O/0541/26

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK REGISTRATION NO. UK00904557575
IN THE NAME OF EGIS PROJECTS SAS
FOR THE TRADE MARK:

IN CLASSES 9, 35, 36, 39 AND 42

AND

APPLICATION FOR REVOCATION THERETO
UNDER NO. 508086
BY KILBURN & STRODE LLP

Background and pleadings

1. Trade mark number UK00904557575[1] as shown on the front page of this decision ("the contested mark") stands registered in the name of Egis Projects SAS ("the proprietor"). The contested mark has a filing date of 22 July 2005 and was registered on 19 May 2008 for the following goods and services:

> **Class 9**: Magnetic cards; magnetic identity cards; smart cards; magnetic data media; optical data media; electronic cash cards; automatic apparatus operated by the introduction of a coin or token; cash registers, calculating machines, data processing equipment and computers.
>
> **Class 35**: Advertising; computerized file management; collection and systematic ordering of data in a central file; automatic toll collection subscription services; subscription to services for locating and tracking vehicles and fleets of vehicles by electronic, computer and satellite means.
>
> **Class 36:** Financial and monetary affairs; detection and payment of road and motorway tolls; payment via direct debit; debit card services; accounting; operation of road and motorway toll collection or automatic toll collection services.
>
> **Class 39**: Assistance with the transport of people and goods, namely: information relating to traffic, incidents and journey times on road and motorway networks, vehicle breakdown assistance (towing); surface or underground car parks; operation of road and motorway networks.

[1] The contested mark is a comparable mark based upon an earlier EU trade mark ("EUTM") of the proprietor. Following the end of the transition period of the UK's withdrawal from the EU, all EUTMs registered before 1 January 2021 were recorded as comparable trade marks in the UK trade mark register (and as a consequence, have the same legal status as if they had been applied for and registered under UK law). A 'comparable trade mark (EU)' retains the same filing date, priority date (if applicable) and registration date of the EUTM from which it derives.

Class 42 - Computer programming; development (design) of software, installation, maintenance, updating or rental of software; data processing equipment; Technical inspection of vehicles.

2. On 22 November 2024, Kilburn & Strode LLP ("the applicant") filed an application to revoke the contested mark on grounds of non-use in accordance with sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 ("the Act").[2]

3. Under section 46(1)(a) of the Act, the cancellation applicant claims non-use of all goods and services in the five-year period following the date on which the mark was registered i.e., 20 May 2008 to 19 May 2013, with an effective date of revocation of **20 May 2013** ("the first relevant period").

4. Under section 46(1)(b) of the Act, the cancellation applicant claims non-use of all goods and services for the following periods: 22 November 2014 to 21 November 2019, with an effective date of revocation of **22 November 2019**; and 22 November 2019 to 21 November 2024, with an effective date of revocation of **22 November 2024.**

5. The proprietor filed a counterstatement defending its mark in relation to some of the goods and services. They conceded, however, that there has been no use of the mark in relation to the following goods and services:

Class 9: cash registers
Class 35: advertising
Class 36: accounting
Class 42: technical inspection of vehicles.

[2] 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.

6. Consequently, the contested mark will be revoked from the earliest revocation date in relation to the above terms which are undefended, without further consideration.

7. Only the proprietor filed evidence. Neither party requested a hearing nor did they file written submissions in lieu of the same. This decision is taken following careful consideration of the papers on file.

8. The cancellation applicant being a firm of European and UK Patent and Trade Mark Attorneys, are self-represented. The registered proprietor is represented by Baker & McKenzie LLP.

Evidence

9. The proprietor's evidence came in the form of two witness statements:

- The first witness statement of Cedric Sebastien Bourgoin dated 12 May 2025, which is accompanied by 13 exhibits (CB1-CB13). Mr Bourgoin is the Mobility Director of the proprietor.

- The second witness statement of Cedric Sebastien Bourgoin dated 16 July 2025.

10. The purpose of the proprietor's evidence is to demonstrate that the contested mark has been put to genuine use in relation to the defended goods and services during the relevant periods for which revocation is sought.

11. I have given due consideration to all of the relevant documents filed and will refer to the evidence to the extent that it is necessary in my decision.

DECISION

12. Section 46 of the Act states that:

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

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

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (“the variant form”) differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

[…]

(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 existed at an earlier date, that date."

13. As the contested mark is a comparable mark, pursuant to paragraph 8 of Part 1, Schedule 2A of the Act, the proprietor may rely upon use of the mark in the EU (including the UK) for any parts of the relevant periods which fall prior to IP Completion Day, being 31 December 2020. The only use after that date that is of relevance is use in the UK.

14. Section 100 of the Act 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."

15. As noted previously, the relevant period for assessing whether there has been genuine use of the mark is 20 May 2008 to 19 May 2013 ("the first relevant period") under section 46(1)(a); and 22 November 2014 to 21 November 2019 ("the second relevant period") and 22 November 2019 to 21 November 2024 ("the third relevant

period”) under section 46(1)(b). A finding of genuine use during the third relevant period will be sufficient to avoid revocation of the mark under section 46(1)(b), and, by virtue of section 46(3), section 46(1)(a). Provided that such use is deemed to be genuine use, this will be the case even if the evidence in relation to the first relevant period is deemed insufficient.

Relevant case law

16. 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 trade mark proprietor bears the burden of proving genuine use of its trade mark: see section 100 of the 1994 Act and *Ferrari* at [73]-[83]. 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]. In *Awareness Ltd v Plymouth City Council* [2013] RPC 24 Mr Daniel Alexander KC sitting as the Appointed Person said:

19. For the tribunal to determine in relation to what goods or services there has been genuine use of a mark during the relevant period, it should be provided with clear, precise, detailed and well-supported evidence as to the nature of that use during the period in question from a person properly qualified to know.

…

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

17. In *Dosenbach-Ochsner Ag Schuhe Und Sport v Continental Shelf 128 Ltd,* Case BL O/404/13*,* Mr Geoffrey Hobbs Q.C. as the Appointed Person stated that:

"21. The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is

required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

22. When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not *'show'* (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

Evidence of use

18. From the witness statements of Cedric Sebastien Bourgoin, I note that the proprietor is part of the Egis Group of companies head-quartered in France. Mr Bourgoin explains that the proprietor develops and manages transport infrastructure projects such as toll collection, automation control penalty systems and inter-modal continuity. He states that the company operates worldwide including in the United Kingdom.

19. Mr Bourgoin states that the proprietor uses its mark in the UK through the operation of two licences namely to Easytrip B.V and Easytrip Services Ireland Limited (the "licensees"). Copies of the licensing agreements have been provided

at exhibit CB3. Mr Bourgoin adds that prior to the licences being formalised, the proprietor granted informal licences to both licensees. For Easytrip B.V, the informal license was granted from 22 November 2014 until 8 January 2024 and for Easytrip Services Ireland Limited, the informal license was granted from 22 November 2014 to 21 September 2023.

20. Mr Bourgoin provides a table that illustrates the conditions of the licensing agreements with each licensee. I note that the territories for Easytrip B.V include the UK (except Northern Ireland) and various EU countries such as Belgium, France and Italy and for Easytrip Services Ireland Limited the territories include Republic of Ireland and Northern Ireland.

21. Mr Bourgoin adds that since at least 2014, the proprietor, through the licensees, has offered a range of goods and services under the Easytrip mark in the UK and EU. These goods and services include parking, e-payment and tagging for toll roads, fuel cards, automated vehicle bookkeeping, car washing and breakdown and key assistance. He explains that these services are offered to consumers via an online portal on the Easytrip websites or via a smartphone application.

22. Mr Bourgoin explains that Northern Ireland represents a key UK market and customer base for the proprietor due to its UK/EU domestic border. An overview of the number of UK/EU customers for each licensee has been provided and is reproduced below:

Year	Total Number of Customers of **EASYTRIP BV**	
	UK	EU
2019	172	9,200
2020	176	9,400
2021	165	8,800
2022	159	8,500
2023	162	8,650
2024	169	8,990

Year	Total Number of Customers of **EASYTRIP SERVICES IRELAND**	
	UK	**EU**
2014	2 416	62 646
2015	2 545	64 665
2016	3 267	76 683
2017	3 686	83 106
2018	3 913	88 236
2019	4 139	94 105
2020	4 403	98 832
2021	4 644	105 714
2022	4 807	113 354
2023	5 161	129 291
2024	4 998	134 348

23. Turnover figures for the registered goods and services offered under the *Easytrip* mark in the UK between 2019 and 2024 have also been provided and are as follows:[3]

Year	EASYTRIP B.V		EASYTRIP SERVICES IRELAND LTD	
	Turnover Figures (EUR)	Converted to GBP as of 26.03.25	Turnover Figures (EUR)	Converted to GBP as of 26.03.25
2024	32, 051 638	26, 810 042	160, 000	133, 792
2023	25, 657 886	21, 461 898	160, 000	133, 792
2022	24, 104 097	20, 161 600	150, 000	125, 430
2021	27, 128 698	22, 691 494	130, 000	108, 706
2020	25, 938 509	21, 695 587	120, 000	100, 323
2019	17, 577 067	16, 375 748	120, 000	100, 323

[3] I recognise that some of the 2024 figures may fall after the end of the relevant period. However, given that the third relevant period ends in November of that year, it seems reasonable to infer that most of these figures would relate to the third relevant period.

24. Although turnover figures from 2019 to 2024 have been provided, they have not been broken down in relation to each good/service. As Phillip Johnson, sitting as the Appointed Person, stated in *W Sternoff LLC v Peter Kertels*, ("*Eros Bodyglide")* BL O/0984/25:

> "26. Where global sales figures are provided for multiple goods sold under one trade mark this is not going to be evidence of use for any of those goods. The sales could all be in relation to good A or all in relation to good B or a split between the two. This is why particularisation is so important as without it the figures provide no evidence of use for either good A or good B. The same applies where the same good is sold under trade mark A and trade mark B.
>
> 27. Evidence of sales is only useful for establishing genuine use where it sets out the sales revenue for a particular and identified good (or service) and it is clear that that good or service is sold under the trade mark. Only where there is only one good being sold and it is sold under only one trade mark can global figures be sufficient."

25. In this case, I do not take the above comments of Professor Johnson to automatically mean that there cannot be genuine use if the turnover is not broken down. Instead, I must be satisfied that, on balance of the evidence as a whole, it is reasonable to infer a level of use that is sufficient to be deemed genuine. Where it relates to a wide range of goods and/or services, the absence of a breakdown may make it difficult to apportion turnover with any accuracy. However, where the evidence relates mainly to one or two goods or services, it may be reasonable to draw such an inference, provided the level of use appears sufficient.

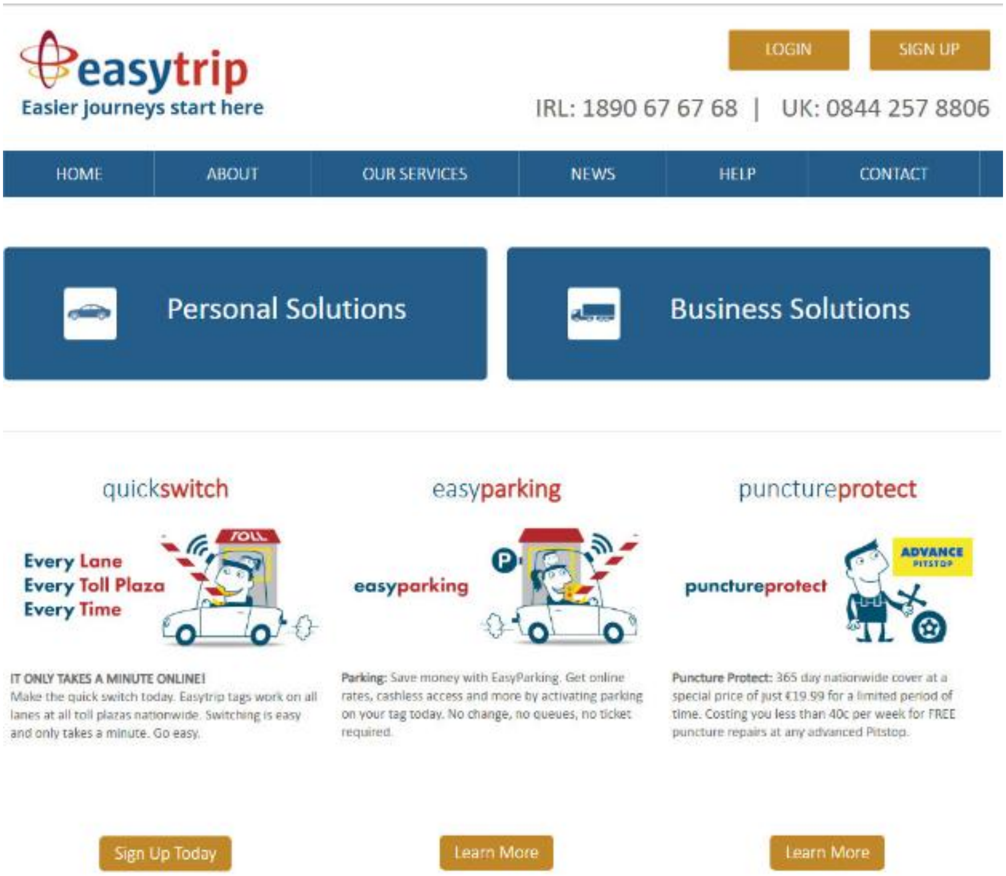
26. I also note that the turnover figures are not broken down by territory. I am therefore unable to determine what proportion of those figures relates to UK or EU customers after IP Completion Day.

27. Exhibit CB4 provides a selection of screenshots taken from the digital archive platform 'Wayback Machine' for easytrip.ie and easytrip-transport-services.com[4] from the years 2009 to 2024. Examples are shown below:

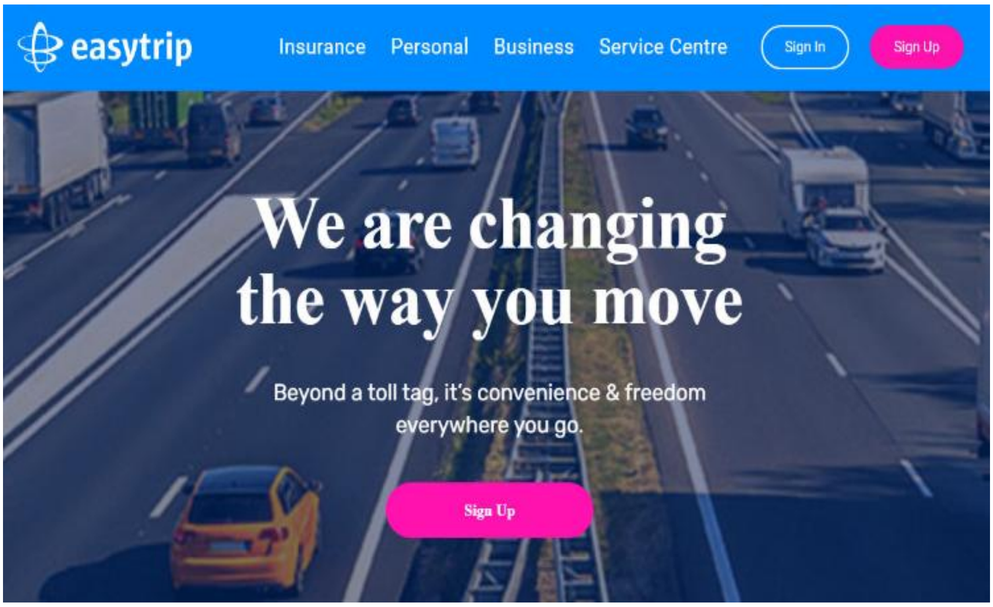
(Dated 12 June 2011)

[4] Mr Bourgoin explains in his witness statement that the UK website www.easytriptransportservices.co.uk redirects visitors to the top-level domain www.easytrip-transport-services.com

(Dated 19 December 2011)



(Dated 19 November 2016)



(Dated 12 January 2022)

(Dated 26 September 2023)

28. Mr Bourgoin states that a selection of well-known corporate partners in the Republic of Ireland have made use of the registered goods and services featuring the Easytrip mark during the period between 22 November 2019 and 31 December 2020. These include FedEx, AXA, Coca-Cola and Tesco. Exhibit CB5 contains a series of invoices issued to the corporate partners, dated between 2019 and 2020. With the exception of references to "toll/parking charges" the nature of the services provided by Easytrip in these invoices is not clearly identified. The invoices primarily list payments for "Easytrip fees", "usage charges" and "subscription charges" without further clarification or supporting detail in the evidence.

29. Exhibit CB6 contains printouts of the Easytrip Ireland and Easytrip Transport Services LinkedIn profile pages. Each profile lists different services that Easytrip Ireland and Easytrip Transport Services offers. Whilst I note these printouts are undated, they provide the following description in relation to Easytrip Ireland:

> Easytrip Ireland is an owned by DKV Mobility providing smart transport payment solutions in Ireland and all across Europe.
>
> Combining over 30 years of experience of both of these firms, in the fields of electronic toll collections, car parking control equipment and access system, Easytrip Ireland offers its customers a holistic suite of high standard services ensuring that every trip you take is an easy trip!
>
> With over 260,000 users, we are known for our world class service & support- before, during and after you come onboard with us.

30. The printouts also list the following services on the profile: *Toll Tag, Car Parking Tags, Breakdown Recovery, eParking, eTolling, puncture repairs, Free puncture repairs across Ireland, easyWash, breakdown assistance, carwash, puncture protect and parking.*

31. The following description is provided on the Easytrip Transport Services LinkedIn profile:

> Keeping your fleet moving smoothly, across borders and through every step of the journey - that's our promise.
>
> Easytrip Transport Services, a member of 360PAY group, is an expert in delivering mobility services. As a one-stop-shop we facilitate your day-to-day journeys, providing convenience, choice and competitive pricing on a broad range of services:
>
> - Toll payment: Enhance your travel experience with our flexible Toll solutions designed to optimize your journeys across Europe. Benefit from extensive range of local and interoperable devices covering 29 countries.
> - Parking payment: Pay for secure parking facilities across Europe, ensuring the tranquility of your drivers and the safety of their loads with the convenience of our Toll Boxes.
> - Ferry – Train- Tunnels Bookings: Benefit from exclusive 24/7 online portal to simplify your connections between Road, Train, and Sea transports. Book across 700 lines and all Alpine Tunnels with just few clicks!
> - VAT and Excise refunds: Get your VAT & Excise Duty refunded quickly and easily! Let Easytrip team of more than 50 Experts handle the VAT paperwork for you in over 30 countries and Excise refund in 7 countries.
> - Telematics: Maximize your profitability with our Telematics solutions tailored to your fleet management needs.
> - Posted Drivers support: Get your certificate for all your cabotage and cross-trade journeys in Europe and be compliant with the European Mobility Package.
> - Fuel Cards: Fuel up at more than 29.000 gas stations in 36 European countries.

32. Exhibit CB7 comprises a list of customers in the UK and Republic of Ireland for the sale of transponder goods. It is explained that these transponders enable the payment tracking and account functionality of the registered goods and services offered under the Easytrip mark. I note however, that the list is undated and there is no further information provided in the narrative evidence.

33. Mr Bourgoin explains that multiple large goods vehicles travel across borders daily, incurring various fees that may have time limits or tax implications requiring accurate and appropriate currency payments. He states that the goods and services provided by Easytrip constitute a distinctive set of products that cater to the needs of these customers. Exhibit CB8 contains customer contracts sent from Easytrip Transport Services to two different UK-based customers dated 6 February 2023 and 25 September 2023. The contracts display a list of the name of each service, its description and the service provider as shown below:

Service	Service description	Provider
VAT refund	Other Global fees for EU countries	Easytrip
VAT refund	EU countries	Easytrip
Q&B	Ferry, Train and Tunnel ticket booking	Easytrip

Service	Service description	Provider
ARIANNA 2	**Toll Payment with an EETS device in:** Italy, France, Spain, Portugal, Austria, Germany, Belgium, Switzerland, Hungary, Bulgaria, Scandinavia*, Poland A4 (highway section Krakow - Katowice), Poland E-Toll EETS + Liefkenshoektunnel (BE) + Payment of the Ferry route Villa San Giovanni - Messina (and Vv) operated by Caronte Tourist (Sicily-Italy) + Parking payment in France, Italy, Spain at Telepass affiliated parking areas	Telepass
Mont Blanc / Frejus card ITA VAT	Mont Blanc / Frejus card ITA VAT	GEIE/SITAF
LogPay Card	**Toll via LogPay Card** CH;DE + Sattelic BP for BE + ENCOBU for HR + Gobox or Toll2Go for AT +Toll collect for DE + Billien OBU 5051 for CZ + Levy for UK + E-Toll for PL + skytoll for SK + DARSGO for SI + E-vignette for SE/LUX/DK/ NL + Payment of ROLA (Railcargo)Train	LogPay

Telepass LE	Italian Toll	Telepass
Administrative Fee	Invoice Fee	Easytrip
Administrative Fee	Shipping Fee	Easytrip

34. What I take from these contracts is that Easytrip is responsible for providing VAT refund services and ferry, train and tunnel booking services. As for services such as “Arianna 2” and “LogPay”, these appear to be in relation to toll payment cards and devices and fuel payment cards facilitated by Easytrip. I say this because exhibit CB8 also includes printouts from the website www.easytrip-transport-services.com that show different toll-payment devices and fuel cards for the customer to select. I now reproduce examples below:

Telepass K1 SAT Box for your HGVs	**Telepass Arianna II SAT Box for**	**Toll 4 Europe SAT Box for your HGVs**

35. Mr Bourgoin states that during the relevant period, the licensees have attended several transport events and trade shows across Europe including Spain, Poland and Italy (prior to IP Completion Day). Exhibit CB9 includes images of booths displaying the Easytrip mark at various locations for the years 2016 to 2019.

36. Exhibit CB10 shows a selection of invoices featuring the Easytrip mark for goods and services provided to UK and Republic of Ireland consumers by the registered users dated between 2018 and 2024. The services on the invoices include retainer/administrative fees for Easytrip services charges and account fees incurred through use of services i.e., the hire of Easytrip tags. They also include related account fees incurred through the use of the services e.g., for parking and/or toll charges. Mr Bourgoin adds that the proprietor also uses the invoices as an advertising opportunity with existing UK clients to inform them of additional Easytrip services such as mobile apps for car parking services and tire repair cover for breakdowns. The adverts displayed on the invoices are now shown below:

37. Mr Bourgoin explains that the *Easytrip* mark has appeared in articles, publications and journals including a range of self-published news bulletins. A selection of these have been provided in exhibit CB11. I note that one of the bulletins dated October 2022 states that car parking services are available to customers with an Easytrip tag in two car parks based in Belfast.

38. Further information relating to Easytrip car parking services is provided in exhibit CB12. This includes a brochure from 2022 outlining guidance to customers about how to use the Easytrip tag. The evidence shows that the tag is a small electronic device which is typically installed on a vehicle's windshield. Upon entry into designated car parks, tag readers detect the tag, and the car park barriers will lift if the customer's account is in credit. When leaving the car park, the parking charges are automatically applied to the customer's account.

39. Exhibit CB13 comprises screenshots from the proprietor's various social media pages including Facebook, Instagram, LinkedIn and X. Whilst I acknowledge the number of followers has also been provided, is it unclear what proportion of the followers are based in the UK post IP Completion Day.

<u>Form of the mark</u>

40. Before I move on to assess the sufficiency of the evidence, I shall begin by addressing the way in which the contested mark has been displayed in relation to the relevant goods and services in the evidence.

41. In this regard, I am mindful of *Lactalis McLelland Limited v Arla Foods AMBA*, BL O/265/22, wherein Phillip Johnson, sitting as the Appointed Person, considered the correct approach to the test under s. 46(2). He said:

> "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."

42. The contested mark is as follows:

easytrip

43. The mark is also shown as follows in the evidence:

a) Easytrip

b) easytrip

c) easytrip.ie
Easier journeys start here

d) easytrip
Transport Services
A 360PAY COMPANY

44. Where the mark is used in word only form, despite the absence of the stylisation and the figurative element used in its registered form, the word *Easytrip* is the

dominant element of the mark, meaning it is still clearly identifiable as an indication of origin and therefore is an acceptable variant.

45. Turning to variant "b", I do not consider that use of the contested mark displayed in a different colour scheme as shown above alters the distinctive character of the contested mark. It is therefore acceptable use of the mark as registered.

46. I also find the use of a different colour scheme to be acceptable for variants "c" and "d". I further note that where a registered mark is used with additional matter, this may still constitute acceptable use of the mark as registered, where this element continues to act independently as an indicator of origin.[5] With this in mind, I consider that the additional wording "Easier journeys start here" and "Transport services/ a 360 pay company" shown in variants "c" and "d" will be seen as straplines and therefore the "easytrip" element still acts as an indicator of origin in accordance with *Colloseum*. The use of ".ie" in variant "c" will be seen as denoting in Irish website domain and again "easytrip" retains its distinctiveness. As such, these variants are also acceptable.

Assessment of genuine use

47. An assessment of genuine use is a global assessment, which includes looking at the evidential picture as a whole, not whether each piece of evidence shows use by itself.[6] Genuine use depends upon a variety of factors, including the nature of the goods and the characteristics of the market, the consistency of sales over time and whether the use is warranted to create or maintain a share in that market.

48. Whether the evidence is sufficient for this purpose will depend on whether it demonstrates that there has been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the goods and services at issue in the relevant territory during the relevant five-year period. In making this assessment, I am required to consider all relevant factors, including:

- The scale and frequency of the use shown;

[5] *Colloseum Holdings AG v Levi Strauss & Co.,* Case C-12/12
[6] *New Yorker SHK Jeans GmbH & Co. KG v OHIM*, General Court of the European Union, Case T 415/09

- The nature of the use shown;
- The goods for which use has been shown;
- The nature of those goods/services and the market(s) for them; and
- The geographical extent of the use shown.

49. I have carefully considered the evidence provided by the proprietor and whether this meets the requirements for genuine use as per *easyGroup*, set out earlier in this decision. I am also mindful of the guidance from the *Dosenbach-Ochsner* and *Awareness* appeal cases emphasising the need to consider what the evidence fails to "show", and what might reasonably have been conclusively shown.

50. The evidence is not without its shortcomings. As noted above, the absence of a breakdown of the turnover figures makes it more difficult to assess the extent of use. Parts of the evidence are undated and some invoices are vague, failing to identify with sufficient clarity the goods and services provided to customers. There is also no evidence regarding the size of the relevant market, the proprietor's market share, or its expenditure on marketing activities.

51. I note that the turnover figures and customer numbers indicate longstanding and consistent use of the mark throughout the UK and the EU prior to IP Completion Day. In line with the approach in *Eros Bodyglid,* I bear in mind that un-particularised global figures may have limited evidential value where they relate to a wide range of goods and services. However, that criticism can be mitigated where the evidence points to a concentration of activity in identifiable areas, enabling a reasonable inference to be drawn. Taking the evidence as a whole, I am satisfied that it demonstrates real commercial exploitation of the mark, consistent with maintaining and/or creating an outlet for certain goods and services. Accordingly, I find that genuine use has been established, albeit not across the entirety of the defended specification.

Fair specification

52. I must now consider whether, or the extent to which, the evidence shows use of the contested mark in relation to the registered goods and services. In *Euro Gida Sanayi Ve Ticaret Limited v Gima (UK) Limited*,[7] Mr Geoffrey Hobbs Q.C. (as he then was) as the Appointed Person summed up the law as being:

> "In the present state of the law, fair protection is to be achieved by identifying and defining not the particular examples of goods or services for which there has been genuine use but the particular categories of goods or services they should realistically be taken to exemplify. For that purpose the terminology of the resulting specification should accord with the perceptions of the average consumer of the goods or services concerned."

53. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834 the Court of Appeal set out the proper approach to partial revocation, as follows:

> "245. First, it is necessary to identify the goods or services in relation to which the mark has been used during the relevant period.
>
> 246. Secondly, the goods or services for which the mark is registered must be considered. If the mark is registered for a category of goods or services which is sufficiently broad that it is possible to identify within it a number of subcategories capable of being viewed independently, use of the mark in relation to one or more of the subcategories will not constitute use of the mark in relation to all of the other subcategories.
>
> 247. Thirdly, it is not possible for a proprietor to use the mark in relation to all possible variations of a product or service. So, care must be taken to ensure this exercise does not result in the proprietor being stripped of protection for goods or services which, though not the same as those for which use has been

[7] BL O/345/10

proved, are not in essence different from them and cannot be distinguished from them other than in an arbitrary way.

248. Fourthly, these issues are to be considered having regard to the perception of the average consumer and the purpose and intended use of the products or services in issue. Ultimately it is the task of the tribunal to arrive at a fair specification of goods or services having regard to the use which has been made of the mark.

249. This approach does strike an appropriate balance. It gives effect to the clear intention of the EU legislature that marks must actually be used or, if not used, be subject to revocation. […] It is also fair to proprietors for it does not require a proprietor to prove that he has used his mark in relation to all possible variations of the goods or services covered by its registration but only those which are sufficiently distinct to constitute coherent categories or subcategories. I am also satisfied that it gives appropriate protection to the legitimate interest of a proprietor in being able in the future to extend his range of goods or services within the scope of the terms describing the goods or services for which its mark is registered."

54. I remind myself that the proprietor has defended its mark for the following goods and services:

Class 9: Magnetic cards; magnetic identity cards; smart cards; magnetic data media; optical data media; electronic cash cards; automatic apparatus operated by the introduction of a coin or token; calculating machines, data processing equipment and computers.

Class 35: Computerized file management; collection and systematic ordering of data in a central file; automatic toll collection subscription services; subscription to services for locating and tracking vehicles and fleets of vehicles by electronic, computer and satellite means.

Class 36: Financial and monetary affairs; detection and payment of road and motorway tolls; payment via direct debit; debit card services; operation of road and motorway toll collection or automatic toll collection services.

Class 39: Assistance with the transport of people and goods, namely: information relating to traffic, incidents and journey times on road and motorway networks, vehicle breakdown assistance (towing); surface or underground car parks; operation of road and motorway networks.

Class 42: Computer programming; development (design) of software, installation, maintenance, updating or rental of software; data processing equipment.

55. What is clear from the evidence is that the proprietor has two distinct sets of customers being individuals and business users. Individual users are offered toll tags and car parking tags, allowing them to pay automatically for toll fees and car parking automatically via a subscription.[8] As for business users, these appear to be fleet operators who the proprietor provides integrated transport solutions to typically under contractual arrangements. These include the provision of toll and parking payment systems (including associated devices), booking services for ferries, trains and tunnels, VAT and excise refund services, telematics solutions for fleet monitoring and management, regulatory support in relation to driver compliance, and fuel card services.[9]

56. With this in mind, I am of the view that I can swiftly deal with a number of the services at issue as it is clear from the evidence that the contested mark has been genuinely used for some of its services as worded in the specification. There are also a range of goods and services that use has not been shown for or warrant more detailed consideration in line with the case law cited above.

[8] As shown in the invoices in exhibit CB8
[9] As shown in the contracts provided in exhibit CB10

57. Dealing first with the services that I have found use for, the contested mark may remain registered for the following:

> Class 35: Automatic toll collection subscription services; subscription to services for locating and tracking vehicles and fleets of vehicles by electronic, computer and satellite means.
>
> Class 36: Detection and payment of road and motorway tolls; operation of road and motorway toll collection or automatic toll collection services.
>
> Class 39: Surface or underground car parks.

58. However, the following goods and services are not sufficiently covered by the evidence:

> Class 9: Magnetic cards; magnetic identity cards; smart cards; electronic cash cards; magnetic data media; optical data media; automatic apparatus operated by the introduction of a coin or token; calculating machines, data processing equipment and computers.
>
> Class 35: Computerized file management; collection and systematic ordering of data in a central file.
>
> Class 36: Payment via direct debit; debit card services.
>
> Class 39: Assistance with the transport of people and goods, namely: information relating to traffic, incidents and journey times on road and motorway networks, vehicle breakdown assistance (towing); operation of road and motorway networks.
>
> Class 42 - Computer programming; development (design) of software, installation, maintenance, updating or rental of software; data processing equipment.

59. For clarity, I accept that fuel cards have been mentioned in the evidence, as discussed at [34] however, I find this too sparing to warrant a finding of use and therefore I do not find it reasonable to infer use for goods such as *smart cards* and *electronic cash cards.*

60. I also note the proprietor has advertised puncture repair services to its customers, as discussed at [36]. However, the evidence does not sufficiently show that those services were actually provided during any of the relevant periods. For that reason, I have included *vehicle breakdown assistance (towing)* in the list of goods and services for which use has not been established.

61. I will now move to the remaining and services, being those that, in my view, warrant a further discussion in line with the guidance in *Merck*. I will deal with these goods and services in turn below.

<u>Class 36: Financial and monetary affairs</u>

62. While I have found evidence of use of VAT and excise refund services, I consider the above term to be too broad and can be limited to a suitable sub-category. Again, considering the principles set out in *Merck*, I must have regard to the perception of the average consumer and the purpose and intended use of the proprietor's services. I am therefore of the view that *Financial and monetary affairs, namely VAT and excise refund services* represents a fair specification for the proprietor's financial and monetary affairs.

63. This, to my mind, accurately reflects the genuine use established during the relevant period and ensures that the registration is neither unduly broad nor artificially restricted.

CONCLUSION

64. The application for revocation on the grounds of non-use succeeds in part under sections 46(1)(a) and 46(1)(b). As the revocation date under 46(1)(a) is earlier, revocation will be effective for the following goods and services from 20 May 2013:

Class 9: Magnetic cards; magnetic identity cards; smart cards; electronic cash cards; magnetic data media; optical data media; automatic apparatus operated by the introduction of a coin or token; calculating machines, cash registers data processing equipment and computers.

Class 35: Advertising; computerized file management; collection and systematic ordering of data in a central file.

Class 36: Payment via direct debit; debit card services; accounting.

Class 39: Assistance with the transport of people and goods, namely: information relating to traffic, incidents and journey times on road and motorway networks, vehicle breakdown assistance (towing); operation of road and motorway networks.

Class 42: Computer programming; development (design) of software, installation, maintenance, updating or rental of software; data processing equipment; technical inspection of vehicles.

65. The proprietor’s mark will remain registered in respect of the following:

Class 35: Automatic toll collection subscription services; subscription to services for locating and tracking vehicles and fleets of vehicles by electronic, computer and satellite means.

Class 36: Financial and monetary affairs, namely VAT and excise refund services; Detection and payment of road and motorway tolls; operation of road and motorway toll collection or automatic toll collection services.

Class 39: Surface or underground car parks.

COSTS

66. On balance, I consider that the parties have achieved roughly an equal measure of success and I find it appropriate that each party bears its own costs. I, therefore, make no order as to costs.

Dated this 27th day of June 2026

Catrin Williams
For the Registrar