

O/0574/26

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION UK00003303498

IN THE NAME OF SHANGHAI CTRIP COMMERCE CO., LTD

AND

APPLICATION CA508493 BY KILBURN & STRODE LLP

TO REVOKE THE AFORESAID REGISTRATION

Background and Pleadings

1. Trade Mark UK00003303498 ('the Contested Mark') stands registered in the name of Shanghai Ctrip Commerce Co., Ltd, the Registered Proprietor ('the RP'). Details of the Contested Mark are as follows:

EASYTRIP

Filing date: 12 April 2018

Date of entry in register: 12 October 2018

Registered for the following:

Class 43:

Canteens; Hotel reservations; Temporary accommodation reservations; Accommodation bureaux [hotels, boarding houses]; Rental of temporary accommodation; Bar services; Tourist homes; Day-nurseries [crèches]; Boarding for animals; Rental of chairs, tables, table linen, glassware.

2. On 25 February 2025, Kilburn & Strode LLP, the Cancellation Applicant ('the CA'), applied to revoke the Contested Mark pursuant to sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 ('the Act'). I note that the revocation action was instituted without notice.¹ Revocation is sought for the registered specification in its entirety.
3. The CA alleges that the RP has not used the Contested Mark:
 - (i) within the period of five years following the date of completion of the registration process, i.e. 13 October 2018 – 12 October 2023 ('the First Relevant Period'). The earliest possible date from which the Contested Mark may be revoked is the day following the end of the aforesaid five-year period, i.e. 13 October 2023.

¹ No Revocation notification date was provided at point 6 of the Form TM26(N) Application to revoke a registration or a protected trade mark for reasons of non-use.

and

(ii) within the period of five years 25 February 2020 – 24 February 2025 ('the Second Relevant Period'). The earliest possible date from which the Contested Mark may be revoked is the day following the end of the aforesaid five-year period, i.e. 25 February 2025.

4. The RP filed a Defence and Counterstatement in which it indicated that it intended to defend the revocation action in so far as it attacks the following terms within the registered specification:

<i>Hotel reservations; Temporary accommodation reservations; Accommodation bureaux [hotels, boarding houses]; Rental of temporary accommodation</i>

5. The following of the RP's registered terms are not defended:

<i>Canteens; Bar services; Tourist homes; Day-nurseries [crèches]; Boarding for animals; Rental of chairs, tables, table linen, glassware.</i>
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6. The CA is a firm of Patent and Trade Mark Attorneys and represents itself. The RP is represented by Murgitroyd & Company. Only the RP filed evidence. A hearing was neither requested nor considered necessary, and neither party filed written submissions in lieu thereof. I confirm that I have read all of the evidence, to which I will refer to the extent necessary.

EVIDENCE

7. The RP's evidence comes in the form of a Witness Statement from Chen Yan, Senior Legal Director of the RP, dated 25 June 2025. There are six exhibits: CY1 – CY6.
8. The following decision is written after careful consideration of all papers filed.

RELEVANCE OF EU LAW

9. 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.

The relevant legislation

10. 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) [...]

(d) [...]

(2) For the purpose of subsection (1) use of a trade mark includes use in a form (the "variant form") differing in elements which do not alter the distinctive character of the mark in the form in which it was registered (regardless of whether or not the trade mark in the variant form is also registered in the name of the proprietor), and use in the United Kingdom includes affixing the trade

mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

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

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

(4) [...]

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

(6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from-

(a) the date of the application for revocation, or

(b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date.'

11. Section 100 of the Act provides that:

'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.'

The relevant case law

12. 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 Court of Justice of the European Union (‘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 Marken 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].'

13. 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 or services protected by the mark' is, therefore, not genuine use.

My approach

14. As noted above at [3], there are two relevant periods within which non-use has been alleged. Should genuine use be proven in the most recent relevant period (i.e. the Second Relevant Period), the revocation action would, to the extent that use has been found, be defeated. I have noted that the revocation action was instituted without notice on 25 February 2025. I remind myself of the proviso that, should commencement/resumption of use of the Contested Mark be shown to occur within the three months preceding institution of the revocation action, if the RP is on notice, such use will be disregarded unless preparations for the commencement/resumption began before the RP became aware of the impending action. I will proceed on the assumption that the RP did not have notice of the revocation action until the day that it was lodged (i.e. 25 February 2025). Given

that the Second Relevant Period ended on the day before the RP had notice, any use shown within that period may be taken into account. The Registrar's usual starting point in revocation proceedings is to consider the most recent relevant period. If no use is shown for all/some of the services in the most recent relevant period, then the Registrar proceeds to consider the other, earlier, relevant period in order to determine the effective date of revocation.

The RP's evidence of use

15. Chen Yan has stated that the Contested Mark 'is in use for travel and accommodation reservation services' and that it is used exclusively online via the website <https://easytrip.com>.² It is stated that the RP is a subsidiary of Trip.com Group ('TCG'), a group of companies which includes Travel Singapore Pte Ltd ('TSP'), the operating company for the Trip.com website, which is authorised by the RP to use the Contested Mark.³

Information from the Wayback Machine⁴

16. Information from the Wayback Machine has been provided to show 'use of the domain [easytrip.com] since 2003'.⁵ The page intended to demonstrate use of the domain includes a bar chart showing the range of years from 2003 to 2021, accompanied by the text 'Saved **441 times** between May 18, 1998 and May 12, 2025' [original emphasis].⁶ The following 'disclaimer' appears at the foot of the extract:⁷

'Note

This calendar view maps the number of times **easytrip.com** was crawled by the Wayback Machine, *not* how many times the site was actually updated. More info in the FAQ'

² Witness Statement of C. Yan, [5].

³ Witness Statement of C. Yan, [4] and [5].

⁴ An internet archiving service.

⁵ Witness Statement of C. Yan, [5]; Exhibit CY3.

⁶ Exhibit CY3

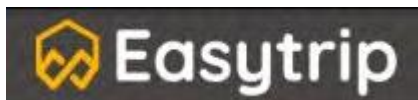
⁷ As above.

17. It is presumed that the bars of the chart show the number of times that the domain has been 'saved'. Whilst this material shows that the domain was live for the period stated, the note reproduced above indicates that the data merely show the number of times that the Wayback Machine has 'crawled' the site. No details are given as to the number of visitors to the website, for example.

Extracts from the easytrip.com website

18. Three extracts from the easytrip.com website have been provided; two 'Wayback' prints, dated 15 August 2018 and 25 June 2022, respectively; and another extract from an unspecified date in 2025.⁸ The fact that the content is in English indicates that it is aimed at English-speaking consumers. I note the following:

(i) The extract dated 25 June 2022 shows the Contested Mark prominently in the header in the following form:



The following reference to the Contested Mark appears further down the page alongside various selling points for Easytrip:



The main feature on the page is a search function to find hotel/serviced apartment accommodation by setting parameters for geographical area and dates for checking in and out:

⁸ Exhibits CY3 and CY6.

Short & Long Term Hotels & Serviced Apartments in **Tai**

(ii) The extract dated 15 August 2018 does not show the Contested Mark on the page, although it is clear from the URL (which is the same as that for the extract noted above at (i)) that the website is for 'Easytrip': <http://www.easytrip.com/>. The following 'flag' appears to be an amalgam of the US and UK flags and, to my mind, likely indicates that the content is aimed at US and UK consumers:



The main feature shown is the following search function to find available flights, hotels and trains:

Destination/Hotel Name

Check-in

Check-out

1 night(s)

Star Rating (Optional)
☐ ≤ 2 stars
☐ 3 stars
☐ 4 stars
☐ 5 stars

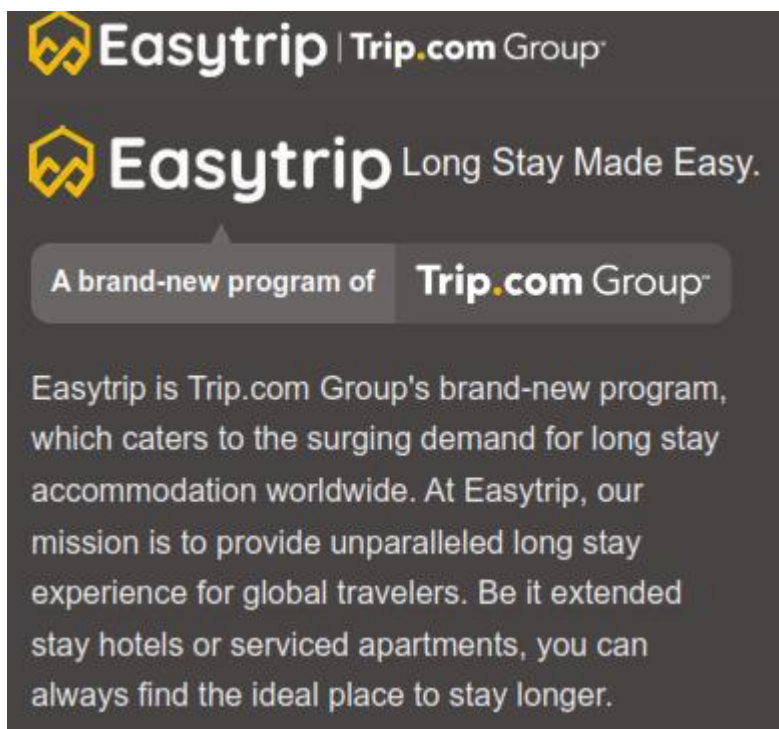
(iii) The extract from 2025⁹ (the print date is 19 June 2025) shows the Contested Mark prominently at the top of each page. Chen Yan's accompanying narrative states that the RP and TSP had 'made a strategic shift in the business model of easytrip.com' during the last 12 months to focus on a 'brand-new offering targeted specifically at the surging demand for long stay accommodation options'.¹⁰ Chen Yan states that 'the easytrip.com domain was inactive for a short period of time, whilst changes were made to the interface, but was relaunched in 2025'.¹¹ It is unclear when this content was first published and, to my mind, it would amount to mere supposition if I were to conclude that it had been online for the 12 months preceding the date of Chen Yan's Witness Statement. The destinations listed are: Hong Kong, Singapore and Bangkok. The content includes the following:

The image is a screenshot of the Easytrip website. At the top, the logo 'Easytrip | Trip.com Group' is displayed. Below the logo, the main headline reads 'Long Stay Made Easy.' in large white letters. Underneath the headline, it says 'Find your perfect long stay hotel or service apartment!' and 'Special discount up to 50% off' in yellow. Below this, there are three icons with corresponding text: a building icon for 'No Contract Needed, Stay From 30 Days', a key icon for 'No Booking Fee, No Agent Fee', and a checklist icon for 'Fully Furnished Room, Move in Ready'. Further down, the section 'Why Choose Us?' is titled, followed by six circular icons with text: 'Move-in Ready' (luggage icon), 'All-inclusive Price' (price tag icon), 'Free Housekeeping' (house with heart icon), 'Additional Services & Perks' (heart with plus icon), 'Residential Security' (shield icon), and 'Access to Hotel Facilities' (building icon).

⁹ Exhibit CY6.

¹⁰ Witness Statement of C. Yan, [8].

¹¹ As above.



The terms and conditions for use of the easytrip website

19. A copy of the terms and conditions for use of the easytrip.com website, dated 23 April 2021, has been provided.¹² The URL in the header and footer areas of the document indicates that this information is to be found on the easytrip.com website. Under the sub-heading '2) ABOUT THESE TERMS', the purpose of the website is set out thus:

'Our website assists you in gathering travel information and determining the availability of travel products and services. It also allows you to book flight tickets, hotels, train tickets, car rentals, airport transfers and attraction tickets ("Travel Products") provided by third party suppliers ("Suppliers"). Depending on which country you are booking in, Travel Products may include ferry and bus tickets, tours, cruises and trips. We also provide customer support services for bookings made on our Website. These terms apply to these booking services.'

¹² Witness Statement of C. Yan, [6]; Exhibit CY4.

20. 'Easytrip' is mentioned frequently throughout the document. The following details demonstrate to me that the content is targeted to, inter alia, consumers either travelling to, or based in, the UK:

- A section headed 'MEMBERSHIP AND TRIP COINS' detailing a 'membership tier system' and 'Trip Coin rewards' directs consumers to URLs containing 'uk';
- A section headed 'RAIL TERMS' includes the URL for UK train services 'www.nationalrail.co.uk';
- Several URLs directing consumers to further information contain 'en-GB', indicating that the website is aimed at English speakers within the UK;
- Information is provided on 'SPLIT TICKETS (UK ONLY)' as a rail travel option;
- The section '13) Language' states that the English version of the document prevails over versions translated into other languages.

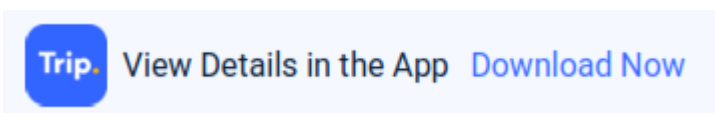
Booking confirmation emails

21. A 'selection of email confirmations sent to customers between 2022 and 2024' has been provided.¹³ There are thirty examples in total. The following mark is clearly visible at the top of each: . The details within the emails include, inter alia: the dates for checking in and out; the hotel address; a booking number and four-digit PIN; the sum payable for the booking and payment method used.

22. Customers' surnames and email addresses have been redacted. No customer addresses are shown. I note that the emails are showing as sent from 'Trip.com' on various dates in 2025, namely: 29 and 30 May 2025; and 10 April 2025. Five examples do not show a 'sent' date. Where the email includes a Google map showing the hotel location, the Copyright notice is dated 2024 or 2025. Furthermore, where the footer of the email is included, I note that the Copyright notice is dated 1999-2025:

¹³ Witness Statement of C. Yan, [7]; Exhibit CY5.

23. These versions of the emails are clearly not contemporaneous with the customers' bookings because the 'sent' dates post-date the check-in dates (by two years or so). No explanation has been given for the anachronistic details that I have noted at [22]. It may be that the versions exhibited comprise copies of sent emails that have been forwarded from the RP's 'sent items' folder to another of the RP's mailboxes. If this is the case, the dates when the confirmations were sent to the customers have been omitted.
24. Notwithstanding the anomalies that I have noted, I can see that thirty bookings have been made for stays in hotels at various locations within the UK, between 17 October 2022 and 22 May 2024. The number of bookings for each of the three years is: 11 in 2022; 9 in 2023; and 10 in 2024. Geographically speaking, the bookings are dispersed across much of the UK, including, inter alia: York, Birmingham, London, Edinburgh, Manchester, Aberdeen, Stratford-Upon-Avon, Sheffield, Newcastle, Cardiff, Inverness, Oxford, Gloucester, Brighton and Leeds. All but one example shows the online payments made to secure the room bookings; with 27 of the payments made in £ Sterling and the remaining 2 payments made in \$ dollars (likely to be US dollars, although I cannot be certain). Whilst it is not possible to determine whether the customers are domiciled in the UK, the following 'features' contained in the emails are clearly intended to be used by consumers whilst they are on UK soil, i.e. when checking in to their UK hotels and during their stays:



 Check-in Voucher

Please check in using the **guest name and the valid ID** provided on the booking.

[View Check-in Voucher](#)

Amenities & Policies

View More Hotel Info & Features

[View Detailed Hotel Info](#)

Service you can rely on

Live chat with our customer support team 24/7 from anywhere in the world. [Learn More](#)



Support in approx. 30s

Get help on the go

Use the Trip.com app to contact us if anything comes up

 Free Internet calls

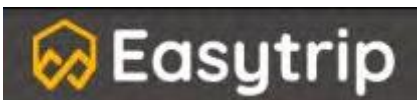


[Download Now](#)

25. Before I proceed to make findings on genuine use, it is necessary to address the matter of variant forms.

Variant forms

26. The word 'Easytrip' appears in the following forms in the evidence:

i. 

ii. 

iii. 

27. I remind myself of section 46(2) of the Act according to which '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)'.

28. The Contested Mark as registered is a word mark. I find that the distinctive character of the mark as registered resides in the combination of the words 'Easy' and 'Trip' forming the one element 'Easytrip'. I do not consider that the different typefaces in which the forms set out above at [26] are presented do anything to disturb that distinctive character. Furthermore, I do not consider that the presence of the figurative element in front of the word 'Easytrip' in variant [26i.] adds to or subtracts from the distinctive character of the mark in its registered form. I find all three variants to be acceptable variants of the Contested Mark as it appears on the register.

Sufficient Use

29. For use to be genuine, it must have been real commercial exploitation of the mark, in the course of trade, sufficient to create or maintain a market for the services at issue.

30. In making my assessment, I am required to consider all relevant factors, including (i) the scale and frequency of the use shown; (ii) the nature of the use shown; (iii) the services for which use has been shown; (iv) the nature of those services, and the market(s) for them; and (v) the geographical extent of the use shown. I also bear in mind the comments of the General Court (GC) in *New Yorker SHK Jeans GmbH KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-415/09:

'53. In order to examine whether use of an earlier mark is genuine, an overall assessment must be carried out which takes account of all the relevant factors in the particular case. Genuine use of a trade mark, it is true, cannot be proved by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (*COLORIS*, paragraph 24). However, it cannot be ruled out that an accumulation of items of evidence may allow the necessary facts to be

established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts (see, to that effect, judgment of the Court of Justice of 17 April 2008 in Case C-108/07, *Ferrero Deutschland v OHIM*, not published in the ECR, paragraph 36).'

Assessment of the evidence

31. In *Merck KGaA v Merck Sharp & Dohme Corp & Ors* [2017] EWCA Civ 1834, Kitchen LJ (as he then was) set out the approach to be followed when considering partial revocation of a trade mark or assessing which goods and services may be relied on under section 5(2). He said:

'244. As I described in *Maier v Asos*, the approach to be adopted is relatively straightforward (although I readily acknowledge that it may on occasion be difficult to apply) and it is in my view consistent with the earlier decisions of the Court of Appeal to which I referred at paragraph [63]. On reflection, I think it can be expressed more clearly 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 categories.

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 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.'

32. This approach was endorsed by the Supreme Court in *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36:

'261. ... First, there can be no doubt that an application to register a mark in respect of a broad category of goods or services may be made *partly* in bad faith in so far as the broad description includes distinct sub-categories of goods or services in relation to which the applicant never had any intention to use the mark, whether conditionally or otherwise. In my view, that emerges clearly from the decision of the CJEU in this case. The approach to be adopted in such a case was explored and explained by the Court of Appeal in *Merck KGaA v Merck Sharp & Dohme Corp* [2017] EWCA Civ 1834; [2018] ETMR 10, at paras 241-2491 and, so far as I am aware, that approach has proved workable and appropriate and has stood the test of time, save that it must now be seen in light of the more recent guidance given by the CJEU in, for example: *Ferrari SpA v DU* (Joined Cases C-720/18 and C-721/18) EU:C:2020:854; [2021] Bus LR 106, at paras 36-53. There the CJEU explained, at para 40, that the essential criterion to apply for the purposes of identifying a coherent subcategory of

goods or services capable of being viewed independently is their purpose and intended use.’

33. In *easyGroup Limited v Easy Live (Services) Limited & Ors* [2025] EWCA Civ 946, Arnold LJ gave further consideration to the approach to identifying independent subcategories:

‘82. As the Court of Justice made clear in *ACTC* and *Ferrari*, the essential criteria which must be applied in determining whether a category of goods or services can be divided into independent subcategories are purpose and intended use. It is not sufficient that different goods may be aimed at different publics or sold in different shops or that different goods or services belong to different market segments. These criteria are easier to apply to goods than to services, in particular because it is easier to distinguish between the purpose and the intended use of goods than it is to distinguish between the purpose and the intended use of services. In the case of services, it seems to me that the logic of the Court of Justice’s approach means that one should consider the intended mode of use of the services in question.

The scope of the revocation action

34. The RP has elected not to defend a number of the registered terms, and these are listed at [5]. The registered terms that *are* defended and, therefore, remain in issue are:

<i>Hotel reservations; Temporary accommodation reservations; Accommodation bureaux [hotels, boarding houses]; Rental of temporary accommodation</i>

35. As a general observation, the body of evidence provided is fairly thin. This is somewhat surprising given the RP’s narrative statement that the offering under the Contested Mark is held out exclusively via the Easytrip website. If an offering is only sold/marketed through a single website, the expectation is that it would not be unduly onerous to provide a more comprehensive picture of use. For example, no revenue figures have been provided; nor any detail on marketing expenditure or examples of promotional materials. Although the RP has endeavoured to obtain

information on the number of times that the Wayback Machine has ‘crawled’ the Easytrip website, data on the number of website ‘hits’ from consumers, and the proportion thereof based in the UK, would have been of greater probative value.

36. Whilst the totality of evidence is not particularly impressive, it does show consistent use of the Contested Mark on booking confirmation emails for hotel stays in locations covering much of the UK, over a period of approximately 19 months (i.e. 17 October 2022 to 22 May 2024). This period spans part of each relevant period due to their overlap. It is clear from the emails that, for this period, the provision of the means for the customers to make the hotel reservations is being held out under the Contested Mark. It is also apparent that ‘Easytrip’ has responsibility for the following:

- i. providing the ‘App’ that customers are invited to download as an option to view their booking details and as a means of contacting ‘Easytrip’;
- ii. providing the electronic ‘check-in Voucher’ to be used upon arrival at the hotel;
- iii. handling the payments to secure the room reservations;
- iv. acting as a first point of contact should the customer have any queries relating to their booking.

37. I note that no evidence of bookings either side of 17 October 2022 to 22 May 2024 has been provided. However, I remind myself that use of a mark need not be quantitatively significant to amount to genuine use, nor is there a requirement for there to be actual sales of the services at stake. Aside from the concluded transactions by way of hotel bookings, I find that other evidential materials demonstrate real commercial efforts to exploit the Contested Mark outside of the 19-month period to which the aforesaid bookings relate. Two ‘Wayback’ extracts of the ‘Easytrip’ website, dated, respectively, August 2018 and June 2022, show search functions to enable consumers to search for flights, hotels and trains. The fact that the content is in English indicates that the site is directed to English speakers; and the ‘flag graphic’ noted at [18(ii)] satisfies me that the UK is one of the English-speaking markets targeted.

38. The document, dated 23 April 2021, setting out the terms and conditions for use of the Easytrip website also has probative value in so far as the details that I have noted at [20] demonstrate that the UK is a destination and/or target market for the services held out via the website. It is also clear to me that considerable effort would have been expended to prepare this document; such efforts amounting to genuine preparation/intention to cater to UK consumers or travellers to the UK.

39. It would have been helpful if the web extract from 2025 showed a specific date. The Second Relevant Period ended on 24 February 2025; and it is not possible to determine whether the content of the aforesaid web extract was published during or after this period. Furthermore, I cannot be sure that the content was published before the RP had notice of the revocation action being filed. Provision of the dates when the Easytrip site was inactive might also have assisted. The RP's narrative evidence is that in the 12 months prior to the date of Chen Yan's Witness Statement, the RP had been working on a new business model and preparing to focus on a long stay accommodation offering. Evidence by way of concrete instances of the Contested Mark being used in this strategic endeavour (e.g. in marketing/promotional materials) would have strengthened the RP's case. That said, I note that the extract from the Easytrip website dated in June 2022 demonstrates that short and long term hotels and serviced apartments were, at that time, already part of the RP's 'Easytrip' offering.

40. Looking at the evidence in the round, there are clear instances of the Contested Mark being used from at least 23 April 2021 to 22 May 2024, which covers a significant portion of the Second Relevant Period, and overlaps the First Relevant Period. I find that the Contested Mark has been put to genuine use within the UK for hotel bookings/reservations across both relevant periods.

41. I will now proceed to determine a fair specification against the registered terms, noted above at [34], according to the guidance in the *Merck* case.

Registered term: *Hotel reservations*

42. I have found that the Contested Mark has been used in respect of hotel reservations, i.e. the RP's offering under the mark entails the provision of a service whose essential function is to enable consumers to book hotel accommodation via its website. It is necessary to consider whether the term *hotel reservations* is sufficiently broad to enable standalone sub-categories to be identified within it. My view is that the act of service denoted by the term *hotel reservations* is, in essence, the enabling of consumers to make reservations for hotel rooms. I do not consider that the service can be sub-divided any further. I have borne in mind that the RP has explicitly stated that the services provided under the Contested Mark are held out exclusively via its website; and that the examples of booking confirmations provided are in the form of emails. This has prompted me to consider whether the term is capable of being sub-divided according to whether the bookings are placed online or by other ('offline') means such as by telephone or in person. My view is that the essence of the service does not change according to the mode of communication used to make the reservation. In my experience as an ordinary member of the general public, virtually any bookable service can be booked online (many services can *only* be booked online). Given the ubiquity of the online 'realm' where bookable services are concerned, I do not consider it appropriate to sub-divide the term according to whether the booking is placed online or offline. In the light of the foregoing, I consider *hotel reservations* to be a fair specification for the RP's services.

Registered term: *Temporary accommodation reservations*

43. This term will encompass reservation services for any type of accommodation that can be booked on a temporary basis, including hotels. A stay in a hotel allows the guest exclusive use of a room, often with its own bathroom/shower (although there are sometimes shared bathrooms). A hostel, on the other hand, typically offers a bed in a room shared with others. An apartment stay, for instance, enables the consumer to enjoy the benefit of a self-contained property. Whilst there may be differences (some significant differences) between types of accommodation that can be booked, the essential act of service from the provider, i.e. provision of a system for consumers to place reservations for overnight accommodation, will, generally speaking, not change according to the type of accommodation booked.

In my experience as an ordinary member of the public, many booking services (Booking.com being a well-known example) cover a variety of accommodation options besides hotels, including, inter alia: 'B&Bs'; motels; glamping pods; shepherd huts; yurts; cottages; apartments/gîtes/villas. Bearing in mind the warning in *Merck* that I must take care not to strip the RP of protection for services that, whilst not the same, do not differ in their essential function, I consider the registered term *Temporary accommodation reservations* a fair specification for the RP's offering. Restricting the term to apply exclusively to *hotel* reservations would exclude, inter alia, B&Bs, motels and hostels, which strikes me as a rather artificial distinction.

Registered term: *Accommodation bureaux [hotels, boarding houses]*

44. It is my understanding that an accommodation bureau is an organisation that finds accommodation for its clients. The nature of this service is, therefore, very different to the provision of a reservation service for stays in hotels and other accommodation where the consumer searches for and selects the hotel/accommodation of their choice before booking it. My view is that the RP's offering will not be encompassed by this term. I find that the Contested Mark has not been used for any services encompassed by *Accommodation bureaux [hotels, boarding houses]*.

Registered term: *Rental of temporary accommodation*

45. It is my view that this service entails the *provision or making available of* rented temporary accommodation. It is important to note that the Nice Classification system explicitly states that class 43 does not include 'rental services for real estate, such as houses or flats, for residential use' (such services being proper to class 36).¹⁴ The term in question must, therefore, only relate to temporary accommodation, e.g. holiday rentals or rooms/beds in boarding house etc. I consider the core of the service 'rental of temporary accommodation' to be different from that of 'temporary accommodation reservations'. To my mind, an undertaking

¹⁴ WIPO Nice Classification, Edition 13-2026, Explanatory Note in Class 43.

providing, say, an online *service to enable consumers to place reservations* for temporary accommodation is not necessarily responsible for also *providing* the accommodation available as a rental. In the former, the act of service is the provision of the reservation facility, whereas in the latter, the act of service is the providing of the accommodation. I refer again to the example of the well-known booking site Booking.com, which facilitates the reservation of a hotel room, whereas it is the hotel itself that provides the temporary accommodation. In the light of the foregoing, I find that the Contested Mark has not been used for this term or any service encompassed by it.

Outcome of revocation action

46. The revocation action has been partially successful. Given that my findings in respect of a fair specification apply across both relevant periods, to the extent that use of the Contested Mark has not been shown, the relevant revocation date will be the earliest possible revocation date, i.e. 13 October 2023.

47. Subject to any appeal, the Contested Mark:

i. may remain registered for the following terms:

Class 43: <i>Hotel reservations; Temporary accommodation reservations</i>

and

ii. will be revoked, from the earliest possible revocation date, i.e. 13 October 2023, for the following terms:

Class 43: <i>Accommodation bureaux [hotels, boarding houses]; Rental of temporary accommodation; Canteens; Bar services; Tourist homes; Day-nurseries [crèches]; Boarding for animals; Rental of chairs, tables, table linen, glassware.</i>
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COSTS

48. The RP defended its mark in respect of four terms only: *Hotel reservations; Temporary accommodation reservations; Accommodation bureaux [hotels, boarding houses]; Rental of temporary accommodation*. The parties have enjoyed a roughly even level of success based on the four terms that remained in issue. I therefore make no order for costs.

Dated this 1st day of July 2026

N. R. Morris

**For the Registrar,
the Comptroller-General**