

O-241-03

DECISION OF THE TRADE MARKS REGISTRY
TRADE MARKS ACT 1994

APPLICANT: EASYGROUP IP LICENSING LIMITED

INVALIDITY N^o. 80868

AND

REGISTERED PROPRIETOR: NIAGARA HEALTHCARE PLC

REGISTRATION N^o. 2286217

CLASS 12



TRADE MARKS ACT 1994

BACKGROUND

Trade mark in issue

1. The registered mark is shown on the front page of this decision; the colours red, blue and grey are claimed as an element of the first of the series. The mark was applied for on 22nd November 2001 by Niagara Healthcare plc Colomendy Industrial Estate, Rhyl Road, Denbigh, Clwyd, LL16 5TS United Kingdom for:

Class 12: Battery powered scooters for the elderly and the infirm; battery powered wheelchairs; invalids' carriages and conveyances.

2. On 2nd August 2000, easyGroup IP Licensing Limited (which I will call 'easyGroup') applied for invalidation of the mark under s. 47(2) of the Act, alleging prior rights in a number of what they called 'easy' marks, basing their attack on ss. 5(2)(b), 5(3) and 5(4)(a). They are the proprietors of the marks indicated in the ANNEX, listed with their Statement of Grounds.
3. A Counterstatement was provided by the Registered Proprietor ('Niagara') denying the grounds asserted. Both parties ask for costs to be awarded in their favour.

HEARING

4. The matter was heard on 17th of October 2002, where the applicants were represented by Mr. Roberts of Counsel, advised by Messrs. Page White & Farrer, and the Registered Proprietor by John Lambert of Counsel, advised by Messrs. L J Bray & Co.

EVIDENCE

The applicants' evidence

5. This is reasonably extensive from easyGroup, appearing in the three Witness Statements by Mr. James Rothnie, their Director of Corporate Affairs. Submission is liberally intermingled with fact, inference and conjecture, and I do not think it useful to set out a full summary here. I will refer to particular sections as they become relevant to the course of my decision.
6. Nevertheless, I note easyGroup's contention - and their evidence - that EASYJET is a household name in the UK for airline services; with this, as will be seen, I agree. However, their submissions go beyond this: they argue that (Rothnie 1, paragraph 4):

"The success of easyJet Airline and the establishment of a notable reputation within the EC, particularly in the UK, has paved the way for the expansion of the 'easy' brand into other fields. The easyJet Airline business attributes of low cost, simplicity and accessibility have been embraced by the other 'easy' businesses and, to emphasise the cohesiveness of the 'easy' brand..."

7. In the words of Mr. Roberts, as of the date of the filing of the registration in suit, the applicants state that the name ‘easy’ was not just ‘..the common factor..’ in all of their registrations, but it was the ‘..dominant component..’ establishing ‘..a family of distinctively similar marks.’
8. I examine the law and the evidence on this later.

The Registered Proprietors’ evidence

9. Though this provides an interesting background history of Niagara, I do not believe that I can identify a great deal in their evidence – provided in the Witness Statement of Timothy Paul Ellis, their Financial Director – that actually helps their case advance beyond that represented by the existence of their mark on the Register: in other words, the *prima facie* validity registration bestows (s. 72).

10. For example, the ‘state of the register’ evidence in Exhibit TPE 5 (Ellis, paragraph 10) proves nothing beyond a desire by traders to use the word ‘easy’ in their marks. I note the following from a recent Decision of the Appointed Person (*ZAROCID* BL/O/140/03):

“.. the requisite degree of distinctiveness cannot be demonstrated or disproved simply by evidence of entries in the Register of Trade Marks. Entries in the Register do not of themselves affect the way in which marks are perceived and remembered.”

11. This observation about such evidence in Registry decisions is now so formulaic and clichéd that I am surprised such material is still trotted out at all.

12. Much of the other material is of the same evidential value. However, I note the significant nature of the Register Proprietor’s business (Ellis, paragraph 5 and Exhibit TPE 3). I also note the survey in Exhibit TPE 3. Nevertheless, with the exception of his observations in paragraph 9, the rest of Mr. Ellis’ Statement really does not merit summary at all: there is nothing, for example, to show that the mark was used in the UK before the relevant date. In short, as Mr. Roberts pointed out at the hearing, no evidence exists supporting trade under Niagara’s mark before this time. I can observe material indicative of a preparation to trade (in particular, see Ellis paragraph 6), but there is nothing demonstrating creation of distinctiveness in the marketplace for the Niagara’s goods under their mark before 22nd November 2001.

13. Finally, where Mr. Ellis’ Statement switches from evidence to argument, I will refer to these as they become relevant to my decision.

LAW

14. The relevant sections of the Act are:

“47(2) The registration of a trade mark may be declared invalid on the ground -

(a) that there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, or

(b) .. ,

unless the proprietor of that earlier trade mark or other earlier right has consented to the registration.”

“5(2) A trade mark shall not be registered if because -

(a) ... , or

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

(3) A trade mark which -

(a) is identical with or similar to an earlier trade mark, and

(b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is protected,

shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark, in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b)

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an “earlier right” in relation to the trade mark.”

DECISION

15. The applicants have a number of earlier marks, under s. 6(1), for the purposes of ss. 5(2)(b) and 5(3). These are cited in the ANNEX. However, during an exchange at the hearing, Mr. Roberts stated that his ‘best’ case was represented by the following marks, in that, if he lost on these, he would not ‘.. win on anything else’. These marks are:

CTM 1232909: EASYJET

CTM 1699792: EASY

CTM 1261502: EASYRENTACAR

UK 2255933: EASYJET.COM THE WEB'S FAVOURITE AIRLINE

16. However, later on in the hearing, Mr. Roberts also mentioned CTM No. 1128743 EASYTECH and EASYJET GIFTS (CTM No. 1983667 and UK Registration No. 2253810). As a result, I am somewhat confused as to which marks actually represent his 'best case', but will consider all those cited by him. I note that the following marks are as yet unregistered:

CTM 1699792: EASY

UK 2255933: EASYJET.COM THE WEB'S FAVOURITE AIRLINE

17. It was agreed at the hearing that any decision in the applicants' favour based on these marks would depend on them progressing to full registration.

S. 5(2)(b)

18. In approaching this section I am mindful of the following decisions of the European Court of Justice (ECJ) on this provision (equivalent to Article 4(1)(b) of Directive 89/104/EEC) in *Sabel BV v Puma AG* [1998] E.T.M.R. 1, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] E.T.M.R. 1, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77 and *Marca Mode CV v Adidas AG* [2000] E.T.M.R. 723. It is clear from these cases that:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel*, paragraph 22;

(b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV*, paragraph 23, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind; *Lloyd*, paragraph 27;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV*, paragraph 23;

(d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV*, paragraph 23;

(e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and *vice versa*; *Canon*, paragraph 17;

(f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either *per se* or because of the use that has been made of it; *Sabel*, paragraph 24;

(g) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel*, paragraph 26;

(h) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode*, paragraph 41;

(i) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon*, paragraph 29.

Comparison of goods and services

19. The goods and services cited by Mr. Roberts as relevant to confusion under s. 5(2)(b) are:

EASY	Class 39: ‘Transportation of goods, passengers and travellers by air ... arranging of transportation of goods, passengers and travellers by land; rental and hire of vehicles, boats and aircraft..’
EASYJET	Class 39: ‘..transportation of goods, passengers and travellers by land, sea and air; ... rental and hire of vehicles, boats and aircraft...’.
EASYTECH	Class 12: ‘Vehicles; apparatus for locomotion by land, air or water; ... parts and fittings for the aforesaid goods included in Class 12.’ Class 39: ‘Transportation of goods, passengers and travellers by air; arranging of transportation of goods, passengers and travellers by land..’
EASYRENTACAR	Class 39: ‘Transportation services; hire and rental of motor vehicles..’
EASYJET.COM THE WEB’S FAVOURITE AIRLINE	Class 12: ‘Scooters, bicycles..’ Class 39: ‘..arranging of transportation of goods, passengers and travellers by land and sea ... rental and hire of ... vehicles ..’
EASYJET GIFTS	Class 12: ‘Scooters, bicycles.’ Class 39: ‘..arranging of transportation of goods, passengers and travellers by land and sea .. rental and hire of ... vehicles..’ Class 28: ‘Games and playthings; toys; gymnastic and sporting articles; decorations for Christmas trees, model aeroplanes, scooters, teddy bears, balls, golf balls.’

These must be compared with Niagara's specification:

'Battery powered scooters for the elderly and the infirm; battery powered wheelchairs; invalids' carriages and conveyances.'

20. A number of cases have considered the similarity of goods issue. First, there must be, in a particular case, a 'threshold' level of 'similarity' below which confusion will not occur. Mr. Hobbs Q.C., sitting as the Appointed Person in *Raleigh International* (SRIS 0-253-00) stated:

"Similarities between marks cannot eliminate differences between goods or services; and similarities between goods or services cannot eliminate differences between marks. So the purpose of the assessment under section 5(2) must be to determine the net effect of the given similarities and differences."

21. Next, I must only consider the goods as they are set out in the specifications as listed. Whatever use is claimed may, or may not, reflect the goods as specified, but is, nevertheless, irrelevant to the right registration grants (see *Origins Natural Resources Inc v Origin Clothing Ltd* [1995] FSR 280). Under s. 5(2)(b) notional and fair use of the respective marks for the goods/services contained within the specifications is assumed. The protection afforded to the parties is thus bounded by the limits of their specification of goods, not by what they may actually be trading in at a given time: the Registrar will compare mark against mark and specification against specification, and that is what I must consider here.
22. Guidance on the approach to be adopted in comparing goods and services can be found in two main authorities. The first is *British Sugar Plc v James Robertson & Sons Ltd* (TREAT) [1996] RPC 281 at page 296. Adapted to the current case the test proposed by Mr. Justice Jacob involved consideration of the following:

- (a) the uses of the respective goods or services;
- (b) the users of the respective goods or services;
- (c) the physical nature of the goods or services;
- (d) the trade channels through which the goods or services reach the market;
- (f) the extent to which the respective goods or services are competitive.

These factors were referred to in the opinion of the Advocate General in *Canon*; page 127, paragraphs 45 - 48. In its judgment, the ECJ stated at paragraph 23:

"23. In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their end users and their method of use and whether they are in competition with each other or are complementary."

23. Mr. Robert's submissions focused on the services in Class 39 and the goods in Class 12. I wish to deal with the former first. Mr. Roberts stated:

“We say that there are affinities between the specification of goods and the registration and the goods and services in the earlier marks.

We say that the goods applied for are modes of transportation and here we have transportation services and the rental and hire of modes of transport. . .”

He went on to state that, though his client’s specifications were ‘..broad and they do catch an awful lot within their scope..’ it was not ‘.. possible in any given case to distinguish the particular means of transportation on the basis that it was something highly specialised.’

24. I may not disagree with the latter general point, but I think I must struggle to accept that ‘..transportation of goods, passengers and travellers by land..’ (EASY, EASYJET EASYTECH and EASYJET GIFTS), in particular, are similar to Niagara’s goods. Mr. Roberts made further comments:

‘... you are entitled to consider notional and fair use of the earlier trade mark in relation to transportation services and those transport services will include all forms of transportation known to man, including battery powered scooters for the elderly and the infirm.’

25. He went on to say:

“.. as a matter of ordinary English these are modes of transportation and therefore identical. ... the rental and hire of vehicles and transportation services are very closely allied to the goods themselves. ... we would say that it is self-evident that these are closely allied in the minds of the average consumer and are competitive with one another.”

26. A car can be defined as a ‘mode of transportation’, as can broadly (very broadly) a wheelchair, but this is not what easyGroup sought to protect in their Class 39 registrations. They are offering the facility of conveying consumers from A to B: these are ‘transportation services’ and I am being asked to conclude, because there are no doubt many and various means to do this (which do not clearly exclude Niagara’s goods), that the former are similar to the latter.

27. I do not agree. In my view, transportation services in Class 12 are not similar to vehicles suitable for people with mobility conditions. I note the following from a Decision of the Appointed Person in *Balmoral* [1999] R.P.C. 297, page 301 that proximity of trading is a matter of fact and degree which should be given the weight and priority it deserves as part of the overall assessment (of confusion). In that case it was also stated (page 302), in relation to ‘wines’ and ‘bar services’:

“When the overall pattern of trade is considered in terms of the factors identified by Jacob J. in the *British Sugar* case (uses, users and physical nature of the relevant goods and services; channels of distribution, positioning in retail outlets, competitive leanings and market segmentation) it seems clear to me that suppliers of wines should be regarded as trading in close proximity ... to suppliers of bar services. In my view the degree of proximity is such that people in the market for those .. services would readily accept a suggestion to the effect that a supplier ...of bar services was also engaged in the business of supplying wines.”

I have seen no evidence that establishes a similar species of trading link between general transportation services and the goods of the Registered Proprietor. In doing so, I also take into account the comments of Jacob J. in *Avnet Incorporated v. Isoact Ltd* [1998] FSR 16 where he said:

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase.”

I also consider that the same must be said of the services of ‘..arranging of transportation of goods, passengers and travellers by land..’; if anything these are further removed from Niagara’s goods.

28. Turning, now, to the ‘..rental and hire of aircraft, vehicles and boats..’ and the ‘.. hire and rental of motor vehicles..’ (EASY, EASYRENTACAR and EASYJET.COM THE WEB’S FAVOURITE AIRLINE), the *Concise Oxford Dictionary* (Oxford University Press, 2001) defines a vehicle as ‘..a thing used for transporting people or goods on land, e.g. a car, truck, or cart.’ Though one might argue that ‘motor vehicles’ were not intended to include Niagara’s goods, I do not see that I can exclude them from the definition of vehicles in general. The question remains, however, as to how similar is a service hiring out mobility vehicles and one of selling them? Having concluded that vehicles subsume such conveyances, I think I must conclude that there is some similarity here. Further, without evidence to the contrary, it does not seem unlikely that hire and sale of such items could be offered by the same enterprise that might sell them: many mobility conditions may be temporary in nature.
29. It follows from this that, arguably, the applicants’ best case in terms of the similitude between the parties goods and services, rests with their goods in Class 12, that is: ‘vehicles’ (EASYTECH) and ‘scooters’ (EASYJET.COM THE WEB’S FAVOURITE AIRLINE and EASYJET GIFTS). I want to consider ‘scooters’ first, which Niagara’s registration also specifies.
30. The parties disagreed, unsurprisingly, as to the definition of the word ‘scooter’. Mr. Roberts stated that the word encapsulated the scooters of Niagara’s specification. Mr. Lambert said that they did not. He was of the view that though the same noun was used in both specifications, the goods referred to were different. – His client’s use of the word is novel and neoteric, employed (perhaps) because of similarities between the items shown in Exhibit TPE 4 and the traditional motor scooter (see definition below) or from the (probable) underivative word ‘scoot’, which means ‘to go or cause to go quickly’ (*Collins English Dictionary*).
31. A number of other authorities have dealt with the proper approach to the meaning of particular terms. Traditionally, terms are to be given their ordinary and natural meaning. *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267 puts a recent gloss on this point:

“I should add that I see no reason to give the word “cosmetics” and “toilet preparations” or any other word found in Schedule 4 to the Trade Mark Regulations 1994 anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context. In particular, I

see no reason to give the words an unnaturally narrow meaning simply because registration under the 1994 Act bestows a monopoly on the proprietor.”

Also from *TREAT* case:

“When it comes to construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of trade. After all, a trade mark specification is concerned with use in trade.”

32. Finally, the Registrar is entitled to treat the Class number as relevant to the interpretation of the scope of the specification of goods (*Reliance Water Controls Ltd v Altecnic Ltd* [2002] RPC 34).
33. The ordinary, usual meaning of the word ‘scooter’, from the *Collins English Dictionary* (HarperCollins 2000), is:

- ‘1. a child’s vehicle consisting of a low footboard on wheels, steered by handlebars. It is propelled by pushing one foot against the ground.
2. See motor scooter.’

‘Motor scooter’ is defined as:

‘A light motorcycle with small wheels and an enclosed engine. Often shortened to: *scooter*.’

34. Let me state first, that it is easyGroup’s use of the word ‘scooter’ here that is at issue – the meaning of Niagara’s is very clear: it is a carriage for those with mobility conditions. I do not believe that it is helpful at this juncture to ask whether easyGroup’s specifications intended to include the latter, as it is normally difficult, if not impossible, to divine an applicants’ precise intention in choosing a particular word; hence the very practical approach restated in *Beautimatic* – no doubt based on the principle that an applicant’s intention is reflected in the choice of vocabulary they adopt to infest their specifications.
35. Of course, this becomes more problematic when, taking up Mr. Lambert’s point, the same word retains different meanings – a situation not unusual in the English language. In such circumstances, one must apply common sense. And the appropriate connotation – again following the guidance in *Beautimatic* – is usually obvious from context, i.e. the Class a good is listed in and the other goods it is listed with.
36. Mr. Lambert suggested that the applicants’ use referred to a child’s toy: this might be the case in Class 28 (EASYGIFTS) – as context and Class suggest – but I do not consider that this definition is so indicated by the Class 12 use (EASYJET.COM THE WEB’S FAVOURITE AIRLINE and EASYGIFTS), which includes ‘Vehicles; apparatus for locomotion by land, air or water.’ I have already found the former – ‘Vehicles’ – to be similar to the Registered Proprietor’s goods; the former is a very general description, but does not exclude the latter.
37. In summary, I find the following of the applicants marks to specify identical and similar goods and services to the Registered Proprietor’s goods:

EASYJET EASY	Class 39: ‘... rental and hire of vehicles...’
EASYTECH	Class 12: ‘Vehicles; apparatus for locomotion by land...’
EASYRENTACAR	Class 39: ‘... hire and rental of motor vehicles..’
EASYJET.COM THE WEB’S FAVOURITE AIRLINE	Class 12: ‘Scooters, bicycles..’ Class 39: ‘..rental and hire of .. vehicles..’
EASYJET GIFTS	Class 12: ‘Scooters, bicycles.’

EasyGroup’s Reputation

38. In his skeleton argument, Mr. Lambert states that the Mr. Rothnie ‘..testifies that easyJet is a relatively small, but fast growing, no frills short haul airline..’. I think this rather undersells the value of the applicants’ evidence of their reputation; anyhow, it is not actually what Mr. Rothnie says. – I note the survey at Exhibit JR3, an NOP poll carried out in April 2000 – which indicates a recognition rate of 81% in the UK for the mark EASYJET. I also note paragraphs 10 to 13 of Mr. Rothnie’s statement. There is no doubt in my mind that that applicants’ EASYJET mark was a household name for what may be called ‘budget airline’ travel as of the date Niagara applied for their own mark – 22nd November 2001. The question is, had this reputation extended to other activities and further, if it did, was this enough to grant the applicants’ marks the status of a ‘family of marks’ based on the prefix EASY, at that time?
39. To answer this question, I need to consider the applicants’ evidence of commercial activity under their other registrations.

EASYRENTACAR. Mr. Rothnie states that this car hire service was ‘announced’ in 1998, publicised from 1999 onwards and now has car rental sites in London, Manchester, Liverpool and Birmingham. He states:

“In relation to easyRentacar, unaudited estimates of turnover are £2 million for revenue between February 2000 and the end of September 2000. Within its first month of trading over 40,000 rental days in bookings were taken and there were around 65,000 visits to its website between May and December 1999, before it even began trading in February 2000.”

EASYEVERYTHING. June 1999 saw the opening of a 500 seat internet café under this mark in London. Mr. Rothnie states that between April 2000 and July 2002 there were nearly 19 million visitors to ‘.. the 20 easyEverything stores and in July 2001 alone there were 1.5 million..’. In terms of trade, turnover in the UK in the period June to 31st September 1999 under the mark is given as £392,000. Turnover between June 1999 and June 2001 is given as £23.6 million. It is not clear that the latter applies to the UK alone. Mr. Rothnie is rather ambiguous about the extent of trade in the UK, as the following sentence shows:

‘The website relating to easyEverything received 10 million visits in the year to 15 May 2000 and I confirm that the services are available to customers in four major UK cities with five stores in London and stores in Edinburgh, Glasgow and Manchester.’

EASYMONEY. There is no evidence of trade under this mark before the relevant date. However, Mr. Rothnie states:

‘.. the establishment of the new easyMoney business involved the total spend of £492,000 between November 1999 and August 2000, before this service had even been launched, and already by August 2000 had been substantial positive feedback and press coverage in the UK.’

40. There is also evidence of promotion of the trade under these names (Rothnie, paragraph 16):

“In total by the end of the year 2000 easyJet Airline Company Ltd had spent over £40 million on advertising or promoting its business and the bulk of that amount, £30 million, has been spent in the UK. The easyEverything and easyRentacar businesses have been promoted in the same manner with the same intensity with around £2.6 million spent in the UK between October 1999 and August 2000 in relation to easyEverything and over £500,000 spent on promotion in relation to easyRentacar in London alone by the end of 2000, including £312,610 spent on outdoor promotions, £173,418 on press and £79,733 on radio.’

41. Mr. Rothnie is clear about the nature and extent of the notoriety his company possesses. He states:

- “...goodwill in the ‘easy’ name in relation to low cost, widely accessible e-tailored travel services and it has become well known to consumers.”
- “The success of easyJet Airline ... has paved the way for the expansion of the ‘easy’ brand into other fields..”
- “easyGroup (UK) Limited is the investment vehicle for the group of companies and acts as an ‘incubator’ for Internet start-up ‘easy’ businesses in new fields.”
- “The united business ethos of simplicity, low cost and accessibility of easyJet Airline and its related companies has resulted in the emergence of a well-known brand identity. The ‘easy’ mark is key to the brand identity. Key features of this are that easyJet Airline and its related companies generally use short trade marks often consisting of two words with the prefix ‘easy’, combined to form one new word, where the suffix has connotations with the services involved.”
- “It is important to note that the development of the ‘easy’ name as a distinctive and valuable trade mark was a deliberate policy since the launch of easyJet Airline in 1995. Particular care has been taken to ensure that all the ‘easy’ businesses that operate under the ‘easy’ mark can deliver low cost services and that they use the same ‘easy’ brand identity.”

- "... the 'easy' prefix is now recognised by the public as denoting the businesses of easyJet Airline and related companies.."

42. Despite these assertions, I do not believe the evidence is sufficient to establish the applicants as trading over a wide portfolio of activities under their trade marks such that use of the EASY prefix had become significantly associated with them as of 22nd November 2001. By this period, they had diversified certainly, but only to a limited extent. I accept that the car hire services (EASYRENTACAR) experienced significant trade in it's first year (£2 million for revenue between February 2000 and the end of September 2000; though later data is not forthcoming), but I am given no idea of the extent of penetration into what must be a vast market, nor of total number of users of the facility. Then there is the provision of (at least) one Internet Café (EASYEVERTHING) in London – there might have been more in the UK, but this is not made clear and I have already pointed out the ambiguity in Mr. Rothnie's evidence on trade under this mark. There is evidence of preparations to trade under the EASYMONEY brand before the relevant date, but that is all.
43. In paragraph 16 of his declaration – quoted above – Mr. Rothnie provides a breakdown of the investment in promotion his clients have made in these marks: by far the greatest is in what I regard as the applicants' focal business, that of an airline service. On the evidence I have seen, I cannot accept that the applicants had established, by 22nd November, a reputation in the EASY prefix that extended beyond that present in their EASYJET registration for airline services.
44. Of course, this undermines Mr. Rothnie's claim to a 'family' of marks under the prefix (paragraph 24). On this point, Mr. Roberts cited the following case law from *Torremar Trade Mark* [2003] R.P.C. 4:
- "18 Each of the earlier trade marks cited by the opponent must be considered in turn for the purpose of determining whether it prevents acceptance of the contested application for registration under s.5(2) of the Act.
- 19 In each case the question to be determined is whether there are similarities (in terms of marks and goods) which would combine to create a likelihood of confusion if the earlier trade mark and the sign subsequently presented for registration were used concurrently in relation to the goods for which they are respectively registered and proposed to be registered.
- 20 The objection cannot be upheld if it does not appear that the public could believe that the goods supplied under the marks in contention come from the same undertaking or, as the case may be, from economically-linked undertakings: Case C-39/97 *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer inc.* [1998] E.C.R. I-5507, paragraphs 26 to 30.
- 21 When (as contemplated by s.5(2)(b) of the Act) the marks in issue are not identical, they need to be *distinctively similar* in order to be capable of inducing such a belief in the mind of the average consumer of the goods concerned.
- 22 At this point it is necessary to observe that marks which converge upon a particular mode or element of expression may or may not be found upon due consideration to be distinctively similar. The position varies according to the propensity of the particular

mode or element of expression to be perceived, in the context of the marks as a whole, as origin specific (see, for example, *Wagamama Ltd v City Centre Restaurants Plc* [1995] F.S.R. 713) or origin neutral (see, for example, *The European Ltd v The Economist Newspaper Ltd* [1998] F.S.R. 283).

23 The relevant propensity may, on established principles, be inherent or acquired through use. This leaves room for evidence demonstrating that the mode or element of expression in question has an established significance which the average consumer would take to have been carried through to the marks in issue.

24 The view that the established significance is origin specific may be supported by evidence directed to the way in which the mode or element of expression has been used as the basis for a ‘family’ of distinctively similar marks: *Duonebs Trade Mark* January 2, 2001 SRIS O/048/01 (Mr Simon Thorley Q.C.); *The Infamous Nut Company Ltd’s Application* September 17, 2001 SRIS O/411/01 (Professor Ruth Annand); *Lifeforce International Inc.’s Application; Opposition of Novartis Nutrition AG* [2001] E.T.M.R. 106, p.1227 (Opposition Division, OHIM). The view that the established significance is origin neutral may be supported by evidence directed to the way in which the mode or element of expression has been used by traders and consumers more generally.

25 In neither case can the proposition in contention be substantiated simply by evidence of entries in the register of trade marks: entries in the register do not in themselves affect the way in which marks are perceived and remembered.”

On the basis of my findings above, I do not accept that, as of the relevant date, EASY was an element of expression perceived, in the context of the marks used as a whole, to be origin specific to the applicants. In short, the applicants did not possess a family of EASY marks.

45. Mr. Rothnie makes other unsupported conjectures from the evidence. For example, he states: “In addition to the above there has been significant press coverage of the services of easyJet Airline Company Ltd and related companies and attached marked ‘JR5’ are Reuters listings of sample press coverage with examples, which all show that interest in the ‘easy’ group of companies has been relentless.” “The fact that the ‘easy’ prefix is now recognised by the public as denoting the businesses of easyJet Airline and related companies and therefore seen as their trade marks is illustrated by the repeated emphasis in the press to the easy mark and not to the full trading names of the companies. For example, attached and marked JR2 there are references to easy car hire, easyGroup umbrella, easy does it, easy revolution, easyFloat and easyRider to name but a few.”

The vast majority of the coverage in Exhibit JR5 relates to the applicants’ business as an airline. And I am not clear how much of this material relates to the UK press, in any case.

46. Then there is Mr. Rothnie’s unfounded assumption that usage of a term by the press is indicative of the acquaintance of a mark as a trade indicator amongst consumers: Mr. Rothnie extrapolates from press coverage to public knowledge. The plays on words he cites are typical of the press, particularly when a trade mark allows it. The few examples shown *may* be evidence of recognition of a mark amongst consumers, but I struggle to make this inference

here. It equally could be taken as evidence of the rather obvious connotation of the word 'easy' which, as I say, the press has latched onto in a thoroughly predictable manner.

47. Anyhow, I do not find the material in Exhibit JR 2 – consisting of various articles from various UK newspapers – as particularly convincing: one from June 1999, two from June 2000, another from September 2000 and four from October 2000. Another 'Reuters Business Briefing' appears at the end of Exhibit JR2: Mr. Roberts made much of this document, largely because it refers to '..the easyGroup umbrella'. It is undated and even if it appeared before the relevant date, I do not believe it can, alone, establish any right in the EASY prefix as such.

The average consumer

48. I take the average consumer in this case to an ordinary member of the public who is interested in purchasing a vehicular mobility aid, as exemplified in the Registered Proprietor's evidence.

Similarity of the marks

49. Niagara's mark consists of the words EASYSHOPPER and some surrounding design:



50. I do not regard this material as the most dominant element in the mark, which must be the words EASY SHOPPER, nevertheless I am conscious of the fact that I must consider the mark as a whole. All the applicants' marks contain the element EASY, which is not untypically depicted in lowercase, with a following word or words, usually allusive, but sometimes descriptive of some service provided under the name. On the whole I think I am able to accept that there is some similarity between the earlier marks cited by Mr. Roberts and the Niagara mark shown above.

Likelihood of confusion

51. I am required to consider each of the opponents' marks in turn. If I take the mark EASY, first, I have found that this mark is not associated with the applicants in the marketplace, that is, it has not attained distinctiveness through use. Neither can it be regarded as a mark possessing strong inherent capacity to distinguish – being a well known English word, which could appropriately apply to any number of goods and services. This would suggest that such a

mark, if registered, would attract little penumbra of protection. This is the ‘flip-side’ of the principle stated in *Sabel* that there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either *per se* or because of the use that has been made of it.

52. Further, though the whole of the applicants’ mark appears within that of the Registered Proprietors’, because it is a very familiar word, I do not see consumers focusing on it as the arrestive element in the registered mark. Rather, I think the element SHOPPER, again a very descriptive word, together with the EASY element, is likely to take the average consumer in quite a different conceptual direction from *EASY solus*. Added to this I have found the services at issue here – rental and hire of vehicles – to be similar, not identical, to Niagara’s goods and, all in all, I do not believe that confusion will occur.
53. As for the mark EASYJET, again, the ‘... rental and hire of vehicles’ are similar to Niagara’s goods. Again, I must approach this matter as if the applicants were hiring or renting vehicular mobility aids under the mark EASYJET. In doing so I must regard this mark as a good and strong mark: I have found it to be a well known mark in the UK.
54. Nevertheless, as I have noted, this notoriety does not extend to the EASY prefix. Thus, part of the applicant’s mark, at least, is not distinctive of them: it is a common English word, with the familiar meaning of simple, uncomplicated and straightforward. And this is the only element the marks share in common; it is the extent of their visual, aural and conceptual identity. Continuing this analysis, but taking the marks as a whole, there are significant differences between them: conceptually the applicants’ mark is likely to bring to mind jet engined aeroplanes: Niagara’s mark ‘shopping’, both of which are somehow, when combined with the EASY element, made simple or accessible.
55. There was some debate at the hearing about how the nature of the applicants’ reputation impacts on the likelihood of confusion under s. 5(2)(b). Mr. Roberts stated:

“Use can only increase the acquired distinctive characteristics. It cannot diminish it in any circumstances and therefore there is an extent to which the question of similarity of services is hermetically sealed from acquired distinctive character. Even though it is a global appreciation there is a requirement from the ECJ that acquired distinctive character arises through use and use gives rise to and increases acquired distinctive character.”
56. *Sabel* certainly suggests that the more distinctive a mark, the greater the likelihood of confusion (paragraph 24): this logically follows from the level of awareness consumers will have of a famous mark, which increases the probability, on seeing a similar or related mark, that they might consider that the products involved come from the same trade source. The passage in *Canon* deals with this point as follows:

“18. ... according to the case law of the Court, the more distinctive the earlier mark, the greater the risk of confusion *Sabel* (paragraph 24). Since protection of a trade mark depends, in accordance with Article 4(1)(b) of the Directive, on there being a likelihood of confusion, marks with a highly distinctive character, either *per se* or because of the reputation they possess on the market, enjoy broader protection than marks with a less distinctive character.”

57. However, confusion still must be likely and, despite the applicants' reputation, there are clear differences between the marks, and the goods and services at issue share similarity not identity. As a consequence, I do not believe that confusion is probable with the mark EASYJET.
58. Much the same argument can be set in relation to the EASYRENTACAR mark: the goods and services at issue are very much the same – hire and rental of motor vehicles – and, again, the applicants' mark displays strong visual and aural differences. Conceptually, easyGroup's mark makes an allusive reference to hire of automobiles and, again, Niagara's mark is likely to call to mind the concept of shopping and enabled access thereto.
59. This is a *prima facie* comparison between two marks, because I have found that the applicants do not possess any particular reputation in the marketplace under EASYRENTACAR. However, the marks have been used on identical goods. Mr. Roberts referred me to the following passage in *Canon*:
- “17. A global assessment of the likelihood of confusion implies some interdependence between the relevant factors, and in particular a similarity between the trade marks and between these goods or services. Accordingly, a lesser degree of similarity between these goods or services may be offset by a greater degree of similarity between the marks, and *vice versa*. The interdependence of these factors is expressly mentioned in the tenth recital of the preamble to the Directive, which states that it is indispensable to give an interpretation of the concept of similarity in relation to the likelihood of confusion, the appreciation of which depends, in particular, on the recognition of the trade mark on the market and the degree of similarity between the mark and the sign and between the goods or services identified.”
60. Nevertheless, there must still be a confusing similarity between the marks at issue. As I have already found, that which the marks share – the element EASY – is not distinctive of the applicants. Again, I do not believe the marks will be confused. My conclusion, here, is strengthened because I have not found this of the applicants' marks to possess anywhere near the reputation associated with their mark EASYJET.
61. Turning to the mark EASYTECH I doubt this is as clearly allusive as some of the applicants' other marks. It could be said to refer, perhaps, to easy, that is simple or accessible technology, but this is guess work on my behalf. Nevertheless, even without the conceptual differences I have discerned between other of the applicants' marks and that in suit, I still do not believe that confusion is likely. Again, the only common element between the marks is the poorly distinctive element EASY, and there are significant aural and conceptual differences.
62. On the basis of these findings, I think I must come to the same conclusion in respect of the mark EASYJET.COM THE WEB'S FAVOURITE AIRLINE for the services in Class 39, ‘..rental and hire of .. vehicles’. Of course, the goods in Class 12, ‘Scooters, bicycles..’, I have found to be identical to Niagara's goods. Despite the presence of the famous mark EASYJET within this mark, visually it is a very different sign from EASYSHOPPER, aurally too; and the semantic significance very much brings to mind the idea of jet air travel, not shopping. In my view, these marks are clearly not confusable.
63. Finally, EASYJET GIFTS is registered for the identical goods in Class 12: ‘Scooters, bicycles’. It seems to me that I must reprise the same arguments I have set out above, in the

main, for the EASYJET mark. If I have been unable to find confusion between the latter and EASYSHOPPER, I must also be unable to do so here: from one reading of the conceptual connection between them the addition of the fully descriptive word ‘gifts’ contributes nothing to the risk of confusion; from another reading it reduces the risk even further, as it not clear how a ‘gift’ of some kind relates to the goods that Niagara specify in their registration.

64. In summary, the grounds under s. 5(2)(b) fail.

Earlier marks, dissimilar goods: s. 5(3)

65. I note the following from the *RARE* trade mark case (BL SRIS 0-470-01), Allan James stated:

“51. The purpose and scope of Section 5(3) of the Act has been considered in a number of cases including *General Motors Corp. v Yplon SA (Chevy)* 1999 ETMR 122 and 2000 RPC 572, *Premier Brands UK Limited v Typhoon Europe Limited* 2000 FSR 767 (*Typhoon*), *Daimler Chrysler v Alavi (Merc)* [2001] RPC 42 and *C.A. Sheimer (M) Sdn Bh’s TM Application (Visa)* 2000 RPC 484.

52. The points that come out of these cases are as follows:

- a) ‘Reputation’ for the purposes of Section 5(3) means that the earlier trade mark is known by a significant part of the public concerned by the products or services covered by that trade mark (paragraph 26 of the ECJ’s judgment in *Chevy*);
- b) Protection is only available where the respective goods or services are not similar (paragraph 29 of the Advocate General’s opinion in *Chevy*);
- c) The provision is not intended to give marks ‘an unduly extensive protection’ - there must be actual detriment or unfair advantage (not merely risks) which must be substantiated to the satisfaction of the national court or tribunal (paragraph 43 of the Advocate General’s Opinion in *Chevy* and paragraph 88 of Pumfrey J’s judgment in the *Merc* case);
- d) The provision is not aimed at every sign whose use may stimulate the relevant public to recall a trade mark which enjoys a reputation with them (per Neuberger J in the *Typhoon* case);
- e) The stronger the earlier mark’s distinctive character and reputation the easier it will be to accept that detriment has been caused to it (paragraph 30 of the ECJ’s judgment in the *Chevy* case);
- f) Confusion as to the trade source of the goods or services offered for sale under the later mark is not a necessary condition before there can be detriment, but is one form of detriment (paragraph 88 of Pumfrey J’s judgment in the *Merc* case);
- g) Detriment can take the form of either making the earlier mark less attractive (tarnishing) or less distinctive - blurring (paragraph 88 of Pumfrey J’s judgment in the *Merc* case);

h) Unfair advantage can take the form of feeding on the fame of the earlier mark in order to substantially increase the marketability of the goods or services offered under the later trade mark (per G Hobbs QC in *Visa* at page 505, lines 10-17)."

66. Mr. Roberts referred to the recent Judgment of the ECJ in Case C292/00 *Davidoff & Cie SA v Gofkid Ltd* [2003] E.T.M.R. 42 which, he stated now extends the protection afforded by s. 5(3) to similar and identical goods and services. I note that paragraph 5 of the applicants' Statement of Case is drawn up in terms of dissimilar goods, and there has been no request to change this aspect of the pleadings; nevertheless, I do not consider that this matters for reasons that will become clear as follows.
67. First, as I have said, by the relevant date, the applicants possessed a reputation such that their name was 'known by a significant part of the public concerned by the products or services which it covers' (*General Motors Corporation v Yplon SA* [2000] RPC 572). This means that it qualifies for the first requirement of s. 5(3).
68. I have also found that certain of the applicants' goods or services are similar to Niagara's goods, but many more are clearly different. Whether Mr. Roberts contention above is correct or not, the applicants are not excluded from the remedy that this section provides on the basis of the items and activities specified with their registrations and applications. Nevertheless, the case law requires, before this ground can succeed, actual detriment or unfair advantage (not merely risk thereof) – which must be demonstrated to my satisfaction.
69. Confusion is not required by s. 5(3) (see point (f)). And it appears that association is not enough (point (d)). But for the detriment or unfair advantage to operate '...there must be some sort of connection formed (I avoid the word association) between the sign used by the defendant and the mark and its associated reputation' (paragraph 86 in *Merc*).
70. I think my finding under s. 5(2)(b) rather decides the unfair advantage point, as this is usually accompanied by confusion in respect of trade source. Even if it is not, the contention that, following a link made between these two business via their marks of trade, customers seeking '...battery powered scooters for the elderly and the infirm; battery powered wheelchairs; invalids carriages and conveyances..' would be delivered to Niagara because of the applicants' reputation in air travel is, in my view, highly unlikely. I do not see that use of the mark EASYSHOPPER could be regarded as a parasitic use that piggy backs on the established reputation of easyGroup.
71. Mr. Roberts cited 'dilution' as a possible detriment to the applicants' reputation, in that use of Niagara's mark would dilute – whether by 'blurring' or by 'tarnishing' – the distinctiveness and therefore value of easyGroup's brand (Rothnie 1 para 28). In other words, the ability of EASY marks to call to mind easyGroup and its 'economically-linked undertakings' in the transportation industry would be diminished by the use of EASYSHOPPER.
72. I do not believe that I can find that this to be the case either. My findings in respect of the EASY element of the applicants' marks do not assign it any particular distinguishing draw to them or their businesses. Further, I see nothing in the trade in which the Registered Proprietor is engaged that, even if a link was made, would be a detriment to the notoriety of the EASYJET name. This ground must also fail.

The earlier right: s. 5(4)(a)

73. Mr. Roberts referred to the guidance given by the Appointed Person in the *Wild Child Trade Mark* [1998] RPC 455, at 459 to 461:

“The question raised by the grounds of opposition is whether normal and fair use of the designation WILD CHILD for the purpose of distinguishing the goods of interest to the applicant from those of other undertakings (see section 1(1) of the Act) was liable to be prevented at the date of the application for registration (see Article 4(4)(b) of the Directive and section 40 of the Act) by enforcement of rights which the applicants could then have asserted against the applicant in accordance with the law of passing off.

A helpful summary of the elements of an action for passing off can be found in *Halsbury's Laws of England* (4th Edition) Vol. 48 (1995 reissue) at paragraph 165. The guidance given with reference to the speeches in the House of Lords in *Reckitt & Colman Products Ltd v Borden Inc.* [1990] R.P.C. 341 and *Erven Warnink BV v J Townend & Sons (Hull) Ltd* [1979] A.C. 731 is (with footnotes omitted) as follows:

“The necessary elements of the action for passing off have been restated by the House of Lords as being three in number:

‘(1) that the plaintiff’s goods or services have acquired a goodwill or reputation in the market and are known by some distinguishing feature;

(2) that there is a misrepresentation by the defendant (whether or not intentional) leading or likely to lead the public to believe that goods or services offered by the defendant are goods or services of the plaintiff; and

(3) that the plaintiff has suffered or is likely to suffer damage as a result of the erroneous belief engendered by the defendant’s misrepresentation.

The restatement of the elements of passing off in the form of this classical trinity has been preferred as providing greater assistance in analysis and decision than the formulation of the elements of the action previously expressed by the House. This latest statement, like the House’s previous statement, should not, however, be treated as akin to a statutory definition or as if the words used by the House constitute an exhaustive, literal definition of passing off, and in particular should not be used to exclude from the ambit of the tort recognised forms of the action for passing off which were not under consideration on the facts before the House.’

Further guidance is given in paragraphs 184 to 188 of the same volume with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

‘To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

- (2) that members of that class will mistakenly infer from the defendant's use of a name, mark or other feature which is the same or sufficiently similar that the defendant's goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.' ”

74. Thus, the question to be asked is whether easyGroup had developed a goodwill under their marks, as of the relevant date, such that use of EASYSHOPPER by Niagara, on all or any of the goods or services specified with the easyGroup marks, on the balance of probabilities, would be likely to lead to confusion and damage to easyGroup's trade?
75. There is no doubt about the applicants' goodwill under the name EASYJET, for airline services, as of the relevant date. However, as I have stated, I do not believe that this goodwill extended to use of the prefix 'EASY' at this time, despite some evidence of limited expansion of the applicants' activities into other businesses before the relevant date. I note the following from an earlier decision of mine, also involving easyGroup (*EASYAIR* BL O/15/03):

“At the risk of tedious repetition, there is no doubt about easyJet's goodwill under the name EASYJET, for airline services, as of the relevant date. However, as I have also stated, I do not believe that this goodwill extended to use of the prefix 'EASY' at this time, despite some evidence of limited expansion of the applicants' activities into businesses just before January 2000 (by means of the EASYEVERYTHING and EASYRENTACAR marks/businesses). Even if some goodwill could have been argued to have been generated by these new ventures, it is my view that easyJet's existing goodwill at that time would have tended to occlude such development, if measured against the knowledge and appreciation the majority of consumers had of easyJet's usual trade.

The nature of the reputation possessed by easyJet is bound to have an effect on the risk of misrepresentation under the doctrine of passing off. Though a 'common field of activity' (*McCulloch v May* [1947] 65 RPC 58) is no longer a requirement in passing off, clearly the similarity of the trade(s) in question is a factor which must be considered (*Annabel's (Berkeley Square) Ltd. v Schock* [1972] RPC 838) when determining confusion in respect of passing off. – Consumers are more likely to assume a connection or be confused where trades are closely related or the same.

Against this, there is the case of *Lego System Aktielskab and Another v Lego M. Lemelstrich Limited* (FSR 1983 155), where the plaintiffs were manufacturers of the famous building bricks and succeeded in a passing-off action against an old established Israeli company which manufactured irrigation equipment, including garden sprays and sprinklers constructed wholly or substantially of brightly coloured plastic material. But here there was at least a tenuous link between the products insofar as both sets of goods were made from similar materials. There is no such contention here between the goods in Classes 7 and 17, and even 16. Further, there was substantial evidence of likely confusion in that case. No such exists here.

In short, I do not believe that easyJet can succeed under this ground, and it fails.”

76. My conclusion is the same in this matter. In my discussion with Mr. Roberts noted above, about reputation and likelihood of confusion under s. 5(2)(b), his view was that the influence of the former on the latter extends from its extent and is unaffected by its character. He also stated that the situation might be different under passing off. I think this must be the case, which is essentially the conclusion I came to in *EASYAIR*. And here, where the applicants’ clear goodwill rests in airline services, and beyond this, maybe also in the popularisation of such services – encompassing accessibility and availability – where access by the Internet is indicative of the same, I do not believe that the public would readily accept that they have moved into such a focused and specific market as that represented by Niagara’s specification. Mr. Lambert spoke of the applicants’ ‘footprint in the marketplace’ and I think it is clear that this mitigates against confusion. This ground also fails.

Conclusion

77. The application has failed on all grounds.

COSTS

78. I see no reason to make a costs award in excess of the usual scale. Nevertheless, this still will require the applicants to acknowledge the Registered Proprietor’s success by paying them £2000. This is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 20th Day of August 2003.

**Dr W J Trott
Principal Hearing Officer
For the Registrar**

ANNEX

UK REGISTRATIONS LISTED IN THE STATEMENT OF GROUNDS.

Mark	Number	Application Date	Classes
EASYJET	2016785	05.04.1995	16, 39 and 42
EASYTRAIN	2112957	15.10.1996	39
EASYBUS	2112956	15.10.1996	39
EASYTRAK (series of two)	2168662	05.06.1998	16, 39 and 42
EASYWEB (series of two)	2168668	05.06.1998	16 and 39
EASYEXTRAS (series of two)	2168672	01.06.1999	16, 18, 36, 39 and 42
EASY EVERYTHING	2182641	20.11.1998	42
EASYMONEY	2184834	8.12.1998	9, 25, 29, 30, 32, 33, 35, 38 and 42
EASYKIOSK (series of four)	2198933	01.06.1999	16 and 42
EASYEVERYTHING	2202916	13.07.1999	42
EASYRENTACAR	2212473	26.10.1999	39
EASYJET SERVICES	2219661	18.01.2000	16, 39 and 42
EASYCLICKIT	2230279	20.04.2000	9, 16, 35, 36, 38, 39, 41 and 42
EASYJET RAMP	2232031	10.05.2000	16 and 39
EASYJET GIFTS	2253810	22.11.2000	3, 9, 12, 14, 16, 18, 25, 28, 29, 30, 32, 33, 34, 35, 38, 39, 41 and 42
EASYJET EASYJET.COM EASYJET	2253812	22.11.2000	3, 9, 12, 14, 16, 18, 25, 28, 29, 30, 32, 33, 34, 35, 38, 39, 41 and 42
GO EASYJET	2254310	28.11.2000	16, 39 and 42
EASYJET	2260901	09.02.2001	16, 39 and 42

Mark	Number	Application Date	Classes
EASYELECTRICAL	2263118	02.03.2001	9, 16, 35, 36, 38, 39, 41 and 42
EASYKIOSK	2263914	09.03.2001	3, 14, 25, 28, 29, 30, 31, 32 and 33
EASYCAR	2266270	03.04.2001	16, 39 and 42
EASYCAR	2266267	03.04.2001	16, 39 and 42
EASYSERVICES	2242495	15.08.2000	16, 39 and 42
EASYRAMP	2242492	15.08.2000	16 and 39
EASYVALUE	2245768	18.09.2000	9, 16, 35, 38, 39, 41 and 42

COMMUNITY TRADE MARK REGISTRATIONS

Mark	Number	Application Date	Classes
EASYEXTRAS	848424	05.06.1999	16, 18, 36, 39 and 42
EASYCAFE	931790	16.09.1998	9, 25, 29, 30, 32, 33, 35, 38 and 42
EASYJET THE WEB'S FAVOURITE AIRLINE	11325696	29.03.1996	39 and 42
EASYTECH	1128743	29.03.1999	12, 37 and 39
EASYKIOSK	1196138	01.06.1999	16 and 42
EASYJET	1232909	01.07.1999	3, 9, 16, 18, 25, 29, 30, 32, 33, 34, 38, 39, 41 and 42
EASYEVERYING	1243948	13.07.1999	9, 35, 38, 41 and 42
EASYRENTACAR	1261502	30.07.1999	39
EASYLIFE	1343359	06.10.1999	16, 35 and 39
EASYJET.COM & PLANE LIVERY	1593326	31.03.2000	3, 9, 16, 18, 25, 30, 32, 33, 34, 35, 38, 39 and 42
EASYJET RAMP	2232031	10.05.2000	16 and 39
EASYSERVICES	1821354	15.04.2000	16, 39 and 42
EASYRAMP	1821370	15.08.2000	16 and 39
EASYVALUE	1857705	18.09.2000	9, 16, 35, 36, 38, 39, 41 and 42
EASYJET GIFTS	1983667	22.11.2000	3, 9, 12, 14, 16, 18, 25, 28, 29, 30, 32, 33, 34, 35, 38, 39, 41 and 42
EASYJET.COM THE WEB'S FAVOURITE AIRLINE	2015287	15.12.2000	3, 9, 12, 14, 16, 18, 25, 28, 29, 30, 32, 33, 34, 35, 38, 39, 41 and 42
EASYKIOSK	2140812	09.03.2001	3, 14, 25, 28, 29, 30, 31, 32 and 33

UK APPLICATIONS

Mark	Number	Application Date	Classes
EASYHOTEL	2246286	21.09.2000	9, 16, 25, 29, 30, 32, 35, 36, 38, 39, 41 and 42
EASY.COM	2247942	06.10.2000	9, 16, 35, 36, 38, 39, 41 and 42
EASYEVERYTHING THE WORLD'S LARGEST INTERNET CAFES	2249416	19.10.2000	9, 16, 35, 36, 38, 39, 41 and 42
EASY	2253872	22.11.2000	9, 16, 25, 28, 29, 30, 32, 33, 35, 36, 38, 39, 41 and 42
EASYVALUE.COM IMPARTIAL COMPARISONS FOR ONLINE SHOPPING	2255323	08.12.2000	9, 16, 35, 36, 38, 39, 41 and 42
EASYJET.COM THE WEB'S FAVOURITE AIRLINE	2255933	15.12.2000	3, 9, 12, 14, 16, 18, 25, 28, 29, 30, 32, 33, 34, 35, 38, 39, 41 and 42
EASYMONEY	2265184	22.03.2001	9, 16, 35, 36, 39, 41 and 42
EASYPOINTS	2266451	05.04.2001	9, 16, 25, 29, 30, 32, 33, 35, 36, 38, 39, 41 and 42
EASYFUNDS	2269333	04.03.2001	9, 16, 35, 36, 38 and 42
EASYCREDIT	2269335	04.05.2001	9, 16, 35, 36, 38 and 42
EASYBANK	2269338	04.05.2001	9, 16, 35, 36, 38 and 42
EASYGIRO	2269343	04.05.2001	9, 16, 35, 36, 38 and 42
EASYAIR	2271732	05.06.2001	9, 16, 35, 36, 38 and 42
EASYMONEY.COM THE CREDIT CARD YOU DESIGN TO SUIT YOUR NEEDS	2272076	06.06.2001	9, 16, 25, 29, 30, 32, 33, 35, 36, 38, 39, 41 and 42
EASYCARD	2184827	18.12.1998	9, 25, 29, 30, 32, 33, 35, 38 and 42
EASYPAY	2184833	18.12.1998	9, 25, 29, 30, 32, 33, 35, 38 and 42

Mark	Number	Application Date	Goods/services: Classes
EASY DOT COM	2240412	24.07.2000	9, 16, 35, 36, 38, 39, 41 and 42
EASYLIFE	2241945	08.08.2000	16, 35, 36 and 39

The following mark, also cited by the applicants, is noted on the Register as 'withdrawn': EASYODDS.

CTM APPLICATIONS

Mark	Number	Application Date	Classes
EASY.COM	1343300	06.10.1999	16, 35 and 39
EASYRENTACAR (AND LOGO)	1360981	26.10.1999	39
EASYJET TOURS	1383157	08.11.1999	16, 39 and 42
EASYJET SERVICES	1472273	19.01.1999	16, 39 and 42
EASYDOTCOM (LOGO)	1588326	31.03.2000	9, 16, 35, 36, 38, 39, 41 and 42
EASYEVERY- THING	1590561	04.04.2000	9, 16, 26, 35, 38, 39, 41 and 42
EASY	1699792	09.06.2000	9, 16, 35, 36, 38, 39, 41 and 42
EASYMONEY	2265184	22.03.2001	9, 16, 35, 36, 38, 39, 41 and 42
EASYCLICKIT	2230279	24.07.2000	9, 16, 35, 36, 38, 39, 41 and 42
EASYLIFE	1796564	07.08.2000	16, 35, 36 and 39
EASYHOTEL	1866706	21.09.2000	9, 16, 25, 29, 30, 32, 33, 35, 36, 38, 39, 41 and 42
EASYODDS	1902394	16.10.2000	9, 16, 28, 38, 41 and 42
EASY	1976679	17.11.2000	9, 16, 25, 28, 29, 30, 32, 33, 35, 36, 38, 39, 41 and 42
EASYJET.COM & PLANE LIVERY	1984079	22.11.2000	3, 9, 14, 16, 18, 25, 29, 30, 32, 33, 34, 35, 38, 39, 41 and 42
EASYCAR	2168714	03.04.01	16
EASYCAR (STYLISED)	2168763	03.04.01	16
EASYPOINTS	2181667	05.04.01	25, 29, 30, 32, 33, 36, 38 and 41
EASYMONEY (STYLISED)	2153575	22.03.01	9, 16, 35, 36, 38, 39, 41 and 42

Mark	Number	Application Date	Classes
EASYJET EASYJET.COM EASYJET	1984079	22.11.200	3, 9, 12, 14, 16, 18, 25, 28, 29, 30, 32, 33, 34, 35, 38, 39, 41 and 42.
EASYMONEY	2153575	22.03.2001	9, 35, 36, 38 and 41