

O/1006/23

TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK APPLICATION NO. 3699390

IN THE NAME OF INFAS LT GMBH

AND

OPPOSITION THERETO UNDER NO. 431625

BY EASYGROUP LTD

Background and pleadings

1. This decision concerns trade mark application number 3699390 for the word “EasyMap”. The trade mark application was filed on 23 September 2021 (“the relevant date”) by Infas LT GmbH (“the applicant”). The trade mark is a re-filed application made under the provisions of Schedule 2A, Part 3, of the Trade Marks Act 1994 (“the Act”). Registration is sought for a range of services in class 42, which are set out in full at annexe 1.

2. The application is opposed by easyGroup Ltd (“the opponent”). The opposition is based upon ss. 5(2)(b) and 5(3) of the Act and is directed against all of the services in the specification.

3. Under s. 5(2)(b), the opponent relies upon the following earlier trade marks:

(i) UK917929119 “EASYHUB” (“the ‘EASYHUB’ mark”). Filed 11 July 2018; registered 27 December 2018. Specification relied upon: all services in class 42 (see annexe 2).

(ii) UK916079675 “easyLand” (“the ‘easyLand’ mark”). Filed 24 November 2016; registered 14 July 2017. Specification relied upon: all services in class 42 (see annexe 2).

(iii) UK918060442 “EASYNETWORKS” (“the ‘EASYNETWORKS’ mark”). Filed 3 May 2019; registered 8 September 2020. Specification relied upon: all goods and services in classes 9, 37 and 42 (see annexe 2).

4. Given their filing dates, none of the above marks is subject to the use provisions at s. 6A of the Act. The goods and services identified may, therefore, be relied upon without evidence of use. The opponent says that the similarity between the contested mark and the above marks, coupled with the identity or similarity between the goods and services, will give rise to a likelihood of confusion. Consequently, the application should be refused under s. 5(2)(b).

5. For its opposition based upon s. 5(3), the opponent relies upon its earlier UK trade mark number 910584001 for the word “EASYJET”. This is a comparable mark created pursuant to Schedule 2A, Part 1, of the Act, which has a filing date of 24 January 2012 and a registration date of 9 January 2015. The opponent claims that this trade mark has a reputation as a result of the use which has been made of it in relation to certain transport services in class 39. These are specified in full at annexe 2. The opponent asserts that the similarity between the marks is such that the relevant public will believe the marks are used by the same or economically connected undertakings. The opponent also claims that the use of the contested mark will take unfair advantage of the earlier mark’s reputation and cause detriment to its reputation and distinctive character. Consequently, the application should be refused under s. 5(3) of the Act.

6. The applicant filed a counterstatement denying all of the grounds and putting the opponent to proof.

7. Only the opponent filed evidence. Neither party requested a hearing but both parties filed written submissions in lieu. This decision is taken following a careful reading of all of the papers.

8. The opponent is represented by Kilburn & Strode LLP. The applicant is represented by Osborne Clarke LLP.

9. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. That is why this decision continues to refer to the case law of the EU courts.

Evidence

10. The opponent filed evidence in the form of a witness statement and exhibits from Ryan Pixton, a Trade Mark Attorney with the opponent’s representatives. Mr Pixton’s

evidence goes to the use which has been made of the earlier marks. It includes as exhibits two witness statements, from individuals to whom I shall refer as SHI and CG.

11. SHI's evidence is not focused on the marks at issue but it does contain some information about the use of the "easyJet" mark. His statement is not recent: it is dated 4 August 2017.

12. CG's statement is also dated 4 August 2017. He gives his opinion about the fame of the "easy" brand, the effect of its licensing activities and the effect of third-party marks on the opponent's brand values.

13. None of the witnesses was cross-examined.

14. I have read all of the evidence. I will return to it, as appropriate, in the course of this decision.

Section 5(2)(b)

15. Section 5(2)(b) of the Act reads as follows:

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

[...]

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

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

16. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, EU:C:1997:528, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, EU:C:1998:442, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, EU:C:1999:323, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, EU:C:2000:339, *Matratzen Concord GmbH v OHIM*, Case C-3/03, EU:C:2004:233, *Medion AG v. Thomson Multimedia Sales Germany & Austria*

GmbH, Case C-120/04, EU:C:2005:594, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P, EU:C:2007:333, and *Bimbo SA v OHIM*, Case C-591/12P, EU:C:2016:591:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

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

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

17. In the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon*, the court stated at paragraph 23 of its judgment that:

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

18. “Complementary” means that “[...] there is a close connection between [the goods/services], in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking”: *Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-325/06, EU:T:2008:338.

19. Goods can be considered identical when the goods for which the earlier mark is entitled to protection are included in a more general category of goods in the specification of the later trade mark: *Gérard Meric v Office for Harmonisation in the Internal Market*, T-133/05, EU:T:2006:247.

20. In *Avnet Incorporated v Isoact Limited*, [1998] F.S.R. 16, Jacob J. (as he then was) warned against construing specifications for services too widely, stating that:

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

21. My assessment of the similarity between the goods and services at issue is below.

IT services; Software development, programming; Updating of computer software; Updating and adapting of computer programs according to user requirements; Computer software design and updating; Updating and maintenance of computer software and programs; Updating and upgrading of computer software; Updating of computer programs; Updating of computer programs for third parties; Updating of computer software for others; Updating of software for data processing; Updating of software databases; Computer programming services for data warehousing; Computer programming for the internet; Computer programming and software design; Computer programming and maintenance of computer programs; Design and development of operating system software; Computer software programming services; Maintenance of computer programs; maintenance of computer programs; Design services for computer programs; Developing and updating computer software; Development and creation of computer programmes for data processing; Development of software; Development and maintenance of computer database software; Development and maintenance of computer software; Development, updating and maintenance of software and database systems; Development of operating system software; Image processing software development; Development of computer programs; Development of programmes for data processing; Developing of driver and operating system software; Development of driver software; Design, development and programming of computer software; Design, development of software; Design and development of computer database programs; Design and development of computer database software; Design and development of data processing software; Design and development of software for database

management; Design and development of data processing programs; Design and development of software for importing and managing data; Design and development of route planning software; Design of computer database software; Designing of data processing programmes; Design, maintenance, development and updating of computer software; development of computer software; Software design for others; Preparation of data processing programmes; Computer programming for others; Creation, updating and adapting of computer programs; Writing and updating computer software; Writing of computer programs; Creation of computer programmes for data processing; Writing of programs for data processing; Creation, maintenance and adaptation of software; Creating, maintaining, and modernizing computer software; maintenance and updating of computer software; maintenance of computer software; maintenance, repair and servicing of computer software; maintenance of database software; maintenance of Internet access software; customisation of computer applications software; maintenance and updating of database software; Design of virtual reality software; Software customisation services; Custom design of software packages; Customized design of computer software; Modifying of computer programs; Maintenance of computer software relating to computer security and prevention of computer risks; Programming of computer software for reading, transmitting and organising data; Programming of data processing programs; Programming of software for importing and managing data; Programming of software for database management; Programming of software for market research purposes; Programming of software for online advertising; Programming of software for evaluating customer behaviour in online shops; Programming of customized web pages; Programming of computer software for evaluation and calculation of data; Computer programming for data processing and communication systems; Programming of web pages; development, design and upgrading of computer software; Repair of software [maintenance, updating]; Repair of computer software; Writing of computer software; Software design and development; Software development; Software creation; Upgrading of computer software; maintenance services for computer software; maintenance of computer software; Editing of computer programs; Maintenance and updating of computer software; Maintenance and upgrading of computer software; Maintenance and repair of software; Maintenance of computer software; Development of systems for the

processing of data; Design and development of data processing systems; Design of data storage systems; Preparation of computer programs for data processing; Maintenance of data processing software; all of the aforesaid in the field of Geomarketing

22. The “EASYHUB” mark contains the term “consultancy, development, advice, assistance, analysis, design, evaluation and programming services relating to computer software”. All of the services listed above relate to software. In my view, “updating”, “upgrading”, “maintaining” and “modifying” (of software and websites) are all types of programming. Similarly, repair of software must be a type of software programming, albeit not from a blank slate. I see no reason why computer programming for the internet or web pages would not at least include software programming, if for use in a web environment. The opponent’s services are unlimited and include services in the geomarketing field. The above services are identical to the earlier specification’s “development [...], design [...] and programming services relating to computer software [...] and information technology” on the basis outlined in *Meric*.

23. The “easyLand” mark contains the term “design [...] and programming services relating to computer software”. Even if “design” of software is a narrower term than “development”, the latter will include designing software. The services in the “easyLand” mark are also identical to the above services.

24. The “EASYNETWORKS” mark contains the term “design of computer software”. Insofar as the contested services above are or include software/programme design or development services they are also identical under the principle in *Meric*. Writing computer programmes is the same service as software design, expressed differently. Customisation of software is a software design service, as is modification of software. Programming of software is, in my view, at least an aspect of software design services. These services are also identical.

25. As regards the contested software maintenance, this includes not only the programming of software but also developing the software in light of changing information or the changing demands of customers, as well as redesigning code to fix bugs in the original programming. There is therefore a design aspect to the service. The same applies

to updating and upgrading computer software. Although there are some differences in nature and purpose, the users and channels of trade are identical and there is a strong complementary relationship, as software design is an important part of maintenance and updating/upgrading services and will be provided by the same undertakings. These services are similar to an above average degree.

Hosting services; Updating Internet pages; Design and updating of home pages and web pages; Designing and developing webpages on the internet; Design and creation of homepages and Internet pages; Design and construction of homepages and websites; Design and maintenance of computer sites for third parties; Creating and maintaining websites; Creating and updating of home pages for computer networks; Building and maintaining websites; Creating and maintaining customized web pages; Creation of internet web sites; Web site design and creation services; Design and creation of homepages and web pages; Design of home pages; Internet web site design services; Design of web pages; Designing websites for advertising purposes; Creating, designing and maintaining web sites; Maintenance of websites; all of the aforesaid in the field of Geomarketing

26. All three earlier marks contain the term “hosting, creating and maintaining websites for others”. These services are identical on the principle outlined in *Meric*. For the avoidance of doubt, if I am wrong about programming for the internet and/or programming of (customised) web pages being identical on the basis outlined above, I consider that those terms are synonymous with services for creating websites and web pages (at least) and are identical to the earlier services under *Meric*.

Software implementation; Installation of computer programs; implementation of software; Installation of computer software; Installation and actualisation of programs for data processing; Installation, setting up of computer software; Installation of computer software; Installation of firmware; Installation of database software; Installation of Internet access software; Installation of computer applications software; Installation of Access Control as a Service (ACaaS) software; Installation of database software; Installing

computer programs; Installation of database software; all of the aforesaid in the field of Geomarketing

27. I have no submissions or evidence on what “software implementation” is. The ordinary meaning of “implementation” is to put something in place. I will proceed on the basis that software implementation means the selection and installation of software. There is no apparent reason why this could not be done remotely as well as in person.

28. The “EASYHUB” mark includes “technological services”. In my view, that would include installation and implementation of both software and firmware. These services are identical.

29. The “easyLand” mark includes “consultancy, advice, assistance, analysis, design, evaluation and programming services relating to computer software, firmware, hardware and information technology”. It seems to me that “assistance” is a very wide term and would include assistance in the form of installing software or firmware on a customer’s behalf, in which case these services are identical. If that is not right, “consultancy [...] relating to computer software, firmware” shares users and channels of trade with the contested services. They are also complementary, as the earlier mark’s services cover consultancy/advice about the installation or implementation of software: the services are important for one another and are likely to be offered by the same companies. They are similar to a medium degree. For completeness, the same finding would apply to the identical “assistance” services in the “EASYHUB” mark’s specification, if I am wrong that the above contested services are technological services.

30. The “EASYNETWORKS” mark includes “computer consultancy” and “technological consultancy”. These services share users and channels of trade with the contested services. They are complementary and overall are similar to a medium degree.

Software as a service, and rental of software; rental of computer software; Providing artificial intelligence computer programs on data networks; Digital asset management; Platforms for graphic design as software as a service [SaaS]; Providing online, non-downloadable software; Providing on-line non-downloadable software for database

management; Rental of computer software; all of the aforesaid in the field of Geomarketing

31. “Digital asset management” appears to consist of software applications or business processes for the management of, for example, documents and images. My understanding is that the software may be provided online, as a service or platform. Accordingly, all of the above appear to be or include software provided online. These services are identical to the “EASYHUB” mark’s “rental of computer software” and/or “creation and hosting of platforms on the internet”.

32. The closest term in the “easyLand” specification is, in my view, “consultancy, advice, assistance, analysis, design, evaluation and programming services relating to computer software”. I see no reason why this would not include software provided over the internet rather than in hard copy. The purpose and nature of the services differ but they share users and trade channels. They are also complementary services. These services are similar to a medium degree.

33. The “EASYNETWORKS” mark contains “rental of consumer domestic electric and electronic goods, namely, rental of [...] computer software”. I see no reason why software as a service would not include software for domestic use: it is common nowadays for various applications, from storage to word processing, to be available online for domestic customers. However, the limitation on the contested services suggests a business-to-business service. In my view, there is a degree of overlap in purpose and nature with domestic cloud computing software—both may, for example, provide online storage space—but it is unlikely that there is a significant competitive relationship because the users of the contested services are businesses, whilst the users of the earlier mark’s services are the general public. The services are not complementary. There may be a degree of overlap in trade channels but this does not seem to me to be a strong point of overlap. These services are similar to a lower than average degree.

IT consultancy, advisory and information services; Professional advisory services relating to computer software; Computer software technical support services; Support services for computer software; Consulting services in the field of software as a service [SaaS];

Provision of information relating to information technology; all of the aforesaid in the field of Geomarketing

34. These services are identical to “consultancy, development, advice, assistance, analysis, design, evaluation and programming services relating to computer software, firmware, hardware and information technology” in the “EASYHUB” mark, which encompass them.

35. As “support” is wide enough to include advice, or vice versa, they are also identical for the same reason to “consultancy, advice, assistance, analysis, design, evaluation and programming services relating to computer software, firmware, hardware and information technology” in the “easyLand” mark.

36. The “EASYNETWORKS” mark includes “consultancy in the fields of computers”. If there is any difference between advisory, information and consultancy services, it is vanishingly small. I consider the earlier term wide enough to include the consultancy, advisory and information services above. It seems to me that “support services” are suggestive of a service which users seek out when they encounter a technical difficulty and that the service provider may give step-by-step advice to rectify the problem; or it may be a more interventionist service where the provider takes control to remedy the issue. That is not, in my view, quite the same as a consultancy service. Nonetheless, users and channels of trade will overlap and the purpose of both includes providing advice or information about software. These services are similar to a medium degree.

Providing or rental of electronic memory space on the Internet; Providing electronic memory space on the Internet; Electronic data back-up; Electronic data storage and data back-up services; Electronic data storage; Electronic storage of files and documents; Electronic storage services for archiving databases; Electronic storage services for archiving databases, images and other electronic data; Electronic storage of digital images; Off-site data backup; Online data storage; Temporary electronic storage of information and data; Providing back-up computer programs and facilities; all of the aforesaid in the field of Geomarketing

37. The “EASYHUB” mark includes “consultancy and advice relating to the evaluation, choosing and implementation of computer software, firmware, hardware, information technology and of data-processing systems”. The “easyLand” mark includes “consultancy, advice, assistance, analysis, design, evaluation and programming services relating to computer software, firmware, hardware and information technology”. The “EASYNETWORKS” mark is registered for “computer consultancy” and “consultancy in the fields of computers”. These services would include the provision of consultancy/advice services regarding options for third-party storage or indeed whether cloud storage was appropriate. Users are the same, the channels of trade will intersect and the services are complementary. They are similar to a medium degree.

38. I note that the “EASYHUB” and “EASYNETWORKS” marks are registered for “rental of computer software, firmware and hardware” and “rental of computers, computer hardware, computer software, computer apparatus and equipment”, respectively. To the extent that the contested services are or include cloud data storage, this appears to be the rental of space on a server. Although it is possible to conceive of “rental of hardware” meaning the same thing, it seems to me, absent any evidence and bearing in mind the guidance in *Avnet*, that this is something of a stretch of the ordinary meaning of the term. It would, ordinarily, mean that a piece of physical equipment, such as an external hard drive, is rented and that the purchaser takes possession of the equipment for the duration of the hire period. That is not to say that the services are dissimilar. On the contrary, they have the same users, similarity in purpose and are competitive. They are similar to a lower than average degree; I do not think that they offer a better case for the opponent.

Testing of software; testing of computer software; all of the aforesaid in the field of Geomarketing

39. The “EASYHUB” and “easyLand” marks contain “evaluation [...] services relating to computer software”. If this is not the same service described in different terms (without the limitation), it includes the contested testing services. These services are identical under the principle in *Meric*.

40. The closest term in the “EASYNETWORKS” mark is “design of computer software”. The services may both be connected with software production but the precise purpose (creation and checking, respectively) is different. They overlap in users and trade channels. Further, testing is important to software design and may be provided by the same undertakings, leading to a complementary relationship. They are similar to a medium degree.

Development of data bases; all of the aforesaid in the field of Geomarketing

41. The opponent has not identified which terms in the earlier specifications it considers closest to this service. The “EASYHUB” and “easyLand” marks are registered for “consultancy, [...] services relating to computer software, firmware, hardware and information technology”. As this includes databases, these services will be used by the same consumers, may be complementary and will share trade channels. They are similar to medium degree.

42. The “EASYNETWORKS” mark includes “technological consultancy” which, in my view, includes consultancy relating to database development. As with the above services, there is complementarity, shared trade channels and an overlap in users, resulting in a medium degree of similarity.

Maintenance of data bases; all of the aforesaid in the field of Geomarketing

43. The “EASYHUB” mark’s “consultancy and advice relating to the evaluation, choosing and implementation of [...] data-processing systems” and the “easyLand” mark’s “consultancy, advice, assistance, analysis, design, evaluation and programming services relating to computer software, firmware, hardware and information technology” share users and channels of trade with the above services. They are also provided by the same entities and have a complementary relationship. They have a medium degree of similarity.

44. The opponent says that the above services are similar to certain goods in the “EASYNETWORKS” mark’s specification. I accept that “data processing equipment” in that specification is likely to reach the market through the same channels of trade as

database maintenance services, that the goods and services are related in such a way that they are complementary and that users will be the same. They have a medium degree of similarity overall.

Programming of data processing equipment; all of the aforesaid in the field of Geomarketing

45. The “EASYHUB” and “easyLand” marks include “programming services relating to computer software, firmware, hardware and information technology”. As data processing equipment is computer hardware and/or information technology, these services are identical.

46. The “EASYNETWORKS” mark is registered for “data processing equipment” in class 9. Although different in nature and purpose, the goods and services at issue will overlap in users and channels of trade, whilst they are also complementary. They have a medium of similarity.

Design and development of computer firmware; Design and development of firmware systems; all of the aforesaid in the field of Geomarketing

47. It is not entirely clear to me how the limitation to geomarketing applies to firmware. In any event, the “EASYHUB” mark includes development and design services relating to firmware which are unlimited. These services include the contested services and are identical.

48. The “easyLand” mark includes design services relating to firmware. This is identical on the principle in *Meric* to the above design services. Design services relating to firmware are identical to firmware development services on the basis that the latter is the umbrella term. Alternatively, they are highly similar, because although “development” may be wider, there is a significant overlap in nature and purpose, users are identical, the services are provided through the same channels of trade and there is a degree of competition. The services may also be complementary.

Design and development of navigation systems; all of the aforesaid in the field of Geomarketing

49. Geomarketing does not appear to have any relevance to navigation systems. The “EASYHUB” mark includes “consultancy services relating to marine technology”. Navigation systems may be marine technology, whether or not the limitation is valid. These services differ in nature and purpose but share users, channels of trade and they are complementary. They have a medium degree of similarity.

50. The opponent has not identified any goods or services in the “easyLand” or “EASYNETWORKS” marks which are identical or similar to the services at issue. “Design [...] and programming services relating to computer software” in the “easyLand” mark includes software design/programming for navigation systems. Although in the same broad field, their purpose differs, one being the design/programming of the software for a navigation system, the other being the design of the system as a whole. They may overlap in users and channels of trade and there is some complementarity. They are similar to a medium degree.

51. The “EASYNETWORKS” mark includes “nautical apparatus”. This includes navigation systems. The goods and services differ in nature and purpose, though both are concerned with navigation. There is a complementary relationship, overlap in users and the channels of trade will also likely intersect. These goods and services are similar to a medium degree.

Research of computer software; all of the aforesaid in the field of Geomarketing

52. “Research” is systematic investigation, in this case of software, in order to draw conclusions. It coincides in nature and purpose with the “EASYHUB” and “easyLand” marks’ “analysis [...] relating to computer software”. These services share users and channels of trade and are complementary. They are similar to an above average degree.

53. The opponent has identified “design of computer software”, along with various online website and software services in the “EASYNETWORKS” mark as the closest terms. It

says that they are identical under *Merit* or, alternatively, that they are similar to an average degree to any non-identical services, though it does not explain why. The services are not identical: the purpose of a design services is to create a specific product; the purpose of research is to collate and examine existing material. I accept, however, that research and design services may be provided through the same market channels to the same users and that they have a reasonable complementary relationship, resulting in a medium degree of similarity. The other services the opponent has identified are no more similar.

Access Control as a Service (ACaaS); all of the aforesaid in the field of Geomarketing

54. This term appears to cover both physical access control (e.g. badge/card permissions for doors) and access to electronic systems (e.g. managing user permissions).

55. It seems to me that the “EASYHUB” and “easyLand” marks’ “consultancy and programming services relating to [...] information technology” may have some similarity in purpose to the above services because the earlier services could concern access control, though they are not the service itself, rather a precursor to it. As with many of the other services, users and channels of trade will overlap and there is a complementary relationship. They are similar to a medium degree.

56. For the same reasons, the “EASYNETWORKS” mark’s “technological consultancy” is also similar to the above services to a medium degree.

Updating of memory banks of computer systems; all of the aforesaid in the field of Geomarketing

57. The “EASYHUB” marks includes “technological services”. This appears to me to include the above services. They are identical.

58. As I indicated above, “assistance [...] relating to computer software, firmware, hardware and information technology” in the “easyLand” mark’s specification appears to be to be a very wide term. It would include the above services.

59. The above services are similar to a medium degree to the “data processing equipment and computers” and/or “computer hardware” goods in class 9 of the “EASYNETWORKS” mark’s specification. The goods and services intersect in users, channels of trade and are complementary.

Data mining; Computer services for the analysis of data; all of the aforesaid in the field of Geomarketing

60. I have no evidence or submissions to explain to me what data mining is. My understanding is that is the identification of patterns or knowledge in large datasets. The closest term in the “EASYHUB” mark’s specification appears to be “consultancy and advice relating to data-processing systems”. Although data mining is an information-gathering exercise, it appears to be an automatic or semi-automatic process and, therefore, its nature is not the same as that of consultancy. The wording of “computer services for the analysis of data” also suggests that this is a computing process. The purpose of these services is different from that of the earlier services but users may be the same. Data processing (e.g. the cleaning of data) may be a precursor to the contested services and be provided by the same companies but I do not consider that consultancy or advice in relation to data processing are important or essential for the above services in a way which would give rise to complementarity as defined in the case law. There is no competition but these services may reach the market through the same channels. There is a low degree of similarity.

61. For the same reasons, the above services have a low degree of similarity to “consultancy [...] relating to [...] information technology” in the “easyLand” mark, because information technology includes data processing systems.

62. The opponent submits that data mining is similar to various goods in class 9 of the “EASYNETWORKS” mark’s specification on the grounds that they are complementary, share users and channels of trade and “appear alongside each other”. It seems to me that “data processing equipment and computers” are the closest of the goods identified. These will share users with data mining services but that is a superficial point of similarity, given that computers (a type of data processing equipment) are ubiquitous. I am doubtful

that there is a meaningful overlap in channels of trade, as data mining/analysis services are unlikely to be made available via the same outlets, whether intended for businesses or the retail consumer, as computers and data processing systems. The skills and equipment necessary for manufacture of the goods are unrelated to the services. Therefore, whilst computers will be necessary for data mining/analysis operations, the consumer will not assume that the goods and services are provided by the same undertakings. These goods and services are not similar.

63. Of the services, the closest term, in my view, is “consultancy services in the fields of computers”, which are a type of data processing equipment. There is a low degree of similarity with these services for the same reasons given at paragraph 60, above.

The average consumer and the nature of the purchasing act

64. The average consumer is a legal construct deemed to be reasonably well informed and reasonably circumspect: *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J. Fox Limited*, [2014] EWHC 439 (Ch) at [60]. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: *Lloyd Schuhfabrik*.

65. The opponent has not made any specific submissions regarding the average consumer. The applicant submits that the average consumer will pay at least a medium degree of attention when selecting the goods and services at issue.

66. In my view, the goods and services at issue are apt to be purchased by both the general public and business or professional consumers, though some of the services are more likely to be used by one group than the other (data mining services, for example, are unlikely to be used by the general public). I agree with the applicant that the average consumer, whether a member of the public or a business person or other professional, will pay at least a medium degree of attention when selecting the goods and services; in my view, the professional purchaser's level of attention is likely to be reasonably high. As the applicant says, considerations such as compatibility with existing systems may play

a part, as may factors like ease of use or reliability, which are likely to be more important for professional users operating complex systems or who are relying on the services for business-critical decisions.

67. The purchasing process is, for both groups of consumer, likely to be mainly visual. Both groups are likely to consult websites or catalogues and will have access to advertising material in print and online. The business user may have more aural exposure to the marks in discussions of suitable products but the final purchase is unlikely to take place without consideration of written material showing a visual representation of the marks. I will bear in mind that aural considerations may play a part.

Distinctive character of the earlier trade marks

68. In *Lloyd Schuhfabrik*, the Court of Justice of the European Union (“CJEU”) stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and

industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

69. The word “easy” signifies, or potentially signifies, a characteristic of the goods and services, i.e. that they are easy to use or access. It is inherently descriptive. The word “HUB” means a focal point or, in computing, a connection between computers in a network. For services relating to information technology or hardware at large, “HUB” indicates a characteristic, i.e. that the services are concerned with consultancy, advice etc. about computer hubs. The distinctiveness is shared equally between “EASY” and “HUB”. For other services, such as those relating to software, it is possible that “HUB” may have some distinctive character, in which case the balance of distinctiveness would be weighted towards “HUB”. Essentially the same point applies to “EASYNETWORKS”: where the subject of the goods or services is or includes networks, whether computer networks or for networks construed more widely, for example in the sharing of online content, the distinctiveness is in the mark as a whole and no part is more dominant; where “NETWORKS” has some distinctive character, the distinctiveness favours the second part of the mark.

70. A similar analysis applies to “easyLand”. Of itself, “easy” is descriptive. Where the services may relate to land (e.g. land management software), the mark’s distinctive character is split evenly between the two parts, “easy” and “Land”; where the subject of the services is not related to land, “Land” is the more distinctive part of the mark.

71. Inherently, none of the marks is distinctive to more than a medium degree. In none of the marks is “easy” the dominant element.

72. The evidence does not establish that the opponent’s marks have acquired distinctiveness. In relation to the “EASYHUB” mark, the evidence consists of a print from <https://easyhub.com> but it is dated December 2022 and nothing in it indicates the scale of the business at the relevant date, or if indeed it was even operating at that point.¹

¹ REP13.

73. The evidence relating to the “easyLand” mark is that it was used from at least 1997 in relation to the “executive terminal” offices at Luton airport.² This appears to be office space rather than use in relation to any of the services relied upon.³ The evidence is insufficient to establish acquired distinctive character.

74. In respect of the “EASYNETWORKS” mark, a company called Easy Networks was established in Portsmouth in 1995, offering internet, network and telecom services.⁴ The brand rights were purchased by the opponent in January 2019. As of February 2020, the company used the easyNetworks name under licence. There is a print from <https://easynetworks.co.uk>, which was printed on 3 October 2022 and has a 2022 copyright date.⁵ It does say that the business has been ISO registered since 2005 and identifies 2019 as “the year we started easyNetworks”. However, it also says that zero projects have been installed since the business started and there is nothing to indicate custom apart from one truncated and undated review. The fact that the first business using the mark was established in 1995 is insufficient, absent any evidence showing turnover, advertising or geographical scope, to establish that there has been any enhancement of the mark’s distinctive character.

Comparison of trade marks

75. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details: *Sabel* (particularly paragraph 23). *Sabel* also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Bimbo*, that:

“[...] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall

² SHI’s statement, §9.

³ See also REP2.

⁴ REP3, p.

⁵ REP14.

impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

76. It would therefore be wrong artificially to dissect the marks, although it is necessary to take into account their distinctive and dominant components. Due weight must be given to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

77. The trade marks to be compared are:

Earlier marks	Contested mark
EASYHUB easyLand EASYNETWORKS	EasyMap

Overall impression of the contested mark

78. The overall impression of the contested mark is contained in the combination “EasyMap”. The average consumer will recognise that the mark consists of the two common words, “Easy” and “Map”, an impression which is assisted by the capital letters “E” and “M”.

Comparison with “EASYHUB”

79. “EASYHUB” will, as I have already indicated, be understood as the two words “EASY” and “HUB” conjoined. Both words play a part, though the precise balance of distinctiveness between those two words is dependent on the extent to which “HUB” is descriptive.

80. The “EASYHUB” and “EasyMap” marks both consist of the word “easy” followed by a three-letter word. It is not of significance that one is in capital letters and one in title case, as both marks could be used in either. Although of the same length, the letters which make up the second word in each mark are different. I recognise that the rule of thumb is that the average consumer tends to pay more attention to the beginning of a mark than the end. However, it is only a rule of thumb. Here, the beginning of the mark is descriptive. The average consumer will, of course, notice it, but the second word is hard to miss. Both elements of each mark will be verbalised, resulting in two of three syllables being identical and one different, though I recognise that the “p” and “b” sounds are not entirely dissimilar. The marks are visually and aurally similar to a medium degree.

81. The opponent submits that “easyHub [sic] shares a conceptual ‘feel’ that is similar to EasyMap”. I do not understand, because the opponent has not explained, what it contends that the “feel” of either mark is. Both marks plainly indicate that something is easy. However, the concept of a hub, as the centre of a computer network or as a focal point in the general sense, will be well known and understood by the average consumer. The mark conveys the idea of a hub which has easy characteristics (for example, of use or set-up). I accept the applicant’s submission that the average consumer will understand a “map” to be “a diagrammatic representation of an area of land or sea showing physical features such as cities and roads”. The contested mark conveys the notion of a map which also has easy properties, for example that it is easy to read. As wholes, the marks convey different messages. To the extent that the marks share the idea of something being “easy”, it is a non-distinctive similarity.

Comparison with “easyLand”

82. The overall impression of the “easyLand” mark is in the whole, though, as I said above, the degree to which each part is distinctive will shift depending on the services.

83. Both marks begin with “easy”/ “Easy”. The second word of the “easyLand” mark is longer than “Map” but only by one letter. The words “Land” and “Map” bear little visual resemblance to one another, though I recognise that both have an “a”. There is a lower than average degree of visual similarity.

84. The competing marks will both be articulated in full. They are both three syllables long, and the first two syllables are identical. The vowel sound in the final syllable is the same but the consonants are very different. The marks are aurally similar to a medium degree.

85. The “easyLand” mark will be perceived as meaning something that is “easy” (for example, simple to use) connected with land. I have discussed the meaning of “EasyMap” above. Both marks suggest something that is easy and both have a connection to the surface of the Earth. There is, however, a conceptual difference between “Land” as an area of ground, or the part of the planet which is not sea or air and “Map”, which is a representation of the land or sea. The marks have an average degree of conceptual similarity. As above, however, any conceptual similarity which arises from the shared concept of “easy” is not a distinctive similarity.

Comparison with “EASYNETWORKS”

86. As with the other earlier marks, the overall impression of this trade mark is in the combination of “EASY” and “NETWORKS” which both play a part, though the exact share of distinctiveness for each word will depend on the extent to which “NETWORKS” is descriptive.

87. Although the competing marks both begin with “Easy”/ “EASY”, the word which follows is very different. Not only is “NETWORKS” much longer than “Map” but these words have nothing in common. There is a low degree of visual similarity. Of four syllables in the earlier mark, two are identical to the first two syllables of the contested mark. The last two syllables of the earlier mark are very different from the final syllable of the contested mark. There is a low degree of aural similarity.

88. “EASYNETWORKS” conveys the idea of networks which are easy (e.g. to create, maintain). It is not a concept which is reflected in the contested “EasyMap”, whose meaning I have given above. The marks as wholes differ conceptually. Whilst I recognise that both share the idea of something which is “easy”, it is, as in the other marks, not a distinctive similarity.

Likelihood of confusion

89. I remind myself that whether there is a likelihood of confusion is a global assessment, which must take into account all of the relevant factors, and that it is determined from the perspective of the average consumer, who must rely on their imperfect recollection of trade marks. I must also bear in mind that the factors considered above are interdependent.

90. The opponent appears to suggest that there is an increased likelihood of confusion because the opponent uses a number of marks containing “easy” in various fields. However, the opponent did not plead that it relied upon a family of marks and that claim must be rejected. Even if the “family of marks” claim had been properly pleaded, I have described the evidence concerning the marks relied upon under s. 5(2)(b) above. There is no evidence that the “easyLand” mark has ever been on the market for goods or services similar to those of the contested mark.⁶ It is a pre-requisite for a claim under s. 5(2)(b) that the goods and services be similar. Nor is there any evidence that the “EASYHUB” mark had been on the market by the relevant date. In my view, a minimum of three marks are required for a “family”. Consequently, a family of marks claim based on the “EASYHUB”, “easyLand” and “EASYNETWORKS” marks would have failed on the evidence.

91. In its written submissions, the opponent also refers to a number of marks which are detailed, irrelevantly, in the evidence. Again, this appears to be an attempt to rely on a family of marks claim in relation to those marks. However, a family of marks claim can only be considered where the marks are formally pleaded as a basis of opposition.⁷ As none of these marks was relied upon, the only matter for me to consider is whether the contested mark is confusingly similar to each of the pleaded earlier marks individually.

⁶ That the mark is on the market is a requirement for a “family of marks” claim: *Il Ponte Finanziaria SpA v OHIM*, Case 234/06 EU:C:2007:514 at [64]. However, it appears that it is unnecessary for each mark to remain on the market at the relevant date: *Easygroup Limited v Easy Live (Services) Limited & Ors* [2022] EWHC 3327 (Ch) at [149]-[150].

⁷ Case C-16/06P *Les Éditions Albert René Sàrl v OHIM*, at [100]-[101].

92. Confusion may be direct or indirect. Direct confusion is where the consumer simply mistakes one mark for the other. Indirect confusion was explained by Mr Iain Purvis Q.C., as the Appointed Person, in *LA Sugar Limited v Back Beat Inc.*, BL O/375/10 as follows:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example).”

93. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold L.J. pointed out that there must be a “proper basis” for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

94. The opponent submits that there is a likelihood of confusion because the word “Map” is descriptive and does not distinguish the contested mark from the earlier marks. It says that the contested mark shares a similar structure to the earlier marks, namely “the prefix easy and an allusive or descriptive word”. It asserts that the “combination of EASY as a prefix to a descriptive or allusive term is distinctive of the Opponent”.

95. I do not consider that there is a likelihood of either direct or indirect confusion with the “EASYHUB” or “EASYNETWORKS” marks, even for identical services. There is a clear conceptual difference between the marks and the only point of overlap is non-distinctive. It is true that the structure of the marks is the same but it is also entirely ordinary. The average consumer would not attribute the fact of the shared word “easy” to economic connection but to coincidence.

96. The closest of the earlier marks to the contested mark is “easyLand”, as there is a degree of conceptual similarity which arises from the meaning of the marks as wholes rather than merely the shared, descriptive word “easy”. The services are similar to varying degrees, including some which are identical. Although there is a medium degree of aural similarity, there is a lower than average degree of visual similarity; the selection process is mainly visual. I recognise that the competing marks convey a meaning which is connected with the Earth’s surface but the difference between “Land” as the surface of the Earth itself and “Map” as the diagrammatic representation or drawing of that surface is an important one in the context of marks where neither element is particularly distinctive and the common element is entirely descriptive. In circumstances where the average consumer pays at least a medium degree of attention, the difference between the second word of the marks is sufficient to obviate the risk of direct confusion. As regards indirect confusion, my view is that the descriptive qualities of “easy” would not give rise to an expectation on the part of the consumer that the user of an “EasyMap” mark would be connected to the user of “easyLand”: this is not a case where the common element is

strikingly distinctive (or even sufficiently distinctive), such that the average consumer would assume that nobody other than the opponent is using it, even allowing for the similar structure of the marks. Further, I do not consider that the average consumer would assume that the mark “EasyMap” is a brand extension of the earlier mark, given that the only common word is descriptive. There is no likelihood of confusion, whether direct or indirect.

97. The opposition under s. 5(2)(b) is dismissed.

Section 5(3)

98. Section 5(3) states:

“(3) A trade mark which-

is identical with or similar to an earlier trade mark, shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark”.

99. Section 5(3A) states:

“(3A) Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

100. The relevant case law can be found in the following judgments of the CJEU: Case C-375/97, EU:C:1999:408, *General Motors* [1999] ETMR 950; Case 252/07, EU:C:2008:655 *Intel*, [2009] ETMR 13; Case C-408/01, EU:C:2003:582, *Adidas-Salomon*, [2004] ETMR 10; and C-487/07, EU:C:2009:378, *L’Oréal v Bellure* [2009] ETMR 55; Case C-323/09, EU:C:2011:604, *Marks and Spencer v Interflora*; and Case C-383/12P, EU:C:2013:741, *Environmental Manufacturing LLP v OHIM*. The law appears to be as follows:

(a) The reputation of a trade mark must be established in relation to the relevant section of the public as regards the goods or services for which the mark is registered; *General Motors*, paragraph 24.

(b) The trade mark for which protection is sought must be known by a significant part of that relevant public: *General Motors*, paragraph 26.

(c) It is necessary for the public when confronted with the later mark to make a link with the earlier reputed mark, which is the case where the public calls the earlier mark to mind: *Adidas Saloman*, paragraph 29 and *Intel*, paragraph 63.

(d) Whether such a link exists must be assessed globally taking account of all relevant factors, including the degree of similarity between the respective marks and between the goods/services, the extent of the overlap between the relevant consumers for those goods/services, and the strength of the earlier mark's reputation and distinctiveness: *Intel*, paragraph 42.

(e) Where a link is established, the owner of the earlier mark must also establish the existence of one or more of the types of injury set out in the section, or there is a serious likelihood that such an injury will occur in the future: *Intel*, paragraph 68; whether this is the case must also be assessed globally, taking account of all relevant factors: *Intel*, paragraph 79.

(f) the more immediately and strongly the earlier mark is brought to mind by the later mark, the greater the likelihood that use of the latter will take unfair advantage of, or will be detrimental to, the distinctive character or the repute of the earlier mark: *L'Oréal v Bellure NV*, paragraph 44.

(g) Detriment to the distinctive character of the earlier mark occurs when the mark's ability to identify the goods/services for which it is registered is weakened as a result of the use of the later mark and requires evidence of a change in the economic behaviour of the average consumer of the goods/services for which the

earlier mark is registered, or a serious risk that this will happen in future: *Intel*, paragraphs 76 and 77 and *Environmental Manufacturing*, paragraph 34.

(h) The more unique the earlier mark appears, the greater the likelihood that the use of a later identical or similar mark will be detrimental to its distinctive character: *Intel*, paragraph 74.

(i) Detriment to the reputation of the earlier mark is caused when goods or services for which the later mark is used may be perceived by the public in such a way that the power of attraction of the earlier mark is reduced, and occurs particularly where the goods or services offered under the later mark have a characteristic or quality which is liable to have a negative impact of the earlier mark: *L'Oréal v Bellure NV*, paragraph 40. The stronger the reputation of the earlier mark, the easier it will be to prove that detriment has been caused to it: *L'Oréal v Bellure NV*, paragraph 44.

(j) The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an unfair advantage where it seeks to ride on the coat-tails of the senior mark in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image. This covers, in particular, cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation (*Marks and Spencer v Interflora*, paragraph 74 and the court's answer to question 1 in *L'Oréal v Bellure*).

101. The earlier mark relied upon under this ground, UK 910584001 "EASYJET", is subject to the use provisions at s. 6A. Under those provisions, the opponent must show genuine use of the services relied upon in the relevant period, defined as the five-year period ending with the date of application for the contested mark, in this case 24 September 2016 to 23 September 2021. However, under s. 5(3), the opponent must show that the earlier mark had a reputation at the relevant date, i.e. 23 September 2021. It is

settled law that a reputation represents a higher bar than genuine use. Providing the evidence showing a reputation is in the five years preceding the relevant date, the proof of use assessment is rendered otiose: if the use is sufficient to show a reputation it must necessarily establish genuine use; if the use is insufficient to establish a reputation, the ground under s. 5(3) will fail even if there has been genuine use. For these reasons, I do not propose to conduct a separate assessment of genuine use.

Reputation

102. In *General Motors*, the CJEU gave the following guidance for the assessment of a trade mark's reputation:

“25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

28. Territorially, the condition is fulfilled when, in the terms of Article 5(2) of the Directive, the trade mark has a reputation ‘in the Member State’. In the absence of any definition of the Community provision in this respect, a trade mark cannot be required to have a reputation ‘throughout’ the territory of the Member State. It is sufficient for it to exist in a substantial part of it.”

103. As the earlier trade mark is a comparable mark, paragraph 10 of Part 1, Schedule 2A of the Act is relevant. It reads:

“10.— (1) Sections 5 and 10 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the reputation of a comparable trade mark (EU) falls to be considered in respect of any time before IP completion day, references in sections 5(3) and 10(3) to—

(a) the reputation of the mark are to be treated as references to the reputation of the corresponding EUTM; and

(b) the United Kingdom include the European Union.”

104. The evidence shows that the easyJet Airline Company was incorporated in 1995 and has been operating flights domestically and internationally since at least 1996.⁸ The airline carried over 78 million passengers in the rolling year to June 2017 and over 83 million passengers in the rolling year to June 2018.⁹ Monthly passenger numbers dropped in July 2020 compared with the same month in 2019 (2 million, down from almost 9.5 million), doubtless due in part to the COVID-19 pandemic.¹⁰ easyJet plc reported total revenue of at least £3,000 million p.a. between 2012 and 2020.¹¹ Revenue fell to £1,458 million in 2021. These figures are not specific to the UK but the opponent’s business appears to be the UK and European (although not exclusively EU) short-haul markets. easyJet appears to have been the UK’s largest short-haul airline, with a 20% market share, from 2014 to 2016.¹² It carried the most passengers of any UK airline in 2017 (over 68 million); in 2019, of 1,994 people who had flown from a UK airport in the last 12 months, 23% had used easyJet for their most recent flight.¹³ The Chief Executive of easyJet says in the financial report for the year to 30 September 2021 that easyJet is the UK’s largest carrier.¹⁴ A print from YouGov which appears to relate to a date in 2020 lists easyJet as

⁸ SHI’s statement, §§ 8, 10, 46.

⁹ REP7, p. 155.

¹⁰ REP7, p. 156.

¹¹ REP5.

¹² REP5.

¹³ REP7, pp. 157-158.

¹⁴ REP5, p. 139.

the most famous and the fourth most popular airline in the UK.¹⁵ Similar data for the second quarter of 2022 ranks easyJet as second for popularity and first for fame, ahead of carriers such as British Airways and Ryanair.¹⁶

105. In view of the above evidence, I am satisfied that at the relevant date the “EASYJET” mark had a strong reputation for passenger airline services.

106. Notwithstanding the opponent’s submission that the evidence also shows a significant reputation for “related services” (to airlines), the evidence does not establish a reputation for any other services under the “EASYJET” mark which would usually require, at a minimum, service-specific evidence of revenue/turnover and advertising. There is nothing which comes close to this. I acknowledge that there is a reference in the 2018 annual report to 500,000 existing easyJet customers who book a hotel through easyJet but there are no figures for any other years and no additional evidence to show the opponent’s offering.¹⁷ The 2019 report indicates that “easyJet holidays” is set to launch in the UK later that year;¹⁸ there is no mention of holiday-related services (other than passenger airline services) in the 2020 report. The location of the customers who bought holidays is not specified and 500,000 users would not, in my estimation, represent a “significant part” of the EU market.

Link

107. Whether the public will make the required mental ‘link’ between the marks must take account of all relevant factors. The factors are identified in *Intel* (see paragraph 100(d), above).

The degree of similarity between the conflicting marks

108. I have considered the overall impression of the contested mark above. The “EASYJET” mark is composed of two descriptive elements, neither of which is more

¹⁵ REP7, p. 160.

¹⁶ REP7, pp. 164-165.

¹⁷ REP5, p. 124.

¹⁸ REP5, p. 130.

dominant in the overall impression. It shares the same first four letters with the contested mark but the words “JET” and “Map” are different. Both parts of each mark will be verbalised, resulting in a medium degree of both visual and aural similarity. Conceptually, although the common use of “easy” creates a similarity of sorts, the meaning of “EASYJET” will be understood as jets that are easy to use or to access, whilst “EasyMap” has an entirely different meaning. As wholes, the marks are conceptually different and any similarity arising from the use of “easy” is not a distinctive similarity.

The nature of the goods or services for which the conflicting marks are registered, or proposed to be registered, including the degree of closeness or dissimilarity between those goods or services, and the relevant section of the public

109. I adopt my findings above in relation to the average consumer of the contested services, i.e. that they may be a member of the public or a business person/professional (though some of the services are unlikely to be used by the public), who will purchase the services through primarily visual means with at least a medium degree of attention. The average consumer of passenger airline services will mainly be the general public, though there will also be some business users. These services will also be purchased via principally visual means following advertising in print and online, I do not discount that there may be an aural element. The level of attention is likely to be at least medium, care being taken regarding the correct selection of dates and times of flights, and of destinations.

110. As far as the similarity between the services is concerned, the contested services are all related to information technology. They are also all in the field of geomarketing, though I am doubtful that the limitation is valid for some of the services, as I have indicated above. Whilst I accept that aircraft require, for example, software and hardware, as well as navigational systems, the contested services are not important or essential for passenger airline services, nor are they provided by the same undertakings: they are not complementary. I can see no point of similarity apart from a potential overlap in users at a high level of generality. The services at issue are dissimilar.

The strength of the earlier mark's reputation

111. The earlier mark has a strong reputation.

The degree of the earlier mark's distinctive character, whether inherent or acquired through use

112. The mark "EASYJET" is factually highly distinctive. However, "EASY" is descriptive of airline services and the evidence does not establish that that word alone has become highly distinctive of the opponent's services.

Whether there is a likelihood of confusion

113. Given the difference between the respective services and the descriptiveness of the common element "EASY"/ "Easy", I see no risk of a likelihood of confusion, including the likelihood of association, on the part of the relevant public.

114. Bearing in mind all of the above and, in particular, the conceptual distinction between the marks, the lack of distinctiveness in the common element and the significant distance between the services, I find that despite the strength of the earlier mark's reputation the average consumer is unlikely to make a link between the respective marks. The opposition under s. 5(3) is dismissed.

Overall conclusion

115. The opposition is dismissed. The application will proceed to registration.

Costs

116. The applicant has been successful and is entitled to an award of costs. The applicable scale is found in Tribunal Practice Notice 2/2016. I award costs to the applicant as follows:

Considering the notice of opposition and filing the counterstatement: £400

Considering the other party's evidence and preparing submissions: £800

Total: £1,200

117. I order easyGroup Ltd to pay Infas LT GmbH the sum of **£1,200**. This sum is to be paid within 21 days of the expiry of the appeal period or within 21 days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 26th day of October 2023

Heather Harrison

For the Registrar

The Comptroller-General

ANNEXE 1

UK3699390

Class 42: IT services; Software development, programming and implementation; Hosting services, software as a service, and rental of software; IT consultancy, advisory and information services; Updating Internet pages; Updating of computer software; Updating and adapting of computer programs according to user requirements; Computer software design and updating; Updating and maintenance of computer software and programs; Updating and upgrading of computer software; Updating of computer programs; Updating of computer programs for third parties; Updating of computer software for others; Updating of software for data processing; Updating of software databases; Computer programming services for data warehousing; Computer programming for the internet; Computer programming and software design; Computer programming and maintenance of computer programs; Design and development of operating system software; Computer software programming services; Maintenance of computer programs; Installation and maintenance of computer programs; Design services for computer programs; Developing and updating computer software; Development and creation of computer programmes for data processing; Development and testing of software; Development and maintenance of computer database software; Development and maintenance of computer software; Development, updating and maintenance of software and database systems; Development of operating system software; Image processing software development; Development of computer programs; Development of data bases; Development of programmes for data processing; Developing of driver and operating system software; Development of driver software; Design and updating of home pages and web pages; Design, development and programming of computer software; Design, development and implementation of software; Designing and developing webpages on the internet; Design and development of computer database programs; Design and development of computer database software; Design and development of computer firmware; Design and development of data processing software; Design and development of software for database management; Design and development of firmware systems; Design and development of data processing programs; Design and development of software for

importing and managing data; Design and development of navigation systems; Design and development of route planning software; Design and creation of homepages and Internet pages; Design and construction of homepages and websites; Design and maintenance of computer sites for third parties; Creating and maintaining websites; Design of computer database software; Designing of data processing programmes; Design, maintenance, development and updating of computer software; Research and development of computer software; Creating and updating of home pages for computer networks; Software design for others; Preparation of data processing programmes; Computer programming for others; Creation, updating and adapting of computer programs; Writing and updating computer software; Building and maintaining websites; Creating and maintaining customized web pages; Writing of computer programs; Creation of computer programmes for data processing; Creation of internet web sites; Writing of programs for data processing; Creation, maintenance and adaptation of software; Professional advisory services relating to computer software; Web site design and creation services; Design and creation of homepages and web pages; Design of home pages; Internet web site design services; Design of web pages; Designing websites for advertising purposes; Creating, designing and maintaining web sites; Creating, maintaining, and modernizing computer software; Installation, maintenance and updating of computer software; Installation and actualisation of programs for data processing; Installation, setting up and maintenance of computer software; Installation, maintenance, repair and servicing of computer software; Installation and maintenance of database software; Installation and maintenance of Internet access software; Installation and customisation of computer applications software; Installation of Access Control as a Service (ACaaS) software; Installation of firmware; Installation of database software; Installing computer programs; Installation, maintenance and updating of database software; Design of virtual reality software; Software customisation services; Custom design of software packages; Customized design of computer software; Modifying of computer programs; Maintenance of computer software relating to computer security and prevention of computer risks; Maintenance of data bases; Programming of computer software for reading, transmitting and organising data; Programming of data processing programs; Programming of software for importing and managing data; Programming of

software for database management; Programming of software for market research purposes; Programming of software for online advertising; Programming of software for evaluating customer behaviour in online shops; Programming of customized web pages; Programming of computer software for evaluation and calculation of data; Computer programming for data processing and communication systems; Programming of data processing equipment; Programming of web pages; Research, development, design and upgrading of computer software; Repair of software [maintenance, updating]; Repair of computer software; Writing of computer software; Software design and development; Software development; Software creation; Computer software technical support services; Testing of computer software; Upgrading of computer software; Support and maintenance services for computer software; Rental and maintenance of computer software; Editing of computer programs; Maintenance and updating of computer software; Maintenance and upgrading of computer software; Maintenance and repair of software; Maintenance of computer software; Maintenance of websites; Access Control as a Service (ACaaS); Consulting services in the field of software as a service [SaaS]; Providing artificial intelligence computer programs on data networks; Providing or rental of electronic memory space on the Internet; Providing electronic memory space on the Internet; Digital asset management; Electronic data back-up; Electronic data storage and data back-up services; Electronic data storage; Electronic storage of files and documents; Electronic storage services for archiving databases; Electronic storage services for archiving databases, images and other electronic data; Electronic storage of digital images; Off-site data backup; Platforms for graphic design as software as a service [SaaS]; Providing online, non-downloadable software; Providing on-line non-downloadable software for database management; Online data storage; Rental of computer software; Temporary electronic storage of information and data; Providing back-up computer programs and facilities; Provision of information relating to information technology; Updating of memory banks of computer systems; Data mining; Computer services for the analysis of data; Development of systems for the processing of data; Design and development of data processing systems; Design of data storage systems; Preparation of computer programs for data processing; Maintenance of data processing software; all of the aforesaid in the field of Geomarketing.

ANNEXE 2

UK917929119 EASYHUB

Class 42: Creation and hosting of platforms on the internet; hosting online web facilities for others for sharing online content; providing online non-downloadable software for use in property transactions; meteorological information services; design of computer software; design, drawing and commissioned writing, all for the compilation of web pages on the Internet; hosting, creating and maintaining websites for others; scientific consultancy; engineering consultancy; computer consultancy; design consultancy; architectural consultancy; technological consultancy; quality assurance consultancy; website design consultancy; data security consultancy; shop fitting design consultancy services; ship design consultancy services; engineering consultancy relating to manufacture; consultancy services relating to design; consultancy services relating to product engineering; consultancy services relating to marine technology; consultancy in the fields of computers; consultancy relating to the design of packaging; provision of technical consultancy to the shipping industry; provision of technology consultancy to the airline industry; consultancy in the field of office and work place automation; technological consultancy in the fields of energy production and use; consultancy relating to the creation and design of websites for e-commerce; consultancy services relating to software used in the field of ecommerce; technical consultancy in relation to research services relating to foods and dietary supplement; consultancy relating to technological services in the field of power and energy supply; technical consultancy in relation to the technical research in the field of food and beverages; consultancy, development, advice, assistance, analysis, design, evaluation and programming services relating to computer software, firmware, hardware and information technology; provision of access to computers, namely, computer rental; rental of consumer domestic electric and electronic goods, namely, rental of computers, computer hardware, computer software, computer apparatus and equipment; hosting, creating and maintenance of websites for others; Internet café services, namely, renting computers and leasing access time to computers; consultancy and advice relating to the evaluation, choosing and implementation of computer software, firmware, hardware, information technology and of data-processing systems; rental of

computer software, firmware and hardware; provision of information relating to technical matters and information technology; scientific and technological services and research and design relating thereto, industrial analysis and research services.

UK916079675 easyLand

Class 42: Meteorological information services; consultancy, advice, assistance, analysis, design, evaluation and programming services relating to computer software, firmware, hardware and information technology; provision of access to computers; design, drawing and commissioned writing, all for the compilation of web pages on the Internet; hosting, creating and maintaining websites for others; Internet café services, consultancy and advice relating to the evaluation, choosing and implementation of computer software, firmware, hardware, information technology and of data-processing systems; provision of information relating to technical matters and information technology; including but not limited to, all the aforesaid services provided via telecommunications networks, by online delivery and by way of the Internet and the world wide web.

UK918060442 EASYNETWORKS

Class 9: Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, supervision, life-saving apparatus and instruments apparatus; magnetic data carriers; recording discs; mechanisms for coin operated apparatus; cash registers; calculating machines, data processing equipment and computers; computer hardware; computer firmware; compact discs; computer games software; consumer domestic electrical and electronic apparatus and instruments, namely, audio disc players, audio disc recorders, compact disc players, compact disc recorders; consumer domestic electrical and electronic apparatus and instruments, namely, radio tuners, audio receivers, MP3 players, audio amplifiers, audio speakers, headphones, earphones, microphones; consumer domestic electrical and electronic apparatus and instruments, namely, plasma display panel televisions, liquid crystal display televisions, television receivers, liquid crystal displays, liquid crystal display projectors; consumer domestic electrical and electronic apparatus and instruments, namely, DVD players, DV recorders,

video cameras, digital still cameras, cameras, mobile phones, audio players for automobile use, radio receivers for automobile use, web cameras, battery chargers; sunglasses; electronic, magnetic and optical identity and membership cards; cases for spectacles; Electrical apparatus and instruments, namely, money receiving and dispensing machines; electronic numeric displays; flat screens; automated banking machines; ticket terminals; automated cash machines; cash dispensing machines; apparatus for processing card transactions and data relating thereto and for payment processing; apparatus for verifying data on magnetically encoded cards; magnetic cards; magnetically encoded and smart (programmable) cards; parts and fittings for the aforesaid goods.

Class 37: Installation, repair and maintenance of computers and computer peripherals.

Class 42: Creation and hosting of platforms on the internet; hosting online web facilities for others for sharing online content; providing online non-downloadable software for use in property transactions; meteorological information services; design of computer software; design, drawing and commissioned writing, all for the compilation of web pages on the Internet; hosting, creating and maintaining websites for others; scientific consultancy; engineering consultancy; computer consultancy; design consultancy; architectural consultancy; technological consultancy; quality assurance consultancy; website design consultancy; data security consultancy; shop fitting design consultancy services; ship design consultancy services; engineering consultancy relating to manufacture; consultancy services relating to design; consultancy services relating to product engineering; consultancy services relating to marine technology; consultancy in the fields of computers; consultancy relating to the design of packaging; provision of technical consultancy to the shipping industry; provision of technology consultancy to the airline industry; consultancy in the field of office and work place automation; technological consultancy in the fields of energy production and use; consultancy relating to the creation and design of websites for e-commerce; consultancy services relating to software used in the field of ecommerce; technical consultancy in relation to research services relating to foods and dietary supplement; consultancy relating to technological services in the field of power and energy supply; technical consultancy in relation to the technical research in

the field of food and beverages; provision of access to computers, namely, computer rental; rental of consumer domestic electric and electronic goods, namely, rental of computers, computer hardware, computer software, computer apparatus and equipment; hosting, creating and maintenance of websites for others; Internet café services, namely, renting computers and leasing access time to computers.

UK910584001 EASYJET

Class 39: Transport; travel arrangement; travel information; transportation of goods, passengers and travelers by air, land, sea and rail; airline and shipping services; airport check-in services; arranging of transportation of goods, passengers and travelers by land and sea; airline services; baggage handling services; cargo handling and freight services; arranging, operating and providing facilities for cruises, tours, excursions and vacations; airport parking services; travel agency services; tourist office services; advisory and information services relating to the aforesaid services; information services relating to transportation services, travel information and travel booking services provided on-line from a computer database or the Internet.