O-0194-25

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK REGISTRATION NOS. 902907509, 911624376, 2313528A AND 914920409 IN THE NAME OF EASYGROUP LTD IN RESPECT OF THE TRADE MARKS

EASYOFFICE

easyOffice

EASYOFFICE

easyOffice

easyOffice

easyOffice

easyOffice

VARIOUSLY IN CLASSES 35, 36, 38, 42 AND 43

AND

IN THE MATTER OF REVOCATION PROCEEDINGS THERETO UNDER NOS. 504403, 504405, 504408 AND 506533

BY THE NUCLEI LIMITED

Background and pleadings

1. easyGroup Limited is the registered proprietor of the following UK trade mark registrations. The list of registered services of the first three contested marks were all restricted in March 2024 and the list of services included below reflects the current lists, being the only ones still relevant in these proceedings:

(i) Comparable UK Mark No 902907509

EASYOFFICE

Filing date: 18 October 2002

Registration date: 30 June 2004

Class 38: *Provision of broadband and telephone line services*.

Class 42: *Provision of advice relating to computer software and hardware and its compatibility with telephony and broadband services*.

(ii) Comparable UK Mark No. 911624376

easyOffice

Filing date: 4 March 2013

Registration date: 31 July 2013

Class 35: *Telephone answering services; document reproduction services; recruitment services; file management services; personnel management services; payroll services; photocopying services; word processing and secretarial services; typing services; office administration services; office management services.*

Class 36: *Insurance; financial affairs; monetary affairs.*

Class 43: *Services for providing food and drink; catering, hotel, restaurant, café and bar services*.

(iii) UK Mark No. 2313528A

EASYOFFICE

easyOffice

easyOffice

easyOffice

Filing date: 18 October 2002

Registration date: 12 September 2003

Class 38: *Telecommunication services for the provision of broadband and telephone line services*.

Class 42: *Provision of advice relating to computer software and hardware and its compatibility with telephony and broadband services*.

(iv) UK Comparable Mark 914920409

easyOffice

Filing date: 17 December 2015

Registration date: 27 June 2018

Class 42: *Non-business professional consultancy; meteorological information services; posting, creating and maintaining websites for others; scientific services and research and design relating thereto, industrial analysis and research services.*

Class 43: *Provision of facilities for exhibitions and conference; room rental for exhibitions, conferences; rental of fair stands; restaurant, bar and catering services.*

2. Nuclei Limited (hereafter, “the cancellation applicant”) seeks revocation of all four of the contested marks on the grounds of non-use based upon Section 46(1)(a) and/or (b) of the Trade Marks Act 1994 (“the Act”). The registered proprietor filed counterstatements denying the claims and stating that it has made genuine use of its marks in the UK in respect to all the registered services.

3. Revocations are sought under Section 46(1)(a) in respect of all the services listed in respect of the 5-year periods following the dates of completion of the registration procedures of Party B’s marks. Revocations are also sought under Section 46(1)(b). The dates relevant to these claims are detailed in the table below:

Trade Mark	**Section 46(1)(a) period**	**Section 46(1)(a) Revocation Date**	**Section 46(1)(b) period**	**Section 46(1)(b) Revocation Date**
902907509	01/07/2004 – 30/06/2009	01/07/2009	01/07/2009 – 30/06/2014 01/07/2014 – 30/06/2019 02/12/2016 – 01/12/2021	01/07/2014 01/07/2019 02/12/2021
911624376	01/08/2013 – 31/07/2018	01/08/2018	02/12/2016 – 01/12/2021	02/12/2021
2313528A	13/09/2003 – 12/09/2008	13/09/2008	13/09/2008 – 12/09/2013 13/09/2013 – 12/09/2018 02/12/2016 – 01/12/2021	13/09/2013 13/09/2018 02/12/2021
914920409	28/06/2018 – 27/06/2023	28/06/2023		

4. The proceedings in respect of the first three of these contested marks were consolidated on 21 June 2022 and the fourth proceedings concerning the fourth

contested mark was added to the consolidated group on 12 March 2024. As a result of a lengthy suspension of the first three proceedings whilst related court proceedings were concluded, the registered proprietor had not filed any evidence in these cases. It did file evidence in the fourth proceedings (CA506533), shortly before it was consolidated with the other three proceedings and, accordingly, the Registry permitted further time for the registered proprietor to file evidence of use in the earlier three proceedings. It chose not to do so but, rather, it surrendered in full all four contested marks. The cancellation applicant notified the Registry that it maintained its applications for cancellation despite the surrender of the contested marks.

5. The only evidence in the consolidated proceedings is, therefore, the witness statement, dated 20 February 2024, of Ryan Edward Pixton, Chartered Trade Mark Attorney at Kilburn and Strode LLP, together with Exhibits REP1 – REP24 originally filed, on 20 February 2024, in support of its claim that the registered proprietor had genuinely used its mark 914920409. However, following the consolidation of the four proceedings, this evidence is now common to all four cases, and I will consider it in that light, and I will summarise it to the extent that it is considered necessary. The cancellation applicant claims that Mr Pixton's statement contains a defective statement of truth[1] but I will proceed on the basis that the statement is acceptable.

6. The parties did not request to be heard, but they both filed written submissions in lieu of a hearing. I give my decision after a careful consideration of all the papers on file.

7. The registered proprietor was represented throughout by Kilburn & Strode LLP and the cancellation applicant by Mishcon de Reya LLP.

Legislation

8. Section 46 of the Act states:

> "46. - (1) The registration of a trade mark may be revoked on any of the following grounds-

[1] At [18] of its final written submissions

(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 in referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made:

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

(4) […]

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

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

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

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

9. Where the mark is a comparable mark, paragraph 8 of part 1, schedule 2A is relevant. It reads:

"8.— Non-use as defence in infringement proceedings and revocation of registration of a comparable trade mark (EU)

(1) Sections 11A and 46 apply in relation to a comparable trade mark (EU), subject to the modifications set out below.

(2) Where the period of five years referred to in sections 11A(3)(a) and 46(1)(a) or (b) (the "five-year period") has expired before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark are to be treated as references to the corresponding EUTM; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union.

(3) Where [IP completion day] falls within the five-year period, in respect of that part of the five-year period which falls before [IP completion day]—

(a) the references in sections 11A(3) and (insofar as they relate to use of a trade mark) 46 to a trade mark, are to be treated as references to the corresponding EUTM ; and

(b) the references in sections 11A and 46 to the United Kingdom include the European Union".

10. Section 100 is also relevant, which reads:

"If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it."

Decision

11. 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.

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 CJEU in a considerable number of cases, the principal decisions being Case C-40/01 *Ansul BV v Ajax Brandbeveiliging BV* [2003] ECR I-2439, Case C-259/02 *La Mer Technology Inc v Laboratories Goemar SA* [2004] ECR I-1159, Case C-416/04 P *Sunrider Corp* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [2006] ECR I-4237, Case C-442/07 *Verein Radetsky-Order v Bundervsvereinigung Kamaradschaft 'Feldmarschall Radetsky'*[2008] ECR I-9223, Case C-495/07 *Silberquelle GmbH v Maselli-Strickmode GmbH* [2009] ECR I-2759, Case C-149/11 *Leno Merken BV v Hagelkruis Beheer BV* [EU:C:2012:816], Case C-609/11 *Centrotherm Systemtechnik GmbH v*

Centrotherm Clean Solutions GmbH & Co KG [EU:C:2013:592], Case C-141/13 *P Reber Holding & Co KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [EU:C:2014:2089], Case C-689/15 *W.F. Gözze Frottierweberei GmbH v Verein Bremer Baumwollbörse* [EU:C:2017:434] and Joined Cases C–720/18 and C–721/18 *Ferrari SpA v DU* [EU:C:2020:854].

106. Ignoring issues which do not arise in the present case, such as use in relation to spare parts or second-hand goods and use in relation to a sub-category of goods or services, the principles may be summarised as follows:

(1) Genuine use means actual use of the trade mark by the proprietor or by a third party with authority to use the mark: *Ansul* at [35] and [37].

(2) The use must be more than merely token, that is to say, serving solely to preserve the rights conferred by the registration of the mark: *Ansul* at[36]; *Sunrider* at [70]; *Verein* at [13]; *Centrotherm* at [71]; *Leno* at [29]; *Ferrari* at [32].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end user by enabling him to distinguish the goods or services from others which have another origin: *Ansul* at [36]; *Sunrider* at [70]; *Verein* at [13]; *Silberquelle* at [17]; *Centrotherm* at [71]; *Leno* at [29]; *Gözze* at [37], [40]; *Ferrari* at [32].

(4) Use of the mark must relate to goods or services which are already marketed or which are about to be marketed and for which preparations to secure customers are under way, particularly in the form of advertising campaigns: *Ansul* at [37]. Internal use by the proprietor does not suffice: *Ansul* at [37]; *Verein* at [14]. Nor does the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle* at [20]-[21]. But use by a non-profit making association can constitute genuine use: *Verein* at [16]-[23].

(5) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, that is to say, use in accordance with

the commercial *raison d'être* of the mark, which is to create or preserve an outlet for the goods or services that bear the mark: *Ansul* at [37]-[38]; *Verein* at [14]; *Silberquelle* at [18]; *Centrotherm* at [71].

(6) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including: (a) whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods and services in question; (b) the nature of the goods or services; (c) the characteristics of the market concerned; (d) the scale and frequency of use of the mark; (e) whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them; (f) the evidence that the proprietor is able to provide; and (g) the territorial extent of the use: *Ansul* at [38] and [39]; *La Mer* at [22]-[23]; *Sunrider* at [70]-[71], [76]; *Centrotherm* at [72]-[76]; *Reber* at [29], [32]-[34]; *Leno* at [29]-[30], [56]; *Ferrari* at [33].

(7) Use of the mark need not always be quantitatively significant for it to be deemed genuine. Even minimal use may qualify as genuine use if it is deemed to be justified in the economic sector concerned for the purpose of creating or preserving market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor. Thus there is no *de minimis* rule: *Ansul* at [39]; *La Mer* at [21], [24] and [25]; *Sunrider* at [72]; *Leno* at [55].

(8) It is not the case that every proven commercial use of the mark may automatically be deemed to constitute genuine use: *Reber* at [32]."

13. I keep this summary of the applicable law in mind. The following is a summary of the registered proprietor's evidence insofar as I consider it helpful or relevant:

- The evidence is focussed upon an attempt to illustrate use of the registered proprietor's "office rental business";[2]

- In 2006 a website for easyOffice was launched allowing the public to register their interest for renting flexible and affordable office space;[3]

- The first easyOffice opened in Kensington, London in 2007 and the number of offices being rented varied and, for example, in October 2011 there were 9 offices, 7 in London, one in Hertfordshire and one in Manchester;[4]

- easyOffice offered a booking facility in respect of more than 4,000 serviced offices of third parties throughout the world. This brokerage service has been in operation since June 2007 from the website www.easyoffice.co.uk;[5]

- A voluntary notice of appointment of a liquidator was filed in July 2012 and since the winding up, easyOffice has not rented serviced offices, but the website has continued to operate offering a brokerage service for serviced offices owned by third parties;[6]

- The witness statement of Mark Smith, who was the CEO of easyOffice Limited, dated 20 May 2010, is provided at Exhibit REP2 of Mr Pixton's witness statement but relates to different proceedings. Mr Smith states that the registered proprietor "currently" (20 May 2010) provides serviced office space for rental in 5 locations in London, with two further offices due to open "shortly". He also stated that the website www.easyOffice.com was set up to promote the easyOffice business. He provides amounts spent on advertising easyOffice on Google between June and November 2007 and this totalled in the region of £110k;[7]

[2] [136] – [141] of the extracts of the witness statement of Sir Stelios Haji-Ioannou, founder and director of easyGroup, the owner of the contested mark, dated 4 August 2017 and provided at Exhibit REP1 to Mr Pixton's witness statement
[3] [136] of Sir Stelios Haji-Ioannou's witness statement
[4] Ditto at [137]
[5] Ditto at [138]
[6] Ditto at [139]
[7] [6] of Mr Smith's witness statement provided at Exhibit REP2

- Promotional activities in respect of easyOffice were undertaken from April 2007 when Sir Stelios delivered a keynote address at the 2007 Business Startup Show,[8] and a promotional leaflet distributed at the show advertising that bookings were be taken from 1 June 2007 is provided.[9] A press release from the show identifies Sir Stelios as delivering the keynote address to give "some insight into his success in building easyJet into a £2billion business". It does not mention easyOffice;[10]

- www.easyoffice.co.uk also offered serviced office brokerage through a partner, allowing users to find and book serviced office space in locations all around the world. Between June 2007 and September 2007, commissions from this partner was in the region of £8450;[11]

- Four extracts from the website www.easyoffice.co.uk are provided from between 5 December 2006 and 13 July 2007. The latter announces that the first easyOffice space in London will open on 28 November 2007;[12]

- Historical extracts are provided from the registered proprietor's www.easyoffice.co.uk website dated 2 April 2016 and 5 February 2019 showing the "About Us" page.[13] The second of these offers office space in London, Sheffield, Liverpool, Manchester, Birmingham, Newcastle and Bristol. The following page provides specific information about "London Office Space" and includes the statement "easyOffice gives you the opportunity to view hundreds of office spaces to rent in the city of London";

- A further 34 historical screen shots are provided either from the same website or from www.easyofficespace.com that is stated as being jointly branded with easyoffice.co.uk. These are dated between 29 March 2015 and 26 March 2023. These all show use of easyOffice alone or as part of the web address easyOffice.co.uk and in respect of the rental of office space. Some promote locations already mentioned above but additional locations are also shown

[8] Ditto, at [8]
[9] At Exhibit MS9 to Mr Smith's 2010 witness statement
[10] Mr Smith's Exhibit MS10
[11] [9] of Mr Smith's witness statement
[12] Exhibit MS12 to Mr Smith's 2010 witness statement
[13] Exhibit REP3

e.g. the extract dated 22/09/2015 shows offices to rent in Edinburgh, Gogar, Leith, Aberdeen and Coatbridge;[14]

- Historical extracts also show promotion under the mark of the rental of meeting rooms in 2015 and 2016;[15]

- A "frequently asked questions" page dated 17 July 2015 states that "we have partnered with a telephone and internet supplier at each location and these services can be tailor made to your needs";[16]

- Details of 26 individual bookings are provided dated between 7 December 2013 and 26 September 2014 and accounting for £1334 revenue.[17] The first two were booked to "easyGroup" itself. The remaining bookings were made by nine third parties;

- Internal emails indicate that the registered proprietor was prepared to spend £2,000 on each of two months in late 2014 or early 2015 in respect of promotion via Google Adwords;[18]

- Email enquiries about renting office space are provided dated between May 2015 and May 2016;[19]

- A statement is produced showing 112 bookings of third party office spaces booked via easyOffice.co.uk website and the commission received by the registered proprietor during the period 28 July 2014 – 1 September 2018. The commission for most bookings was less than £100 but there are some higher amounts including one of nearly £4200;[20]

- Twelve example invoices from the period November 2014 – January 2020 is provided each relating to "easyOffice Fee Report" issued by easyGroup

[14] Exhibits REP4 – REP7
[15] Exhibit REP6
[16] Ditto, page 135
[17] Exhibit REP8
[18] Exhibit REP10
[19] Exhibit REP11
[20] Exhibit REP12

showing commission for various two-month periods in the range of £153 - £7071;[21]

- The witness statement of Christopher Griffin, Chief Executive of the Museum of Brands, dated 4 April 2017 attests to the fame of the "easy" brand and details its expansion to include a variety of brands including easyOffice;[22]

- Five purchase orders and invoices, dated between 23 September 2014 – 25 June 2015, relating to adverts placed in various national newspapers are provided together with copies of the adverts that promote easyGroup and its businesses including easyOffice;[23]

- Press articles from The Guardian newspaper and Reuters dated 30 September 2018 and 1 October 2018 relate to a dispute between easyGroup and Netflix and these articles refer to easyGroup's licensing of its brand, including easyOffice;[24]

- Example invoices are produced showing commission paid to the registered proprietor from a company called Citibase, for the licence to use easyHub (NOT easyOffice) in the period 2019 – 2022;[25]

- An email, dated 10 September 2020, sent to Sir Stelios (and other redacted names) from the CEO of a company called NewFlex reporting easyHub business during lockdown. After noting the resilience of enquiries and sales he also notes that "Ironically, EasyOffices continue to provide leads to easyHub";[26]

- An agreement between easyGroup and Citibase is produced dated 17 September 2019 relating to the licence of the easyHub and EASY trade marks. There is no mention of easyOffice;[27]

[21] Exhibit REP13
[22] Exhibit REP14
[23] Exhibit REP15
[24] Exhibit REP18
[25] Exhibit REP20
[26] Exhibit REP21
[27] Exhibit REP23

- A financial and occupancy forecast from Citibase in 2019 relating to easyOffice, Fulham is provided. There is no mention of easyOffice.[28]

14. The cancellation applicant submits that the registered proprietor has only provided evidence of use in respect of contested mark 914920409 and that the applications for revocation in respect of the other three challenged marks should succeed in their entirety. This is not the correct approach. The evidence was originally filed in support of the 914920409 mark but the proceedings were subsequently consolidated. Consolidation is an administrative procedure which aims to reduce costs and the work involved in dealing with related proceedings. It means the proceedings are combined, with each side in the dispute filing one set of evidence headed for, and covering, all of the consolidated proceedings. Therefore, following consolidation of the four proceedings on 12 March 2024, the evidence is common to all four. I accept that the letter informing the parties of this could have been clearer. It invited the registered proprietor to file evidence in the other three proceedings that form part of the consolidated group. This was in fact a reference to evidence to top-up that already provided in order to take account of the slight difference between some of the contested marks and the dates for revocation that varied across the four proceedings. The registered proprietor chose not to provide further evidence, but it is right that I consider the evidence already filed in respect of all four consolidated proceedings.

15. I have provided a reasonably detailed overview of the registered proprietor's evidence so that it is easier to see what it relates to and, more importantly, what it does not relate to. As characterised by the cancellation applicant it does relate to (1) office rental and (2) an office booking facility. It submits that the evidence fails in establishing this and that, further, the remaining contested listed services do not include such services. In support of this submission, it refers to the following view expressed in Kerley's Law of Trade Marks and Trade Names (17th Ed.) at 12-072:

> "*The use must be in relation to goods or services within the specification.* ***Use on any other goods or services is irrelevant*** [The cancellation applicant's emphasis]. *If an issue arises as to whether particular goods or services do or do not fall within the specification, it may be necessary to construe what the*

[28] Exhibit REM24

words used in the specification actually mean. The general approach to construction has been described thus:

> *"When it comes to construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of trade. After all, a trade mark specification is concerned with use in trade*."[29]

The words in the specification must be construed as at the date of application for the mark in question."

16. I agree with the cancellation applicant when it asserts that there are no issues of construction in this case. Office rental services do not fall within the remaining contested services. Such services are properly classified in Class 36 of the Nice Classification of goods and services. Further, brokerage of third party office space is also proper to Class 36. Only contested mark 911624376 contains Class 36, but even then, the services listed are *insurance*, *financial affairs* and *monetary affairs* and are not, nor do they include, office rental services or brokerage of the same. Therefore, insofar as the evidence demonstrates such use (and I note the cancellation applicant's strong submissions that the evidence does not), it is irrelevant for demonstrating use of the services of all four contested marks. I need say no more on this point.

17. In its submissions that accompanied the evidence, the registered proprietor asserts that the services shown to be offered demonstrate use in relation to the Class 43 services of contested mark 914920409 (namely *provision of facilities for exhibitions and conference; room rental for exhibitions, conferences; rental of fair stands; restaurant, bar and catering services*) and refers specifically to the contents of Exhibit REP3. There are no references to these services in that exhibit but rather it refers to "office space" and "office rental" that, on an ordinary understanding, would not include such services. Further, having considered the evidence carefully, it is not obvious that such services are referenced elsewhere in the evidence. For these reasons alone I

[29] A quote from Jacob J in *British Sugar Pic v James Robertson & Sons Ltd* [1996] R.P.C. 281 at 288.

dismiss the registered proprietor's claims that use of the contested marks in respect of these services is supported by the evidence*.* There is some minimal evidence in relation to rental of meeting rooms, but I do not understand that such facilities are conference facilities (i.e. used for hosting conferences) but rather they are likely to be understood as a facility linked with the provision of office space (i.e. a meeting room provided as an adjunct to office workspace). Even if I am wrong, and the evidence is considered to, in some way, relate to the listed services, there is no indication of the scale of use, or the geographical scope of any such use. For all these reasons, I conclude that the registered proprietor's evidence does NOT show genuine use of the Class 43 services.

18. Further to the above finding, there is no evidence going to any services other than rental of office space or the brokerage of third-party office space. The high point of the evidence (in respect of showing use of the listed services contained in the contested marks) is a "frequently asked questions" page of the easyOffice.co.uk, dated 17 July 2015, that states "we have partnered with a telephone and internet supplier at each location and these services can be tailor made to your needs". This is a reference to services that are arguably listed in the Class 38 and Class 42 specifications of both the 902907509 and 2313528A registrations, however, the phrase "we have partnered with…" suggests that such services are provided by third parties and not under one of the contested marks. Certainly, in the absence of corroboratory evidence to the contrary, I am unable to accept such a reference to be indicative of genuine use of the contested marks in respect of such services. Once again, even if I am wrong, and the evidence is considered to, in some way, relate to the listed services provided under the contested marks, such a cursory reference on a website in the absence of any indication regarding the scale of use, is insufficient. It is not possible to ascertain the volume provided by the registered proprietor and, for all these reasons, I conclude that the registered proprietor's evidence does NOT show genuine use in respect of *provision of broadband and telephone line services* or advice regarding the compatibility of software and hardware to telephony and broadband services.

Conclusion

19. In summary, I find that the evidence fails to establish genuine use in respect of any of the services listed in the four contested registrations at any time. Consequently, the

applications for revocation succeed in their entirety in respect of all four of the contested registrations and they are revoked from the earliest dates claimed, namely:

Contested Registration Number	Date of Revocation
902907509	01/07/2009
911624376	01/08/2018
2313528A	13/09/2008
914920409	28/06/2023

COSTS

20. The applicant for revocation has been successful in all four proceedings and is entitled to a contribution towards its costs. In its written submissions, it requests costs on an “off-scale” basis because the registered proprietor pressed on with the proceedings despite the findings of the court (confirmed by the court of appeal). It is relevant that contested mark 914920409 formed no part of the court proceedings and that proceedings against this mark were only commenced shortly before the Court of Appeal judgment that brought the court proceedings to an end. Further, the registered proprietor submitted that the surrender of the contested marks was as a result of other proceedings involving a third party and the decision was not related to the proceedings here and was not “cynical” as claimed by the cancellation applicant. Its evidence was filed prior to consolidation with the other three proceedings and prior to its decision to surrender all the contested marks. The purpose of the evidence, when filed, was to demonstrate use of the 914920409 mark during a five year period that was later than all the periods under consideration before ethe court.

21. In addition to the above, the cancellation applicant declined to file evidence, so whilst it was put to the costs of reviewing the registered proprietor’s evidence, its only other costs associated to these proceedings following consolidation of the fourth cancellation were those associated with drafting its final submissions.

22. In its submissions[30], the registered proprietor incorrectly stated that the court order related to rental of office space services. The Order also related to revocation in respect of *providing facilities for exhibitions and conferences; room rental for exhibitions* in class 43. These are services also listed in the Class 43 specification of contested mark 914920409. However, as the cancellation applicant did not address this specifically in its submissions, the error has no impact upon the costs of the proceedings.

23. Taking all of the above into account, I do not consider it appropriate to award off-scale costs. Rather, I award the cancellation applicant the sum of £2800 as a contribution towards the cost of the proceedings.   The sum is calculated as follows:

Preparing notice of revocations and considering defences	£800
Considering the other side’s evidence	£400
Preparing final submissions	£800
Official fees (4 x £200)	£800

24. I therefore order easyGroup Ltd to pay Nuclei Ltd the sum of £2800. The above sum should be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 4th day of March 2025

Mark Bryant
For the Registrar,
The Comptroller-General

---

[30] At [24]