O/0430/26

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF REGISTRATION NO. UK00901699792
FOR THE TRADE MARK:

EASY

IN CLASSES 35, 39 AND 42
OWNED BY EASYGROUP LTD

AND

AN APPLICATION FOR REVOCATION ON THE GROUND OF NON-USE
UNDER NO. 506235

AND

AN APPLICATION FOR A DECLARATION OF INVALIDITY
UNDER NO. 506233

BROUGHT BY THE SUPPORT GROUP (UK) LIMITED

BACKGROUND AND PLEADINGS

1. Trade mark no. UK00901699792 for the trade mark shown on the cover page of this decision stands registered in the UK in the name of easyGroup Limited ("the proprietor"). The mark was filed on 09 June 2000; it was registered on 13 July 2006.

2. The specification of this mark has been limited a number of times and the services for which the mark is registered are now as follows:[1]

> **Class 35:** *Commercial administration and management of the licensing of goods and services, including the administration and management of brand licences; provision of general business organisation, administration and management support, business administration and management services to licensees of goods or services.*
>
> **Class 39:** *Transportation of luggage, passengers and travellers by air; arranging of transportation of luggage, passengers and travellers by land; airline services.*
>
> **Class 42:** *Hotel services.*

3. On 29 June 2023, The Support Group (UK) Limited ("the applicant") applied to revoke the proprietor's mark in full. The applicant seeks revocation of the proprietor's registration on the grounds of non-use based upon Section 46(1)(a) and (b) of the Trade Marks Act 1994 ("the Act").

4. Revocation is sought under Section 46(1)(a) in respect of the five-year period following the date on which the mark was registered, namely 14 July 2006 to 13 July 2011 ("the first relevant period"). Revocation is therefore sought from 14 July 2011.

[1] On 8 February 2024, the proprietor submitted Form TM23 to partially surrender some of its goods and services under this registration, in connection with separate proceedings. This was duly recorded and confirmed by the Office on 9 February 2024. Subsequent limitations were made on 25 July 2024, 31 July 2025, and 17 October 2025.

5. Revocation is also sought under Section 46(1)(b) in respect of the following time periods: 5 January 2011 to 4 January 2016 ("the second relevant period"); 5 January 2017 to 4 January 2022 ("the third relevant period"); and 27 June 2018 to 26 June 2023 ("the fourth relevant period"), with the applicant seeking revocation to take effect from 5 January 2016, 5 January 2022 and 27 June 2023 respectively.

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

7. In addition to the revocation action, on 29 June 2023 the applicant filed an application for a declaration of invalidity based upon Section 3(1)(b) and (c) of the Act.[2] In particular, the applicant stated that the proprietor's mark should be invalidated because:

I. It is devoid of any distinctive character under Section 3(1)(b).

II. It consists exclusively of a sign or indication which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or rendering of services, or other characteristics of goods or services under Section 3(1)(c).

8. Furthermore, the applicant argues that the proprietor's mark is for the plain word 'EASY' which is an everyday adjective used to denote "*something needing little effort; presenting few difficulties; done or obtained without a lot of effort or problems"* and would be perceive by the relevant consumer as follows:

I. Under the Section 3(1)(b) ground: as descriptive of one or more characteristics of the services, in particular the "quality" or "characteristic" of each of the

[2] Initially the applicant pleaded Section 3(1)(d) but this ground was withdrawn in the applicant's submissions in lieu.

services in question, as it conveys the message that the services provided are easy to purchase or use; and/or it merely has a promotional or laudatory meaning.

II. Under the Section 3(1)(c) ground: as descriptive of one or more characteristics of the services, in particular the "quality" or "characteristic" of the services. It merely conveys the message that the services provided are easy to purchase, receive or use.

9. Whilst the applicant pleaded both that the mark is descriptive under Section 3(1)(c) and devoid of distinctiveness under Section 3(1)(b), in its submissions in lieu, the applicant also recognised that since its case under Section 3(1)(b) is that the proprietor's mark is descriptive, then it follows that if this is found to be the case the mark will also lack the necessary distinctiveness.

10. The proprietor filed a counterstatement denying the claims. In particular, the proprietor claimed that the mark is inherently distinctive. Alternatively, it claims that it has acquired enhanced distinctiveness.

11. The proceedings were consolidated on 11 January 2024 in accordance with rule 62(1)(g) of the Trade Marks Rules 2008.

12. The applicant is represented by Hansel Henson Limited, and the proprietor is represented by Kilburn & Strode LLP. Both parties filed evidence in these proceedings. The proprietor also filed two sets of submissions dated 22 July 2023 and 21 May 2024. No hearing was requested but both parties filed written submissions in lieu. In addition, after both parties filed written submissions in lieu, the applicant filed a copy of the High Court decision in *easyGroup Limited v Premier Inn Hotels Limited* [2025] EWHC 2229 (Ch), which the Tribunal treated as further written submissions from the applicant, and the proprietor filed further submissions in response.

13. This decision is taken following a careful consideration of the papers.

14. 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

15. The proprietor's evidence came in the form of three witness statements from Ryan Edward Pixton dated 21 May 2024 (with exhibits REP1- REP39), 22 July 2024 (with exhibits REP40- REP70), and 04 March 2025 (with exhibits REP71- REP79). Mr Pixton is a Chartered Trade Mark Attorney at Kilburn & Strode LLP, the legal representatives for the proprietor in these proceedings.

16. Mr Pixton's evidence is only a vehicle for introducing 79 exhibits being those labelled REP1-79. Aside from introducing and describing the content of the exhibits, Mr Pixton's evidence contains no narrative explaining the relevance of each exhibit.

17. The applicant's evidence came in the form of three witness statements from Justine Flockhart dated 21 May 2024 (with Exhibits JERF01-JERF10), 22 July 2024 (with Exhibit JERF11) and 6 March 2025 (with Exhibits JERF12- JERF21).

18. 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

19. 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.

20. As far as I am concerned, I case managed these proceedings along with 10 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 into 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.

DECISION

21. 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;
>
> (c) […]

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

(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".

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

> "8.— Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)
>
> (1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.
>
> (2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the "five-year period") has expired before [IP completion day]—
>
> (a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding EUTM; and
>
> (b) the references in sections 11A and 46 to the United Kingdom include the European Union.
>
> (3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before [IP completion day]—
>
> (a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM ; and
>
> (b) the references in sections 11A and 46 to the United Kingdom include the European Union".

23. 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."

24. 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 Bundervsvereinigung 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]."

25. Proven use of a mark which fails to establish that *"the commercial exploitation of the mark is real"* because the use would not be *"viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services protected by the mark"* is not, therefore, genuine use.[4]

26. As I have set out above, the proprietor's mark is a comparable mark based upon an earlier EU Trade Mark ("EUTM"). This means that use of this mark in the EU prior to (and including) IP Completion Day (being 31 December 2020) is relevant to the present assessment.[5] By virtue of being a Member State prior to this date, the UK still

[4] *Jumpman,* Case BL O/222/16
[5] See paragraph 4 of Tribunal Practice Notice 2/2020

forms part of the relevant territory of the EU. From 1 January 2021 onwards, however, the relevant territory is the UK only.

27. I remind myself that there are four relevant periods in these proceedings. Those are: 14 July 2006 to 13 July 2011; 5 January 2011 to 4 January 2016; 5 January 2017 to 4 January 2022 and 27 June 2018 to 26 June 2023.

28. 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 commenced prior to a period of three months before the date of the application for revocation. Therefore, it can be said that so long as use 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.

29. In its written submissions, the proprietor states: *"The Relevant Period for the purpose of these proceedings shall therefore be 29 June 2018 – 28 June 2023. The Proprietor has provided evidence of use within the Relevant Period, with evidence dating back to 2018. This evidence has been submitted to the Office in the form a Witness Statement from Ryan Edward Pixton of Kilburn & Strode LLP, along with accompanying Exhibits REP1- REP39".*

30. The proprietor's approach is therefore that the mark has been used during the last five-year period – although, I note, there is a difference of a few days between the period claimed by the applicant and that reported by the proprietor - and that the application for revocation should be dismissed based on the alleged most recent use.

THE PROPRIETOR'S CONCESSIONS

31. After these proceedings were commenced, the proprietor partially surrendered some of the services against which the present revocation action was initially directed. However, the services which have been surrendered are still relevant for the purpose of this revocation action. This is because in an application for revocation on the grounds of non-use, the earliest date from which revocation can take effect is the day following the fifth anniversary of completion of the registration procedure which is

earlier than the date the registration was partially surrendered (the surrender of a registration not having retrospective effects). Consequently, the applicant still has an interest in pursuing the revocation action against the surrendered services because if the revocation were to be successful, the surrendered services would be cancelled from an earlier date.

32. Although in its defence the proprietor stated that the intention was to defend all of the services covered by the registration, in its submissions in lieu it stated:

> "*On 8 February 2024, the Proprietor submitted Form TM23 to partially surrender some of its goods under this registration, in connection with separate proceedings. This was duly recorded and confirmed by the Office on 9 February 2024.*
>
> *On 21 May 2024, the Registered Proprietor filed its evidence of genuine use, and seeks to rely on the submissions made insofar as they relate to the remaining services under each registration. These services are as follows:*
>
> *Class 35: Business management; business administration; office functions; publicity, promotional services, business information services, organising exhibitions for commercial or advertising purposes; auctioneering services.*
>
> *Class 36: Financial and insurance services.*
>
> *Class 39: Transportation of goods, passengers and travellers by air; arranging of transportation of goods, passengers and travellers by land; bus transport services, car transport services, coach services; airline services; cruises, excursions and vacations; chartering of aircraft; rental and hire of vehicles, boats and aircraft; travel agency and tourist office services; advisory and information services relating to the aforesaid services; information services relating to transportation services, including information services provided on-line from a computer database or the Internet; travel reservation and travel booking services provided by means of the world-wide web.*

Class 41: Information relating to entertainment and education, provided on-line from a computer database or the Internet; entertainment services provided on-line from a computer database or the Internet.

Class 42: Hotel services; reservation services for hotel accommodation."

33. Accordingly, the proprietor requested that the present revocation action be refused insofar as it relates to the "relevant services", the "relevant services" being those which are listed above.

34. However, further services were surrendered on 25 July 2024, 31 July 2025, and 17 October 2025 with the specification standing now as follows:

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

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

Class 42: *Hotel services.*

35. Since I consider that by surrendering services which were initially defended, the proprietor has implicitly abandoned its defence in respect of those services, I conclude that the proprietor's mark is to be revoked for the surrendered services from the earliest possible date, being it 14 July 2011. The surrendered services are those in strikethrough (as per the originally registered specification):

Class 35: *business management; business administration;*[6] ~~*office functions; publicity, promotional services, import-export agency services, business information services, organising exhibitions for commercial or advertising purposes; auctioneering services*~~[7]~~.~~

~~**Class 36:** *Financial and insurance services.*~~

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

~~**Class 41:** *Information relating to entertainment and education, provided on-line from a computer database or the Internet; entertainment services provided on-line from a computer database or the Internet; educational information provided on-line from a computer database or the Internet; rental of clothing and games.*~~

Class 42: *hotel services;* ~~*reservation services for hotel accommodation; provision of exhibition facilities; meteorological information services; hairdressing, grooming and beauty salon services; security services; airport security services; airline passenger security screening services.*~~

[6] In its TM23 of 23.07.2025 the proprietor stated that (a) the terms “business management” have been restricted to the provision of general support, marketing, advertising, administration and management services to licensees of goods or services and (b) the terms “business administration” have been restricted to the commercial administration and management of the licensing of goods and services, including the administration and management of brand licences.

[7] These services were deleted by the proprietor with the latest TM23 of 17 October 2025.

36. Accordingly, the revocation action is successful in respect of these services which are revoked with effect from 14 July 2011.

37. From now on, I will limit my considerations to the remaining (non-surrendered) services, namely those for which the registration still stands:

> **Class 35:** *Commercial administration and management of the licensing of goods and services, including the administration and management of brand licences; provision of general business organisation, administration and management support, business administration and management services to licensees of goods or services.*
>
> **Class 39:** *Transportation of luggage, passengers and travellers by air; arranging of transportation of luggage, passengers and travellers by land; airline services.*
>
> **Class 42:** *Hotel services.*

EVIDENCE OF GENUINE USE

38. Before I turn to the evidence, it is helpful for me to set out the point made by the applicant that there is no use of the proprietor's mark 'EASY' *"solus*" and that the use shown in the evidence relates to other trade marks incorporating the element 'EASY' and another word – which, the applicant contends, is not an acceptable variant of the registered trade mark 'EASY' and cannot count towards genuine use. In this connection, the applicant stated:

> *"It is anticipated that whilst this is not pleaded, there may be an issue as to whether use of easy[plus another word] is use in a variant form differing in elements which do not alter the distinctive character of the mark. The answer is no. easy[plus another word], or easy[plus another word] with the Stylisation, are forms which do alter the distinctive character of EASY solus, for the reasons already explained.*

In any event, the same criticisms of the evidence made above in relation to the Invalidation Action are repeated here, in particular that use of EASY in a figurative form and the use of easy[plus another word] family of marks is not use of the mark EASY solus. If the Tribunal is with [the applicant] on this, then the Trade Mark has not been put to genuine use.

If however, the Tribunal is of the contrary view (i.e., that use of EASY in a figurative form or use of easy[plus another word] is genuine use of the Trade Mark), then that is still not sufficient. [The applicant]'s position is that even in those forms, [the proprietor] has not provided sufficient evidence of use in any relevant period, let alone the only relevant period relied upon by [the proprietor] (being 29 June 2018 to 28 June 2023, as set out in its letter dated 21 May 2024)…"

39. Although the applicant's argument about the use shown not being use of 'EASY' *solus* was not pleaded within the application for revocation, that does not prevent it from being advanced later in these proceedings. This is because such an argument only replies to what the proprietor's evidence shows which, in turn, means that it could not have been advanced before the evidence was filed (i.e. at the pleadings stage). That said, I agree with the applicant that the evidence fails to show use of the mark 'EASY' *solus*. I now explain why I have reached that conclusion.

40. The witness statement from Sir Stelios Haji-Ioannou, the founder and director of the proprietor,[8] provides information about the history of the *"easy family of brands".* Sir Stelios Haji-Ioannou states that 'easyJet' was the first sign in the 'EASY' family of brands, and that since the 'easyJet' airline business was launched, he started extending the 'EASY' family of brands. In this connection, Sir Stelios Haji-Ioannou refers to the use of various names which include the word 'easy' followed by another word, for example, ''easyLand' (a mark allegedly used for the company's headquarters), 'easyKiosk' (a mark allegedly used for an in-flight catering service), 'easy Come, easy Go' or 'easyRider' (a mark allegedly used for an-flight magazine), 'easyRamp' (a mark allegedly used for a service consisting of organising the ground

[8] Witness statement dated 4 August 2017 and exhibited at REP1

handling activities of the airline), ‘easyTech’ (a mark allegedly used for aircraft repair and maintenance servicing), ‘easyEverything’ (a mark allegedly used for an Internet café), and ‘easyRentacar’ (a mark allegedly used for a car rental service). Other trade marks following the same pattern are mentioned, including: ‘easyCar’, ‘easyValue’, ‘easyMoney’, ‘easyCinema’, ‘easyBus’, ‘easyHotel’, ‘easy4men’, ‘easyJobs’, ‘easyPizza’, ‘easyMusic’, ‘easyCruise’, ‘easyMobile’, ‘easyWatch’, ‘easyOffice’ and ‘easyProperty’. Sir Stelios Haji-Ioannou further explains that the services and the goods offered by the ‘EASY’ businesses are and have been very diverse, ranging from travel ventures such as ‘easyJet’, ‘easyCar’ and ‘easyCruise’, to accommodation such as ‘easyHotel’ and ‘easyProperty’, to music downloading (‘easyMusic’), to price comparison websites (‘easyValue’) to food delivery (‘easyPizza’) and to gyms (‘easyGym’). He also states that in each case the businesses use the distinctive ‘EASY’ get-up to encourage customers to identify each business with the other businesses within the ‘EASY’ family of brands. The ‘EASY’ get up consists of the cooper black font and white letters on an orange background. In this connection, Sir Stelios Haji-Ioannou states:

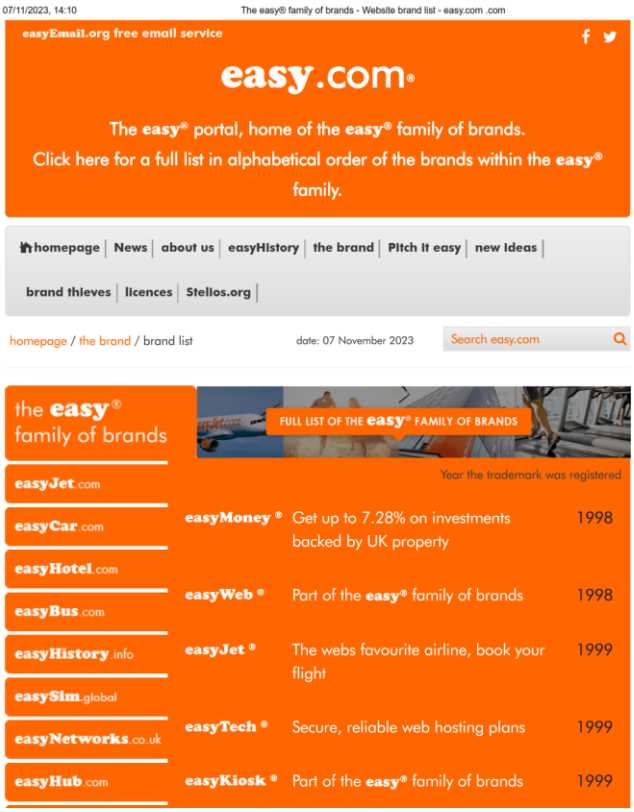
> *“Each business uses the EASY prefix (the word EASY being in lower case) immediately followed by a second word or phrase (the first letter of which is capitalized), which is appropriate to the goods or services provided by the individual business within the group. As I have explained, the font used for the wording is the cooper black fat font, which was also decided by me…*
>
> *….*
>
> *Driven by my desire to diversify my portfolio of assets away from the airline business, but at the same time trying to build on this intangible asset I had created (the EASY family of brands), I decided to embark on a strategy based upon using the EASY name to create a family of brands which covered many services and sectors….*
>
> *…..*
>
> *However in more recent years (probably around since 2010), I have focused on licensing arrangements because they bring in a much more steady revenue stream and typically involve less financial risk for myself and easyGroup. Although the royalties tend to be smaller, the income flow is more predictable.*
>
> *…..*

Today, easyGroup has around 1,000 trade mark registrations and approximately 2,500 domain names….

…..

I make a point of choosing EASY business ventures that benefit the many, rather than the few. In other words, the products and services of the EASY businesses are designed with a price point in mind which is competitive in the market place and within reach of as many consumers as possible"

41. The rest of the evidence merely expands on, and provide further details and examples of, the various 'EASY'-[plus another word] or 'EASY'-[plus another word and stylisation] trade marks/brands which are used by the proprietor and its licensees. Details of the relevant license agreements and invoices which show royalty payments according to these agreements are provided. I am not going to repeat that evidence here, but I will say that the only use of the mark 'EASY' *solus* is within the proprietor's website www.easy.com. This website does not sell or offer any goods or services, but it is merely a portal of the 'EASY'-family of brands which showcases and lists the various 'EASY'-marks (and corresponding businesses) belonging to the 'EASY' family of marks as shown below:



42. Lastly, Mr Pixton's evidence includes a witness statement from Christopher Griffin, the Chief Executive of the Museum of Brands.[9] However, this evidence only confirms the facts stated by Sir Stelios Haji-loannou. In particular, Mr Griffin says that since the launch of the well-known airline 'easyJet' in 1995, the 'easy` brand has expanded to cover a diverse range of products and services and that *"each 'easy' brand uses a distinctive style, beginning with the word `easy' followed by the relevant product or service offered, with its first letter capitalised".* In this connection, as examples of the 'easy' family of brands, Mr Griffin mentions the following: 'easyHotel', 'easyGym', 'easyOffice', 'easyCar', 'easyCoffee' and 'easyFoodstore'. Mr Griffin also says that he would expect there to be widespread knowledge of the 'easy' brand, because of the variety and number of 'easy' brands licensed or used by the proprietor. I pause here to make the following points.

43. First, Mr Griffin's evidence about there being widespread knowledge of the 'easy' brand is opinion evidence which has not much weight. Although Mr Griffin says that he is an acknowledged expert in the field of branding, as the applicant correctly pointed out, in a previous decision whereby the same witness statement was relied upon,[10] the HO stated "*it is not clear who has acknowledged him as such".*

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

45. Third, even if I were to accept that the relevant public is familiar with the proprietor's 'EASY'-family of brands (which I do not), that would not assist the proprietor. This is because:

[9] Exhibit REP36
[10] BL-O/102/18

a. Use of a trade mark belonging to the 'EASY'-family of brands (i.e. 'EASY'-plus another word which is descriptive of the goods and services in relation to which the mark is used) is not the same as use of the trade mark 'EASY' *solus* in relation to which genuine use must be established.

b. The fact that the proprietor might have created a 'EASY' family of brands (by registering and using hundreds of trade marks which revolve around the same business model of using a trade mark made up of the word 'EASY' plus another word which is descriptive of the goods and services and is presented in the same get-up) does not create a separate entity in relation to which genuine use must be assessed. In this connection, I think the opponent's case suffers from a fundamental misconception. Whilst the concept of a family of marks is relevant for assessing the likelihood of confusion (and for this purpose it is possible to establish the existence of a family of marks in trade mark proceedings) when the issue to be decided is about genuine use, use must be assessed in relation to each mark which is part of the family of marks.[11] There is no concept of assessing genuine use in relation to a family of marks, because a family of marks is not a registered right, and neither the legislation nor the case law refers to a family of marks as being relevant for the assessment of genuine use.

46. This point takes me to the next argument. In his witness statement, Sir Stelios Haji-Ioannou states that "*each use of an EASY brand within the EASY family of brands constitutes use not only of that brand but also compound use of EASY itself, as a prefix within the relevant brand. I believe that the fact that EASY is a common element within the family of brands is further reinforced by the fact that it is used in the EASY get-up."*

47. In *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under Section 46(2). He said:

[11] Il Ponte Finanziaria SpA v OHIM, Case C-234/06

“13. […] While the law has developed since *Nirvana* [BL O/262/06], the recent case law still requires a comparison of the marks to identify elements of the mark added (or subtracted) which have led to the alteration of the mark (that is, the differences) (see for instance, T-598/18 *Grupo Textil Brownie v EU*IPO*, EU:T:2020:22, [63 and 64]).

14. The courts, and particularly the General Court, have developed certain principles which apply to assess whether a mark is an acceptable variant and the following appear relevant to this case.

15. First, when comparing the alterations between the mark as registered and used it is clear that the alteration or omission of a non-distinctive element does not alter the distinctive character of the mark as a whole: T-146/15 *Hypen v EUIPO*, EU:T:2016:469, [30]. Secondly, where a mark contains words and a figurative element the word element will usually be more distinctive: T-171/17 *M & K v EUIPO*, EU:T:2018:683, [41]. This suggests that changes in figurative elements are usually less likely to change the distinctive character than those related to the word elements.

16. Thirdly, where a trade mark comprises two (or more) distinctive elements (eg a house mark and a sub-brand) it is not sufficient to prove use of only one of those distinctive elements: T-297/20 *Fashioneast v AM.VI. Srl*, EU:T:2021:432, [40] (I note that this case is only persuasive, but I see no reason to disagree with it). Fourthly, the addition of descriptive or suggestive words (or it is suppose figurative elements) is unlikely to change the distinctive character of the mark: compare, T-258/13 *Artkis*, EU:T:2015:207, [27] (ARKTIS registered and use of ARKTIS LINE sufficient) and T-209/09 *Alder*, EU:T:2011:169, [58] (HALDER registered and use of HALDER I, HALDER II etc sufficient) with R 89/2000-1 CAPTAIN (23 April 2001) (CAPTAIN registered and use of CAPTAIN BIRDS EYE insufficient).

17. It is also worth highlighting the recent case of T-615/20 *Mood Media v EUIPO*, EU:T:2022:109 where the General Court was considering whether the use of various marks amounted to the use of the registered mark MOOD

MEDIA. It took the view that the omission of the word "MEDIA" would affect the distinctive character of the mark (see [61 and 62]) because MOOD and MEDIA were in combination weakly distinctive, and the word MOOD alone was less distinctive still."

48. Applying the above principles, I reject the submission that use of the word 'EASY' within a trade mark belonging to the 'EASY' family of brands constitutes use not only of that trade mark, but also of 'easy' *solus*. In other words, I reject the submission that use of 'easy' as a prefix amounts to use of 'easy' *solus.* In this connection, the reference made by Sir Stelios Haji-loannou to use of 'easy' as a prefix within trade marks belonging to the 'easy' family of marks is the crux of the proprietor's case. This is because, as Sir Stelios Haji-loannou himself explained in his evidence, in the business model he has adopted, he has built a family of brands based on trade marks incorporating the prefix 'easy' and a word which is descriptive of the goods and services in relation to which the marks are meant to be used. In asking whether use of 'easy' as a prefix is an acceptable variant of 'easy' *solus*, the question is whether the distinctiveness of 'easy' *solus* has been altered.

49. In answering that question, I think it is important to consider that 'easy' is a common English word which has the potential of conveying a message about the goods and services being accessible and affordable; consequently, this element is, in itself, of no or low in distinctiveness. Further, I consider that the distinctiveness of the 'easy' family of marks lies not in the word 'easy' alone, but in that word in combination with a descriptive word. As I have said, the proprietor does not use 'easy' *solus* as a house mark but as a prefix; even looking at the proprietor primary brand 'easyJet',[12] easy' and 'Jet' are either descriptive or weakly distinctive, but in combination they make a distinctive mark. In other words, what makes the proprietor's trade marks (and family of brands) distinctive is not the use of 'easy' *solus*, but the use of 'easy' as a prefix followed by a descriptive word (as well as the get-up). It follows from this that use of 'easy' as a prefix followed by a descriptive word cannot amount to use of 'easy' *solus,* because it alters the distinctive character of 'easy' *solus.*

[12] See REP 40 paragraph 8 of Anthony Anderson's witness statement.

50. Having reached the conclusion that:

a. Use of ‘easy’ as a prefix in the proprietor’s ‘easy’ family of brands does not amount to use of the trade mark ‘easy’ *solus;*

b. The only use of the trade mark ‘easy’ *solus* is within the proprietor’s website www.easy.com;

c. The website www.easy.com is only a vehicle for promoting the ‘easy’ family of brand which, in turn, promotes ‘easy’ as a prefix, not ‘easy’ *solus,* and it is not use in relation to any goods and services,

51. I conclude that the use shown in the evidence filed is not sufficient to establish genuine use of the trade mark ‘easy’ *solus* in relation to the registered services.

52. For the sake of completeness, I should say that the evidence filed by the proprietor includes other material, such as a witness statement from John Andrew Anderson, which provides information about the history of the ‘easy’ family of brands. However, there is no point in me repeating or summarising that evidence here because it does not overcome the fundamental point that use of ‘easy’ as a prefix within trade marks belonging to the proprietor’s ‘easy’ family of brands cannot count towards genuine use of the trade mark ‘EASY’ *solus*.

53. Lastly, I should briefly mention that Mr Pixton’s evidence introduces a copy of a witness statement from Graham Williams dated 24 January 2025[13] which was provided in Claim No. IL-2023-000155 *easyGroup Limited v Premier Inn Hotels Limited [2025] EWHC 2229 (Ch)*. In that case, the proprietor in these proceedings brought a claim for trade mark infringement. Mr Williams’ evidence concerns the results of two surveys carried out on behalf of the proprietor relating to the figurative mark ‘easy’ reproduced below:

[13] REP72

54. First, I agree with the applicant that this evidence is inadmissible. This is because, as the applicant stated in its submissions in lieu, survey evidence and expert witness evidence can only be adduced into trade mark proceedings before the Intellectual Property Office with the permission of the hearing officer,[14] and no permission was sought in this case.

55. Second, in *easyGroup Limited v Premier Inn Hotels Limited* reliance on the surveys was only for the purpose of demonstrating the reputation and enhanced distinctiveness of the trade mark UKTM 3362833 for the figurative marks shown below:

56. The surveys therefore relate to different marks, the mark at issue being a word-only mark (i.e. UK00901699792 for the word-mark 'easy').

57. Third, even ignoring for a moment the invalidity action and proceeding on the basis that the proprietor's registered trade mark has a minimum level of distinctiveness,[15] the inherently low distinctive character of the word 'easy' (due to the word conveying the meaning that the relevant services are affordable and easy to access) combined with the distinctiveness of the get-up (which I find to be enhanced by its widespread use at least in relation to the proprietor's main airline business) means that the impact of the visual aspect of the mark on the respondents makes the result of that survey not transferable in this case which concerns the word-only mark 'easy'.

[14] 4.8.4.5 Survey evidence (including evidence from expert witnesses) Trade Marks Manual
[15] Formula One Licensing BV v OHIM, Case C-196/11P

58. Fourthly, in *easyGroup Limited v Premier Inn Hotels Limited* the judge concluded that the survey evidence did not support the submission that there had been any use of, and therefore reputation in and enhanced distinctiveness of, the element 'easy' *solus*.

59. Lastly, some final remarks.

60. 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.[16]

61. In the other cases I dealt with, an aspect of the proprietor's case is that the marks subject to revocation were promoted as part of the "EASY" family of marks. Here the same argument is made in relation to the use of 'easy' as a prefix. Importantly, use of the mark must relate to goods or services already marketed or which are about to be marketed and for which preparations by the undertaking to secure customers are under way. This includes use in the form of advertising campaigns; however, the promotion of a trade mark cannot be an end in itself, as trade marks which are the subject of advertising activities must relate to goods or services already marketed or about to be marketed. In other words, the owner of a registered trade mark cannot promote the mark independently from the 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.

62. In the present case, for all of the reasons I have set out above, the evidence fails to establish that the relevant services were offered under the mark 'easy'. Further, the

[16] *Reber* at [32]

promotion of the mark ‘easy’ as a prefix within the proprietor’s ‘EASY’ family of marks, but independently from the relevant 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 ‘easy’ has been promoted as a prefix used consistently across 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 relevant services. That approach is wrong in law and is not very helpful.

63. 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. 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. The use of the mark ‘easy’ shown in evidence is not use on the market to distinguish the proprietor’s services. The fact that the mark is promoted as being the prefix distinguishing 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.

64. The proprietor has failed to establish that the mark has been put to genuine use during any of the relevant periods (or at all) in relation to any of the registered services (both surrendered and non-surrendered). The evidence does not support the conclusion that there has been a real commercial exploitation of the mark on the market for these services.

65. 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.

66. Accordingly, I find that the evidence filed is not sufficient to establish genuine use of the mark UK00901699792 for any of the registered services. The mark is therefore revoked in its entirety (including the services which have been surrendered) with effect from 14 July 2011.

67. I now turn to the invalidity action.

The application for a declaration of invalidity

68. As set out above, the application for invalidity is based on Section 3(1)(b) and (c) of the Act. Both of these grounds have application in invalidation proceedings because of the provisions of Section 47 of the Act.

69. Section 47 of the Act states as follows:

> "47. (1) The registration of a trade mark may be declared invalid on the ground that the trade mark was registered in breach of section 3 or any of the provisions referred to in that section (absolute grounds for refusal of registration). Where the trade mark was registered in breach of subsection (1)(b), (c) or (d) of that section, it shall not be declared invalid if, in consequence of the use which has been made of it, it has after registration acquired a distinctive character in relation to the goods or services for which it is registered.
> […]
> (5) Where the grounds of invalidity exist in respect of only some of the goods or services for which the trade mark is registered, the trade mark shall be declared invalid as regards those goods or services only.
> […]
> (6) Where the registration of a trade mark is declared invalid to any extent, the registration shall to that extent be deemed never to have been made.
> Provided that this shall not affect transactions past and closed."

Section 3(1) case law and legislation

70. Section 3(1) of the Act provides as follows:

> "3.— Absolute grounds for refusal of registration
>
> (1) The following shall not be registered—

(a) …

(b) trade marks which are devoid of any distinctive character.

(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,

(d) ….

Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.".

71. Whilst, in principle Section 3(1)(b) and (c) are independent and have differing general interests,[17] in this case the applicant's claim under Section 3(1)(b) is based on the claim that the mark is devoid of distinctive character as a result of being descriptive. Hence, the claim under Section 3(1)(b) does not add anything to the applicant's claim under Section 3(1)(c), which is the ground I am going to focus on.

72. The relevant date for determining whether the proprietor's registration is objectionable under Section 3(1)(c) is its filing date, being 09 June 2000.

73. The position under the present grounds must be assessed from the perspective of the average consumer, who is deemed to be reasonably observant and circumspect: *Matratzen Concord AG v Hukla Germany SA*, Case C-421/04. The proprietor's services are business services, airline services and hotel services that will be sought by members of the general public and business users.

Section 3(1)(c)

[17] *SAT.1 SatellitenFernsehen GmbH v OHIM,* Case C-329/02 P at [25].

74. The case law under Section 3(1)(c) (corresponding to article 7(1)(c) of the EUTM Regulation, formerly article 7(1)(c) of the CTM Regulation) was set out by Arnold J. (as he then was) in *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2012] EWHC 3074 (Ch) as follows:

> "91. The principles to be applied under art.7(1)(c) of the CTM Regulation were conveniently summarised by the CJEU in *Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-51/10 P) [2011] E.T.M.R. 34 as follows:
>
> > "33. A sign which, in relation to the goods or services for which its registration as a mark is applied for, has descriptive character for the purposes of Article 7(1)(c) of Regulation No 40/94 is – save where Article 7(3) applies – devoid of any distinctive character as regards those goods or services (as regards Article 3 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), see, by analogy, [2004] ECR I-1699, paragraph 19; as regards Article 7 of Regulation No 40/94, see *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Wm Wrigley Jr Co* (C-191/01 P) [2004] 1 W.L.R. 1728 [2003] E.C.R. I-12447; [2004] E.T.M.R. 9; [2004] R.P.C. 18, paragraph 30, and the order in *Streamserve v OHIM* (C-150/02 P) [2004] E.C.R. I-1461, paragraph 24).
> >
> > 36. … due account must be taken of the objective pursued by Article 7(1)(c) of Regulation No 40/94. Each of the grounds for refusal listed in Article 7(1) must be interpreted in the light of the general interest underlying it (see, inter alia, *Henkel KGaA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (C-456/01 P) [2004] E.C.R. I-5089; [2005] E.T.M.R. 44, paragraph 45, and *Lego Juris v OHIM* (C-48/09 P), paragraph 43).
> >
> > 37. The general interest underlying Article 7(1)(c) of Regulation No 40/94 is that of ensuring that descriptive signs relating to one or more

characteristics of the goods or services in respect of which registration as a mark is sought may be freely used by all traders offering such goods or services (see, to that effect, *OHIM v Wrigley*, paragraph 31 and the case-law cited).

38. With a view to ensuring that that objective of free use is fully met, the Court has stated that, in order for OHIM to refuse to register a sign on the basis of Article 7(1)(c) of Regulation No 40/94, it is not necessary that the sign in question actually be in use at the time of the application for registration in a way that is descriptive. It is sufficient that the sign could be used for such purposes (*OHIM v Wrigley*, paragraph 32; *Campina Melkunie*, paragraph 38; and the order of 5 February 2010 in *Mergel and Others v OHIM* (C-80/09 P), paragraph 37).

39. By the same token, the Court has stated that the application of that ground for refusal does not depend on there being a real, current or serious need to leave a sign or indication free and that it is therefore of no relevance to know the number of competitors who have an interest, or who might have an interest, in using the sign in question (Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, paragraph 35, and Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 38). It is, furthermore, irrelevant whether there are other, more usual, signs than that at issue for designating the same characteristics of the goods or services referred to in the application for registration (*Koninklijke KPN Nederland*, paragraph 57).

And

46. As was pointed out in paragraph 33 above, the descriptive signs referred to in Article 7(1)(c) of Regulation No 40/94 are also devoid of any distinctive character for the purposes of Article 7(1)(b) of that regulation. Conversely, a sign may be devoid of distinctive character for the purposes of Article 7(1)(b) for reasons other than the fact that it may be descriptive (see, with regard to the identical provision laid down in

Article 3 of Directive 89/104, *Koninklijke KPN Nederland,* paragraph 86, and *Campina Melkunie*, paragraph 19).

47. There is therefore a measure of overlap between the scope of Article 7(1)(b) of Regulation No 40/94 and the scope of Article 7(1)(c) of that regulation (see, by analogy, *Koninklijke KPN Nederland*, paragraph 67), Article 7(1)(b) being distinguished from Article 7(1)(c) in that it covers all the circumstances in which a sign is not capable of distinguishing the goods or services of one undertaking from those of other undertakings.

48. In those circumstances, it is important for the correct application of Article 7(1) of Regulation No 40/94 to ensure that the ground for refusal set out in Article 7(1)(c) of that regulation duly continues to be applied only to the situations specifically covered by that ground for refusal.

49. The situations specifically covered by Article 7(1)(c) of Regulation No.40/94 are those in which the sign in respect of which registration as a mark is sought is capable of designating a ‘characteristic’ of the goods or services referred to in the application. By using, in Article 7(1)(c) of Regulation No 40/94, the terms ‘the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service’, the legislature made it clear, first, that the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service must all be regarded as characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account.

50. The fact that the legislature chose to use the word ‘characteristic’ highlights the fact that the signs referred to in Article 7(1)(c) of Regulation No 40/94 are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As the Court has

pointed out, a sign can be refused registration on the basis of Article 7(1)(c) of Regulation No 40/94 only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics (see, by analogy, as regards the identical provision laid down in Article 3 of Directive 89/104, *Windsurfing Chiemsee*, paragraph 31, and *Koninklijke KPN Nederland*, paragraph 56)."

92. In addition, a sign is caught by the exclusion from registration in art.7(1)(c) if at least one of its possible meanings designates a characteristic of the goods or services concerned: see *OHIM v Wrigley* [2003] E.C.R. I-12447 at [32] and *Koninklijke KPN Nederland NV v Benelux-Merkenbureau* (C-363/99 [2004] E.C.R. I-1619; [2004] E.T.M.R. 57 at [97]."

75. I have summarised the evidence of use above. As that evidence is not sufficient to establish genuine use, it follows that it cannot establish enhanced distinctiveness. As a result, the grounds under both Section 3(1)(b) and 3(1)(c) being based on the claim that the trade mark 'easy' *solus* is descriptive, and the evidence not establishing use or enhanced distinctiveness of 'easy' *solus*, the only question that is left is whether the trade mark 'easy' *solus* was inherently descriptive of the services for which it was filed on 09 June 2000.

76. Before I turn to the evidence relied upon by the applicant under this ground, I should mention that after the evidence rounds were concluded, the applicant provided a copy of the High Court decision in the aforementioned case *easyGroup Limited v Premier Inn Hotels Limited* which was issued on 29 August 2015. Insofar as the issue of whether 'easy' *solus* is descriptive is concerned, the applicant pointed to the following passages of that judgment:

- Paragraph 120: *"As to the easy UKTM, the distinctive character of that in respect of the easy UKTM Services resides in the distinctive Cooper Black font and the orange (Pantone ref 021C) and white colours. It too is said to be visually, conceptually and aurally distinct from, and dissimilar to, the ordinary English phrase "rest easy" and/or the Premier Inn Rest Easy Device."*

- Paragraph 134: *“As to the easy UKTM, it is important to keep in mind that the UKTM is not easy.com, but "easy". It is a figurative mark as opposed to a word mark. Having been registered and its validity not challenged, the easy UKTM has some measure of distinctiveness (see paragraph 35 above). I accept Ms Himsworth's submission that as the word part of the mark is the ordinary English word "easy", the inherent distinctiveness which the easy UKTM has must be derived from the non-word elements, namely the text stylisation, device and/or colour and not from the word "easy". I have had regard to the other easyGroup cases referred to by Premier Inn in their closing submissions where the Courts have had to consider the word "easy" solus and the findings in those cases as to the lack of any distinctiveness in the word "easy". For example, in easyGroup Ltd. v. Beauty Perfectionists Ltd. [2024] EWHC 1441 (Ch); [2024] ETMR 36 , Bacon J held that the "easy" element of the "easyJet" word mark had no inherent distinctive character, but that it was a descriptive word, indicating that the services are easy to use. I am not bound by those decisions but, forming my view independently of the earlier findings, I come to the conclusion that "easy" has no inherent distinctiveness.”*

  Paragraph 194: “*easyGroup argues that the distinctive and dominant component of each of its marks is the word "easy". I do not accept this argument. "easy" in "easyHotel" is descriptive, it describes simplicity. The fact that the second part of the conjoined word "Hotel" is descriptive does not compel the conclusion that "easy" is descriptive or dominant (a finding also made by Arnold J in the W3 case at [243(ii)]). As has been held in earlier easyGroup cases, "easy" is a description of what the business provides and aims to provide. These findings are not binding on me, and I have come to the same conclusion independently of them. A finding to the contrary would fly in the face of the decision of Arnold J (as he then was) to declare the "EASY" word mark invalid. As I have already held, it is the figurative element of the easy UKTM which provides its not more than minimal distinctiveness, not the word "easy". It would be an impossible conclusion that notwithstanding this finding, the word "easy" is nonetheless the dominant element of the easy UKTM.”*

77. Accordingly, it is established that in *easyGroup Limited v Premier Inn Hotels Limited* the High Court agreed that ‘easy’ *solus* was descriptive in relation to the relevant services which, in that case, were *"temporary accommodation; provision of holiday accommodation; hotel services; hotel reservation services".* The High Court also referred to other easyGroup cases whereby the word ‘easy’ was found to be descriptive.

78*.* Having been set a deadline of 4 September 2025 to respond, the proprietor replied as follows:

1. The judgement is inadmissible because it was filed after the evidence rounds were closed and the applicant did not seek permission to introduce it.

2. The judgment has no relevance in these proceedings because Claim No. IL-2023-000155 concerned an entirely different matter, different parties, different marks, and different periods of time to those in the present proceedings, and does not represent an analogy as the applicant seems to imply, *“but is rather a means to cloud the issue and distort the facts and evidence at hand. The decision issued concerns the proprietor's use, enhanced distinctiveness and reputation, much of which is irrelevant to the issues to be heard and considered*” here.

3. To the extent that the Hearing Office is minded to consider the High Court judgement when making its decision in these consolidated proceedings, the proprietor refers to paragraph 171 of the judgement which states: *"I therefore accept Mr Malynicz's submission that it is possible for the easy UKTM to have acquired distinctiveness if it has been used as part of ‘easyJet’ or ‘easyHotel’ for the services for which it has been registered. Whether or not it has been used as alleged and even if it has whether it has acquired distinctiveness depend on the evidence in the case."* In this connection, the proprietor states that if the judgement handed down by the High Court is an authority to be relied on, the above paragraph establishes the principle that ‘easy’ on its own is capable of acquiring distinctiveness through use, if it has been used as part of another mark such as ‘easyJet’ or ‘easyHotel’. To that end, the proprietor

argues that (a) it has submitted over 70 exhibits in these proceedings, many of which, if not most, relate to the 'easy' family of brands and consistently refer to and contain the tag line *"part of the easy family of brands*"; (b) such evidence differs from that considered by the Court in Claim No. IL-2023-000155, further underscoring the irrelevance of that claim to the present proceedings and (c) notwithstanding the applicant's contentions that 'easy' *solus* is not distinctive, if the starting point is that 'easy' *solus* can acquire distinctiveness through the use made of it in combination with other marks in the family, as the Court judgment states, then the proprietor's evidence demonstrating exactly such use leads to the logical conclusion that 'easy' *solus* is in fact distinctive. As such, the applicant's arguments must be dismissed on that basis.

79. As regards point (1) (i.e. the admissibility of the High Court judgement in *easyGroup Limited v Premier Inn Hotels Limited*), as the applicant correctly pointed out in its submissions of 4 September 2025, that judgment ruled on the same witness statement of Graham Williams which the proprietor filed in these proceedings and its underlying survey.[18] Insofar as the High Court decision gives context to some evidence which has been filed in these proceedings (evidence that was "recycled" from that filed in the High Court proceedings), I consider that the High Court judgement in *easyGroup Limited v Premier Inn Hotels Limited* is relevant here and, accordingly, I confirm that it was correctly admitted into these proceedings.

80. As regards point (2), admittedly the High Court judgement concerned a different trade mark (i.e. UKTM no. 3362833 for the figurative mark 'easy') and different parties. Nevertheless, the judge's finding that the word 'easy' (which is identical to the mark at issue here) was descriptive of class 43 services, including hotel services (which are identical to the services at issue here), is relevant to the question I have to decide, namely whether the word 'easy' alone is descriptive of hotel services (as well as of other services).

[18] Exhibited to the Third Witness Statement of Mr Ryan Pixton dated 4 March 2025 (submitted in Evidence Round 3) as Exhibit REP72 and Exhibits REP73 – REP77.

81. As regards point (3), the proprietor's argument that 'easy' *solus* can acquire enhanced distinctiveness does not assist its case because I have already found that there has been no genuine use of the mark 'easy' *solus.*

82. Significantly, although the proprietor challenged the relevance of the decision in *easyGroup Limited v Premier Inn Hotels Limited,* it did not state that the word-mark 'easy' is inherently distinctive; what it said, instead, is that 'easy' is distinctive because it has acquired distinctiveness through use. However, as I have stated, I have found no genuine use, which means that 'easy' cannot have acquired enhanced distinctiveness. Since it is arguable that the proprietor has made an admission as to the descriptiveness of the mark 'easy' *solus* for the services at issue here, I will go on to consider the evidence filed by the applicant in relation to its Section 3(1)(c) claim.

83. Whilst I remind myself that I am not bound by *easyGroup Limited v Premier Inn Hotels Limited* and I must form my view independently of the judge's findings in that case, I find it to be a persuasive authority. Now let's see whether the applicant's evidence supports the same conclusion here.

84. The services for which the proprietor's mark was originally registered includes business services, financial services, transportation services, entertainment services and hotel services.

85. The applicant's evidence includes the following:

- Various dictionary definitions of the word 'easy' dated between 1993 and 2024,[19] including the following: (a) not difficult; (b) achieved without great effort; (c) characterised by ease or rest; (d) needing little effort; (e) not requiring much labour or effort; not difficult; simple; (f) achieved without great effort; presenting few difficulties.

[19] JERF01

- Copies of documents from the EUIPO file concerning the application to register the mark at issue here.[20] They show that the mark was originally refused for being devoid of distinctive character on the basis that "*EASY' can be understood by the public at large in a number ways e.g. easy to use, easy to understand, easy to arrange etc and when applied to the goods and services in the specification merely refers to level of understanding e.g. computer software made easy in Class 9, financial and insurance services made easy in Class 36".* The examiner also stated that *"the word easy belongs to the common stock of words and phrases and as such should be left free for other traders in the field to use to promote their goods and services".* The documents also show that the examiner's objection was maintained after the proprietor filed evidence and submissions on the basis that the material filed did not show use of 'easy' on its own. Although the mark was subsequently accepted it is not clear why and it is now showing as "Application Refused".

- Copies of documents from the EUIPO file concerning the application to register the trade mark no. 014920441 for the word mark 'easy' in classes 35, 36, 39, 41 and 43.[21] They show that the mark was refused registration on the basis that it was descriptive of the kind and quality of the services. The relevant part of the decision of the EUIPO's opposition division stated:

  "The word applied for consists of a readily identifiable and ordinary word from the English language, namely 'EASY'. The word is intellectually meaningful. As such, there is no doubt that the relevant consumer will not perceive the word 'easy' as unusual but rather as a meaningful expression, on this basis the message conveyed by the sign is clear, direct and immediate to the relevant public and in relation to the services claimed. It is not vague or ambiguous in any way, nor is it unusual or akin to an allusive fanciful sign in relation to the services at issue.

  To reiterate, the Office remains of the opinion that the word 'easy' immediately

[20] JERF02
[21] JERF03

informs consumers without further reflection that the services applied for are simple to contract and use and they provide an uncomplicated and straightforward experience to the consumer. For example, the service provider may be very accessible with online services such as booking and ordering and online access to accounts or information. The information provided by the service provider may be easily located by the consumer, or automatically provided, based upon the customer's profile. Furthermore, the service provider may provide a very straightforward service to consumers such as simple ways to pay for goods and services, good travel connections, fast check-in at airports or hotels etc. Thus, for all of the services applied for, the mark 'easy' conveys obvious and direct information regarding the kind and quality of the services in question".

An appeal against the above decision was dismissed by the EUIPO Board of Appeal.

- Copy of decision no. BL- O-553-20 refusing the proprietor application for the word mark 'easy' in respect of services in classes 35, 39 and 43. The application was refused for being descriptive under Section 3(1)(c).[22]

- Examples of third parties using the word 'easy' to describe their services.[23]

86. The above evidence in my view corroborates the conclusion that 'easy' alone is a word which will be immediately perceived by the relevant public of the applied-for services in classes 35, 36, 39, 41 and 43 as referring to a characteristic of the services, due to its ordinary meaning, and will be understood as conveying the message that the services are easy to use and access, or are affordable. The mark is descriptive and the ground under Section 3(1))(c) succeeds in its entirety.

[22] JERF04
[23] JERF06-10

OUTCOME

87. The application for revocation on the grounds of non-use therefore succeeds under both Sections 46(1)(a) and 46(1)(b) in relation to all of the services. The registration will be revoked in respect of all the services for which the proprietor's mark is (and was) registered including the services which have been surrendered.

88. The effective date of revocation is 14 July 2011.

89. The application for invalidity is also successful in its entirety and the proprietor's mark will be invalidated *ab initio*.

COSTS

90. 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.

91. However, as the last lot of submissions were generated by the applicant providing copy of the High Court's decision after the closing submissions (even if that decision was available earlier) the applicant will bear the cost of those submissions. In the circumstances, I award the applicant sum of £2,200, calculated as follows:

Preparing the revocation applications and invalidity application and considering the counterstatements: £500
Filing evidence and considering the evidence: £1,000
Submissions in lieu: £300
Official Fees: 400
Total: £2,200

92. I therefore order easyGroup Ltd to pay The Support Group (UK) Limited the sum of £2,200. 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 20th day of May 2026

TERESA PINTO

For the Registrar