100. 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

